

CHAPTER 285

AIR POLLUTION

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Note: 1995 Wis. Act 227 renumbered the provisions of chs. 144, 147, 159 and 162, Stats. 1993–94, to be chs. 280–299, Stats. 1995–96. For a table tracing former section numbers see the Addenda & Errata at the end of Volume 5.

SUBCHAPTER I DEFINITIONS

285.01 Definitions. In this chapter, unless the context requires otherwise:

(1) “Air contaminant” means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(2) “Air contaminant source”, or “source” if not otherwise modified, means any facility, building, structure, installation, equipment, vehicle or action that emits or may emit an air contaminant directly, indirectly or in combination with another facility, building, structure, installation, equipment, vehicle or action.

(3) “Air pollution” means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(4) “Air pollution control permit” means any permit required or allowed under s. 285.60.

(5) “Allocation of the available air resource” means either:

(a) The apportionment among air contaminant sources of the difference between an ambient air quality standard and the concentration in the atmosphere of the corresponding air contaminant

in existence at the time the rule promulgated under s. 285.25 becomes effective; or

(b) The apportionment among air contaminant sources of the difference between an ambient air increment and the baseline concentration if a baseline concentration is established.

(7) “Allowable emission” means the emission rate calculated using the maximum rated capacity of the origin of, or the equipment emitting an air contaminant based on the most stringent applicable emission limitation and accounting for any enforceable permit conditions which limit operating rate, or hours of operation, or both.

(8) “Ambient air increment” means the maximum allowable concentration of an air contaminant above the base line concentration.

(9) “Ambient air quality standard” means a level of air quality which will protect public health with an adequate margin of safety or may be necessary to protect public welfare from anticipated adverse effects.

(9m) “Architectural coating” means a coating applied to a stationary structure, including a parking lot, and its appurtenances or to a mobile home.

(10) “Attainment area” means an area which is not a nonattainment area.

(11) “Base line concentration” means concentration in the atmosphere of an air contaminant which exists in an area at the time of the first application to the U.S. environmental protection agency for a prevention of significant deterioration permit under 42 USC 7475 or the first application for an air pollution control permit under s. 285.60 for a major source located in an attainment

area, whichever occurs first, less any contribution from stationary sources identified in [42 USC 7479](#) (4).

(12) “Best available control technology” means an emission limitation for an air contaminant based on the maximum degree of reduction achievable as specified by the department on an individual case-by-case basis taking into account energy, economic and environmental impacts and other costs related to the source.

(13) “Department” means the department of natural resources.

(15) “Emission” means a release of air contaminants into the atmosphere.

(16) “Emission limitation” or “emission standard” means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(17) “Emission reduction option” means:

(a) An offsetting of greater emissions from a stationary source against lower emissions from the same or another stationary source.

(b) A reduction in emissions from a stationary source which is reserved as a credit against future emissions from the same or another stationary source.

(c) Other arrangements for emission reduction, trade-off, credit or offset permitted by rule by the department.

(18) “Existing source” means a stationary source that is not a new source or a modified source.

(19) “Federal clean air act” means the federal clean air act, [42 USC 7401 to 7671q](#), and regulations issued by the federal environmental protection agency under that act.

(20) “Growth accommodation” means the amount of volatile organic compounds specified in [s. 285.39 \(1\) \(a\)](#).

(21) “Hazardous substance” means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

(23) “Lowest achievable emission rate” means the rate of emission which reflects the more stringent of the following:

(a) The most stringent emission limitation which is contained in the air pollution regulatory program of any state for this class or category of source, unless an applicant for a permit demonstrates that these limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by the class or category of source.

(24) “Major source” means a stationary source that is capable of emitting an air contaminant in an amount in excess of an amount specified by the department by rule under [s. 285.11 \(16\)](#).

(25) “Minor source” means a stationary source that is not a major source.

(26) “Modification” means any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted, subject to rules promulgated under [s. 285.11 \(17\)](#).

(27) “Modified source” means a stationary source on which modification commences after November 15, 1992.

(28) “Municipality” means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(29) “New source” means a stationary source on which construction, reconstruction or replacement commences after November 15, 1992.

(30) “Nonattainment area” means an area identified by the department in a document prepared under [s. 285.23 \(2\)](#) where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard.

(33) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(34) “Reasonably available control technology” means that control technology which provides the lowest emission rate that a particular source is capable of achieving by the application of control technology that is reasonably available considering technological and economic feasibility.

(35) “Refuse” means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(36) “Regulated pollutant” means any of the following, except for carbon monoxide:

(a) A volatile organic compound.

(b) An oxide of nitrogen.

(c) A pollutant regulated under [42 USC 7411](#) or [7412](#).

(d) A pollutant for which a national primary ambient air quality standard has been promulgated under [42 USC 7409](#).

(37) “Replenishment implementation period” means the period between August 1, 1987, and December 31 of the year by which the department requires full compliance with rules required to be promulgated under [s. 285.39 \(3\)](#).

(38) “Secretary” means the secretary of natural resources.

(39) “Sewage” means the water-carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in [s. 101.01 \(12\)](#), with such surface water or groundwater as may be present.

(40) “Solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under [ch. 283](#), or source material, as defined in [s. 254.31 \(10\)](#), special nuclear material, as defined in [s. 254.31 \(11\)](#), or by-product material, as defined in [s. 254.31 \(1\)](#).

(41) “Stationary source” means any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant. A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving.

(42) “Volatile organic compound” means an organic compound which participates in an atmospheric photochemical reaction, as determined by the department by rule.

(43) “Volatile organic compound accommodation area” means Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha counties and any other county specified by the department by rule in response to a finding by the federal environmental protection agency that the county is to be included in the volatile organic compound accommodation area.

History: 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269, 302; 1995 a. 227 ss. 438 to 453, 989; Stats. 1995 s. 285.01; 1997 a. 35; 1999 a. 9.

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

Cleaning the Air: Wisconsin’s Air Quality Laws. Burke. Wis. Law. Aug. 1992.

SUBCHAPTER II

GENERAL POWERS AND DUTIES

285.11 Air pollution control; department duties. The department shall:

(1) Promulgate rules implementing and consistent with this chapter and s. 299.15.

(2) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter and s. 299.15.

(3) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance for that purpose.

(4) Collect and disseminate information and conduct educational and training programs relating to the purposes of this chapter and s. 299.15.

(5) Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's air resources.

(6) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:

(a) The measures are part of an interstate ozone control strategy implementation agreement under s. 285.15 signed by the governor of this state and of the state of Illinois.

(b) The measures are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

(7) Conduct or direct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and air pollution throughout the state.

(8) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with this chapter or rules pursuant thereto, or any other provision of law.

(9) Prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

(10) Specify the best available control technology on an individual case-by-case basis considering energy, economic and environmental impacts and other costs related to the source.

(11) Coordinate the reporting requirements under ss. 285.65 and 299.15 in order to minimize duplicative reporting requirements.

(12) Prepare an annual report which states the total nitrogen oxide and sulfur dioxide emissions from all stationary sources in this state. This report may be combined with other reports published by the department.

(13) If federal legislation is enacted that establishes sulfur dioxide or nitrogen oxide controls for the purpose of reducing acid deposition, prepare a report, in consultation with the public service commission, this state's electric utilities, industries and environmental groups, recommending ways to coordinate state law with federal law. The department, after holding a public hearing

on the report, shall submit the report to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), within 6 months after the enactment of the federal legislation.

(14) Promulgate by rule the actions or events which constitute the reconstruction of a major source.

(15) Promulgate by rule the actions or events which constitute the shutdown of a facility.

(16) Promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants.

(17) Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.

(18) Adopt and apply objective performance measurements, for the subunit of the department that administers this chapter, relating to the issuance of permits under subch. VII and to overall performance of the subunit.

History: 1995 a. 227 ss. 455, 989; 1999 a. 9.

Cross Reference: See also NR 400–, Wis. adm. code.

285.13 Air pollution control; department powers. The department may:

(1) Hold hearings relating to any aspect of the administration of this chapter and s. 299.15 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(2) Issue orders to effectuate the purposes of this chapter and s. 299.15 and enforce the same by all appropriate administrative and judicial proceedings.

(3) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(4) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(5) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(6) Examine any records relating to emissions which cause or contribute to air contamination.

(7) Establish by rule, consistent with the federal clean air act, the amount of offsetting emissions reductions required under s. 285.63 (2) (a).

History: 1995 a. 227 ss. 456, 989.

Cross Reference: See also NR 400–, Wis. adm. code.

285.15 Interstate agreement. After May 14, 1992, the governor may enter into an agreement with the governor of the state of Illinois, that may also include the governors of the states of Indiana and Michigan, that specifies measures for the control of atmospheric ozone that are necessary in order to implement an interstate ozone control strategy to bring an area designated under 42 USC 7407 (d) as an ozone nonattainment area into attainment with the ambient air quality standard for ozone if the area includes portions of this state and the state of Illinois.

History: 1995 a. 227 ss. 458, 989.

Cross Reference: See also s. NR 1.50, Wis. adm. code.

285.17 Classification, reporting and monitoring. (1)

(a) The department, by rule, shall classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be

made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department require reporting shall make reports containing such information as the department requires concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months.

(3) The department may not post on the Internet any information that is required to be reported to the department under this chapter and that relates to a facility's air emissions, including the nature and duration of specific emissions of an air contaminant source and any results of monitoring the emissions of a contaminant source or the ambient air in the vicinity of a contaminant source, unless the department certifies that the information is accurate on the date on which the information is posted.

History: 1991 a. 302; 1995 a. 227 s. 478; 1999 a. 9.

Cross Reference: See also NR 400-, Wis. adm. code.

285.19 Inspections. Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and s. 299.15 and rules promulgated or permits issued under this chapter or s. 299.15. No person may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1991 a. 302; 1993 a. 491; 1995 a. 227 s. 461; Stats. 1995 s. 285.19.

Cross Reference: See also ch. NR 439, Wis. adm. code.

SUBCHAPTER III

AIR QUALITY STANDARDS, PERFORMANCE STANDARDS; EMISSION LIMITS AND NONATTAINMENT AREAS

285.21 Ambient air quality standards and increments.

(1) **AMBIENT AIR QUALITY STANDARDS.** (a) *Similar to federal standard.* If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (4).

(b) *Standard to protect health or welfare.* If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.

(2) **AMBIENT AIR INCREMENT.** The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consis-

tent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act except as provided under sub. (4).

(3) **CAUSE OR EXACERBATION OF AMBIENT AIR QUALITY STANDARD OR INCREMENT.** The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.

(4) **IMPACT OF CHANGE IN FEDERAL STANDARDS.** If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare.

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35.

Cross Reference: See also ch. NR 404, Wis. adm. code.

The promulgation of emission standards is discussed. Wisconsin Hospital Association v. Natural Resources Board, 156 Wis. 2d 688, 457 N.W.2d 879 (Ct. App. 1990).

285.23 Identification of nonattainment areas. (1) **PROCEDURES AND CRITERIA.** The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area.

(2) **DOCUMENTS.** The department shall issue documents from time to time which define or list specific nonattainment areas based upon the procedures and criteria promulgated under sub.

(1). Notwithstanding ss. 227.01 (13) and 227.10 (1), documents issued under this subsection are not rules.

(3) **REVIEW.** The documents issued under sub. (2) may be reviewed under ss. 227.42 and 227.52.

(4) **PROCEDURES.** (a) For any document issued under sub. (2), the department shall hold a public hearing and follow the procedures in this subsection.

(b) The department shall give notice of the public hearing, and shall take any steps it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed document. The notice shall be given at least 30 days prior to the date set for the hearing. The notice shall include a statement of the time and place at which the hearing is to be held and either a text of the proposed document or a description of how a copy of the document may be obtained from the department at no charge.

(c) The department shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if it appears that the length of the hearing otherwise would be unduly increased by reason of repetition. The department shall afford each interested person opportunity to present facts, views or arguments in writing whether or not he or she has had an opportunity to present them orally.

(d) At the beginning of each hearing the department shall present a summary of the factual information on which the document is based. The department or its duly authorized representative may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines. The department shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible.

(e) The department shall receive written comments on the document for at least 10 days after the close of the hearing. The department may not issue documents under this section earlier than 30 days after the close of the hearing.

History: 1979 c. 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1989 a. 56; 1995 a. 227 s. 463; Stats. 1995 s. 285.23.

Cross Reference: See also ch. NR 401, Wis. adm. code.

285.25 Air resource allocation. (1) **DETERMINATION.** The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule procedures

and criteria to determine the allocation of the available air resource in an attainment area.

(2) **ALLOCATION.** The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule air resource allocation standards to allocate the available air resource in attainment areas among sources receiving a construction permit or operation permit or an elective operation permit for an existing source after the effective date of this rule, other air contaminant sources and possible future air contaminant sources. The air resource allocation standards may allow for emission reduction options. The application of air resource allocation standards may not result in a violation of an ambient air quality standard or an ambient air increment.

(3) **DOCUMENTS.** The department shall maintain records indicating how much of the available air resource has been allocated in attainment areas. The department shall make these records available for public inspection.

History: 1979 c. 221; 1991 a. 302; 1995 a. 227 s. 470; Stats. 1995 s. 285.25.

285.27 Performance and emission standards.

(1) **STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES.**
(a) *Similar to federal standard.* If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).

