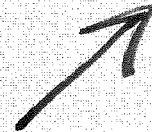


 **07hr_SC-ENR_CRule_06-047_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Environment and Natural
Resources (SC-ENR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Environment and Natural Resources

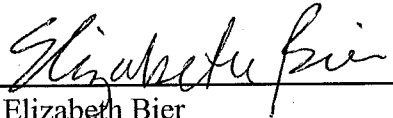
Clearinghouse Rule 06-047

Relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

Submitted by Department of Natural Resources.

January 08, 2007 Referred to Committee on Environment and Natural Resources.

March 22, 2007 No action taken.



Elizabeth Bier
Committee Clerk

Senate

Record of Committee Proceedings

Committee on Environment and Natural Resources

Clearinghouse Rule 06-047

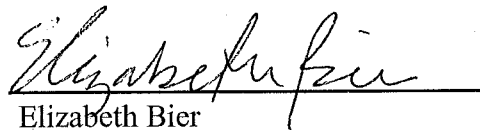
Relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

Submitted by Department of Natural Resources.

January 08, 2007 Referred to Committee on Environment and Natural Resources.

March 8, 2007 Modifications received.

March 22, 2007 No action taken.



Elizabeth Bier
Committee Clerk

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Clearinghouse Rule 06-047

Relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

Submitted by Department of Natural Resources.

August 29, 2006 Referred to Committee on Natural Resources and Transportation.

October 12, 2006 **PUBLIC HEARING HELD**

Present: (4) Senators Kedzie, Stepp, Kapanke and Wirch.
Absent: (1) Senator Breske.

Appearances For

- Caroline Garber — WI Department of Natural Resources
- Kevin Kessler — WI Department of Natural Resources
- Jeff Hanson — WI Department of Natural Resources

Appearances Against

- None.

Appearances for Information Only

- Scott Manley — WI Manufacturers and Commerce
- Robert Fassbender — WI Economic Development Association
- Pat Osborne — Aggregate Producers of Wisconsin

Registrations For

- None.

Registrations Against


- None.

October 25, 2006 **EXECUTIVE SESSION HELD - POLLING**

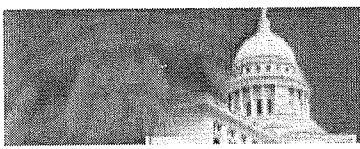
Moved by Senator Kedzie that **Clearinghouse Rule 06-047** be recommended for modifications requested.

Ayes: (4) Senators Kedzie, Stepp, Kapanke and Breske.
Noes: (1) Senator Wirch.

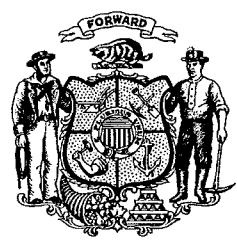
MODIFICATIONS REQUESTED RECOMMENDED, Ayes 4,
Noes 1



Dan Johnson
Committee Clerk



WISCONSIN STATE LEGISLATURE



Scott Gunderson



STATE REPRESENTATIVE • 83RD DISTRICT

RECEIVED

October 19, 2006

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Inter-Departmental
GEF-2, AD/5

OCT 19 2006
OFFICE OF THE
SECRETARY

Hand Delivered

Dear Secretary Hassett,

On October 18, 2006 the Assembly Natural Resources Committee adopted the following motion with respect to Clearinghouse Rule 06-047, relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business:

MOVED: that the Assembly Committee on Natural Resources, pursuant to s. 227.19 (4) (b) 2., Stats., requests that the Department of Natural Resources consider modifications to Clearinghouse Rule 06-047, relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

This motion was adopted on a vote of Ayes, 7; Noes, 5.

If the Department of Natural Resources does not agree to consider modifications to Clearinghouse Rule 06-047, in a letter addressed to the chair of the Assembly Committee on Natural Resources, or fails to respond in writing to this request for modification, by 5:00 p.m., November 8, 2006, the Assembly Committee on Natural resources objects to Clearinghouse Rule 06-047, pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious and imposes an undue hardship.

