

Clearinghouse Rule 10-012

Report to
Legislative Council Rules Clearinghouse
NR 400, Wis. Adm. Code
Natural Resources Board Order No. AM-27-09

Wisconsin Statutory Authority

Sections 227.11(2)(a) and 285.11(1) and (6), Stats., interpreting s. 285.11(6), Stats.

Federal Authority

Not applicable.

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The United States Environmental Protection Agency (U.S. EPA) recently determined that dimethyl carbonate and propylene carbonate make a negligible contribution to tropospheric ozone formation. The U.S. EPA therefore excluded these two compounds from its regulatory definition of volatile organic compound (VOC) through a January 21, 2009 Federal Register notice (74 FR 3437). The final rule became effective on February 20, 2009.

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 the state and federal definitions. This action is consistent with Department duties under s. 285.11(16), Stats.

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.

The Department expects that the primary entities affected by the proposed rule revision would be paint and coating manufacturers. Dimethyl carbonate and to a lesser degree propylene carbonate may be useful in the formulation of paints and coatings, and could be used in place of other more highly photochemical reactive organic compounds.

The proposed rule 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.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

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Submitted on February 02, 2010

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

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

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

12. Place where comments are to be submitted and deadline for submission:

A public hearing as been scheduled for March 12, 2010. Comments on the proposed rule must be

submitted on or before March 22, 2010. Written comments may be submitted at the public hearing, by regular 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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Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm> .

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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)