(b) *Standard to protect public health or welfare.* If a standard of performance for any air contaminant for new stationary sources is not promulgated under section 111 of the federal clean air act, the department may promulgate an emission standard of performance for new stationary sources if the department finds the standard is needed to provide adequate protection for public health or welfare.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard of performance for a new stationary source than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive emission standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

(2) **EMISSION STANDARDS FOR HAZARDOUS AIR CONTAMINANTS.**
(a) *Similar to federal standard.* If an emission standard for a hazardous air contaminant is promulgated under section 112 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).

(b) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard for a hazardous air contaminant than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

(3) **LIMITATION ON IMPOSITION OF EMISSION STANDARDS.** The department may not impose emission standards on a coal-powered car ferry that was manufactured before 1954 and has operated only on Lake Michigan if the coal-powered car ferry does not burn coal with a higher sulfur content than the coal burned before May 2, 1990.

(4) **IMPACT OF CHANGE IN FEDERAL STANDARDS.** If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air

act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.

History: 1995 a. 227 s. 474, 989.

Cross Reference: See also NR 400–, Wis. adm. code.

The promulgation of emission standards under s. 144.375 (5) (b) [now s. 285.27 (2) (b)] is discussed. *Wisconsin Hospital Association. v. Natural Resources Board*, 156 Wis. 2d 688, 457 N.W.2d 879 (Ct. App. 1990).

285.29 Best available retrofit technology. (1) CASE-BY-CASE SPECIFICATION. If visibility in an area is identified as an important value of the area under section 169A of the federal clean air act, the department shall specify on a case-by-case basis the best available retrofit technology for any existing major source located in the area and identified under section 169A of the federal clean air act.

(2) **CONSIDERATIONS.** In specifying the best available retrofit technology, the department shall consider:

- (a) The cost of compliance.
- (b) The existing pollution control technology in use at the source.
- (c) The remaining useful life of the source.
- (d) The degree of improvement in visibility which may be anticipated to result from the use of various retrofit technologies.
- (e) The energy and nonair quality environmental impacts of compliance.

History: 1979 c. 221; 1995 a. 227 s. 469; Stats. 1995 s. 285.29.

SUBCHAPTER IV

VOLATILE ORGANIC COMPOUNDS AND MOBILE SOURCES; EMISSION LIMITS AND STANDARDS

285.30 Motor vehicle emissions limitations; inspections. (1) DEFINITIONS. As used in this section, unless the context requires otherwise:

(a) “Federal act” means the federal clean air act, 42 USC 7401 et seq., and regulations issued by the federal environmental protection agency under that act.

(b) “Motor vehicle” has the meaning designated under s. 340.01 (35).

(2) **LIMITATIONS.** The department shall adopt rules specifying emissions limitations for all motor vehicles not exempted under sub. (5). The limitations may be different for each size, type and year of vehicle engine affected and may not be more stringent than those required by federal law at the time of the vehicle’s manufacture. The limitations shall be adopted and periodically revised upon consideration of the following factors:

(a) The emissions reductions necessary to achieve federally mandated ambient air quality standards by any deadline established by the federal act and to maintain those standards after any deadline established by the federal act.

(b) The emissions levels attainable by reasonable preventive maintenance practices relating to installed emission control equipment and devices for each model year, size and type of motor vehicle affected.

(c) The requirements for eligibility for a manufacturer’s warranty under section 7541 (b) of the federal act.

(d) The requirements of the federal act.

(3) **COUNTIES WHERE INSPECTIONS REQUIRED.** If the department finds that air quality within a county will not meet one or more applicable primary or secondary ambient air quality standards by any deadline established by the federal act, or that these standards will not be maintained in the county after any deadline established by the federal act and that inspection of emissions from motor vehicles in any part of the county is required by federal law to

attain or maintain these standards, the department shall certify this finding to the department of transportation.

(4) **TERMINATION.** If the department finds that air quality within a county specified in a certification under sub. (3) has attained all applicable ambient air quality standards and that these standards will be maintained in the county or that control of motor vehicle emissions is no longer required by federal law for attainment and maintenance of these standards, the department shall notify the department of transportation that the county is withdrawn from the certification under sub. (3).

(5) **EXEMPTIONS.** Emissions limitations promulgated under sub. (2) do not apply to the following motor vehicles:

(a) A motor vehicle of a model year of 1967 or earlier.

(b) A motor vehicle with a gross vehicle weight rating exceeding 10,000 pounds, as determined by the manufacturer of the vehicle.

(c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g) or (h).

(d) A motor vehicle powered by diesel fuel.

(e) A new motor vehicle not previously registered in any state.

(f) A motor vehicle for which inspection, in the judgment of the department, is not a cost effective method for attaining and maintaining air quality.

(g) A moped as defined in s. 340.01 (29m).

(h) A motorcycle as defined in s. 340.01 (32).

(i) A farm truck as defined in s. 340.01 (18) (a).

(6) **TAMPERING WITH POLLUTION CONTROL SYSTEM OR MECHANISM.** (a) *Definitions.* As used in this subsection:

1. “Air pollution control equipment” means any equipment or feature which constitutes an operational element of the air pollution control system or mechanism of a motor vehicle.

3. “Tamper” means to dismantle, to remove without replacing with an identical or comparable tested replacement device or to cause to be inoperative any air pollution control equipment.

(b) *Prohibition.* Except as permitted or authorized by rule of the department, no person may fail to maintain in good working order or may tamper with air pollution control equipment.

(c) *Ineligibility for motor vehicle registration.* Except as permitted or authorized by rule of the department, if any person tampers with the air pollution control equipment of a motor vehicle, that vehicle is ineligible for motor vehicle registration until the air pollution control equipment is replaced, repaired or restored to good working order.

(d) *Suspension or cancellation of motor vehicle registration.* Except as permitted or authorized by rule of the department, if the owner of a motor vehicle tampers with or causes or knowingly permits any person to tamper with the air pollution control equipment, the motor vehicle registration for that vehicle may be suspended or canceled in addition to any other penalty provided by law.

(e) *Rule making.* The department shall promulgate rules that specify the requirements for the inspection of motor vehicles for the occurrence of tampering with air pollution control equipment.

History: 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b); 1979 c. 34 s. 2102 (39) (g); 1979 c. 274; 1981 c. 390; 1983 a. 243; 1987 a. 27; 1991 a. 39; 1993 a. 288; 1995 a. 137; 1995 a. 227 s. 507; Stats. 1995 s. 285.30; 1997 a. 27.

Cross Reference: See also ch. NR 485, Wis. adm. code.

285.31 Gasoline vapor recovery. (1) DEFINITIONS. In this section:

(a) “Gasoline dispensing facility” means a place where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(b) “Retail station” means a gasoline dispensing facility where gasoline is sold at retail.

(c) “Vapor control system” means a system that gathers vapors of organic compounds, including gasoline and benzene, released

during the operation of transfer, storage or processing equipment and processes the vapors to prevent their emission into the atmosphere.

(3) **RULES.** (a) The department shall promulgate rules, based on requirements under 42 USC 7511a, that require the owner or operator of a retail station that is located in an ozone nonattainment area with a classification under 42 USC 7511 (a) of moderate or worse to install and operate a vapor control system that is approved by the department on the equipment that is used to dispense gasoline to a motor vehicle gasoline tank or other fuel tank.

(b) The department shall establish vapor recovery efficiency standards for vapor control systems approved under par. (a). The department shall use nationally recognized methods to determine the vapor recovery efficiency of vapor control systems.

(4) **IMPLEMENTATION OF REQUIREMENTS.** (a) The rules promulgated under sub. (3) shall have an effective date of November 15, 1992. The rules shall apply the requirements under sub. (3) beginning on November 15, 1993, except that the requirements under sub. (3) shall apply beginning on May 15, 1993, to retail stations the construction of which begins after November 15, 1990.

(b) The department may not require the owner or operator of a retail station that is located in this state to install or operate a vapor control system for gasoline dispensing equipment before November 15, 1993, or, if construction of the retail station begins after November 15, 1990, before May 15, 1993.

History: 1991 a. 39; 1993 a. 16; 1995 a. 27, 144; 1995 a. 227 s. 504; Stats. 1995 s. 285.31; 1997 a. 27.

285.33 Employee trip reduction program. (1) AREAS.

(a) The department shall issue documents that describe the areas of the state in which employee trip reduction programs are required by 42 USC 7511a (d) (1) (B).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require employee trip reduction programs. The department may not require an employee trip reduction program in an area unless that requirement is authorized under s. 285.11 (6).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(2) **REQUIREMENTS.** (a) The department shall promulgate by rule requirements for employers who are located in areas described under sub. (1) (a) or (b) to implement programs to reduce work-related trips and miles traveled by employees. The department shall develop the rules in accordance with 42 USC 7511a (d) (1) (B) and the guidance issued by the administrator of the federal environmental protection agency under 42 USC 7408 (f).

(b) The rules under par. (a) shall establish reasonable limits on the direct and indirect expenses that an employer may be required to incur to comply with the rules. The rules shall specify a limit for each of the following:

1. The maximum annual expenses for each worksite subject to the rules.

2. The maximum annual expenses for each employee subject to the rules at a worksite.

(3) **COMPLIANCE PLANS.** (a) Except as provided under sub. (4) or (5), if an employer is located in an area that is described before November 15, 1993, by the department under sub. (1) (a) or (b) and is subject to the rules promulgated under sub. (2), the employer shall submit to the department, no later than November 15, 1994, a plan that demonstrates that the employer will comply with the rules no later than November 15, 1996.

(b) The department may not require as a condition of approving a compliance plan that an employer incur annual expenses greater than the limits established under sub. (2) (b).

(c) Notwithstanding any other provision of this section, an employer is considered to meet the requirements of this section if the employer’s compliance plan is approved by the department

and the employer makes reasonable efforts to implement the compliance plan.

(4) ALTERNATIVE CONTROL PLAN. (a) Instead of submitting a compliance plan under sub. (3) (a), an employer may submit to the department a plan for an alternate control program that provides for any of the following:

1. Air quality benefits similar to a compliance plan under sub. (3) (a), as determined by the department.

2. A reduction of emissions of volatile organic compounds, achieved after August 31, 1995, in the areas described under sub. (1) (a) or (b) that is at least 1.3 times the reduction of the emissions of volatile organic compounds that would be achieved under a compliance plan under sub. (3) (a).

3. A reduction of emissions of volatile organic compounds, achieved after August 31, 1995, in the areas described under sub. (1) (a) or (b) that is equal to or greater than the reduction of the emissions of volatile organic compounds that would be achieved under a compliance plan under sub. (3) (a), if the emissions reduction is included in an operation permit under s. 285.60 or another document that is enforceable by the federal government.

(b) Notwithstanding any other provision of this section, an employer with an alternate control plan under par. (a) 1. or 2. that is approved by the department is considered to meet the requirements of this section if the employer makes reasonable efforts to implement the alternate control plan.

(5) SUSPENSION. (a) If the secretary determines that the requirement for an employee trip reduction program under 42 USC 7511a (d) (1) (B) is suspended or terminated, the secretary may suspend the program under this section.

(b) If the U.S. congress has passed and the president has signed legislation that eliminates or suspends the requirement for an employee trip reduction program under 42 USC 7511a (d) (1) (B), the governor may suspend the program under this section.

History: 1991 a. 302; 1995 a. 52; 1995 a. 227 s. 464; Stats. 1995 s. 285.33.

Cross Reference: See also ch. NR 486, Wis. adm. code.

285.35 Clean fuel fleet program. (1) DEFINITIONS. In this section:

(a) “Clean alternative fuel” has the meaning given in 42 USC 7581 (2).

(b) “Clean-fuel vehicle” has the meaning given in 42 USC 7581 (7).

(c) “Covered fleet” has the meaning given in 42 USC 7581 (5).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which clean-fuel vehicle programs are required under 42 USC 7511a (c) (4) (A).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require clean-fuel vehicle programs. The department may not require a clean-fuel vehicle program in an area unless that requirement is authorized under s. 285.11 (6).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1) a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(3) REQUIREMENTS. The department shall promulgate by rule requirements for the use of clean-fuel vehicles and clean alternative fuels by operators of covered fleets in areas identified under sub. (2) (a) or (b). The rules shall be in accordance with the requirements applicable to covered fleets under 42 USC 7586 and regulations promulgated under that provision.

History: 1991 a. 302; 1995 a. 227 s. 465; Stats. 1995 s. 285.35.

Cross Reference: See also ch. NR 487, Wis. adm. code.

285.37 Reformulated gasoline. (1) DEFINITIONS. In this section, “reformulated gasoline” means gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in 42 USC 7545 (k) (1) to (3).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which the use of reformulated gasoline is required under 42 USC 7545 (k) (5).

(b) The department shall issue documents that describe areas of the state, other than areas described under par. (a) or (c), in which the use of reformulated gasoline is required, if the governor designates the areas in an application under 42 USC 7545 (k) (6) that is approved by the administrator of the federal environmental protection agency.

(c) The department may, by rule, determine areas of the state, other than areas described under par. (a) or (b), in which the department will require the use of reformulated gasoline. The department may not require the use of reformulated gasoline in an area unless that requirement is authorized under s. 285.11 (6).

(d) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) or (b) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(3) PROHIBITIONS. (a) Except as provided in par. (b), beginning on January 1, 1995, no person may sell gasoline in an area described under sub. (2) (a), (b) or (c) unless the gasoline satisfies the minimum specifications for reformulated gasoline under s. 168.04.

(b) The secretary, with the approval of the administrator of the federal environmental protection agency, may grant temporary waivers from the prohibition under par. (a) if fuel that satisfies the minimum specifications for reformulated gasoline is unavailable.

History: 1991 a. 302; 1995 a. 227 s. 466, 467; Stats. 1995 s. 285.37.