Thank you for your consideration of this recommendation.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly

State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-3363

Toll-Free:
(888) 534-0083

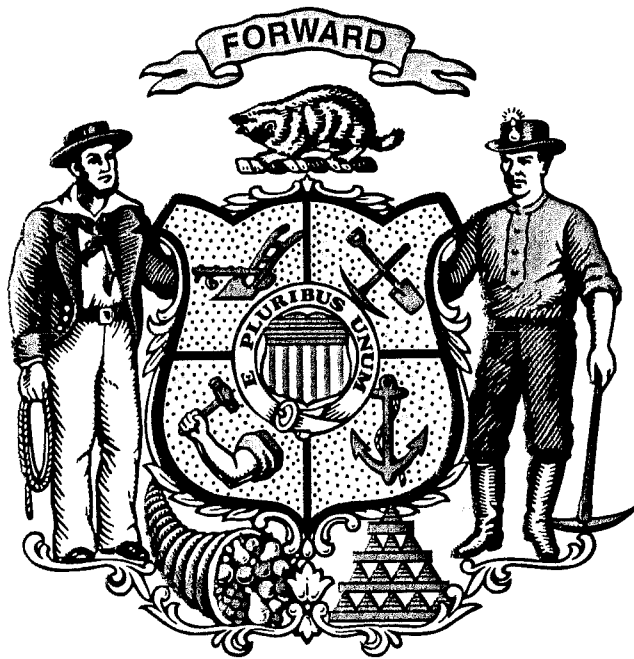
Fax:
(608) 282-3683

E-Mail:
Rep.Gunderson@
legis.state.wi.us

83rd District

P.O. Box 7
Waterford, WI
53185

(262) 895-6254





State Senator

Neal J. Kedzie

11th Senate District

RECEIVED

OCT 26 2006

OFFICE OF THE
SECRETARY

Hand delivered 4:25 p.m.

October 26, 2006

Mr. Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street, 5th Floor
Madison, WI 53708

Dear Secretary Hassett,

This letter is to inform you that on October 26, 2006 the Senate Natural Resources and Transportation Committee voted (Ayes, 4 ; Noes, 1) pursuant to s. 227.19 (4) (b) 2., Stats., to request the Department of Natural Resources to consider modifications to the following Clearinghouse Rule:

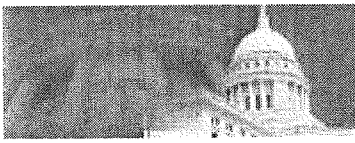
- **Clearinghouse Rule 06-047:** relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business

Please inform me in writing no later than 12:00 p.m. on October 30, 2006 if the department agrees to consider modifications to this rule. Thank you for your consideration.

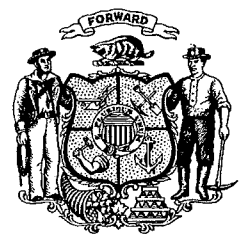
Sincerely,

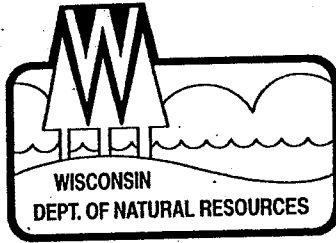
Neal Kedzie
Chair, Senate Natural Resources and Transportation Committee
State Senator
11th Senate District

NJK: dj



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

October 30, 2006

Senator Neal J. Kedzie
Chair, Senate Natural Resources Committee
313 South State Capitol
PO Box 7882
Madison, WI 53707

Representative Scott Gunderson
Chair, Assembly Natural Resources Committee
Wisconsin State Capitol
Room 7 West
PO Box 8952
Madison, WI 53507

Subject: Clearinghouse rule 06-047

Dear Senator Kedzie and Representative Gunderson:

Thank you for your letters dated October 26, 2006 and October 18, 2006, requesting unspecified modifications to Clearinghouse Rule 06-047 (hereinafter "the rule") pertaining to exemptions from air permits. While the Department agrees to consider modifications to the rule, I must tell you of my disappointment in the Senate Natural Resources and Transportation and the Assembly Natural Resources Committee's action to delay implementation of an important regulatory reform tool for over 1,000 Wisconsin small businesses.

