

Chapter NR 406

CONSTRUCTION PERMITS

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NR 406.01 Applicability; purpose. (1) **APPLICABILITY.** This chapter applies to all air contaminant sources which may be required under s. 144.391, Stats., to obtain construction permits. In accordance with s. 144.391 (6), Stats., this chapter exempts sources of certain sizes and types from the requirement to obtain a permit. For nonattainment area major sources the construction permit requirements of ch. NR 408 apply in addition to the requirements of this chapter.

(2) **PURPOSE.** This chapter is adopted under ss. 144.31, 144.391 (6), 144.393, 144.394 and 144.396, Stats., to exempt types of stationary sources from the requirement to obtain a construction permit and to establish permit and permit review requirements and permit duration for construction permits.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; am. Register, April, 1988, No. 388, eff. 5-1-88; emerg. am. (1), eff. 11-15-92; am., Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.02 Definitions. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(1) "Associated parking area" means a parking facility owned or operated in conjunction with an indirect source.

(1m) "Highway project" means all or a portion of a proposed new or modified section of highway. Where an environmental impact document is to be prepared, the highway project may be taken to cover the same length of highway.

(2) "Intersection boundary" means a line surrounding an intersection which is drawn to include the peak hour queue for each intersection approach and the area on either side of each such queue within a distance of one queue length, measured perpendicular to the queue.

(3) "Metropolitan county" means a county which has been designated as either a metropolitan statistical area or a primary metropolitan statistical area by the U.S. department of commerce in Federal Information Processing Standards Publication 8-5, October 31, 1984, incorporated by reference in ch. NR 484.

Note: The 19 Wisconsin counties which have been so designated are the counties of Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, Kenosha, La Crosse, Marathon, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, St. Croix, Washington, Waukesha and Winnebago.

(4) "Modified intersection" means an intersection which will have at least part of the new roadway surface, which is within the new intersection boundary, on land currently used for roadway within the boundary of an existing intersection.

(5) "Modified road or highway segment" means a road or highway segment which will have at least part of its roadway surface located on land currently used for roadway. In addition, a proposed road, ramp or lane which will carry traffic in only one direction shall be considered a modified road or highway segment if it will be less than one half mile in length and will not create a new traffic movement.

(6) "Municipal garbage and refuse" means garbage and refuse, as those terms are defined in ch. NR 500, which are primarily generated by residential activities but which may include minor amounts of commercial and industrial garbage and refuse that are in the total waste stream and are not hazardous. Municipal garbage and refuse does not include sludge which is generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility.

(7) "New road or highway segment" means a road or highway segment which will have its roadway surface located entirely on land not currently used for roadway and which is not a modified road or highway segment.

(8) "Parking capacity" means the maximum number of vehicles which a parking facility is designed to hold based on an allotment of not more than 350 square feet of stall and aisle area per vehicle.

(9) "Peak hour queue" means the line of waiting vehicles produced during the highest hour of traffic volume measured, estimated or projected for a given year, at a location where traffic flow is restricted.

(10) "Peak hour volume" means the highest one-hour traffic volume in a calendar year.

(10m) "Permit revision" means any change to a construction permit to reflect a change at a source that is not a modification of the source.

(11) "Road or highway segment" means a continuous length of road or highway outside of intersection boundaries. If the road or highway crosses the boundary between a metropolitan county and a non-metropolitan county, the portion on each side of this boundary is a separate road or highway segment.

(12) "Traffic volume" means the number of vehicles that pass a particular point on a road or highway during a specific time period.

History: Cr. (intro.), renum from NR 154.01, Register, September, 1986, No. 369, eff. 10-1-86; r. (1), r. and rec. (2), renum. (3) to (7) and (9) to be NR 400.02 (17m), (43m), NR 406.02 (1), NR 400.02 (46a), NR 406.02 (6) and (10), cr. (3) to (5), (7), (9) and (11), (12) renum. from NR 400.02 (96) and am., Register, April, 1988, No. 388, eff. 6-1-88; correction in (6) made under s. 13.93 (2m) (6) 7, Stats., Register, April, 1988, No. 388; (1) renum. from NR 400.02 (16), renum. (1) to be (1m), am. (3), Register, August, 1991, No. 428, eff. 9-1-91; emerg. cr. (2m) and (13), eff. 11-15-92; am. (intro.), Register, May, 1993, No. 449, eff. 6-1-93; cr. (10m), Register, December, 1993, No. 466, eff. 1-1-94.

NR 406.03 Permit requirements and exemptions for construction permits. No person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a

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

(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.

NR 406.15 Relocation of portable sources (1) APPLICABILITY. This section applies to all portable sources of air contaminants which are required under s. 144.391, Stats., to have a construction permit and to notify the department prior to relocation.

(2) **PERMIT REQUIREMENT.** No person may cause, allow or permit the relocation of a portable source to a new site without first obtaining a construction permit unless the portable source is exempt from the requirement to obtain a permit under s. NR 406.04, the portable source is an approved relocated source under s. 144.391 (5), Stats., or the portable source is exempt from the requirement to obtain an additional permit under sub. (3).

(3) **RELOCATION INTO AND WITHIN OZONE NONATTAINMENT AREAS.** Notwithstanding s. 144.391 (5) (a) 1., Stats., and pursuant to s. 144.391 (6), Stats., a portable source may relocate into or within a nonattainment area for ozone without obtaining an additional permit if all of the following requirements are met:

(a) The source has the potential to emit less than 25 tons per year of VOC and less than 25 tons per of NO_x.

(b) The source has an operation permit under s. 144.391, Stats., prior to relocation.

(c) The owner or operator of the source provides written notice to the department at least 20 days prior to relocation and the department does not object to the relocation.

(d) The source in its new location will meet all applicable emission limitations and any visibility requirements in chs. NR 401 to 499.

(e) The source is not an affected source.

History: Renum. (1) from NR 409.01 (1) and am., (2) from NR 409.025 and am., (3) from NR 409.03, Register, April, 1995, No. 472, eff. 5-1-95.