285.39 Volatile organic compounds growth accommodation and replenishment. (1) GROWTH ACCOMMODATION CALCULATION. (a) The growth accommodation for any specified year, as calculated by the department, is the predicted emissions specified in par. (b) minus the sum of:

1. Net actual emissions specified in par. (c);
2. Net certified accommodation credits specified in par. (d);
3. Net offset credits specified in par. (e); and
4. Set asides specified in par. (f).

(b) Predicted emissions are the total predicted annual emissions of volatile organic compounds in the volatile organic compound accommodation area necessary to attain and maintain the ambient air quality standard for ozone for the year 2 years before the specified year, as set forth in the plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

(c) Net actual emissions are the total actual annual emissions of all volatile organic compounds in the volatile organic compound accommodation area for the year 2 years before the specified year as reported under sub. (2) (a) minus:

1. The sum of the annual emissions of volatile organic compounds attributable to shutdowns of facilities in the volatile organic accommodation area during the previous year; and
2. If a rule has been promulgated under sub. (3), the sum of the annual emissions reductions of volatile organic compounds attributable to the sources subject to the rule promulgated under sub. (3) during the previous year.

(d) Net certified accommodation credits are the sum of all volatile organic compound growth accommodation credits certified to date under s. 285.63 (7) or (8) minus the sum of the actual annual emissions of volatile organic compounds for the year 2 years before the specified year attributable to the sources receiving volatile organic compound growth accommodation credits certified to date under s. 285.63 (7) or (8).

(e) Net offset credits are the sum of all allowable emissions of volatile organic compounds authorized to date attributable to sources subject to an annual volatile organic compounds emission limitation that is specified in an air pollution control permit to operate under an emission reduction option or specified as an emission credit under a plan approved by the U.S. environmental protection agency under 42 USC 7502 (a) or in reports submitted

to the U.S. environmental protection agency under the plan minus the sum of the actual annual emissions of volatile organic compounds for the year 2 years before the specified year attributable to sources subject to an annual volatile organic compounds emission limitation that is specified in an air pollution control permit to operate under an emission reduction option or specified as an emission credit under a plan approved by the U.S. environmental protection agency under 42 USC 7502 (a) or in reports submitted to the U.S. environmental protection agency under the plan.

(f) Set asides are:

1. Fifteen percent of the annual emissions of volatile organic compounds attributable to shutdowns of facilities in the volatile organic compound accommodation area since January 1, 1987; and

2. If a rule has been promulgated under sub. (3), 15% of the sum of the annual emissions reductions of volatile organic compounds attributable, since January 1, 1987, to the sources subject to the rule promulgated under sub. (3).

(2) ANNUAL REPORTS. The department shall prepare an annual report by January 15, which may be combined with other reports published by the department, that:

(a) States, on a calendar year basis, the total annual emissions, for the year 2 years before the year in which the report is prepared, of all volatile organic compounds in the volatile organic compound accommodation area, except methylene chloride and methyl chloroform and other volatile organic compounds that the department determines by rule to be compounds that do not contribute to the formation of ozone in the troposphere.

(b) Includes an annual plan for the management of the volatile organic compounds growth accommodation and replenishment and the growth accommodation replenishment grant program. At a minimum, the plan shall:

1. Indicate the amount of the growth accommodation at the beginning of the year.

2. Indicate the likely amount of the growth accommodation at the end of the year.

3. Report the status of the development and implementation of plans or rules under subs. (3) to (5).

4. Report if, during the prior year, the replenishment implementation period has expired.

(3) GROWTH ACCOMMODATION REPLENISHMENT. The department shall:

(a) Promulgate rules under s. 285.30 (6) (e), relating to the inspection of vehicles for tampering with air pollution control equipment.

(b) Promulgate rules restricting the amount of volatile organic compounds that may be contained in architectural coatings sold at retail in the volatile organic compound accommodation area or for use by a service provider in the volatile organic compound accommodation area. The department may exempt from a rule under this paragraph one or more categories of architectural coatings, based upon the type of coating or the use to which a coating is put, if it would be technically impractical to prohibit a category of architectural coating. The proposed rules shall include a provision to allow for the limited sale and use of the supplies of prohibited architectural coatings that retailers and suppliers in the volatile organic compound area already have in stock at the time of promulgation of the rules.

(c) Promulgate rules requiring persons who refinish auto bodies in the volatile organic compound accommodation area to use compounds, as solvents to clean painting and related equipment, that do not react to form ozone in the troposphere. The proposed rules shall allow the use of cleaning solvents containing volatile organic compounds that were purchased before the effective date of the proposed rules.

(4) REPORT ON NEW REPLENISHMENT MECHANISMS. After expiration of the replenishment implementation period, if the department reports under sub. (2) (b) 1. or determines at any other time

that the growth accommodation is less than 3,500 tons, the department shall, with the advice of the department of commerce, submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees of the legislature under s. 13.172 (3) on how to most effectively and equitably replenish the growth accommodation. The report shall review existing studies and data to evaluate the accuracy of this state's state implementation plan with respect to the effect of emissions from inside and outside the volatile organic compound accommodation area on the ambient air quality within the area.

(5) CONTINGENT RESTRICTIONS ON EXISTING SOURCES. If at any time the department finds that the growth accommodation is less than 2,500 tons and determines that it is unlikely that the growth accommodation will exceed 2,500 tons in the report under sub. (2) (b) 1. for the following year because of the inadequacy of replenishment activities at the time or because of facility shutdowns, the department shall implement the rules that specify emission limitations for emissions of volatile organic compounds from stationary sources located in the volatile organic compound accommodation area that were required to report their emissions under s. 299.15 during calendar year 1987. The emission limitations shall be designed to ensure that the growth accommodation in the subsequent year is not less than 2,500 tons. The emission limitations may not be more restrictive than the lowest achievable emission rate. The department shall implement the emission limitations by source category. For the purpose of this section, the department shall determine a source category according to the type and level of emissions. The department may also use other characteristics which relate to air pollution to determine source categories. The department shall implement the emission limitations based upon ease of implementation, cost-effectiveness and the relative equity of imposing a limitation upon a source category, given any prior limitations of emissions imposed upon that source category. To the extent feasible, the emission limitations shall provide affected sources the opportunity to choose to be subject to either an annual emission limitation or a more restrictive applicable reasonably available control technology rule than was in effect in 1987.

History: 1987 a. 27, 399; 1991 a. 302; 1995 a. 27 s. 9116 (5); 1995 a. 227 s. 500; Stats. 1995 s. 285.39.

Cross Reference: See also chs. NR 485 and 488, Wis. adm. code.

SUBCHAPTER V

SULFUR DIOXIDE AND NITROGEN OXIDE EMISSION RATES AND GOALS

285.41 Sulfur dioxide emission rates after 1992; major utilities. (1) DEFINITIONS. In this section:

(a) "Annual emissions" means the number of pounds of sulfur dioxide emissions from all boilers under the ownership or control of a major utility in a given year.

(b) "Annual heat input" means the heat input, measured in millions of British thermal units, from all boilers under the ownership or control of a major utility in a given year.

(c) "Boiler" means a fossil fuel-fired boiler.

(d) "Commission" means the public service commission.

(e) "Environmental dispatching" means the operation of the various units under the ownership or control of a major utility in a manner that minimizes the discharge of sulfur dioxide emissions rather than minimizing the cost of operation.

(f) "Major utility" means a Class A utility, as defined under s. 199.03 (4), which generates electricity or an electrical cooperative association organized under ch. 185, if the total sulfur dioxide emissions from all stationary air contaminant sources in this state under the ownership or control of the utility or association exceeded 5,000 tons in any year after 1979.

(g) "Traded emissions" means the pounds of sulfur dioxide emissions in a given year that a major utility which is the grantor in an agreement under sub. (2) (b) 1. makes available to the major utility which is the grantee in the agreement.

(2) CORPORATE EMISSION RATE; TRADING. (a) Except as provided under sub. (4), beginning with 1993, the average number of pounds of sulfur dioxide emissions per million British thermal units of heat input from all boilers under the ownership or control of a major utility for any year may not exceed 1.20.

(b) 1. Two major utilities may enter into an agreement for trading emissions unless the sum of the proposed traded emissions and the projected annual emissions of the grantor major utility for the year to which the agreement will apply would exceed the actual annual emissions of the grantor major utility in 1985.

2. To determine whether the major utility that is the grantor in an agreement under subd. 1. is in compliance with par. (a) in a given year, the department shall add the traded emissions and the grantor's annual emissions and divide the sum by the annual heat input of the grantor.

3. To determine whether the major utility that is the grantee in an agreement under subd. 1. is in compliance with par. (a) in a given year, the department shall subtract the traded emissions from the grantee's annual emissions and divide the difference by the annual heat input of the grantee.

(3) ANNUAL COMPLIANCE PLAN REQUIRED. (a) *Submission; contents.* On or before October 1 of each year beginning with 1992, each major utility shall submit to the department and the commission a plan for achieving compliance with the emission rate under sub. (2) (a). The plan shall include, at a minimum:

1. The major utility's expected electricity demand.
2. The major utility's annual operation plan.
3. The expected operation characteristics of each boiler, including:
 - a. The order to be used in placing the boilers into operational production.
 - b. The planned maintenance schedule for each boiler and how the maintenance is expected to affect the methods of meeting electricity demands.
4. The amount and sulfur content of coal, other fossil fuel or other materials to be used for each boiler in operational production. The sulfur content shall be expressed in pounds of sulfur dioxide per million British thermal units of heat input.
5. The anticipated sulfur dioxide emissions from each boiler.
6. Contingency plans for unexpected events or increased demand including a summary of generation costs and the anticipated additional costs for reducing sulfur dioxide emissions under those circumstances.
7. The methods that will be used to achieve compliance with sub. (2) (a) in the following year including, if applicable, the provisions of any trading agreement under sub. (2) (b) 1.
8. The total anticipated annual sulfur dioxide emissions from all boilers under the ownership or control of the major utility for each of the next 3 years.

(b) *Review.* The department shall review the adequacy of each compliance plan and, after consulting with the commission, shall approve or disapprove the plan within 90 days after its receipt.

(4) VARIANCE. (a) *Request; variance conditions.* A major utility may request a variance from the emission rate under sub. (2) (a) by submitting the request to the commission and the department. No request for a variance may be submitted if the department has served the major utility with written notice under s. 285.83 that the major utility has violated sub. (2) (a). Upon receipt of a request, the commission shall, within 45 days, determine if any of the following variance conditions exists and shall report its determination to the department:

1. A major electrical supply emergency within or outside this state.
2. A major fuel supply disruption.
3. An extended and unplanned disruption in the operation of a nuclear plant or low sulfur coal-fired boiler under the ownership or control of the major utility.

4. The occurrence of an uncontrollable event not anticipated in the plan submitted under sub. (3).

5. A plan by the major utility to install and place into operation new technological devices that will enable it to achieve compliance with sub. (2) (a).

(b) *Compliance plan required.* With the request for a variance, the major utility shall submit its plan for achieving compliance with the emission rate. If the request is based on a variance condition specified under par. (a) 1. to 4., the request shall include an explanation of why the major utility cannot achieve or remain in compliance by using fuel with a lower sulfur content or by environmental dispatching.

(c) *Grant of variance.* The department shall grant a request for a variance if the commission determines that a variance condition exists and the department determines that the major utility's compliance plan is adequate.

(d) *Denial of variance.* The department shall deny a request for a variance if the commission determines that no variance condition exists or if the department determines that the major utility's compliance plan is not adequate.

(e) *Time limit for response.* The department shall grant or deny a request for a variance within 90 days after its receipt of the request.

(5) NO IMPACT ON OTHER PROVISIONS. Nothing in this section exempts a major utility from any provision of ss. 285.01 to 285.39 or 285.51 to 285.87. Compliance with this section is not a defense to a violation of any of those provisions.

(6) DETERMINATION OF COMPLIANCE. The department shall determine compliance with sub. (2) (a) using data submitted by the major utilities. Each major utility shall provide the department with any information needed to determine compliance.

(7) PENALTY. Notwithstanding s. 285.87, any major utility that exceeds the annual emission rate under sub. (2) (a) in violation of this section shall forfeit not less than \$100,000 nor more than \$500,000 for each year of violation.

History: 1985 a. 296; 1995 a. 227 s. 481; Stats. 1995 s. 285.41.

285.43 Sulfur dioxide emission rates; state-owned facilities. (1) LIMIT. After June 30, 1988, the average number of pounds of sulfur dioxide emissions per million British thermal units of heat input during any year from any large source, as defined under s. 285.45 (1) (a), that is owned by this state may not exceed 1.50.

(2) COMPLIANCE. The department shall determine compliance with sub. (1) using data submitted by state agencies. Each state agency shall provide the department with any information needed to determine compliance.

(3) NONCOMPLIANCE; REPORT REQUIRED. Noncompliance report required. If the department determines that any large source owned by this state is not in compliance with sub. (1), the department shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (2), a report of the noncompliance and recommendations for bringing the large source into compliance.

History: 1985 a. 296; 1995 a. 227 s. 482; Stats. 1995 s. 285.43.

285.45 Sulfur dioxide emission goals after 1992; major utilities and other large air contaminant sources. (1) DEFINITIONS. In this section:

(a) "Large source" means a stationary source in this state, other than a fossil fuel-fired boiler under the ownership or control of a major utility, that had sulfur dioxide emissions averaging at least 1,000 tons annually in the most recent 5-year period, that became operational before May 2, 1986, and that is not a boiler subject to the standard of performance for new stationary sources for sulfur dioxide emissions established under s. 285.27 (1).

(b) "Major utility" has the meaning given under s. 285.41 (1) (f).

(2) GOALS. It is the goal of this state that, beginning with 1993, total annual sulfur dioxide emissions do not exceed the following:

- (a) From all major utilities and large sources, 325,000 tons.
- (b) From all fossil fuel–fired boilers under the ownership and control of the major utilities, 250,000 tons.
- (c) From all large sources, 75,000 tons.

(3) EXCESS EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the department determines, based on its annual report under s. 285.11 (12), that the total annual sulfur dioxide emissions from all major utilities and large sources exceeded 325,000 tons in the previous year, or if the department projects, based on the amounts anticipated by the major utilities under s. 285.41 (3) (a) 8. and the department’s estimates of emissions from large sources, that the total sulfur dioxide emissions in this state will exceed 325,000 tons in any of the 3 succeeding years, the department shall determine if the actual or projected excess emissions are or will be attributable to the major utilities, the large sources or both.

(b) 1. If the department determines that the excess emissions are or will be attributable to the major utilities, the department shall, after consulting with the commission, prepare a report containing a recommendation as to whether the goal specified under sub. (2) (b) should be replaced with an enforceable limit. If so, the report shall include the department’s recommendation for a cost–effective mechanism for ensuring compliance with the limit, including any necessary changes in s. 285.41. The department shall hold a public hearing on the report.

2. The department shall submit the report required under this paragraph to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(c) 1. If the department determines that the excess emissions are or will be attributable to the large sources, the department shall, after consulting with the commission, prepare a report containing a recommendation as to whether the goal specified under sub. (2) (c) should be replaced with an enforceable limit. If so, the report shall include the department’s recommendation for a cost–effective mechanism for ensuring compliance with the limit. The department shall hold a public hearing on the report.

2. The department shall submit the report required under this paragraph to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(d) If the department determines that the excess emissions are or will be attributable to both the major utilities and the large sources, the department shall comply with both pars. (b) and (c). The reports and public hearings required under those paragraphs may be combined.

History: 1985 a. 296; 1987 a. 186; 1995 a. 227 s. 483; Stats. 1995 s. 288.45.

285.47 Nitrogen oxide emission goal; major utilities.

(1) DEFINITION. In this section, “major utility” has the meaning given in s. 285.41 (1) (f).

(2) GOAL. It is the goal of this state that, beginning with 1991, the total annual nitrogen oxide emissions from all major utilities do not exceed 135,000 tons.

History: 1985 a. 296; 1987 a. 186; 1995 a. 27; 1995 a. 227 s. 484; Stats. 1995 s. 285.47.

285.48 Nitrogen oxide emissions reductions. (1) DEFINITIONS. In this section:

(a) “Call” means a call to implement a state implementation plan that is issued by the federal environmental protection agency before October 29, 1999, or after that date arising out of a call issued before that date, including a call issued after that date pursuant to a federal court order or otherwise.

(b) “Electric cooperative” has the meaning given in s. 76.48 (1g) (c).

(c) “Midcontinent area” has the meaning given in s. 16.958 (1) (e).

(cm) “Nonutility stationary or mobile source” means a stationary or mobile source that is not an electric generating facility owned by a public utility or electric cooperative.

(d) “Northwestern county” means Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Monroe, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vernon or Washburn county.

(e) “Other county” means a county that is not a northwestern county.

(f) “Public utility” has the meaning given in s. 196.01 (5).

(g) “State implementation plan” means a state implementation plan for control of atmospheric ozone in another state.

(h) “Summer” means the period beginning on May 1 and ending on September 30 of each year.

(2) APPLICABILITY. This section applies if the department of natural resources, pursuant to a call, issues a state implementation plan that requires electric generating facilities in the midcontinent area of this state to comply with nitrogen oxide emission reduction requirements. If the department of natural resources issues such a plan, the department of natural resources shall notify the department of administration and the public service commission. The notice shall specify the date on which electric generating facilities in the midcontinent area of this state are required to comply with the initial nitrogen oxide emission reduction requirements.

(3) NITROGEN OXIDE EMISSIONS STANDARDS AND LIMITATIONS.

(a) In establishing nitrogen oxide emission reduction requirements for the control of atmospheric ozone in another state pursuant to a call, the department may not, in a state implementation plan, by rule or through the adoption of control strategies, establish nitrogen oxide emissions standards or limitations that do any of the following:

1. Require less than 2,234 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in northwestern counties that are owned by electric cooperatives.

2. Require less than 315 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in northwestern counties that are owned by public utilities.

3. Require less than 15,157 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in other counties owned by public utilities or electric cooperatives.

(b) The department shall issue emissions allowances in a number that is sufficient to allow the emissions specified in par. (a).

(c) In establishing nitrogen oxide emission reduction requirements for the control of atmospheric ozone in another state pursuant to a call, the department may not, with respect to any nonutility stationary or mobile source in this state, in a state implementation plan, by rule or through the adoption of control strategies, establish nitrogen oxide emissions standards or limitations that do any of the following:

1. Require any reductions in nitrogen oxide emissions for any boiler, turbine or internal combustion engine the designed heat input of which is 250 million British thermal units per hour or less.

2. Require reductions of nitrogen oxide emissions that are in addition to those reductions required by or projected for nonutility stationary or mobile sources based on source–specific nitrogen oxide inventory data or other subinventory information used by the federal environmental protection agency to establish state nitrogen oxide emission budgets concerning interstate pollution transport.

3. Require any additional reductions of nitrogen oxide emissions from nonutility stationary or mobile sources in this state due to this section, including the reduction requirements under par. (a).

(d) If the department of natural resources implements a state implementation plan specified in sub. (2) in a manner that requires reductions in nitrogen oxide emissions that are lower than the reductions set forth in the call published on October 27, 1998, the department of natural resources shall do each of the following:

1. Determine the amounts by which the number of tons specified in par. (a) 1., 2. and 3. shall be increased to reflect the lower reductions.

2. Take action that is necessary to relax any related emissions control requirements in a manner that reflects the lower reductions.

2m. Determine the amounts by which reduction requirements for any nonutility stationary or mobile source in this state shall be relaxed to reflect the lower reductions.

3. Determine the amount by which the \$2,400,000 in assessments under s. 196.86 (2) shall be decreased to reflect the lower reductions and provide notice of the decreased amount to the public service commission.

4. Determine the amount by which the \$2,500,000 that is transferred to the air quality improvement fund under s. 16.958 (2) (a) shall be decreased to reflect the lower reductions and provide notice of the decreased amount to the department of administration.

(4) **LOW-INCOME WEATHERIZATION AND ENERGY CONSERVATION MEASURES; RENEWABLE ENERGY USES.** The department shall ensure that at least 866 tons of total annual reductions in nitrogen oxide emissions required under the state implementation plan are achieved through any of the following:

(a) The use of renewable energy, including renewable energy that is provided by electric providers for the purpose of complying with the requirements of s. 196.378 (2) (a), or renewable energy that is used under programs specified in s. 196.374 (2) (d) that are funded by expenditures under s. 196.374 (3).

(b) The implementation of low-income weatherization and energy conservation measures, including programs established under s. 16.957 (2) (a) or (b) or programs specified in s. 196.374 (2) (a) or (b) that are funded by expenditures under s. 196.374 (3).

History: 1999 a. 9, 75.

285.49 Trading program for nitrogen oxide emissions credits. The department shall establish or authorize air contaminant sources to participate in a market-based trading program for the purchase, sale and transfer of nitrogen oxide emissions credits for use in any state implementation plan under s. 285.11 (6) that requires reductions in nitrogen oxide emissions. To the extent allowed under federal law, the department shall allow nitrogen oxide emissions reductions by any source in this state, regardless of whether the source is subject to nitrogen oxide controls under a state implementation plan, to be purchased, sold or transferred under the trading program.

History: 1999 a. 9.

SUBCHAPTER VI

WASTE INCINERATORS; OZONE DEPLETING SUBSTANCES; EMISSION LIMITS AND OTHER REQUIREMENTS

285.51 Solid waste incinerator operator certification. (1) In this section, “solid waste treatment” has the meaning given in s. 289.01 (39).

(2) The department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste treatment facilities that burn solid waste. The certification requirements shall take effect on January 1, 1993. The department shall do all of the following:

(a) Identify those persons or positions involved in the operation of a solid waste treatment facility who are required to obtain certification.

(b) Establish the requirements for and term of initial certification and requirements for recertification upon expiration of that term. At a minimum, the department shall require applicants to complete a program of training and pass an examination in order to receive initial certification.

(c) Establish different levels of certification and requirements for certification for different sizes or types of facilities, as the department determines is appropriate.

(d) Impose fees for the operator training and certification program.

(e) Require that there be one or more certified operators on the site of a solid waste treatment facility at all times during the facility’s hours of operation.

(3) The program under sub. (2) does not apply with respect to any of the following:

(a) A facility described in s. 287.07 (7) (bg).

(b) A solid waste treatment facility for the treatment of hazardous waste.

(c) A solid waste treatment facility for high-volume industrial waste as defined in s. 289.01 (17).

(d) A solid waste treatment facility of a type exempted from the program by the department by rule.

(4) The training required under sub. (2) (b) may be conducted by the department or by another person with the approval of the department.

(5) The department may suspend or revoke a solid waste treatment facility’s operating license if persons at the facility fail to obtain certification required under sub. (2) (a) or for failure to have a certified operator on the site as required under sub. (2) (e).

(6) The department may suspend or revoke an operator’s certification for failure to comply with this chapter, rules promulgated under this chapter or conditions of operation made applicable to a solid waste treatment facility by the department.

History: 1995 a. 227 s. 457, 989.

Cross Reference: See also ch. NR 499, Wis. adm. code.

285.53 Testing emissions from medical waste incinerators. (1) **TESTING FOR HAZARDOUS SUBSTANCES.** (a) *Applicability.* This subsection applies to a medical waste incinerator, as defined in s. 287.07 (7) (c) 1. cr., that has a capacity of 5 tons or more per day.

(b) *Requirements.* 1. A person operating or responsible for the operation of a medical waste incinerator described in par. (a) shall test emissions of particulates, dioxins, furans, arsenic, lead, hexavalent chromium, cadmium, mercury and any other hazardous substance identified by the department by rule, at least as often as follows:

- a. During the initial 90-day period of operation.
- b. One year following the initial 90-day period of operation.
- c. Every 2 years following the testing under subd. 1. b.

2. A person operating or responsible for the operation of a medical waste incinerator described in par. (a) shall report the results of the testing under subd. 1. to the department and the city, village or town in which the medical waste incinerator is located.

(c) *Analysis.* 1. The department shall provide an analysis of the test results submitted under par. (b) 2. to the city, village or town in which the medical waste incinerator is located.

2. The city, village or town in which the medical waste incinerator is located shall publish the analysis provided under subd. 1. as a class 1 notice under ch. 985.

3. The department may charge the person operating or responsible for the operation of the medical waste incinerator a fee for reviewing and preparing the analysis of the test results.

(2) **CONTINUOUS MONITORING.** A person operating or responsible for the operation of a medical waste incinerator, as defined in s. 287.07 (7) (c) 1. cr., shall continuously monitor emissions from the medical waste incinerator.

History: 1989 a. 335; 1991 a. 300; 1995 a. 227 s. 479; Stats. 1995 s. 285.53.

285.54 Medical waste incinerator fees. (1) In this section:

(a) “Medical waste incinerator” has the meaning given in s. 287.07 (7) (c) 1. cr.

(b) “Municipality” means a city, village or town.

(2) A municipality may, by ordinance, impose a fee, in accordance with rules promulgated under s. 287.03 (1) (am), on the operator of a medical waste incinerator located in the municipality to cover the costs incurred because of the presence of the medical waste incinerator, including costs of monitoring emissions and of providing periodic notification to residents concerning the medical waste incinerator. The fee imposed under this section may not exceed \$1 per ton of waste that is incinerated at the medical waste incinerator unless the municipality and the operator of the medical waste incinerator agree to a higher fee.

History: 1989 a. 335; 1995 a. 227; 1999 a. 150 s. 373; Stats. 1999 s. 285.54.

285.57 Emission of ozone-depleting substances.

(1) **DEFINITION.** In this section, “class I substance” has the meaning given in 42 USC 7671 (3).

(2) **MEDICAL STERILIZERS.** (a) The department shall evaluate the progress toward eliminating the use of class I substances in medical sterilizers. The department shall complete the evaluation no later than August 1, 1994.

(b) Based on the results of the evaluation under par. (a), the department shall promulgate a rule that prohibits the use of class I substances in medical sterilizers or, if no adequate substitute for class I substances is available, requires persons who operate medical sterilizers that use class I substances to achieve the lowest achievable emission rate for class I substances.

(3) **SOLVENTS.** The department shall advise persons who use class I substances as solvents on ways to eliminate that use.

(4) **CITATIONS.** The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2).

(5) **PENALTIES.** Any person who violates sub. (2) shall be required to forfeit not less than \$250 nor more than \$1,000. Each day of violation constitutes a separate offense.

History: 1993 a. 243; 1995 a. 227 s. 508; Stats. 1995 s. 285.57.

285.59 Recovery of ozone-depleting refrigerants.

(1) **DEFINITIONS.** In this section:

(a) “Ozone-depleting refrigerant” has the meaning given in s. 100.45 (1) (d).

(b) “State agency” means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, the Wisconsin Housing and Economic Development Authority, the Bradley Center Sports and Entertainment Corporation, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, and the Wisconsin Health and Educational Facilities Authority.

(2) **SALVAGING REFRIGERATION EQUIPMENT.** After June 30, 1992, except as provided in sub. (3), no person, including a state agency, may perform salvaging or dismantling of mechanical vapor compression refrigeration equipment in the course of which ozone-depleting refrigerant is or may be released or removed unless the person certifies all of the following to the department:

(a) That the person uses equipment that is approved by the department to transfer ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks whenever it performs those activities.

(b) That the individuals who use the equipment under par. (a) have, or are under the supervision of individuals who have, the qualifications established under sub. (5) (a) 1.

(3) **SCRAP METAL PROCESSORS.** (a) In this subsection, “scrap metal processor” has the meaning given in s. 84.31 (2) (h).

(c) After June 30, 1992, except as provided in par. (d), any person who sells, gives or transports mechanical vapor compression refrigeration equipment to a scrap metal processor shall do all of the following:

1. Transfer ozone-depleting refrigerant from the mechanical vapor compression refrigeration equipment into a storage tank as provided in sub. (2) (a) and (b) or obtain and possess documentation that another person performed that transfer.

2. Provide documentation to the scrap metal processor that it has complied with subd. 1.

(d) Paragraph (c) does not apply to a person who sells, gives or transports mechanical vapor compression refrigeration equipment to a scrap metal processor that agrees in writing to transfer the ozone-depleting refrigerant into a storage tank as provided in sub. (2) (a) and (b).

(4) **RELEASE.** (a) During the salvaging, dismantling or transporting of mechanical vapor compression refrigeration equipment, no person may knowingly or negligently release ozone-depleting refrigerant to the environment, except for minimal releases that occur as a result of efforts to transfer ozone-depleting refrigerant into storage tanks.

(am) No person may knowingly or negligently release from a storage tank to the environment ozone-depleting refrigerant that was removed during the salvaging, dismantling or transporting of mechanical vapor compression refrigeration equipment, except that this paragraph does not apply to minimal releases that occur as a result of efforts to transfer ozone-depleting refrigerant into mechanical vapor compression refrigeration equipment or other storage tanks.

(b) Any person who transports, for purposes of salvaging or dismantling, mechanical vapor compression refrigeration equipment that contains ozone-depleting refrigerant shall certify to the department that it complies with par. (a), except that this paragraph does not apply to an individual who transports his or her personal mechanical vapor compression refrigeration equipment.

(5) **DEPARTMENT DUTIES.** The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. Qualifications, which may include training or certification requirements, for individuals who use equipment to transfer ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

2. Fees to cover the cost of administering subs. (2), (3) and (4) (b).

(b) Approve equipment for the transfer of ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

(6) **DEPARTMENT POWERS.** The department may promulgate rules providing that any portion of sub. (2), (3) or (4) applies with respect to a substance used as a substitute for an ozone-depleting substance.

(7) **CITATIONS.** The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2), (3) (c) or (4).

(8) **PENALTIES.** (a) Any person who violates sub. (2) shall be required to forfeit not less than \$100 nor more than \$1,000. Each act of salvaging or dismantling in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (3) (c) shall be required to forfeit not less than \$100 nor more than \$1,000. Each sale, giving or transporting in violation of sub. (3) (c) constitutes a violation.

(c) Any person who violates sub. (4) shall be required to forfeit not less than \$100 nor more than \$1,000. Each release in violation of sub. (4) constitutes a violation.

History: 1989 a. 284; 1991 a. 97; 1993 a. 243; 1995 a. 227 s. 509; Stats. 1995 s. 285.59; 1997 a. 27; 2001 a. 16.

SUBCHAPTER VII

PERMITS AND FEES

285.60 Air pollution control permits. (1) NEW OR MODIFIED SOURCES. (a) *Construction permit.* 1. Except as provided in sub. (6), no person may commence construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the department.

2. A construction permit may authorize the initial operation of a stationary source for a period specified in the permit to allow testing of the stationary source's equipment and monitoring of the emissions associated with the equipment.

(b) *Operation permit.* 1. Except as provided in subd. 2., par. (a) 2., sub. (6) or s. 285.62 (8), no person may operate a new source or a modified source unless the person has an operation permit under s. 285.62 from the department.

2. A person may continue to operate a new source or a modified source for which the department issued a permit under s. 144.392, 1989 stats., on or before November 15, 1992, but on which construction, reconstruction, replacement or modification began after November 15, 1992, but the person shall apply for an operation permit under s. 285.62 no later than March 1, 1996.

(2) **EXISTING SOURCES.** (a) *Operation permit requirement.* Except as provided in sub. (6) or s. 285.62 (8), no person may operate an existing source after the operation permit requirement date specified under s. 285.62 (11) (a) unless the person has an operation permit under s. 285.62 from the department.

(b) *Elective operation permit.* A person may apply for an operation permit for one or more points of emission from an existing source for which an operation permit is not required. No person may operate a stationary source under an emission reduction option program unless the person has an operation permit from the department. If a person elects to apply for an operation permit under this paragraph, the election may not be withdrawn and the stationary source may not be operated without the operation permit beginning on the date that the operation permit is first issued.

(2m) **GENERAL CONSTRUCTION PERMITS.** The department may, by rule, specify types of stationary sources that may obtain general construction permits. A general construction permit may cover numerous similar stationary sources. A general construction permit shall require any stationary source that is covered by the general construction permit to comply with ss. 285.61 to 285.69. The department shall issue a general construction permit using the procedures and criteria in ss. 285.61, 285.63, 285.65, 285.66, and 285.69.

(3) **GENERAL OPERATION PERMITS.** The department may, by rule, specify types of stationary sources that may obtain general operation permits. A general operation permit may cover numerous similar stationary sources. A general operation permit shall require any stationary source that is covered by the general operation permit to comply with ss. 285.61 to 285.69. The department shall issue a general operation permit using the procedures and criteria in ss. 285.62 to 285.69.

(4) **PERMIT FLEXIBILITY.** The department shall allow a person to make a change to a stationary source that has an operation permit, or for which the person has submitted a timely and complete application for an operation permit, for which the department would otherwise first require an operation permit revision, without first requiring a revision of the operation permit if the change is not a modification, as defined by the department by rule, and the change will not cause the stationary source to exceed the emissions allowable under the operation permit, whether expressed as

an emission rate or in terms of total emissions. Except in the case of an emergency, a person shall notify the department and, for permits required under the federal clean air act, the administrator of the federal environmental protection agency in writing at least 21 days before the date on which the person proposes to make a change to a stationary source under this subsection. A person may not make a proposed change to a stationary source if the department informs the person before the end of that 21-day period that the proposed change is not a change authorized under this subsection. The department shall promulgate rules establishing a shorter time for advance notification of changes under this subsection in case of emergency.

(5) **EXEMPTION FROM ADDITIONAL PERMIT REQUIREMENTS FOR APPROVED RELOCATED SOURCES.** (a) *Approved relocated source.* A source is an approved relocated source if all of the following requirements are met:

1. The source is to be relocated within an attainment area.
2. The source is a stationary source capable of being transported to a different location.
3. The source received an air pollution control permit for the relevant air contaminant prior to relocation.
4. 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.
5. The source in its new location meets all applicable emission limitations and any visibility requirements in the department's rules and does not violate an ambient air increment or ambient air quality standard.
6. The source is not an affected source as defined in 42 USC 7651a (1).

(b) *Exempt from additional permits.* Notwithstanding subs. (1) and (2), no additional permit is required if a source is an approved relocated source.

(6) **EXEMPTION BY RULE.** Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

(7) **COMPLIANCE.** A person who obtains a permit under this section shall comply with all terms and conditions of the permit.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 485; Stats. 1995 s. 285.60; 1997 a. 35; 2001 a. 16.

Cross Reference: See also chs. NR 405, 406, 407, 408, 409, and 411, Wis. adm. code.

285.61 Construction permit application and review.

(1) **APPLICANT NOTICE REQUIRED.** A person who is required to obtain or who seeks a construction permit shall apply to the department for a permit to construct, reconstruct, replace or modify the stationary source.

(2) **PLANS, SPECIFICATIONS AND OTHER INFORMATION.** Within 20 days after receipt of the application the department shall indicate the plans, specifications and any other information necessary to determine if the proposed construction, reconstruction, replacement or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

(3) **ANALYSIS.** The department shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time periods after the receipt of the plans, specifications and other information:

(a) *Major source construction permits.* For construction permits for major sources, within 120 days.

(b) *Minor source construction permits.* For construction permits for minor sources, within 30 days.

(4) **DISTRIBUTION AND AVAILABILITY OF ANALYSIS, PRELIMINARY DETERMINATION AND MATERIALS.** (a) *Distribution and pub-*

licity. The department shall distribute and publicize the analysis and preliminary determination as soon as they are prepared.

(b) *Availability*. The department shall make available for public inspection in each area where the stationary source would be constructed, reconstructed, replaced or modified the following:

1. A copy of materials submitted by the permit applicant;
2. A copy of the department's analysis and preliminary determination; and
3. A copy or summary of other materials, if any, considered by the department in making its preliminary determination.

(5) NOTICE; ANNOUNCEMENT; NEWSPAPER NOTICE. (a) *Distribution of notice required*. The department shall distribute a notice of the proposed construction, reconstruction, replacement or modification, a notice of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to:

1. The applicant.
2. Appropriate federal, local and state agencies including agencies in other states which may be affected.
3. Regional and county planning agencies located in the area which may be affected.
4. Public libraries located in or near the area which may be affected.
5. Any person or group who requests this notice.

(b) *Announcement required*. The department shall circulate an announcement sheet containing a brief description of the proposed construction, reconstruction, replacement or modification, a brief description of the administrative procedures to be followed, the date by which comments are to be submitted to the department and the location where the department's analysis and preliminary determination are available for review to:

1. Local and regional governments which have jurisdiction over the area that may be affected.
2. Local and regional news media in the area that may be affected.
3. Persons and groups who have demonstrated an interest and have requested this type of information.

(c) *Newspaper notice*. The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the analysis and preliminary determination.

(6) PUBLIC COMMENT. The department shall receive public comments on the proposed construction, reconstruction, replacement or modification and on the analysis and preliminary determination for a 30-day period beginning when the department gives notice under sub. (5) (c).

(7) PUBLIC HEARING. (a) *Hearing permitted*. The department may hold a public hearing on the construction permit application if requested by a person, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

(b) *Procedure*. The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (3).

(8) DEPARTMENT DETERMINATION; ISSUANCE. (a) *Criteria; considerations*. The department may approve the construction permit application and issue a construction permit according to the criteria established under s. 285.63 after consideration of the comments received under subs. (6) and (7) and after consideration of the environmental impact as required under s. 1.11.

(b) *Time limits*. The department shall act on a construction permit application within 60 days after the close of the public comment period or the public hearing, whichever is later, unless compliance with s. 1.11 requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

(9) MINING HEARING. If a hearing on the construction permit is conducted as a part of a hearing under s. 293.43, the notice, comment and hearing provisions in that section supersede the provisions of subs. (4) to (8).

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

Cross Reference: See also ch. NR 490, Wis. adm. code.

285.62 Operation permit; application, review and effect.

(1) APPLICANT NOTICE REQUIRED. A person who is required to obtain an operation permit for a stationary source shall apply to the department for the permit on or before the operation permit application date specified under sub. (11) (b). The department shall specify by rule the content of applications under this subsection. If required by the federal clean air act, the department shall provide a copy of the complete application to the federal environmental protection agency. The department may not accept an application submitted to the department before November 15, 1992, as an application under this subsection.

(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION. Within 20 days after receipt of the application the department shall indicate any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

(3) REVIEW; NOTICE; PUBLICATION. (a) The department shall review an application for an operation permit. Upon completion of that review, the department shall prepare a preliminary determination of whether it may approve the application and a public notice. The public notice shall include all of the following:

1. A brief description of the stationary source.
2. The department's preliminary determination of whether it may approve the application.
3. Notice of the opportunity for public comment and the date by which comments must be submitted to the department.
4. Notice of the opportunity to request a public hearing.
5. Any other information that the department determines is necessary to inform the public about the application.

(b) The department shall provide the notice prepared under par. (a) to all of the following:

1. The applicant.
2. Any local air pollution control agency that has a program under s. 285.73 that is approved by the department and that has jurisdiction over the area in which the stationary source is located.
3. Any regional planning agency, any county planning agency and any public library located in the area that may be affected by emissions from the stationary source.
4. Any person or group that requests the notice.
5. Any city, village, town or county that has jurisdiction over the area in which the stationary source is located.
6. If required by the federal clean air act, the federal environmental protection agency.
7. If required by the federal clean air act, any state that is within 50 miles of the stationary source and any state that is contiguous to this state and whose air quality may be affected by emissions from the stationary source.

(c) The department shall publish the notice prepared under par. (a) as a class 1 notice under ch. 985 in a newspaper published in the area that may be affected by emissions from the stationary source.

(4) PUBLIC COMMENT. The department shall receive public comment on the application for a 30-day period beginning when the department gives notice under sub. (3) (c).

(5) PUBLIC HEARING. (a) *Hearing permitted.* The department may hold a public hearing on an application for an operation permit for a stationary source if requested by any state that received notice under sub. (3) (b) or any other person within 30 days after the department gives notice under sub. (3) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it determines that there is a significant public interest in holding the hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (3).

(6) PROPOSED PERMIT; RESPONSE TO COMMENTS; ENVIRONMENTAL PROTECTION AGENCY OBJECTION. (a) After considering any public comments concerning an application, the department may prepare a proposed operation permit or deny the application for an operation permit. If the criteria in ss. 285.63 and 285.64 are met, the department shall prepare a proposed operation permit. If required by the federal clean air act, the department shall provide a copy of a proposed operation permit to the federal environmental protection agency. If a state has submitted recommendations in response to the notice under sub. (3) (b) 7. and the department has not accepted those recommendations, the department shall notify that state and the federal environmental protection agency in writing of its decision not to accept the recommendations and the reasons for that decision.

(b) The federal environmental protection agency may object in writing to the issuance of an operation permit that it determines is not in compliance with the federal clean air act or an implementation plan prepared under s. 285.11 (6). The department shall respond in writing to the objection if the federal environmental protection agency provides the reasons for the objection and submits the objection to the department and the applicant within 45 days after receiving either a copy of the proposed operation permit under par. (a) or notice under par. (a) of the department's decision not to accept the recommendations of another state.

(c) 1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit to satisfy the objection.

2. If the department has issued an operation permit before receiving an objection from the federal environmental protection agency that is based on a petition submitted under 42 USC 7661d (b) 2. and the federal environmental protection agency modifies, terminates or revokes the operation permit, the department shall issue an operation permit that is revised to satisfy the objection.

(d) The requirements under pars. (a) to (c) do not apply with respect to an application for an operation permit for a stationary source that is in a category that the department excludes, by rule, from those requirements because the source is not required to obtain a permit under the federal clean air act or that the federal environmental protection agency excludes from those requirements under 42 USC 7661d (d).

(e) This subsection does not apply before the federal environmental protection agency approves this state's air pollution control permit program under 42 USC 7661a (d) or (g).

(7) DEPARTMENT DETERMINATION; ISSUANCE. (a) The department shall approve or deny the operation permit application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for an existing source or deny the application within 18 months after receiving a complete application, except that the department may, by rule, extend the 18-month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of

the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule may not extend the 18-month period for more than 3 years.

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for a new source or modified source or deny the application within 180 days after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit.

(c) If required by the federal clean air act, the department shall provide a copy of an operation permit to the federal environmental protection agency.

(8) OPERATION CONTINUED DURING APPLICATION. If a person timely submits a complete application for a stationary source under sub. (1) and submits any additional information requested by the department within the time set by the department, the stationary source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until the department acts under sub. (7).

(9) DELAY IN ISSUING PERMITS. (a) If the department fails to issue an operation permit or to deny the application within the period specified in sub. (7) or in a rule promulgated under sub. (7), that failure is considered a final decision on the application solely for the purpose of obtaining judicial review under ss. 227.52 and 227.53 to require the department to act on the application without additional delay.

(b) Paragraph (a) does not apply if the department's failure to act is due to the applicant's failure to submit a complete application and any additional information requested by the department in a timely manner.

(10) EFFECT OF PERMIT. (a) Except as provided in par. (b), the issuance of an operation permit, including an operation permit that contains a compliance schedule, does not preclude enforcement actions based on violations of this chapter that occur before, on or after the date that the operation permit is issued. The inclusion of a compliance schedule in an operation permit does not preclude enforcement actions based on violations of this chapter to which the compliance schedule relates, whether or not the source is violating the compliance schedule.

(b) Unless precluded by the administrator of the federal environmental protection agency under 42 USC 7661c (f), compliance with all emission limitations included in an operation permit is considered to be compliance with all emission limitations established under this chapter and emission limitations under the federal clean air act that are applicable to the stationary source as of the date of issuance of the operation permit if the permit includes the applicable emission limitations or the department, in acting on the application for the operation permit, determines in writing that the emission limitations do not apply to the stationary source and the operation permit includes that determination.

(11) OPERATION PERMIT DATES. (a) *Operation permit requirement date.* The department shall promulgate by rule a schedule of the dates when an operation permit is required for various categories of stationary sources.

(b) 1. The department shall promulgate by rule a schedule of the dates when an operation permit application is required to be submitted for various categories of existing sources.

2. A person who is required to obtain a construction permit shall submit an application for an operation permit with the application for the construction permit.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

Cross Reference: See also chs. NR 406, 407, 408, 409, and 490, Wis. adm. code.

285.63 Criteria for permit approval. (1) REQUIREMENTS FOR ALL SOURCES. The department may approve the application for a permit required or allowed under s. 285.60 if it finds:

(a) *Source will meet requirements.* The stationary source will meet all applicable emission limitations and other requirements promulgated under this chapter, standards of performance for new stationary sources under s. 285.27 (1) and emission standards for hazardous air contaminants under s. 285.27 (2);

(b) *Source will not violate or exacerbate violation of air quality standard or ambient air increment.* The source will not cause or exacerbate a violation of any ambient air quality standard or ambient air increment under s. 285.21 (1) or (2);

(c) *Other permits approvable if source is operating under an emission reduction option.* If the source is operating or seeks to operate under an emission reduction option, the required permit applications for other sources participating in that emission reduction option are approvable; and

(d) *Source will not preclude construction or operation of other source.* The stationary source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of another stationary source if the department received plans, specifications and other information under s. 285.61 (2) for the other stationary source prior to commencing its analysis under s. 285.61 (3) for the former stationary source. This paragraph does not apply to an existing source required to have an operation permit.

(2) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN NONATTAINMENT AREAS. The department may approve the application for a construction permit or operation permit for a major source that is a new source or modified source and is located in a nonattainment area if the department finds that the major source meets the requirements under sub. (1) and it finds that all of the following conditions are met:

(a) *Emission offsets.* By the time the major source is to commence operation, sufficient offsetting emissions reductions have been obtained so that total allowable emissions from the major source and from other air contaminant sources in the area designated by the department will be sufficiently less than the total emissions allowed prior to the application for the construction permit or operation permit, so that reasonable further progress toward the attainment and maintenance of any ambient air quality standard will be achieved.

(b) *Lowest achievable emission rate.* The emission from the major source will be at the lowest achievable emission rate.

(c) *Applicant's other major sources meet or on schedule to meet requirements.* All other major sources that are located in this state and that are owned or operated by the permit applicant or by any entity controlling, controlled by or under common control with the permit applicant, as determined under s. 180.1140 (6), meet or are on schedule to meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15 and are in compliance with or are on schedule to come into compliance with all applicable emission limitations and emission standards under the federal clean air act.

(d) *Analysis of alternatives.* Based on an analysis of alternative sites, sizes, production processes and environmental control techniques for any major source that is located in an area designated under 42 USC 7407 (d), that the benefits of the construction or modification of the major source significantly outweigh the environmental and social costs imposed as a result of the major source's location, construction or modification.

(3) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN ATTAINMENT AREAS. The department may approve the application for a construction permit or operation permit for a major source that is a new source or a modified source and is located in an attainment area if the department finds that the major source meets the requirements under sub. (1) and it finds:

(a) *Best available control technology.* The source will be subject to the best available control technology for each applicable air contaminant;

(b) *Effects on air quality analyzed.* The effects on air quality as a result of the source and growth associated with the source were analyzed;

(c) *No adverse effect on air quality related values.* The source will not adversely affect the air quality related values of any federal mandatory class I prevention of significant deterioration area; and

(d) *Monitoring.* The permit applicant agrees to conduct monitoring specified by the department as necessary to determine the effects of the source on air quality.

(4) EXEMPTION FROM REQUIREMENTS. The department may waive a requirement under sub. (2) or (3) if:

(a) *Not applicable.* The requirement is not applicable to the source; or

(b) *Not necessary.* The requirement is not necessary to ensure that the source will have no adverse effect on air quality if the construction and operation or modification and operation of the source would result in an allowable emission of less than an amount specified by rule by the department.

(5) CONDITIONAL PERMIT. The department may issue a conditional air pollution control permit even if it finds that the source, as proposed, does not meet the requirements under subs. (1) to (3). If the department issues a conditional permit, it shall prescribe reasonable permit conditions to assure that the source will meet the requirements under subs. (1) to (3) if it is constructed, reconstructed, replaced, modified or operated in accordance with those conditions.

(6) EXEMPTION FROM REQUIREMENTS FOR MODIFICATIONS. The department may waive a requirement under subs. (1) to (3) if the application is for the modification of a source, the source already has an air pollution control permit and the source already meets the requirements as a condition of that permit.

(7) USE OF VOLATILE ORGANIC COMPOUND GROWTH ACCOMMODATION. (a) Subject to the conditions and restrictions specified in this subsection, the department shall grant use of the growth accommodation as a means for a stationary source to comply with either sub. (1) (b) or (2) (a), or both subs. (1) (b) and (2) (a).

(b) Upon application by a source, the department shall certify to the applicant a growth accommodation credit in the amount requested subject to all of the following conditions:

1. The applicant demonstrates to the satisfaction of the department that it is unable, through reasonable means which could include installation of the best available control technology, to eliminate its need for a growth accommodation credit by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area. If the department determines that an applicant could, through reasonable means, reduce the amount of growth accommodation credit applied for by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area, the department shall certify to the applicant a growth accommodation credit equal to the amount requested by the applicant minus the amount by which the department finds the source could, through reasonable means, reduce emissions from other stationary sources that it owns or operates in the volatile organic compound accommodation area.

2. Except as provided in s. 285.69 (5) (d), the applicant is in compliance or is complying with an approved schedule to be in compliance with this chapter and s. 299.15 with respect to all stationary sources that it owns or operates and has paid the fees required under s. 285.69 (5).

3. Except as provided in subd. 8., the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, is greater than 2,500 tons.

4. If the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., less a reduction by the amount of any growth accommodation credits issued since the date of the report under s. 285.39 (2) (b) 1., is greater than 3,000 tons, the department may certify to the applicant no more than the amount of the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., less the sum of 2,750 tons and any growth accommodation credits issued since the date of the report under s. 285.39 (2) (b).

5. If the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., after reduction by the amount of any growth accommodation credits issued since the date of the report under s. 285.39 (2) (b) 1., is greater than 2,500 tons but less than or equal to 3,000 tons, the department may certify no more than 250 tons to the applicant in that year.

6. The applicant agrees to forfeit any unused growth accommodation credits that the department determines the applicant does not need, as provided under sub. (8).

7. The applicant agrees not to sell or transfer any amount of the growth accommodation credit to any person other than the department.

8. If the growth accommodation reported for the current year under s. 285.39 (2) (b) 1., after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, would be 2,500 tons or less, the department may certify to the applicant a growth accommodation credit in the amount determined under this section if, because of facility shutdowns or replenishment activities under s. 285.39 that have occurred, the growth accommodation for the next succeeding year after reduction by the amount of the growth accommodation credit will be greater than 2,500 tons.

9. An applicant shall inform the department of the date or dates when it will need to use any given amount of the growth accommodation credit. The department shall certify to the applicant the proper amount of the growth accommodation credit on the date which the applicant states it will need it and shall reserve the proper amount of the growth accommodation credit for certification to the applicant upon the date needed, except for any amount which is forfeited under sub. (8). The department may use reserved growth accommodation credits to certify temporary growth accommodation credits which expire on or before the date when they are certified to the source which reserved them.

10. Upon request by an applicant, the department may certify to the applicant a growth accommodation credit which expires upon a date designated in the permit. The applicant shall sign a statement to acknowledge the expiration date of the permit. Growth accommodation credits issued under this subdivision may be certified from growth accommodation credits reserved by another source under subd. 9.

(c) Nothing in this subsection grants the recipient of a growth accommodation credit a property right to emit volatile organic compounds.

(d) Notwithstanding pars. (a) and (b) (intro.), the department may not grant use of the growth accommodation under this subsection for an air pollution control permit application submitted after July 1, 1992, as long as the growth accommodation area is designated under 42 USC 7407 as an ozone nonattainment area.

(8) FORFEITURE OF GROWTH ACCOMMODATION CREDITS. Within 4 years after the department certifies, under sub. (7), a growth accommodation credit to an applicant or reserves for the future use of an applicant a growth accommodation credit, and at least every 4 years thereafter, the department shall determine whether the certified or reserved growth accommodation credit is reasonably necessary for the applicant's current use and future plans. If the department determines that any amount of the certified or reserved growth accommodation credit is not reasonably necessary for the applicant's current use and if the applicant cannot demonstrate to the satisfaction of the department that any amount

of the certified or reserved growth accommodation credit is reasonably necessary for the applicant's future plans, the applicant shall forfeit an amount of the growth accommodation credit, as determined by the department. The department shall deposit the forfeited amount of the growth accommodation credit in the growth accommodation replenishment.

(9) RESTRICTION ON EMISSION REDUCTION OPTION PROGRAMS. (a) No emissions of volatile organic compounds may be used in an emission reduction option program if:

1. The program involves a grantee of emissions of volatile organic compounds that is different than the grantor of emissions of volatile organic compounds; and

2. The emissions of volatile organic compounds specified in the program are from a recorded source.

(b) In this subsection, "recorded source" means a stationary source in the volatile organic compound accommodation area owned or operated by any person who owns or operates on May 17, 1988, a stationary source whose actual 1980 emissions of volatile organic compounds are recorded as zero in the 1982 plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

(10) REQUIREMENTS FOR MEDICAL WASTE INCINERATORS. (a) In this subsection, "medical waste incinerator" has the meaning given in s. 287.07 (7) (c) 1. cr.

(b) In addition to the requirements under subs. (1) to (3), the department may approve an application submitted after May 14, 1992, for a permit required or allowed under s. 285.60 for the construction of a medical waste incinerator or for the modification of a medical waste incinerator that expands the capacity of the medical waste incinerator only if it finds that the new or modified medical waste incinerator will be needed and that the site of the medical waste incinerator is appropriate.

(c) The department shall consider all of the following in evaluating the need for the proposed medical waste incinerator:

1. An approximate service area for the proposed medical waste incinerator that encompasses all sources of waste that could potentially be burned in the medical waste incinerator. The department shall delineate the service area based on the economics of waste collection, transportation and treatment.

2. The quantity of waste that could potentially be burned in the proposed medical waste incinerator and that is generated within the anticipated service area.

3. The remaining capacity or design capacity of other solid waste facilities, if those facilities are located within the anticipated service area of the proposed medical waste incinerator and are currently providing or are expected to provide solid waste management for any sources of solid waste that could potentially be burned in the medical waste incinerator.

4. The quantity of waste having the potential to be burned in the medical waste incinerator that may be managed in an effective recycling program created under s. 287.11.

5. The potential for reducing the quantity of waste having the potential to be burned in the medical waste incinerator by reducing the amount of waste that is generated within the anticipated service area and the potential for using alternative technologies for disposing of the waste.

(d) The department may not determine that the site of a proposed medical waste incinerator is appropriate if the medical waste incinerator or the transportation of solid waste to the medical waste incinerator will have an adverse effect that is both substantial and unreasonable on any of the following:

1. Existing recreational land uses.
2. Land or surface water that has any of the characteristics under s. 23.27 (2).
3. Scenic vistas of statewide significance.
4. Residential property.

5. Schools, churches, hospitals, nursing homes or day care facilities.

6. Projected land uses identified in any municipal master plan or official map that is in effect at least 15 months prior to the submission to the department of the permit application, if the land uses are expected to occur during the site life of the medical waste incinerator and any expansions of the medical waste incinerator.

(e) The department shall promulgate rules for making the findings under par. (b).

History: 1979 c. 34, 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 56; 1991 a. 300, 302; 1993 a. 213; 1995 a. 227 s. 488; Stats. 1995 s. 285.63.

285.64 Criteria for operation permits for stationary sources. (1) **ISSUANCE TO SOURCES NOT IN COMPLIANCE; FEDERAL OBJECTION.** (a) Notwithstanding s. 285.63, the department may issue an operation permit for a stationary source that does not comply with the requirements in the operation permit, in the federal clean air act, in an implementation plan under s. 285.11 (6) or in s. 285.63 when the operation permit is issued if the operation permit includes all of the following:

1. A compliance schedule that sets forth a series of remedial measures that the owner or operator of the stationary source must take to comply with the requirements with which the stationary source is in violation when the operation permit is issued.

2. A requirement that, at least once every 6 months, the owner or operator of the stationary source submit reports to the department concerning the progress in meeting the compliance schedule and the requirements with which the stationary source is in violation when the operation permit is issued.

(b) Notwithstanding par. (a) and s. 285.63, the department may not issue an operation permit to a stationary source if the federal environmental protection agency objects to the issuance of the operation permit as provided in s. 285.62 (6) unless the department revises the operation permit to meet the objection.

(2) **ONE-YEAR MORATORIUM ON REVOCATION.** (a) The department may not revoke an operation permit for an existing source for one year after the issuance of that permit based upon failure of the existing source at the time of permit issuance to comply with this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

(b) Notwithstanding par. (a), the department may take any other action necessary to enforce an operation permit and this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15 which apply to the existing source after issuance of an operation permit under this section.

History: 1979 c. 221, 355; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 489; Stats. 1995 s. 285.64.

285.65 Permit conditions. The department may prescribe conditions for an air pollution control permit to ensure compliance with this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15 and to ensure compliance with the federal clean air act if each condition is one of the following and if each condition is applicable to the source:

(1) Final inspection and release of the project for permanent operation upon completion of construction, reconstruction, replacement or modification.

(2) Variances, orders or compliance schedules.

(3) Requirements necessary to assure compliance with s. 285.63.

(4) Reasonable construction and applicable operating conditions, emission control equipment maintenance requirements and emergency episode plans.

(5) Emission reduction options.

(6) Documentation of the allocation of the available air resource.

(7) The terms of any election by the permit applicant to meet more stringent emission limitations or to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option.

(8) The terms for use of growth accommodation credits under s. 285.63 (7) or (8), including the dates that the source expects to use the credits.

(9) Requirements concerning entry and inspection as provided in s. 285.19.

(10) Monitoring, record-keeping, reporting and compliance certification requirements.

(11) Requirements to submit compliance plans and schedules and progress reports.

(12) Conditions necessary to implement 42 USC 7651 to 7651o and regulations under 42 USC 7651 to 7651o concerning acid deposition control.

(13) Other conditions applicable to the source under the federal clean air act.

(14) Other requirements specified by rule by the department.
History: 1979 c. 34, 221; 1987 a. 27; 1991 a. 302; 1995 a. 227 s. 490; Stats. 1995 s. 285.65.

Cross Reference: See also chs. NR 406, 407, 408, 409, and 439, Wis. adm. code.

285.66 Permit duration and renewal. (1) **CONSTRUCTION.** Unless otherwise specified in the permit, a construction permit is valid for 18 months from the date of issuance of the permit unless the permit is revoked or suspended. The department may extend the term of the construction permit for the purposes of commencing or completing construction, reconstruction, replacement or modification. Unless otherwise specified in a construction permit, the department may only extend the term of the permit for up to 18 additional months beyond the original 18-month period. If construction, reconstruction, replacement or modification is not completed within the term specified in the permit or any extension granted by the department, the applicant shall apply for a new construction permit.

(2) **OPERATION.** The department shall specify the term of an operation permit in the operation permit. The term of an operation permit issued under s. 285.62 or renewed under sub. (3) may not exceed 5 years from the date of issuance or renewal.

(3) **RENEWAL.** (a) A permittee shall apply for renewal of an operation permit at least 12 months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

(b) The department shall follow the procedures in s. 285.62 in renewing an operation permit for a new source, a modified source or an existing source.

(c) The department may renew an operation permit if the criteria in ss. 285.63 and 285.64 are met. Notwithstanding s. 285.64 (1) (a), the department may deny an application for renewal of an operation permit for a stationary source if the stationary source is in violation of its current operation permit.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 492; Stats. 1995 s. 285.66.

Cross Reference: See also chs. NR 406, 408, 409, 463, 466, and 469, Wis. adm. code.

285.67 Permit revision, suspension and revocation. The department shall promulgate rules establishing criteria and procedures for revising, suspending and revoking air pollution control permits.

History: 1979 c. 34, 221; 1989 a. 335; 1991 a. 302; 1995 a. 227 s. 491; Stats. 1995 s. 285.67.

Cross Reference: See also ch. NR 407, Wis. adm. code.

285.68 Failure to adopt rule or issue permit or exemption. The failure to adopt a rule or issue an air pollution control permit or the exemption or granting of an exemption from an air pollution control permit requirement does not relieve any person from compliance with any emission limitation or with any other provision of law.

History: 1979 c. 34; 1995 a. 227 s. 493; Stats. 1995 s. 285.68.

285.69 Fees. (1) **RULE MAKING.** The department may promulgate rules for the payment and collection of reasonable fees for all of the following:

(a) *Application for permit.* Reviewing and acting upon any application for a construction permit.

(c) *Request for exemption.* Reviewing and acting upon any request for an exemption from the requirement to obtain an air pollution control permit.

(2) FEES FOR PERSONS REQUIRED TO HAVE OPERATION PERMITS.

(a) The department shall promulgate rules for the payment and collection of fees by the owner or operator of a stationary source for which an operation permit is required. The rules shall provide all of the following:

1. That fees collected in a year before 2002 are based on actual emissions of all regulated pollutants and any other air contaminant specified by the department in the rules in the preceding year.

2. Except as provided under par. (d), that the fees collected in 1993 are \$18 per ton of each regulated pollutant.

3. Except as provided under par. (d), that the fees collected in 1994 are \$25 per ton increased by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), for 1993 exceeds the consumer price index for 1989.

4. That the fees collected in each year after 1994 and before 2002 are calculated by increasing the fees collected in the preceding year by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), increased in the preceding year.

5. That fees are not based on emissions by an air contaminant source in excess of 5,000 tons per year of each regulated pollutant, except that, subject to par. (b), this limitation does not apply to a major utility, as defined in s. 285.41 (1) (f), that owns or operates a phase I affected unit as listed in Table A of 42 USC 7651c.

6. That during 1995 to 1999, no fee is required to be paid under this subsection for emissions from any affected unit listed in Table A of 42 USC 7651c.

7. That the fees billed for a stationary source in each year after 2001 are based on the fees billed for the stationary source in 2001.

8. That the fee billed for each stationary source in each year after 2001 is based on the actual emissions of all regulated pollutants, and any other air contaminant specified by the department in the rules, in the preceding year.

9. That fees billed in years after 2001 are determined using a performance-based approach that increases a stationary source's fees in proportion to increases in the amount of pollutants emitted by the stationary source, as determined under subd. 8., and decreases a stationary source's fees in proportion to decreases in the amount of pollutants emitted by the stationary source, as determined under subd. 8.

10. That no multiplier or similar mechanism is used that would increase a stationary source's fees to compensate for decreases in overall amounts of emissions.

11. That no provision is used that would increase the fee per unit of pollutant emitted in order to compensate for decreases in overall amounts of emissions.

(b) The department may not charge a major utility fees on emissions in excess of 5,000 tons per year of each regulated pollutant beyond the amount necessary to recover the fees that would have been charged for any phase I affected unit listed in Table A of 42 USC 7651c owned by that major utility if the prohibition in par. (a) 6. did not exist.

(c) The fees collected under pars. (a) and (e) shall be credited to the appropriations under s. 20.370 (2) (bg), (3) (bg), (8) (mg) and (9) (mh) for the following:

1. The costs of reviewing and acting on applications for operation permits; implementing and enforcing operation permits except for court costs or other costs associated with an enforcement action; monitoring emissions and ambient air quality; preparing rules and materials to assist persons who are subject to the operation permit program; ambient air quality modeling; prepar-

ing and maintaining emission inventories; and any other direct and indirect costs of the operation permit program.

2. Costs of any other activities related to stationary sources of air contaminants.

(d) The department may promulgate a rule reducing any operation permit fee required to be paid under par. (a) by small business stationary sources to take into account the financial resources of small business stationary sources.

(e) Beginning in 2001, the owner or operator of a stationary source for which an operation permit is required shall pay to the department an annual fee of \$.86 per ton of actual emissions in the preceding year of all air contaminants on which the fee under par. (a) is based.

(3) ASBESTOS INSPECTION FEES. The department may promulgate rules for the payment and collection of fees for inspecting nonresidential asbestos demolition and renovation projects regulated by the department. The fees under this subsection may not exceed \$210 per project. The fees collected under this subsection shall be credited to the appropriation under s. 20.370 (2) (bi) for the direct and indirect costs of conducting inspections of nonresidential asbestos demolition and inspection projects regulated by the department.

(4) INFORMATION ON FEES. In promulgating rules under subs. (1) and (2), the department shall provide information on the costs upon which the proposed fees are based.

(5) GROWTH ACCOMMODATION USE FEE. (a) A one-time growth accommodation use fee shall be imposed at the time of application upon any person who obtains a certified growth accommodation credit under s. 285.63 (7). If the amount of credit per calendar year varies between calendar years, the amount of the fee shall be based upon the largest annual credit for any calendar year. If the person submits more than one application in any calendar year, the fee for the application shall be based upon the largest cumulative credit obtained for any calendar year. A fee is nonrefundable, except that in determining a fee for an application in any calendar year, the department shall credit once to the person an amount equal to any fee previously paid in the same calendar year. All fees collected under this subsection shall be deposited in the general fund.

(b) Except as provided in par. (d), if the amount of the growth accommodation credit obtained by the person in a calendar year is less than 40 tons, the amount of the fee shall be determined by multiplying the amount of the growth accommodation credit certified to the person, expressed in tons per year, by \$100 per ton.

(c) Except as provided in par. (d), if the amount of the growth accommodation credit obtained by the person in a calendar year is 40 tons or more, the amount of the fee shall be determined by multiplying the amount of the growth accommodation credit certified to the person, expressed in tons per year, by \$200 per ton.

(d) A stationary source which is operating without an air pollution control permit required under s. 285.60 but which can demonstrate to the satisfaction of the department the ability to comply with this chapter and s. 299.15 after obtaining a growth accommodation credit under s. 285.63 (7) shall be required to pay an amount from \$200 to \$1,000 times the amount of the growth accommodation credit certified to the person, expressed in tons per year.

(6) USE OF CERTAIN FEES. The department shall use moneys collected under subs. (1) and (5) for the purposes in subs. (1) and (5). If moneys collected under subs. (1) and (5) exceed the amounts necessary for the purposes specified in subs. (1) and (5), the department may use the excess for other activities to control air pollution in this state.

(7) EMISSION REDUCTION CREDIT FEES. The department may promulgate rules for the payment of fees by persons who hold emission reduction credits that may be used to satisfy the offset requirements in s. 285.63 (2) (a) and that have been certified by the department. The rules may waive the payment of fees under

this subsection for categories of emission reduction credits. The fees collected under this subsection shall be credited to the appropriation under s. 20.370 (2) (bg).

History: 1979 c. 34, 221; 1987 a. 27; 1989 a. 56; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27; 1995 a. 227 ss. 495 to 499; Stats. 1995 s. 285.69; 1997 a. 27, 35; 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. NR 410, Wis. adm. code.

SUBCHAPTER VIII

MISCELLANEOUS

285.70 Confidentiality of records. (1) Except as provided in sub. (2), the department shall make any record, report or other information obtained in the administration of this chapter and s. 299.15 available to the public.