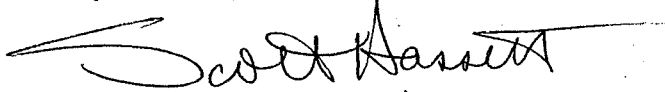
2003 Act 118 was a delicately crafted compromise to provide regulatory reform in Wisconsin while still ensuring a base level of public health and environmental protections exist for the public. The Department's proposed rule, coupled with the recently enacted registration permit rule, are the centerpieces for the State's air regulatory streamlining efforts for small businesses that were agreed upon as part of 2003 Wisconsin Act 118. These two new air permitting tools will reduce permit transaction times from months to hours, significantly reduce small business transaction costs, and enable small businesses to react quickly to changing market opportunities.

This rule is necessary to provide regulatory relief to the state's small business community; an objective I know you support. This rule would have made over 1,000 small businesses eligible for exemption from minor source air permitting. These businesses will now have to needlessly wait for further legislative action. The Committees could have decided to allow the rule to move forward—in order to provide immediate relief to over 1,000 small businesses—and asked the Department to consider modifications to put forward in a future rule revision.

The proposed rule provides regulatory relief to small businesses, is based on sound science and establishes a 10 ton per year threshold that balances regulatory relief while protecting the health of the public. While I disagree with the Committees' action to delay this extremely important regulatory streamlining tool to over 1,000 of the state's small businesses, the Department has agreed to consider

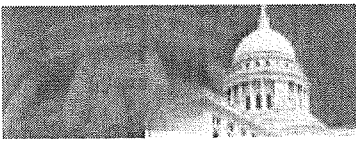
modifications as requested by the Committees. Again, a better course of action would have been to put this vital piece of reform in place and continue to work with the Department on additional regulatory streamlining measures. It is short-sighted and harmful to small business community to delay changes that make an immediate, real difference for over 1,000 Wisconsin small businesses.

Sincerely,

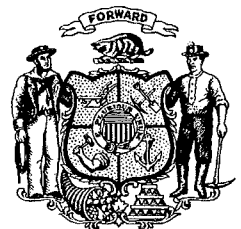


Scott Hassett
Secretary

Assembly Natural Resources Committee members
Senate Natural Resources and Transportation Committee members
Secretary Mary Burke – Dept. of Commerce
Carl Komassa, Chair - Small Business Environmental Council
Richard Petershack, Chairman, Small Business Regulatory Review Board
Bill Smith, State Director, NFIB
Carla Klein, Chapter Director, Sierra Club
Dave Steffenson, Executive Director, Wis. Interfaith Climate & Energy Campaign
Scott Manley - WMC



WISCONSIN STATE LEGISLATURE





State Senator

Neal J. Kedzie

11th Senate District

RECEIVED

OCT 31 2006

OFFICE OF THE
SECRETARY

HAND-DELIVERED

October 31, 2006

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street, 5th Floor
Madison, WI 53708

Dear Secretary Hassett,

Thank you for your letter responding to the Senate Natural Resources and Transportation Committee's request for the Department to consider modifications to Clearinghouse Rule 06-047, relating to minor source air permit exemptions. While I am pleased the Department has agreed to consider such modifications, I am concerned by your additional comments on the Committee's action.

As you know, state agencies are afforded an opportunity to craft administrative rules to a myriad of statewide issues. Further, the authority to do so was granted by the Legislature under the premise that such rules may only be implemented when approval is given by the Legislature, in most cases, by the appropriate standing committee of the Legislature. It is a process that maintains a balance between the Legislative and Executive branches of government and holds both entities accountable to the people of Wisconsin. I can assure you, it is a responsibility I do not take lightly.

