

(b) The maximum theoretical emissions from the source for sulfur dioxide or carbon monoxide do not exceed 9.0 pounds per hour for each air contaminant;

(c) The maximum theoretical emissions from the source for particulate matter, nitrogen oxides or organic compounds do not exceed 5.7 pounds per hour for each air contaminant;

(cm) The maximum theoretical emissions from the source for PM₁₀ do not exceed 3.4 pounds per hour;

(d) The maximum theoretical emissions from the source for lead do not exceed 0.13 pounds per hour;

(e) The source will not emit any of the air contaminants listed in s. NR 405.02 (27) (a) at a rate greater than the applicable emission rate listed in s. NR 405.02 (27) (a);

(f) 1. The maximum theoretical emissions from the source for any hazardous air contaminant listed in Table 1 or Table 4 of s. NR 445.04 are not greater than the emission rate listed in Table 1 or Table 4 of s. NR 445.04 for the air contaminant for the respective stack height;

2. The maximum theoretical emissions from a source which manufactures or processes pesticides, rodenticides, insecticides, herbicides or fungicides for any hazardous air contaminant listed in Table 2 of s. NR 445.04 are not greater than the emission rate listed in the table for the air contaminant for the respective stack height;

3. The maximum theoretical emissions from the source for any hazardous emission contaminant listed in Table 3 of s. NR 445.04 do not exceed the emission rate contained in the table; and

4. The source does not combust municipal solid waste, as defined in s. NR 500.03 (86), or infectious wastes;

(g) The maximum theoretical emissions from the source for any air contaminant not mentioned in par. (b), (c), (cm), (d), (e) or (f), do not exceed 6.0 pounds per hour for each air contaminant;

(h) The source is not required to obtain a permit under ch. NR 408 because of a significant net increase in the emissions [of] an air contaminant for which the area is designated nonattainment; and

(i) The source is not subject to any standard or regulation under s. 111 or 112 of the federal clean air act.

(3) DETERMINATION OF HAZARDOUS EMISSIONS. (a) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source may rely on information on an approved material safety data sheet if the approved material safety data sheet lists a hazardous air contaminant listed in Tables 1 to 4 of s. NR 445.04 and the hazardous air contaminant listed in Table 1, 2, or 4 of s. NR 445.04 constitutes 10,000 parts per million or more of the material or the hazardous air contaminant listed in Table 3 constitutes 1,000 parts per million or more of the material. If an approved material safety data sheet for a material is not classified as proprietary and does not list a hazardous air contaminant in Tables 1 to 4 of s. NR 445.04 at or above the amounts listed in this paragraph, that material will be presumed not to result in emissions of a haz-

ardous air contaminant unless a hazardous air contaminant is formed in processing of the material.

(b) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source may rely upon mass balance, or other use, consumption and analytical methodologies for calculating potential emissions. However, the department may require that a stack test be conducted to affirm the accuracy of emission estimations.

(c) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source is not required to consider indoor fugitive emissions in calculating emissions of any substance in Table 1, 2 or 4 of s. NR 445.04.

(d) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source is not required to consider emissions resulting directly from naturally occurring constituents in windblown soil.

(4) **EXCLUSIONS FROM MODIFICATION.** For the purpose of determining if a modification occurs, a physical change in, or change in the method of operation of, a stationary source, may not include:

(a) *Use of alternate fuel or raw material.* Use of an alternate fuel or raw material which the source is designed to burn or use if:

1. The source has continuously had such design capability;
2. The use will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment;
3. The use is not prohibited by any permit, plan approval or special order applicable to the source;
4. The use will not result in a net emissions increase of a hazardous air contaminant above the threshold amount listed for the contaminant in Tables 1 to 4 of ch. NR 445 or the product of the following equation is equal to or less than 1.0:

$$\frac{\text{TLV (old substance)}}{\text{TLV (new substance)}} \times \frac{\text{Emissions (proposed new substance)}}{\text{Emissions (permitted old substance)}} =$$

5. The use will not result in a violation of any emission limit in chs. NR 405, 408 and 415 to 436; and

6. The use will not subject the source to any standard or regulation under s. 112 of the federal clean air act.

(b) *VOC RACT compliance.* A change at a source which is made primarily for the purpose of complying with the requirements of a RACT compliance plan approved under chs. NR 419 to 425, or a VOC RACT variance approved under s. NR 436.05, if the change does not cause or exacerbate the violation of an ambient air quality standard or ambient air increment for any air contaminant other than ozone.

