

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

**SUBJECT:**

Request that the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order AM-05-21, proposed rules affecting chapter NR 428 related to nitrogen compound emissions regulations.

**FOR: October 2021 Board meeting**

**PRESENTER'S NAME AND TITLE:** Gail Good, Air Management Program Director

**SUMMARY:**

The Joint Committee for Review of Administrative Rules (JCRAR) has requested a preliminary public hearing and comment period on the scope statement for Board Order AM-05-21. If the preliminary hearing notice for Board Order AM-05-21 is approved by the board, the department will hold a preliminary public hearing and comment period on the scope statement. After the hearing is held and the public comment period closes, the department will bring the scope statement before the Board for approval. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. The 30-month time frame for submission of a final rule to the legislature for approval expires on January 26, 2024.

Chapter NR 428, Wis. Adm. Code, regulates the emissions of nitrogen oxides (NOx) from certain stationary sources. Subchapters I through III of this rule were added in January 2001 to fulfill the Rate of Progress/Reasonable Further Progress plans as required by Sections 172 (c)(2) and 182 (b)(1) of the federal Clean Air Act (CAA). Subchapter IV of this rule was added in July 2007 to include CAA Section 182(f) Reasonably Available Control Technology (RACT) requirements for major sources of NOx located in ozone nonattainment areas classified as "moderate" (or above).

Since the promulgation of the 2001 and 2007 ch. NR 428, Wis. Adm. Code, rule revisions, the department has identified several implementation issues associated with the chapter for certain scenarios. The department is therefore proposing to make changes to ensure clear and consistent implementation of this rule. The proposed changes include clarifying exemption applicability, emission limits for units using more than one type of fuel, and emissions averaging requirements. The proposed rule also revises and clarifies the existing compliance and monitoring requirements.

**RECOMMENDATION:** That the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order AM-05-21.

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

- Statement of Scope
- Governor's Approval of Statement of Scope
- Notice of Hearing

Approved by	Signature	Date
Gail E. Good, Air Management Program Director	<small>DocuSigned by:</small> <i>Gail E. Good</i>	8/13/2021   2:35 PM CDT
Darsi J. Foss, Environmental Management Division Administrator	<small>DocuSigned by:</small> <i>Darsi J. Foss</i>	8/13/2021   2:56 PM CDT
Preston D. Cole, Secretary	<small>DocuSigned by:</small> <i>Todd Ambs</i>	8/23/2021   8:53 AM CDT

for

by Todd Ambs

cc: Board Liaison - AD/8  
Department Tribal Liaison - AD/8

DS  
*WR*

Program attorney - LS/8

Department rule officer - LS/8

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## **Notice of Preliminary Hearing on Statement of Scope**

The Department of Natural Resources (DNR) announces that it will hold a preliminary public hearing on Statement of Scope SS 064-21 (Board Order AM-05-21) relating to revisions to nitrogen oxide (NO<sub>x</sub>) emissions regulations in ch. NR 428. In accordance with s. 227.136, Wis. Stats., the DNR is seeking public comment and feedback on Statement of Scope SS 064-21 at the time and virtual location shown below.

### **Hearing Information**

Date: Friday, November 5, 2021

Time: 10:30 AM

Virtual Location Link: <https://us02web.zoom.us/j/83791933638>

Call-in Number: 1-312-626-6799

Meeting ID: 837 9193 3638

### **Rule Information**

Chapter NR 428, Wis. Adm. Code, regulates the emissions of NO<sub>x</sub> from certain stationary sources. Subchapters I through III of this rule were added in January 2001 to fulfill the Rate of Progress (ROP)/Reasonable Further Progress (RFP) plans as required by Sections 172(c)(2) and 182 (b)(1) of the federal Clean Air Act (CAA). Subchapter IV of this rule was added in July 2007 to include CAA Section 182(f) Reasonably Available Control Technology (RACT) requirements for major sources of NO<sub>x</sub> located in ozone nonattainment areas classified as “moderate” (or above).

Since the promulgation of the 2001 and 2007 ch. NR 428, Wis. Adm. Code, rule revisions, the department has identified several implementation issues associated with the chapter for certain scenarios. The DNR is therefore proposing to make changes to ensure clear and consistent implementation of this rule. The proposed changes include clarifying exemption applicability, emission limits for units using more than one type of fuel, and emissions averaging requirements. The proposed rule also revises and clarifies the existing compliance and monitoring requirements.

### **Accessibility**

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

### **Appearances at the Hearing and Submittal of Written Comments**

The public has the opportunity to testify at the hearing. Registration will take place at the hearing by completing a Hearing Appearance form, which is available at:

<https://dnr.wisconsin.gov/news/input/ProposedPermanent.html>. Pre-registration is strongly

encouraged if you plan to provide spoken comments during the hearing. To pre-register, please download and complete the fillable [Hearing Appearance form](#) and send it to [OliviaE.Salmon@wisconsin.gov](mailto:OliviaE.Salmon@wisconsin.gov).

Comments on the proposed scope statement must be received on or before November 5, 2021. Written comments may be submitted by U.S. mail, 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 scope statement should be submitted to:**

Department of Natural Resources

Attn: Olivia Salmon

101 S. Webster Street

Madison, WI 53703

[OliviaE.Salmon@wisconsin.gov](mailto:OliviaE.Salmon@wisconsin.gov) or [DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov)

The Statement of Scope may be reviewed, and comments made at [https://docs.legis.wisconsin.gov/code/scope\\_statements/comment](https://docs.legis.wisconsin.gov/code/scope_statements/comment).

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** AM-05-21

**Relating**

**to:** Revisions to nitrogen compound emissions regulations in ch. NR 428

**Rule Type:** Permanent

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

The rule will be proposed as a permanent rule.

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

Chapter NR 428, Wis. Adm. Code, regulates the emissions of nitrogen oxides (NO<sub>x</sub>) from certain stationary sources. Subchapters I through III of this rule were added in January 2001 to fulfill the Rate of Progress (ROP)/Reasonable Further Progress (RFP) plans as required by Sections 172 (c)(2) and 182 (b)(1) of the federal Clean Air Act (CAA). Subchapter IV of this rule was added in July 2007 to include CAA Section 182(f) Reasonably Available Control Technology (RACT) requirements for major sources of NO<sub>x</sub> located in ozone nonattainment areas classified as “moderate” (or above).

Since the promulgation of the 2001 and 2007 ch. NR 428, Wis. Adm. Code, rule revisions, the department has identified several implementation issues associated with the chapter for certain scenarios. The department is therefore proposing to make changes to ensure clear and consistent implementation of this rule. The proposed changes include clarifying exemption applicability, emission limits for units using more than one type of fuel, and emissions averaging requirements. The proposed rule also revises and clarifies the existing compliance and monitoring requirements.

### 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 department is not proposing any new policies in this rule. This rule is consistent with the department’s longstanding policy of controlling NO<sub>x</sub> emissions as a precursor to ground level ozone formation, consistent with federal requirements. An alternative to this proposed rulemaking would be to issue guidance to clarify specific implementation issues. This alternative would not bring the same degree of clarity or long-term certainty to regulated sources.

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

The department is required under s. 285.11(1), Wis. Stats., to promulgate and implement air pollution control rules consistent with ch. 285, Wis. Stats. In addition, s. 285.11(6), Wis. Stats., requires the department to prepare and develop comprehensive state implementation plans (SIP) for prevention, control and abatement of air pollution and revise and implement those plans to conform with the CAA.

Several provisions of the CAA provide the federal statutory basis for this rule. Sections 172(c)(2) and 182(b)(1) of the CAA require the state to provide RFP plans for ozone nonattainment areas. Section 182(f) of the CAA requires NO<sub>x</sub> RACT to be included in the SIP for moderate (and above) ozone nonattainment areas.

**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 estimates that approximately 600 hours of staff time will be required to complete the proposed rule.

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

Affected entities include major stationary sources of NO<sub>x</sub> emissions (mainly combustion sources) located in Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties, as well as such sources located in other areas that are classified as moderate (or above) ozone nonattainment in the future.

In addition, there are organizations that may not be directly affected by the rule but may have an interest in rule development, including business, environmental and public health organizations.