Thus, when you express your disappointment that it will make Wisconsin businesses "needlessly wait for legislative action" and delays are "short-sighted and harmful to small business", I believe you fail to understand the legislative process and duty we have as legislators to review and potentially approve such rules.

I agree with you that an exemption for small businesses from the minor air permit process is necessary to promote job growth in Wisconsin. As a co-sponsor of the 2003 Job Creation Act, Chair of the Senate Natural Resources committee, and author or co-author of many permit streamline measures, I am gratified by the agency's awareness that such changes are proper for business to succeed in this state. You and I, along with your staff, have worked collaboratively on innovative environmental reform measures in the past and I believe future successes are within our grasp. That being said, I do not believe it is appropriate for the Department to editorialize on the Committee's request when the Committee is performing its due diligence and upholding its statutory obligation.

I also question the need to circulate your response to various outside interests, when this process is historically conducted as an internal matter between the Department and the respective Committee Chairs. Because of that action, I feel it necessary to distribute this letter to those same parties.

While I understand your desire to expeditiously implement this rule and then return to work on additional streamlining measures, I believe it is more prudent to approve a sound rule the first time, rather than implementing corrective "clean-up" measures at some later date. I believe the business community expects better from us, as do the people of Wisconsin. I trust you will share this common goal once we engage in further discussions with the agency to improve the condition of Clearinghouse Rule 06-047.

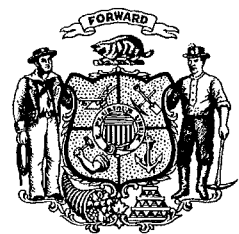
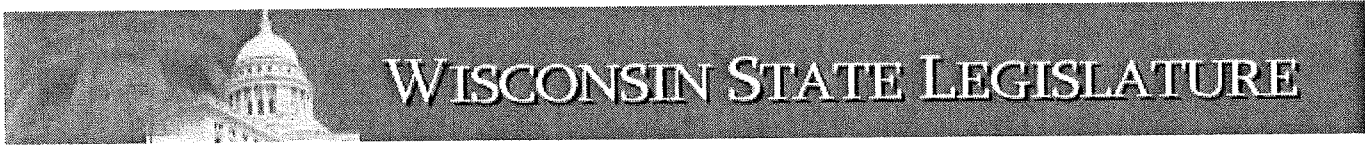
Sincerely,

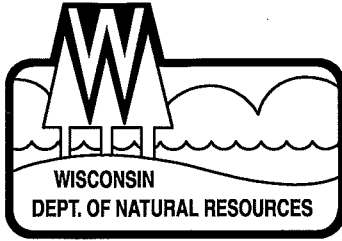


Neal Kedzie
Chair, Senate Natural Resources and Transportation Committee
State Senator
11th Senate District

NJK: dj

Senate Natural Resources and Transportation Committee members
Assembly Natural Resources Committee members
Mary Burke – Secretary, WI Department of Commerce
Carl Komassa, Chair – Small Business Environmental Council
Richard Petershack – Chair, Small Business Regulatory Review Board
Bill Smith – Director, National Federation of Independent Businesses
Carla Klein – Chapter Director, Sierra Club
Dave Steffenson – Executive Director, WI Interfaith Climate and Energy Campaign
Scott Manley – WI Manufacturers and Commerce





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

March 7, 2007

Honorable Mark Miller, Chair
Senate Committee on Environment and Natural Resources
Room 409 South
State Capitol

Honorable Scott Gunderson, Chair
Assembly Committee on Natural Resources
Room 7 West
State Capitol

Re: Clearinghouse Rule No. 06-047
Air pollution permit exemptions and air pollution permit exemption fees,
and affecting small business

Gentlemen:

In October, 2006, the Senate Natural Resources and Transportation Committee and the Assembly Natural Resources Committee requested that the Department of Natural Resources consider modifications to Clearinghouse Rule No. 06-047. At its February 28, 2007 meeting, the Natural Resources Board adopted a modification to proposed s. NR 407.03(1m). This section creates an exemption from operation permits for facilities that meet certain criteria. The proposed modification clarifies that the requirement to notify the Department of the intent to operate the facility under the exemption also serves as a request for revocation of an existing permit or withdrawal of a pending permit application.

Attached is a copy of the modifications adopted by the Natural Resources Board and a copy of Natural Resources Board Order No. AM-09-06 (Clearinghouse Rule No. 06-047) incorporating the modifications.

Under s. 227.19(4)(b)2., Stats., the Department of Natural Resources refers this action to your committees for an additional 10 working day review. If the Department does not hear from you within 10 working days of receipt of this letter, the Department will continue processing this rule.

Sincerely,

Scott Hassett
Secretary

cc: Robert Eckdale – AM
Marcia Penner – LS/5
Carol Turner – LS/5

Attach.

Proposed Amendment of Natural Resources Board Order AM-09-06
(Clearinghouse Rule CR 06-047)

Section NR 407.03(1m) is amended to read:

NR 407.03(1m) FACILITIES EXEMPT BASED ON ACTUAL EMISSIONS. (a) Any facility that is required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit following notification under par. (c), where all of the following criteria and requirements are met:

1. The actual emissions of each air contaminant from the facility do not exceed any of the following levels:

a. 10 tons in any calendar year for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM₁₀, carbon monoxide and volatile organic compounds.

b. 0.5 tons in any calendar year for lead.

c. Any stack-appropriate thresholds for emissions points in columns (c), (d), (e) and (f) of Table A, B or C of ch. NR 445. If the facility is a source of incidental emissions under s. NR 445.11, this subdivision only applies to emissions of air contaminants which are listed as substances of concern in Table E of ch. NR 445.

2. The facility is not subject to a standard under section 111 or 112 of the Act (42 USC 7411 or 7412).

~~3. The owner or operator has submitted to the department an operation permit exemption claim. The claim shall be submitted on department approved forms and to a location designated by the department. A claim under this subdivision is not required if the facility is exempt from the requirement to submit an air emission inventory report under s. NR 438.03(1)(a).~~

~~3.~~ 3. The owner or operator conducts monitoring and ~~maintain~~ maintains records sufficient to demonstrate compliance with the requirements of this paragraph, including the calculation of annual facility-wide emissions. These records shall be maintained on site for at least 5 years, unless a longer period is required by statute or rule.

~~5.~~ 4. If a control device is used to limit actual emissions, the owner or operator uses a compliance monitoring method which is identified in s. NR 439.055.

(b) Any facility that is not required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit where all of the criteria and requirements in par. (a) 1. to 4. are met.

(c) 1. The owner or operator of a facility required to submit an air emission inventory report under s. NR 438.03 shall notify the department of their intent to operate the facility under the exemption criteria in par. (a). A claim of exemption made under s. NR 406.04(1q) from construction permit requirements shall satisfy this notification requirement.

2. Any existing permit shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn. A notification under subd. 1. shall serve as a request for revocation of an individual permit or withdrawal from coverage under a general or registration permit.

3. A notification under subd. 1. shall serve as a request for withdrawal of any pending permit application.

Note: The An owner or operator exempt under this subsection is responsible for complying with all other applicable requirements in chs. NR 400 to 499.

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **renumber** NR 406.02(1) and 406.04(4)(h), to **amend** NR 410.03(1)(d) and to **create** NR 406.02(1), 406.04(1)(zh), (1q), (4)(h) and (i), 407.03(1m) and 410.03(1)(f) relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

AM-09-06

Analysis Prepared by the Department of Natural Resources

Statute interpreted: s. 285.60(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

Statutory authority: ss. 285.11(1) and (6) and 285.60(6), Stats.

Explanation of agency authority: The Department has had the authority under s. 285.60(6)(a), Stats., to exempt stationary sources from permitting requirements if potential emissions do not present a significant hazard to public health, safety or welfare or to the environment. In 2003, s. 285.60(6)(b), Stats., was created and requires the Department to exempt minor sources from the requirement to obtain air permits if emissions from the source do not present a significant hazard to public health, safety or welfare or to the environment.

Related statute or rule: Chapters NR 406 and 407, Wis. Adm. Code.

Plain language analysis: The rule proposal provides for sources that have less than 10 tons/year of actual emissions of criteria pollutants (particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds), and which are not subject to Federal air pollution requirements for hazardous air pollutants or new source performance standards, to be exempt from all permitting requirements.

For sources with emissions above these thresholds, projects undertaken at the facility that will meet the aforementioned criteria would be exempt from obtaining a construction permit prior to undertaking the project. The facility owner/operator would still need to apply for an operation permit for the project, but construction of the sources included in the project would be allowed. The proposal includes an \$800 fee for each construction permit exemption to defray engineering review costs incurred by the Department when evaluating whether a source qualifies for the exemption.

The Rule also includes provisions to exclude certain fuel changes at smaller boilers from being considered a modification of the boiler. The effect of this change is that boilers which switch to a clean fuel or convert from one clean fuel to another will not be subject to more stringent new source requirements such as more restrictive opacity limitations. Lastly, the rule also excludes sources which are subject to ch. NR 424 emission control requirements from construction permit review when they seek to change the control requirements required under ch. NR 424 without increasing potential VOC emissions from the affected source.

Summary of, and comparison with, existing or proposed federal regulation: A comparable federal regulation does not exist. The Federal Clean Air Act requires States to have a minor source construction permit program which allows for preconstruction review of new and modified sources of air pollution. The purpose of this program is to ensure that ambient air quality standards are protected.

The Clean Air Act also requires that each state manage an operation permit program for major sources of air pollution. The criteria for being a major source of air pollution is 100 tons/year of criteria pollutant emissions or being defined as a major Federal hazardous air pollution source.

Comparison with rules in adjacent states: All the states within EPA Region 5 manage a minor source construction and operation permit program. Some of these programs appear to be more “stringent” than Wisconsin’s program, while others appear to be less stringent. Comparisons between programs are difficult due to the varying ways sources may be exempt and how programs are funded. Based on a review done by the Air Management program, it appears that Wisconsin’s program offers more exemptions than most Region V States.

Wisconsin: Chapters NR 406 and 407 establish two types of exemptions from construction and operation permitting requirements. The first of these, specific exemptions, apply to specific processes such as small boilers, crematoriums and small coating operations. The second type, general exemptions, are based on the maximum source emissions and whether the source is subject to any Federal emission control requirements.

Minnesota: Exemptions from operation permits are based solely on the facility’s potential to emit. The term “potential to emit” for determining permit applicability is identical to the term “maximum theoretical emissions” used by the Department in its general permit exemptions. The Minnesota exemption thresholds are somewhat higher than those in Wisconsin for all pollutants. However, Minnesota does not provide for any specific exemptions from permitting requirements such as those available in Wisconsin for grain processing, storage facilities and other categories of sources. Additionally, Minnesota does not provide for the actual emissions based exemptions currently available in Wisconsin for coating and graphic arts operations nor does it provide any exemptions similar to the exemption proposed in this rule package for facilities using control equipment to limit actual emissions. Thus, for some smaller uncontrolled facilities (especially facilities not in coating or graphic arts industries) Minnesota may provide more extensive permit exemptions. But, for other types of facilities, it appears that Wisconsin has more extensive permit exemptions.

For construction permits, the Minnesota program appears to be based on changes in potential to emit, which may be limited by control devices in certain cases. The reviews may vary and are identified as insignificant, minor, moderate or major. For major (PSD) sources, any change requiring synthetic minor conditions must go through the most detailed level of review (major). Again, the emission increase thresholds are generally above those in Wisconsin, but no exemptions exist for specific source categories or for sources on an actual emission basis.

Michigan: Exemptions are mainly based on specific exemptions for certain processes/emissions sources. Examples include small boilers and small printing and coating operations. There is also an exemption for facilities with low emissions with a threshold significantly lower than that being proposed in this Rule package. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Illinois: Exemptions are based on specific exemptions for certain processes/emission sources. Examples include small boilers and small printing and coating operations. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Iowa: Exemptions are based on a limited number of identified processes and operations that have very low emission rates (lower than in this rule proposal).