(c) *Resumption of operation.* 1. The resumption of operation of a source after a period of closure if the existing equipment was continuously included in the department's emissions inventory as an existing source covered by plans submitted under s. 144.31 (1) (f), Stats.

2. The resumption of operation of a source after a period of closure if the source was never included and never required to be included in the emissions inventory as an existing source covered by plans submitted under s. 144.31 (1) (f), Stats., and the resumption of operation of the source will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment, will not result in the emission of a new air contaminant and is not prohibited by any permit, plan approval or special order applicable to the source.

(d) *Increase in production rate.* An increase in production rate if:

1. The increased production rate does not exceed the design capacity of the source;

2. The production rate increase does not require any change to existing equipment;

3. The increase is not prohibited by any permit, plan approval or special order applicable to the source; and

4. The increase will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment or violate an emission limit.

(e) *Increase in hours of operation.* An increase in hours of operation if:

1. The increase is not prohibited by any permit, plan approval or special order applicable to the source; and

2. The increase will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment or violate an emission limit.

(f) *Change of ownership.* A change in ownership of a source.

(g) *Routine maintenance or repair.* The routine maintenance or repair of a source.

(5) **EXEMPT RELOCATIONS.** (a) In addition to the approved relocated sources which are exempt from the need for an additional permit under s. 144.391 (5), Stats., and the relocation of an emissions unit within the contiguous property of an attainment area major source, no construction permit is required for the relocation of an emissions unit within the contiguous property of a minor source or a nonattainment area major source if:

1. The relocation of the emissions unit is not prohibited by any permit, plan approval or special order applicable to the source;

2. The emissions unit will not be modified;

3. The emissions unit meets all applicable emission limitations; and

4. The emissions unit's stack height or stack gas exit velocity or temperature will not be decreased.

(b) If the criteria in par. (a) 1, 2, and 3 are met but the emissions unit's stack height or stack gas exit velocity or temperature will be decreased, no construction permit is required for the relocation of the emissions unit if the allowable emissions from the source will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment.

(6) **EXEMPT REPLACEMENTS.** No construction permit is required for the replacement of a source if:

(a) The replacement is for only a portion of a basic emissions unit;

(b) Such replacement is not prohibited by any permit, plan approval or special order applicable to the source; and

(c) The essential components of the basic emissions unit are not replaced through several partial replacements within a 12-month period.

History: Cr. Register, March, 1972, No. 195, eff. 4-1-72; r. and recr. Register, June, 1975, No. 234, eff. 7-1-75; am. (1), renum. (2) and (3) to be (3) and (4) and am., cr. (2), Register, April, 1977, No. 256, eff. 5-1-77; r. and recr. Register, April, 1983, No. 328, eff. 5-1-83; reprinted to correct error in (2) (a) 8., Register, July, 1983, No. 331; renum. from NR 154.04 (2) to (6), Register, September, 1986, No. 369, eff. 10-1-86; am. (1) (intro.), (e) and (f), (2) (intro.) and (g), (4) (a) (intro.), r. (1) (m) to (o), renum. (3) (intro.), (a) to (c), (7) (a) to (c) to be (4) (intro.), (e) 1. to 3., NR 406.07 (1) and (2) and NR 406.04 (7) and am. (4) (intro.), (e) 3., NR 406.07 and NR 406.04 (7), cr. (4) (e) (intro.), Register, April, 1988, No. 388, eff. 5-1-88; r. (2) (e) and (4) (d), renum. (2) (d), (f), (g) and (4) (e) to be (2) (e), (g), (h) and (4) (d) and am. (2) (g), cr. (2) (d), (f), (3) and (4) (a) 4., am. (4) (a) 2. and 3., Register, September, 1988, No. 393, eff. 10-1-88; cr. (2) (cm), Register, December, 1988, No. 396, eff. 1-1-89; cr. (1) (m), am. (1) (a) 1. to 3., (g), (h), and (j), (2) (b), (c), (cm), (d), (e) 1. and 5., (f) 1. to 3. and (g), (7) (a), (b) and (c) 1. and 5., Register, August, 1991, No. 428, eff. 9-1-91; cr. (1) (n), Register, October, 1991, No. 430, eff. 11-1-91; correction in (1) (a) and (b), (4) (d) 2. made under s. 13.93 (2m) (b) 7, Stats., Register, October, 1991, No. 430; correction in (1) (a) and (n) made under s. 13.93 (2m) (b) 1 and 7, Stats., Register, May, 1992, No. 437; emerg. am. (1) (intro.), (a) (intro.) and 5., (b), (c), (e), (g), (h), (j) and (l), (2), (4) (intro.) to (c), (5) and (6) (intro.), cr. (1) (lm), (4) (e) to (g), r. and recr. (4) (d), r. (7), eff. 11-15-92; am. (1) (intro.), (a) (intro.) and 5., (b), (c), (e), (g), (h), (j) and (l), (2), (4) (intro.) to (c), (5) (a) (intro.), (b) and (6) (intro.), r. (1) (d) and (7), cr. (2) (i), (4) (a) 5. and 6., (e) to (g), r. and recr. (4) (d), Register, May, 1993, No. 449, eff. 6-1-93; corrections made under s. 13.93 (2m) (b) 12, Stats., Register, May, 1993, No. 449; cr. (1) (d), (o) to (w), am. (1) (e) and (f), Register, December, 1993, No. 456, eff. 1-1-94; cr. (1) (x) to (zb), Register, June, 1994, No. 462, eff. 7-1-94; am. (1) (m) (intro.) to 3., r. (1) (m) 5., renum. (1) (m) 6. to 10. to be 5. to 9. and am. 7. and 9., Register, September, 1994, No. 465, eff. 10-1-94.

