

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 recr. (2), renum. (3) to (7) and (9) to be NR 400.02 (17m), (43m), NR 406.02 (1), NR 400.02 (46s), NR 406.02 (6) and (10), cr. (3) to (5), (7), (9) and (11), (12) renum. from NR 400.02 (98) and am., Register, April, 1988, No. 388, eff. 5-1-88; 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. 456, 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

construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 144.391 (5), Stats., or under this chapter. Applications for the construction permit shall be submitted on forms which are available from the department at its Madison headquarters and district offices.

Note: The address of the Madison headquarters is: Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison WI 53707, Attention: Permit Application Forms

History: Renum. from NR 154.04 (1), Register, September, 1986, No. 369, eff. 10-1-86; emerg. am. eff. 11-15-92; am. Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.04 Direct sources exempt from construction permit requirements.

(1) **SPECIFIC CATEGORIES OF EXEMPT SOURCES.** The following categories of direct sources are exempt from the requirement to obtain a construction permit unless 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 under ch. NR 408 because of a significant net increase in the emissions [of] an air contaminant for which the area is designated nonattainment:

(a) An external combustion furnace which will not burn any hazardous waste identified under ch. NR 605, or which has been issued a license under ch. NR 680, and which is designed to burn the following fuels at the maximum rates indicated:

1. Coal, coke or other solid fuels, except wood, at a heat input rate of not more than 1.0 million Btu per hour;

2. Wood alone or wood in combination with gaseous or liquid fuels at a heat input rate of not more than 5.0 million Btu per hour;

3. Residual or crude oil at a heat input rate of not more than 5.0 million Btu per hour;

4. Distillate oil at a heat input rate of not more than 10 million Btu per hour; and

5. Gaseous fuel at a heat input rate of not more than 40 million Btu per hour.

(b) Equipment which is designed to incinerate solid wastes, which are not pathological wastes, infectious wastes, municipal wastes or hazardous wastes under ch. NR 605, at a rate of not more than 500 pounds per hour.

(c) Equipment which is designed to dry grain at a rate of not more than 1,500 bushels per hour at 5% moisture extraction and which is not subject to ch. NR 440.

(d) Portland concrete batch plants which produce or will produce less than 20,000 cubic yards of concrete per month averaged over any 12 consecutive month period.

(e) Storage tanks containing organic compounds with a true vapor pressure in pounds per square inch absolute at 70°F of less than 1.52 with a combined total tankage capacity of not more than 40,000 gallons.

(f) VOC storage tanks with a combined total tankage capacity of not more than 10,000 gallons of volatile organic compounds.

(g) Painting or coating operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of organic compounds per month, which are measured prior to entering any emission control devices.

(h) Graphic arts operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of organic compounds per month, which are measured prior to entering any emission control devices.

(i) 1. Equipment used or to be used for the purpose of testing or research provided:

a. A complete application for exemption is made describing the proposed testing or research and including an operating schedule and the types and quantities of emissions anticipated; and

b. The department determines that the equipment to be used and the anticipated emissions from the testing or research will not present a significant hazard to public health, safety or welfare or to the environment and approves the application for exemption.

2. The department shall approve or deny the application in writing within 45 days of receiving a complete application for exemption under this paragraph. The department may provide public notice of an application for research and testing exemption, may provide an opportunity for public comment and an opportunity to request a public hearing and may hold a public hearing on any application under this paragraph. The department shall make all nonconfidential information available to the public upon request.

(j) A laboratory which emits organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides or particulate matter or a combination thereof at a rate of less than 5.7 pounds per hour unless the emissions of any single hazardous air pollutant as defined by s. 112 (b) of the federal clean air act equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants equal or exceed 25 tons per year. Hourly emissions shall be determined, based on the quantitative estimate of air contaminants before they enter any emission control devices, by dividing the total uncontrolled emissions which would have occurred during a calendar month by the total hours of operation of the laboratory during that calendar month. A laboratory is in operation if laboratory apparatus or equipment is in use.

(k) Equipment whose primary purpose is to transport or sort paper.

(l) Facilities for chlorination of municipal drinking water, the intake of once through industrial process or cooling water, or water for swimming pools, spas or other recreational establishments.

(m) The following procedures for the remediation of soil or water contaminated with organic compounds, provided the potential to emit, considering emission control devices, for any hazardous air contaminant listed in Table 1 to Table 4 of s. NR 445.04 is not greater than the emission rate listed in Table 1 to Table 4 of s. NR 445.04 for the air contaminant at the respective stack height:

1. Landspreading of contaminated soil, including the agricultural landspreading of soil contaminated with pesticide or fertilizer;

2. Negative pressure venting of contaminated soil or bioremediation, provided the remediation is completed within 3 months or the potential to emit organic compounds from the remediation site is at a rate of not more than 5.7 pounds per hour, considering emission control devices;

3. Pilot testing of a negative pressure venting system provided the testing is limited to a total withdrawal of not more than 150,000 standard cubic feet (scf) of air;

Note: The total withdrawal may be determined by the equation: Total withdrawal (scf) = hours of operation of pilot test (hr) × average flow rate in cubic feet per minute at standard conditions (scfm) × 60 min/hr. An example is: 10 hours of operation × 250 scfm × 60 min/hr = 150,000 scf. When testing at multiple flow rates, determine the withdrawal for each flow rate and sum the withdrawals for a total withdrawal.

4. Landfilling of contaminated soil;

5. Installation and use of devices which remove organic compounds from a private or municipal potable water supply;

6. Installation and use of crop irrigation systems or dewatering wells to remediate contaminated water;

7. Installation and use of air strippers for treatment of contaminated water, provided the remediation is completed within 3 months or the potential to emit organic compounds from the remediation site is at a rate of not more than 5.7 pounds per hour, considering emission control devices;

8. Installation and use of any devices or techniques not listed in this paragraph which are used to remediate soil or water contaminated with organic compounds, if the device or technique is not portable and is not a thermal evaporation unit, and the remediation is completed within 3 months; and

9. Installation and use of any technique or device to remediate soil or water contaminated with organic compounds as part of actions taken by EPA under the authority of the comprehensive environmental response compensation and liability act of 1980, 42 USC 9601 et seq., by the department under the authority of s. 144.442 or 144.76, Stats., or by a responsible party in compliance with the requirements of an administrative order, consent decree or contract issued pursuant to the comprehensive environmental response compensation and liability act of 1980, 42 USC 9601 et seq., or s. 144.442 or 144.76, Stats.

Note: Even though these sources are exempt from permit requirements, they are still subject to the notification requirements under s. NR 419.07 (2).

(n) Renovation or demolition operations involving friable asbestos containing material provided:

1. The amount of asbestos containing material is less than 260 linear feet on pipes or 160 square feet on other facility components; or

2. If the amount of asbestos containing material is at least 260 linear feet on pipes or at least 160 square feet on other facility components:

a. Notice of intention is provided under s. NR 447.07;

b. The notice indicates that the project will meet all applicable requirements of ch. NR 447; and

c. The fee required under s. NR 410.05 (2) and (3) is submitted with the notice.

(o) Batch cold cleaning equipment with a total air to solvent interface of 1.0 square meters or less during operation.

(p) Batch open top vapor degreasing equipment with a total air to vapor interface of 1.0 square meters or less during operation.

(q) Private alcohol fuel production systems as defined in s. 144.438 (1) (c), Stats.

(r) Dry cleaning operations with a total maximum operating capacity for all machines of 75 pounds of clothes per hour.

(s) Crematories.

(t) Indirect malt dryers which are designed to burn fuels specified in par. (a) at a heat input rate less than the rates specified in par. (a).

(u) Gasoline dispensing facilities which dispense gasoline or other petroleum products.

(v) Bulk gasoline plants which distribute gasoline or other petroleum products.

(w) Emergency electric generators powered by internal combustion engines which are fueled by gaseous fuels, gasoline or distillate fuel oil with an electrical output of less than 3,000 kilowatts.

(x) Any quarry, mine or other facility where nonmetallic minerals are extracted that is not a ledge rock quarry or industrial sand mine.

(y) Ledge rock quarries with actual production of less than 25,000 tons per month on a rolling 12 month average, or with actual operation of less than 365 days per 5 year period.

(z) Industrial sand mines with actual production of less than 2,000 tons per month on a rolling 12 month average.

(za) Fixed sand and gravel plants and fixed crushed stone plants with capacities of 25 tons per hour or less.

(zb) Portable sand and gravel plants and portable crushed stone plants with capacities of 150 tons per hour or less.

(1m) ASBESTOS ABATEMENT NOTICE. Each asbestos abatement notice of intention is considered an application for permit exemption. The department may place conditions on any permit exemption granted under sub. (1) (n).

(2) GENERAL CATEGORY OF EXEMPT SOURCES. In addition to the specific categories of exempt sources identified in sub. (1), no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a direct source if:

(a) The construction, reconstruction, replacement, relocation or modification of the source is not prohibited by any permit, plan approval or special order applicable to the source;

cluded 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), renun. (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; renun. 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), renun. (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), renun. (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., renun. (1) (m) 6. to 10. to be 5. to 9. and am. 7. and 9., Register, September, 1994, No. 465, eff. 10-1-94; am. (2) (f) 3., (3) (a), cr. (2) (f) 3m., Register, December, 1994, No. 468, eff. 1-1-95; am. (1) (n) 2. c., Register, February, 1995, No. 470, eff. 3-1-95.

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;

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(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.