

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING
Natural Resources Board Order AM-05-09

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11(2)(a), 285.11(1) and (16), 285.60(6), and 285.67, Stats., and interpreting ss. 227.11(2)(a) and 285.11(1) and (6), Stats., the Department of Natural Resources, hereinafter the DNR, will hold a public hearing to consider the repeal, amendment, repeal and recreation, and creation or rules relating to federal hazardous air pollutant regulations, biodiesel fuel, incorporation of statutory changes, and air permit applications on the date and at the time and location listed below.

The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11(6), Stats., will be revised.

Hearing Information

Date and Time

April 16, 2009, 11:00 A.M. - 12:30 P.M.

Location

Department of Natural Resources Building (GEF 2)
Room 613
101 South Webster Street
Madison, WI 53703

The public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult, please contact Robert Eckdale in writing at the DNR, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707; by E-mail to robert.eckdale@wisconsin.gov ; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rule and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm> . If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert Eckdale, Bureau of Air Management Rules Coordinator, by e-mail at robert.eckdale@wisconsin.gov or by calling 608.266.2856.

Submitting Comments

Comments on the proposed rule must be received on or before **April 24, 2009**. Written comments may be submitted by mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

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101 S Webster St, Madison, WI 53703

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Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>

Fiscal Estimate Summary

The DNR does not believe the proposed rule changes will have a significant effect on the private sector or on state and local governments. Minor savings may result from a proposed reduction in reporting requirements from semi-annual to annual, affecting both private and government owned facilities. In addition, minor savings could result from a proposed change to consider a switch to burning bio-fuels as a

permit revision, and not a permit modification. Where the DNR charges a fee for a permit modification, there are no fees associated with a permit revision.

Environmental Analysis

The DNR has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the DNR may prepare an environmental analysis before proceeding. This analysis would summarize the DNR's consideration of the impacts of the proposal and any reasonable alternatives.

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: Sections 227.11(2)(a), 285.11(1), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: Sections 227.11(2)(a), 285.11(1) and (16), 285.60(6), and 285.67, Stats.

3. Explanation of Agency Authority: Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., gives the Department the authority to develop a state implementation plan for the control of air pollution. Section 285.11(16), Stats., requires the Department to promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source. Section 285.60(6) Stats., allows the Department to promulgate rules to exempt types of stationary sources from the requirement to get a construction permit, if the potential emissions from the sources do not present a significant hazard to public health, safety, welfare or to the environment. Section 285.67, Stats., requires the Department to promulgate rules establishing criteria and procedures for revising air pollution control permits.

4. Related statute or rule: These rules relate directly to the permitting of activities that result in air emissions. The consent of the Attorney General will be requested for the incorporation by reference of an ASTM test method, in ch. NR 484.

5. Plain language analysis: The main objective of the proposed rule is to update permit language in chs. NR 406 and 407 regarding federal Generally Available Control Technology (GACT) rules for hazardous air pollutants. The current state rules do not exempt certain source categories from the need to obtain a construction or operation permit as is done on the federal level. Sources in Wisconsin potentially affected by this rule are bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities (gas stations), pipeline facilities and wood preserving facilities.

Rules are also proposed that add biodiesel fuel, by definition, as an alternative clean fuel. Currently a permit modification for existing sources, or a construction permit for new sources, is required in order to burn it.

This proposal would also amend the time frame for submittal of operation permit renewal applications.

Current rules require the application be submitted 12-18 months prior to the expiration of the operation permit. The Department proposes to change this deadline to no later than six months prior to the expiration of the operation permit to reflect updated statutory requirements in s. 285.66(3)(a), Stats.

Currently only selected portions of our rules require submittal of two copies of permit applications and related materials. The proposed rule would correct this inconsistency so that two copies are required in all cases. Additionally, language will be added to allow for electronic copies. Two copies are required as one is retained by the central office and one copy is sent to the appropriate regional office.

Other non-substantive changes are being proposed for consistency, to update outdated rule language and to provide clarification where needed.

6. Summary of, and comparison with, existing or proposed federal regulation: The changes to chs. NR 406 and 407, Wis. Adm. Code, are incorporating updates from federal rules, as referenced in Section 5. Chapter NR 407 is being changed as a result of a statutory change on the timeframe for the submittal of an operation permit renewal application. Other changes, to chs. 406, 407, 419 and 439 provide consistency within the rules by updating outdated language and providing clarification where appropriate. Chapter 484 is being amended to add an ASTM method for the testing of bio-diesel fuels

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): All the states manage an air construction and operation permit program. Comparisons between programs are difficult due to the varying ways sources may be exempt and how programs are funded.

The federal rules are effective nation-wide and the rules being proposed by the Department are essentially identical to the federal rules so the portions of the proposed rules dealing with the GACT standard should be similar or identical to rules in effect in adjacent states that have similar programs.

8. Summary of factual data and analytical methodologies used and how any related findings

support the regulatory approach chosen: Since the Department is proposing rules consistent with federal regulations, and making consistency and clarification changes, the Department did not, with one exception, make use of any factual data or analytical methodologies in the rule development. That exception is the proposed amendment to ch. NR 484.

The only exception is the adding of biodiesel as a clean fuel. Based on emission information developed by EPA in "A Comprehensive Analysis of Biodiesel Impacts on Exhaust Emissions" (October 2002, <http://www.epa.gov/OMS/models/biodsl.htm>), emissions from the burning of biodiesel are less than those of distillate fuels, except for Nitrogen Oxides (NO_x). NO_x emissions are approximately, 10% higher for a 20% blend of biodiesel and distillate fuels. Normally, biodiesel is not burned independently from other fuel types. By blending the fuels, existing burner design and fuel feed systems do not need to be altered. Emissions of hydrocarbons (21.1), particulate matter (10.1) and carbon monoxide (11.0) were all reduced with a 20% by the amounts shown in the parentheses. Carbon dioxide remained approximately the same.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: An analysis of the effect of the proposed rules on small business was not performed since most of the changes are identical requirements that are already in effect at a federal level, and the Department is required by statute to adopt federal regulations or to develop similar standards. Preparation of an economic impact report has not been requested. The proposed changes not based on federal regulations, were clarification in nature or updating of old or outdated language in the rules.

10. Effect on small business: Because the proposed GACT rule changes for permitting sources of hazardous air pollutants may result in a limited number of sources becoming subject to federal operation permit requirements, some small businesses may be required to report their compliance status semi-annually instead of annually.

The proposed rule is not expected to have a significant economic impact on small businesses nor have a significant economic effect on any entity.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary