



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Board Order Number: AM-27-09
Clearinghouse Number: CR 10-012
Subject of Rules: A rule-making order to revise s. NR 400.02 (162), relating to the definition of volatile organic compound.
Date of Transmittal: June 01, 2010

Send a copy of any correspondence or notices pertaining to the rule to:

**Linda Haddix – Department Rules Coordinator
DNR Bureau of Legal Services
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or robert.eckdale@wisconsin.gov

REPORT TO LEGISLATURE

NR 400, Wis. Adm. Code
Relating to the definition of volatile organic compound

Board Order Number: AM-27-09
Clearinghouse Rule Number: 10-012

BASIS AND PURPOSE OF THE PROPOSED RULE

In a January 21, 2009 Federal Register notice (74 FR 3437), the United States Environmental Protection Agency (EPA) revised its definition of volatile organic compounds (VOC) for purposes of preparing state implementation plans (SIP) to attain the national ambient air quality standard for ozone under Title I of the Clean Air Act. This revision added the compounds propylene carbonate and dimethyl carbonate to the list of compounds which are excluded from the federal definition of VOC on the basis that their emissions make a negligible contribution to tropospheric ozone formation.

Currently, s. NR 400.02(162)(a), Wis. Adm. Code, lists 50 compounds that are excluded from the state regulatory definition of VOC. The Department is proposing to add dimethyl carbonate and propylene carbonate to this list to ensure continued consistency between state and federal definitions in accordance with s. 285.11(16), Wis. Stats.

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_x) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOC and NO_x that can be released. VOC are those organic compounds of carbon which form ozone through atmospheric photochemical reactions. Different VOC have different levels of reactivity, i.e., they do not react to form ozone at the same speed or to the same extent. Some VOC react slowly, and changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC, so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. The EPA lists these negligibly reactive compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOCs.

SUMMARY OF PUBLIC COMMENTS

No public comments were received.

MODIFICATIONS MADE

No modification were necessary.

APPEARANCES AT THE PUBLIC HEARING

The Department conducted a public hearing on March 12, 2010 in Madison. There were no appearances at the hearing.

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

None were required.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

No comments were provided by the Legislative Council Rules Clearinghouse in its report.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule is not expected to have a significant economic impact on small business because it does not impose any new regulations, but rather removes two compounds from the state regulatory definition of VOC. This may provide lower cost alternatives to compounds currently being used.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to create NR 400.02(162)(a)51. and 52., relating to the definition of volatile organic compound.

AM-27-09

Analysis Prepared by the Department of Natural Resources

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

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

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rule-making authority. Section 285.11(1), Stats., gives the Department the authority to promulgate rules implementing and consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution. The plan must conform with the Clean Air Act and federal regulations for ozone control. Since volatile organic compounds (VOC) are a precursor to ozone, having the state definition of VOC conform to the federal definition is consistent with s. 285.11(6), Stats.

4. Related statute or rule:

Chapters NR 401 – 499 reference the definitions presented in s. NR 400.02, Wis. Adm. Code.

5. Plain language analysis:

The proposed rule amendment contained in this order reflects a recent conclusion by the United States Environmental Protection Agency (EPA) that dimethyl carbonate and propylene carbonate make a negligible contribution to tropospheric ozone formation. EPA excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437).

Currently, s. NR 400.02(162)(a), Wis. Adm. Code, lists 50 compounds that are excluded from the state regulatory definition of VOC. The Department is proposing to add dimethyl carbonate and propylene carbonate to this list to ensure consistency between state and federal definitions of VOC.

The proposed rule amendment may create an incentive for certain entities, such as paint and coating manufacturers, to use these compounds in place of other more highly reactive organic compounds thereby potentially reducing ground-level ozone concentrations.

6. Summary of, and comparison with, existing or proposed federal regulation:

The proposed rule amendment will ensure consistency between state and federal VOC definitions.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Each of the adjacent states have exempted or are in the process of exempting these two compounds from

the regulatory definition of VOC through state rulemaking processes. The following lists the expected state exemption dates for dimethyl carbonate and propylene carbonate:

- Illinois – Expected exemption January, 2010.
- Iowa – Compounds are exempt from emissions reporting starting in 2009.
- Michigan – Expected exemption late 2010.
- Minnesota – Compounds are currently exempt because EPA’s VOC definition is referenced.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

Since the proposed rule amendment is based on federal rule changes, the Department is relying on the factual data and analytical methodologies used by EPA to support its rule change. Information on the federal rule changes may be found in the Federal Register notice published on January 21, 2009 (74 FR 3437).

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 rule amendment on small business was not performed since this change would only provide additional flexibility in allowing them to choose from additional chemical compounds.

Preparation of an economic impact report was not requested.

10. Effect on small business:

The proposed rule amendment is not expected to have a significant economic impact on small business because it does not impose any new regulations on them, but rather removes two compounds from the state regulatory definition of VOC. This may provide lower cost alternatives to compounds currently being used.

11. Agency contact person: Joseph Hoch; P.O. Box 7921, Madison, WI 53707-7921; Telephone number: (608) 264-8861; e-mail address: joseph.hoch@wisconsin.gov

SECTION 1. NR 400.02(162)(a)51. and 52. are created to read:

NR 400.02(162)(a)51. Dimethyl carbonate (C₃H₆O₃).

52. Propylene carbonate (C₄H₆O₃).

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin
Natural Resources Board on May 26, 2010.

Dated at Madison, Wisconsin _____.

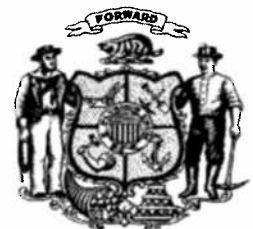
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 10-012

AN ORDER to create NR 400.02 (162) (a) 51. and 52, relating to the definition of volatile organic compounds.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-02-2010 RECEIVED BY LEGISLATIVE COUNCIL.

02-16-2010 REPORT SENT TO AGENCY.

RNS:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO