

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 99-109

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

The title of s. NR 216.45 is “Incomplete Notice of Intent.” If the department chooses to place the new provisions implementing the permit guarantee program in this section, then this title should be changed to reflect the added content. Alternatively, the new provisions could be placed in a separate section, perhaps numbered s. NR 216.455.

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Sections NR 300.02, 300.04 and 300.06 are inconsistent in their terminology. Section NR 300.02 says that the chapter is applicable to applications for *permits* and *approvals*; s. NR 300.04 (4) addresses permits, approvals and *determinations*, but the specific provisions of that subsection do not refer to approvals. Should “determinations” be added to s. NR 300.02? Should “approvals” be added to s. NR 300.04 (4) (a) and (c)? Also, s. NR 300.06 (4) refers only to permits and approvals; should “determinations” be added to this section?

b. In s. NR 300.06 (4), the comma following “30.206” should be replaced by the word “or.”

c. The definition of “business day,” in s. NR 400.02 (36m), should read: “. . . any day except Saturday, Sunday or a state holiday designated in . . . .”

d. The provisions of the rule affecting the NR 400 series apply the permit guarantee program to actions on applications for permits for the construction or operation of various sources of air pollution. With regard to construction permits, the department is subject to statutory time limits for certain steps in the review process, although there is no overall time limit for the entire process. [s. 285.61, Stats.] This statute allows substantially longer for the analysis of applications for permits to construct major sources than for minor sources (120 days vs. 30 days), clearly indicating the Legislature's view that the review of minor source applications should not take as long as the review of major source applications.

The rule establishes a 205 business day deadline for the department to complete its review of and issue its final determination regarding construction permit applications. Department staff indicate that this deadline reflects their estimate of the total time required to make these determinations, considering the time limits specified in s. 285.61, Stats., and the additional time required for other steps not subject to time limits in that section. In addition, they indicate that the estimate uses the 120-day limit for analysis of an application. However, since there is only a single deadline specified for all application types, this fails to consider the Legislature's view that the review of minor source applications should not take as long as the review of major source applications. In addition, it is unclear why there is one deadline for the review of minor source applications for purposes of the permit guarantee program and another, shorter, albeit not entirely explicit, deadline for the same review for purposes of actual issuance of the permit. It would seem to be more appropriate for the permit guarantee provisions to specify a separate deadline for minor sources, reflecting at least the difference (in business days) between the 120-day and 30-day analysis deadlines for major and minor sources.