NR 406.06 Indirect sources exempt from construction permit requirements. (1) **SPECIFIC CATEGORIES OF EXEMPT SOURCES.** The following categories of indirect sources are exempt from the requirement to obtain a construction permit unless the construction, reconstruction, replacement, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source or the source is required to obtain a permit because of incremental growth as determined under sub. (3).

(a) *Indirect sources with associated parking.* If the indirect source will not be a road or highway project, no permit is required if the source will be:

1. A new indirect source located in a metropolitan county with a parking capacity of less than 1000 cars in its associated parking areas.

2. A modified indirect source located in a metropolitan county with a parking capacity increase of less than 1000 cars in its associated parking areas.

3. A new indirect source located outside the metropolitan counties with a parking capacity of less than 1500 cars in its associated parking areas.

4. A modified indirect source located outside the metropolitan counties with a parking capacity increase of less than 1500 cars in its associated parking areas.

(b) *Road and highway projects.* If it is located outside the metropolitan counties, no permit is required for any new road or highway segment which will carry less than 4 lanes of traffic, for any new intersection each leg of which will carry less than 4 lanes of traffic, or for any modified road or highway segment or modified intersection which will have less than 2 additional lanes of traffic. In addition, no permit is required for any road or highway project which will meet all of the following criteria for location and anticipated traffic volumes within 10 years after construction or modification:

1. A peak hour volume of less than 1200 vehicles per hour on any new road or highway segment or new intersection leg located in a metropolitan county.

2. An increase in the peak hour volume of less than 1200 vehicles per hour on any modified road or highway segment located in a metropolitan county.

3. A peak hour volume of less than 1800 vehicles per hour on any new road or highway segment or new intersection leg located outside the metropolitan counties.

4. An increase in the peak hour volume of less than 1800 vehicles per hour on any modified road or highway segment located outside the metropolitan counties.

5. A maximum shift in the nearest roadway edge of less than 12 feet toward any potential receptor location within the new intersection boundary for any modified intersection.

(c) *Application of screening technique.* If a road or highway project is not exempt from permit requirements under par. (b), a person may apply for permit exemption by submitting the results of an approved screening analysis based on a line source dispersion model. The screening technique used must have been reviewed and approved by the department and the analysis must use receptor locations which have been approved by the department for each project as adequate to show the worst case ambient concentrations of carbon monoxide to which the public may be exposed. If the screening analysis results indicate that no receptor location will be exposed to more than 75% of any ambient air quality standard for carbon monoxide, no permit is required.

(2) **EXEMPT MODIFICATION OF EXISTING SOURCES.** No construction permit is required for the resumption of operation of an indirect source after a period of closure if the source meets all the conditions specified in s. NR 406.04 (4) (c).

(3) **INCREMENTAL GROWTH.** If a person constructs or modifies an indirect source in increments which individually are exempt from the requirement for a permit under this section, the person is required to obtain a construction permit for the source prior to commencing construction or modification of the increment which, in combination with the other increments occurring since July 1, 1975, or since the date of the last air pollution control permit or plan approval issued to the source, whichever is later, will cause the applicable permit exemption criteria specified in sub. (1) to be exceeded.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88; emerg. am. (1) (intro.), (2) and (3), eff. 11-15-92; am. (1) (intro.), (2) and (3), Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.07 Scope of permit exemption. (1) Exemption or the granting of an exemption under this chapter from the requirement to obtain a permit does not relieve any person from compliance with the emission limitations of chs. NR 400 to 499, the air quality requirements of ch. NR 404, the reporting requirements of ch. NR 438, or with any other provision of law.

(2) If a source undergoes a modification which is exempt from the requirement to obtain a construction permit under s. NR 406.04 (4), it will not be treated as a modified source for purposes of the emission limitations under chs. NR 400 to 499.

History: Renum. from NR 406.04 (7) (a) and (b), Register, April, 1988, No. 388, eff. 5-1-88; am. (2), Register, September, 1988, No. 393, eff. 10-1-88; emerg. am. (2), eff. 11-15-92; am., Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.08 Action on permit applications. The department shall act upon permit applications submitted by sources to which this chapter applies in accordance with the procedures set forth in s. 144.392, Stats.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. from NR 408.025, eff. 11-15-92; renum. from NR 408.025, Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.09 Air quality analysis. The air quality impact of a proposed stationary source will be determined at such locations where members of the public might reasonably be exposed for time periods consistent with the ambient air quality standards for the pollutants for which analysis is carried out.

History: Renum. from NR 154.05 (8) and am. Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. from NR 408.03, eff. 11-15-92; renum. from NR 408.03, Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.10 Violations. Any owner or operator who fails to construct a stationary source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate a stationary source in accordance with conditions imposed by the department under s. 144.394, Stats.; any owner or operator who modifies a stationary source in violation of conditions imposed by the department under s. 144.394, Stats.; or any owner or operator who commences construction or modification of a stationary source without applying for and receiving a permit as required under this chapter or ch. NR 408 shall be considered in violation of s. 144.391, Stats.

History: Renum. from NR 154.05 (1) and am. Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. from NR 408.04 and am., eff. 11-15-92; renum. from NR 408.04 and am., Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.11 Construction permit revision, suspension and revocation. (1) After providing 21 days written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, Stats., the department may revise, suspend or revoke a construction permit, part of that permit or the conditions of that permit if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or ambient air increment or which causes air pollution;

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation or a deliberate failure to disclose fully all relevant, significant facts when obtaining the permit;

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(c) *Department determination.* A determination by the department that the permit shall be revised to assure compliance with the applicable requirements;

(d) *Request.* A request by the permit holder to revise, suspend or revoke the permit;

(e) *Failure to pay fees.* An intentional failure by the permit holder to pay in full the fees required under ch. NR 410, except the department may not suspend or revoke the permit for failure to pay fees while those fees are being disputed under s. NR 410.04 (6); or

(f) *Failure to file annual emission inventory reports.* An intentional failure by the permit holder to file annual air emission inventory reports required under ch. NR 438.

(2) Any revised permit may be issued only if it meets the criteria in s. 144.393, Stats.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

NR 406.12 Permit duration periods. Approval to construct or modify a stationary source shall become invalid 18 months after the date when a construction permit was issued by the department unless the permit specifies otherwise. The department may only extend such a time period for up to 18 additional months on written request upon satisfactory showing that an extension is justified unless the permit specifies otherwise.

History: Renum. from NR 154.05 (12), (13) and (14) and am. Register, September, 1986, No. 369, eff. 10-1-86; renum. (1) and am., r. (2) and (3), Register, May, 1992, No. 437, eff. 6-1-92; emerg. renum. from NR 408.05 and am., eff. 11-15-92; renum. from NR 408.05 and am., Register, May, 1993, No. 449, eff. 6-1-93; renum. from NR 406.11, Register, December, 1993, No. 456, eff. 1-1-94.

NR 406.13 Duty to comply. Approval to construct or modify does not relieve any owner or operator of the responsibility to comply with the emission limits of chs. NR 400 to 499, the air quality standards of ch. NR 404 or the control strategies of all local, state and federal regulations which are part of the state implementation plan.

History: Renum. from NR 154.05 (15), Register, September, 1986, No. 369, eff. 10-1-86; am. Register, May, 1992, No. 437, eff. 6-1-92; emerg. renum. from NR 408.06, eff. 11-15-92; renum. from NR 408.06, Register, May, 1993, No. 449, eff. 6-1-93; renum. from NR 406.12, Register, December, 1993, No. 456, eff. 1-1-94.

NR 406.14 Exemption from requirements for indirect sources. Pursuant to s. 144.393 (4) (a), Stats., the permit requirements in s. 144.393 (2) (b) and (3) (a), Stats., do not apply to indirect sources.

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92; emerg. renum. from NR 408.07, eff. 11-15-92; renum. from NR 408.07, Register, May, 1993, No. 449, eff. 6-1-93; renum. from NR 406.13, Register, December, 1993, No. 456, eff. 1-1-94.