(2) The department shall keep confidential any part of a record, report or other information obtained in the administration of this chapter and s. 299.15, other than emission data or an air pollution control permit, upon a showing satisfactory to the department by any person that the part of a record, report or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

(3) Subsection (2) does not prevent the disclosure of any information to a representative of the department for the purpose of administering this chapter and s. 299.15 or to an officer, employee or authorized representative of the federal government for the purpose of administering the federal clean air act. When the department provides information that is confidential under sub. (2) to the federal government, the department shall also provide a copy of the application for confidential status.

History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26; 1991 a. 302; 1995 a. 227 s. 460; Stats. 1995 s. 285.70.

285.71 Federal aid. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of this chapter and any other applicable requirements of law.

History: 1979 c. 34; 1995 a. 227 s. 459; Stats. 1995 s. 285.71.

285.73 Local air pollution control programs. (1) After consultation with incorporated units of local government, any county may establish and thereafter administer within its jurisdiction, including incorporated areas, an air pollution control program which:

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by this chapter and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

(b) Provides for the countywide enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff and financial and other resources necessary to effectively and efficiently carry out its program;

(d) May authorize municipalities to participate in the administration and enforcement of air pollution programs; and

(e) Is approved by the department as adequate to meet the requirements of this chapter and any applicable rules pursuant thereto.

(2) Any county may consult with regional planning commissions and may administer all or part of its air pollution control program in cooperation with one or more other counties or municipalities. Performance by or on behalf of a county pursuant to such cooperative undertaking shall be considered to be performance by the county for purposes of this section.

(3) If the department finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the department may determine the boundaries within which such program is necessary and require it.

(4) (a) If the department has reason to believe that a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this chapter, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is inadequate to prevent and control air pollution in the county to which such program relates, or that such program is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 60 days.

(c) If the county fails to take such necessary corrective action within the time required, the department shall administer within such county all of the regulatory provisions of this chapter. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction.

(5) Any county in which the department administers its air pollution control program under sub. (4) may, with the approval of the department, resume a county air pollution control program which meets the requirements of sub. (1).

(6) Nothing in this chapter supersedes the jurisdiction of any county air pollution control program in operation on July 26, 1967, but any such program shall meet all requirements of this chapter for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

History: 1973 c. 90; 1979 c. 34 s. 2102 (39) (g); 1995 a. 227 s. 506; Stats. 1995 s. 285.73.

Cross Reference: See also ch. NR 403, Wis. adm. code.

285.75 County program. Instead of state review of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans, specifications and permits of air contaminant sources being constructed, modified or operated within the jurisdiction of these counties.

History: 1979 c. 34; 1995 a. 227 s. 501; Stats. 1995 s. 285.75.

Cross Reference: See also ch. NR 403, Wis. adm. code.

285.76 Notice concerning proposed area redesignations. (1) Within 5 days after the department receives notification that an American Indian tribal governing body proposes to redesignate an area under 42 USC 7474 for the purpose of the federal clean air act provisions concerning the prevention of significant deterioration of air quality and that a consultation meeting is requested among the tribal governing body, the federal environmental protection agency and this state, the department shall report that notification to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate, under s. 13.172 (3).

(2) Within 15 days after receiving notification that an American Indian tribal governing body proposes to redesignate an area under 42 USC 7474 for the purpose of the federal clean air act provisions concerning the prevention of significant deterioration of air quality, the department shall do all of the following:

(a) Publish a class I notice, under ch. 985, of the proposed redesignation and request for consultation with the state in a newspaper of general circulation in the area that would be affected by the redesignation, as determined using standards established by the federal environmental protection agency, and in the official

state newspaper and provide a written statement concerning the proposed redesignation to those newspapers.

(b) Report that notification to the governor, and to the agency responsible for administering air pollution control laws, of any other state with an area that would be affected by the redesignation, as determined using standards established by the federal environmental protection agency.

(3) Within 15 days after receiving notification of the time and place of a public hearing under [42 USC 7474](#) (b) (1) (A) concerning a proposal by an American Indian tribal governing body to redesignate an area, the department shall provide notice of the time and place of the public hearing in the manner provided in subs. (1) and (2) (a). If the department receives notification of a hearing at the same time that it receives notification of the proposed redesignation, it shall combine the newspaper notices under this subsection with the notices under sub. (2) (a).

(4) The department shall submit a report to the appropriate standing committees of the legislature, as determined by the speaker of the assembly and the president of the senate, under s. [13.172](#) (3), on the results of any consultations, under [40 CFR 52.21](#) (g) (4) (ii), with an American Indian tribal governing body that proposes to redesignate an area under [42 USC 7474](#).

History: 1997 a. 270.

285.77 Machinery use. The department may not require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

History: 1979 c. 34; 1987 a. 27; Stats. 1987 s. 144.404; 1995 a. 227 s. 503; Stats. 1995 s. 285.77.

285.78 Registration of early emission reductions.

(1) In this section:

(a) “Carbon reserve” means any system that takes in and stores more carbon from the atmosphere than it releases to the atmosphere.

(b) “Fine particulate matter” means solid or liquid particles with a diameter less than or equal to 2.5 micrometers or emissions that are precursors to solid or liquid particles with a diameter less than or equal to 2.5 micrometers.

(c) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride or any other gas that traps heat in the atmosphere.

(2) (a) The department shall establish and operate a system under which the department registers reductions in emissions of greenhouse gases if the reductions are made before the reductions are required by law. Under the system, the department may register carbon sequestration from the creation or preservation of carbon reserves and may register avoided emissions resulting from energy efficiency measures and from the use of renewable energy sources. Under the system, the department may not register a reduction in emissions of greenhouse gases if the reduction was made before January 1, 1991.

(b) The department may establish and operate systems under which the department registers reductions in emissions of fine particulate matter, mercury or other air contaminants identified by the department if the reductions are made before the reductions are required by law.

(c) The department may verify and quantify, or require the verification and quantification of, emission reductions that a person seeks to register under par. (a) or (b).

(d) Registration of emission reductions under this section is voluntary.

(3) (a) The department shall promulgate rules for the system under sub. (2) (a). In promulgating the rules, the department shall make the system as consistent as possible with other state, federal and international programs designed to reduce emissions of greenhouse gases.

(b) The department shall promulgate rules for any system that the department establishes under sub. (2) (b). In promulgating the rules, the department shall make the system as consistent as possible with other state, federal and international programs designed to reduce emissions of the substances covered by the system.

History: 1999 a. 195.

285.79 Small business stationary source technical and environmental compliance assistance program.

(1) **DEFINITION.** In this section, “small business stationary source” means a stationary source designated under sub. (2) (a) or, except as provided in sub. (2) (b), a stationary source that satisfies all of the following criteria:

(a) Is owned or operated by a person that employs 100 or fewer individuals.

(b) Is a small business concern, as determined under [15 USC 632](#) (a).

(c) Is not a major stationary source, as defined in rules promulgated by the department.

(d) Does not emit 50 tons or more per year of any regulated pollutant.

(e) Emits a total of less than 75 tons per year of all regulated pollutants.

(2) **DESIGNATIONS AND EXCLUSIONS.** (a) In response to a petition by a stationary source, the department may, by rule, designate as a small business stationary source any stationary source that does not meet the criteria of sub. (1) (c), (d) or (e) but that does not emit a total of more than 100 tons per year of all regulated pollutants.

(b) The department may, by rule, after consultation with the administrators of the federal environmental protection agency and the federal small business administration, exclude from the definition of small business stationary source any category or subcategory of stationary source that the department determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the assistance provided under this section.

(3) **ASSISTANCE PROGRAM.** The department shall, in cooperation with the small business ombudsman clearinghouse under s. [560.03](#) (9), develop and administer a small business stationary source technical and environmental compliance assistance program. The program shall include all of the following:

(a) Mechanisms to develop, collect and coordinate information concerning methods and technologies that small business stationary sources can use to comply with the federal clean air act and programs to encourage lawful cooperation among small business stationary sources or other persons to further compliance with the federal clean air act.

(b) Mechanisms for providing small business stationary sources with information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution and with other assistance in pollution prevention and accidental release detection and prevention.

(c) A compliance assistance program that assists small business stationary sources in determining applicable requirements under this chapter and s. [299.15](#) and in receiving air pollution control permits in a timely and efficient manner.

(d) Mechanisms to ensure that small business stationary sources receive notice of their rights under the federal clean air act and state laws implementing the federal clean air act in a manner and form that assures reasonably adequate time for small business stationary sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the federal clean air act.

(e) Mechanisms for referring small business stationary sources to qualified auditors to determine compliance with the federal clean air act and state laws implementing the federal clean air act and other mechanisms for informing small business stationary

sources of their obligations under the federal clean air act and state laws.

(f) Procedures for consideration of a request from a small business stationary source for alteration of any required work practice or technological method of compliance with this chapter or of the schedule of measures that must be taken to implement a required work practice or method of compliance before an applicable compliance date, based on the technological and financial capability of the small business stationary source.

(4) GRANTING ALTERATIONS. The department may not grant an alteration under sub. (3) (f) unless the alteration complies with the requirements of the federal clean air act and any applicable plan under s. 285.11 (6). If those applicable requirements are set forth in federal regulations, the department may only grant alterations authorized in those regulations.

History: 1991 a. 302; 1995 a. 227 s. 462; Stats. 1995 s. 285.79.

SUBCHAPTER IX

ENFORCEMENT; PENALTIES

285.81 Hearings on certain air pollution actions.

(1) PERMIT HOLDER; PERMIT APPLICANT; ORDER RECIPIENT. Any permit, part of a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing on the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified or withdrawn.

(2) OTHER PERSONS. Any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.42 (1) or who submitted comments in the public comment process under s. 285.62 (4) or (5) may seek review under sub. (1) of any permit, part of a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75.

(3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. 293.43.

(4) REVIEW OF DEPARTMENT DETERMINATIONS. An air pollution control permit, part of an air pollution control permit or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75 is not subject to review in any civil or criminal enforcement action for a violation of this chapter. This subsection does not restrict the ability of a person to challenge an administrative rule as provided in s. 227.40 (2).

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302; 1995 a. 227 s. 502; Stats. 1995 s. 285.81.

Sub. (4) provides in unequivocal terms that enumerated permits and determinations are not subject to review. *U.S. v. Murphy Oil USA, Inc.* 143 F. Supp. 2d 1054 (2001).

285.83 Violations: enforcement. (1) (a) If the department has reason to believe that a violation of this chapter or s. 299.15 or any rule promulgated or special order, plan approval or permit issued under this chapter or s. 299.15 has occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the alleged violation, and contain the findings of fact on which the charge of violation is based. The notice may include an order that necessary corrective action be taken within a reasonable time. This order shall become effective

unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. Instead of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or

2. Initiate action under s. 285.59 (8) or 285.87.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of such other corrective action as may be appropriate. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating or controlling the violation.

(2) The notice under sub. (1) (a) 1. for an alleged violation of rules promulgated under s. 285.31 (3) may include a tag or other notice placed on the dispensing equipment that is alleged to be in violation of rules promulgated under s. 285.31 (3).

History: 1971 c. 125 s. 522 (2); 1977 c. 377; 1979 c. 34 s. 980h; 1979 c. 221 s. 2202 (39); Stats. 1979 s. 144.423; 1989 a. 284; 1991 a. 39; 1995 a. 227 s. 510; Stats. 1995 s. 285.83.

Cross Reference: See also chs. NR 493 and 494, Wis. adm. code.

285.85 Emergency procedure. (1) If the secretary finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, he or she shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the department. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the natural resources board shall affirm, modify or set aside the order of the secretary.

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he or she may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 285.83. In such event, the requirements for hearing and affirmation, modification or setting aside of orders set forth in sub. (1) shall apply.

History: 1979 c. 34 ss. 983m, 2102 (39) (g); 1979 c. 176; Stats. 1979 s. 144.424; 1995 a. 227 s. 511; Stats. 1995 s. 285.85.

Cross Reference: See also ch. NR 493, Wis. adm. code.

285.86 Asbestos citations. (1) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture from a person who commits a violation under sub. (2).

(2) The department shall promulgate rules that specify violations of rules relating to asbestos abatement and management that are promulgated under ss. 285.11, 285.13, 285.17 and 285.27 to which sub. (1) applies. In a rule promulgated under this subsection, the department may limit the applicability of sub. (1) based on the frequency of violation and on health and environmental risks caused by the violation.

(3) The department shall submit any proposed rules under sub. (2) to the department of justice. The department may not promulgate a rule under sub. (2) unless the rule is approved by the department of justice.

History: 1999 a. 9.

285.87 Penalties for violations relating to air pollution.

(1) Except as provided in s. 285.57 (5) or 285.59 (8), any person who violates this chapter or any rule promulgated, any permit issued or any special order issued under this chapter shall forfeit

not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense.

(2) (a) Except as provided in par. (b), any person who intentionally commits an act that violates, or fails to perform an act required by this chapter, except s. 285.59, or any rule promulgated, any permit issued or any special order issued under this chapter, except s. 285.59, shall be fined not more than \$25,000 per day of violation or imprisoned for not more than 6 months or both.

(b) If the conviction under par. (a) is for a violation committed after another conviction under par. (a), the person is guilty of a

Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$50,000 per day of violation.

Note: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) If the conviction under par. (a) is for a violation committed after another conviction under par. (a), the person shall be fined not more than \$50,000 per day of violation or imprisoned for not more than 3 years or both.

History: 1979 c. 34; 1989 a. 284, 289; 1993 a. 243; 1995 a. 227 s. 511; Stats. 1995 s. 285.87; 1997 a. 283; 2001 a. 109.

Cross Reference: See also ch. NR 494, Wis. adm. code.