**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:**

The proposed rule will revise the current RFP and RACT requirements for NO<sub>x</sub> emitting units located in former and current ozone nonattainment areas. The CAA requires the state to develop these regulations; there is no existing or proposed federal regulation that addresses the activities to be regulated by the proposed rule.

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

Chapter NR 428, Wis. Adm. Code, mainly applies to large NO<sub>x</sub> emitting facilities. The proposed rule is intended to clarify existing requirements and to ensure clear and consistent application of the department's longstanding policy of controlling NO<sub>x</sub> emissions. Therefore, the economic impact of the rule is expected to be minimal and the rule is not anticipated to have a significant economic impact on small businesses.

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

The department anticipates holding a public hearing in Madison, WI, in or around April 2023.

**Contact Person:**

Gail Good – AM/7  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
PO Box 7921  
Madison, WI 53703  
(608) 219-2690  
Gail.Good@wisconsin.gov

DocuSigned by:



6793A7BA427C4CD...  
For Preston D. Cole, Secretary

3/19/2021 | 8:55 AM CDT

Date Submitted

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# Tony Evers

Office of the Governor | State of Wisconsin

July 16, 2021

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Administration, submitted May 20, 2021, relating to the environmental improvement fund (Wis. Admin. Code ch. ADM 35); and
- A statement of scope by the Controlled Substances Board, submitted June 21, 2021, relating to scheduling Crotonyl Fentanyl (Wis. Admin. Code ch. CSB 2.78); and
- A statement of scope by the Controlled Substances Board, submitted June 21, 2021, relating to scheduling Remimazolam (Wis. Admin. Code ch. CSB 2.79); and
- A statement of scope by the Controlled Substances Board, submitted June 21, 2021, relating to scheduling bupropion (Wis. Admin. Code ch. CSB 2.81); and
- A statement of scope by the Department of Children and Families, submitted June 29, 2021, relating to school-age child care programs and other child care licensing updates (Wis. Admin. Code chs. DCF 250, 251 and 252); and
- A statement of scope by the Department of Natural Resources, submitted March 19, 2021, relating to revisions to nitrogen compound emissions regulations (Wis. Admin. Code ch. NR 428).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Optometry Examining Board, submitted May 17, 2021, relating to reciprocal credentials for service members, former service members, and their spouses (Wis. Admin. Code ch. Opt 3); and
- A proposed rule by the Department of Natural Resources, submitted June 23, 2021, relating to fishing regulations on inland, outlying and boundary waters (the 2021 Fisheries Management spring hearing rule) (Wis. Admin. Code chs. NR 19, 20, 21, 22, 23, 24, 25 and 26); and
- A proposed rule by the Department of Natural Resources, submitted June 23, 2021, relating to fish harvest in Lake Superior and affecting small business (Wis. Admin. Code chs. NR 20 and 25); and

- A proposed rule by the Department of Natural Resources, submitted June 23, 2021, relating to lake trout harvest and season in Lake Michigan (Wis. Admin. Code ch. NR 20); and
- A proposed rule by the Department of Natural Resources, submitted June 23, 2021, relating to Minocqua Chain walleye harvest regulations (Wis. Admin. Code ch. NR 20).

Please direct any questions about this letter to my policy director, Jenni Dye.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers". The signature is written in a cursive, flowing style.

Tony Evers  
Governor

cc: Ryan Nilsestuen, chief legal counsel ([ryan.nilsestuen1@wisconsin.gov](mailto:ryan.nilsestuen1@wisconsin.gov))  
Jenni Dye, policy director ([jenni.dye@wisconsin.gov](mailto:jenni.dye@wisconsin.gov))  
DOA State Budget Office ([SBOAdminRules@spmail.wi.gov](mailto:SBOAdminRules@spmail.wi.gov))  
David Rabe, DOA ([David.Rabe@wisconsin.gov](mailto:David.Rabe@wisconsin.gov))  
DSPS ([DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov))  
Elaine Pridgen, DCF ([elaine.pridgen@wisconsin.gov](mailto:elaine.pridgen@wisconsin.gov))  
Emma Esch, DNR ([emma.esch@wisconsin.gov](mailto:emma.esch@wisconsin.gov))