Summary of factual data and analytical methodologies: Rule revisions to chs. NR 406, 407 and 410 are in response to s. 285.60(6)(b), Stats., which was part of 2003 Wisconsin Act 118. The law requires that small sources of emissions that do not present a significant hazard to public health, safety or welfare or to the environment be exempted from permit requirements.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rule revisions will require Department resources to implement. The Department is proposing an addition to its construction permit fee schedule contained within chapter NR 410 to fund this work effort. A proposed fee of \$800 is included and is based upon the existing fee structure for Department review of another existing construction permit exemption. Businesses that choose to take advantage of the regulatory flexibility will have reduced permit fees in the long run because many projects that had previously required a construction permit will not be reviewed under that program under the proposed rule revisions.

Anticipated costs incurred by private sector: Although the proposed rule revision requires a fee of \$800 for one type of construction permit exemption evaluated under these rules, this cost is less than that which would be incurred if the source were required to obtain a construction permit.

Effect on small business: These proposed rule revisions should lower compliance costs for many small businesses.

Agency contact person: (including email and telephone):

Steven Dunn: (608) 267-0566 steven.dunn@dnr.state.wi.us

Jeffrey Hanson: (608) 266-6876 jeffrey.hanson@dnr.state.wi.us

SECTION 1. NR 406.02(1) is renumbered NR 406.02(1m).

SECTION 2. NR 406.02(1) is created to read:

NR 406.02(1) "Clean fuel" means distillate oil, as defined in s. NR 440.205(2)(h), with a sulfur content less than 0.05% by weight, natural gas or propane.

SECTION 3. NR 406.04(1)(zh) is created to read:

NR 406.04(1)(zh)1. Any construction, modification, replacement, relocation or reconstruction of an emissions unit at a stationary source which is exempt from the requirement to obtain an operation permit under s. NR 407.03(1m), provided the stationary source still qualifies for the exemption under s. NR 407.03(1m) after completion of the proposed construction, modification, replacement, relocation or reconstruction.

2. Construction of a new facility if the facility will be exempt from the requirement to obtain an operation permit under s. NR 407.03(1m) after completion of the proposed construction.

SECTION 4. NR 406.04(1q) is created to read:

NR 406.04(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS. Any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:

1. The owner or operator of the stationary source has a facility-wide operation permit under ch. NR 407 or has submitted a timely and complete application for a facility-wide operation permit.

2. Actual emissions from all of the constructed, modified, replaced, relocated and reconstructed emissions units do not exceed any of the following levels:

a. 1,666 pounds in any month averaged over any consecutive 12-month period for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM₁₀, carbon monoxide and volatile organic compounds.

b. 10 pounds in any month averaged over any consecutive 12-month period for lead.

3. None of the emission units constructed, modified, replaced, relocated or reconstructed requires a new BACT or LAER determination under ch. NR 445 as a result of the new project.

4. None of the emission units constructed, modified, replaced, relocated or reconstructed are subject to new permitting requirements under ch. NR 405 or 408 as a result of the new project.

5. The owner or operator of the stationary source submits to the department a complete application for an operation permit revision, or an updated application for an operation permit, which includes each new, modified, replaced, relocated or reconstructed emissions unit, prior to commencing construction, modification, replacement, relocation or reconstruction and does all of the following:

a. In the operation permit revision application, or updated operation permit application, proposes monitoring of any control equipment used to limit actual emissions from any emissions unit being constructed, modified, replaced, relocated or reconstructed in accordance with the monitoring requirements in s. NR 439.055.

b. Commences monitoring of any control equipment as proposed in subd. 5.a., and maintains any records necessary to demonstrate compliance with any applicable emission limitation, upon startup of any newly constructed, modified, replaced, relocated or reconstructed emissions unit.

6. The owner or operator of the source submits to the department a claim of exemption from construction permitting requirements. The exemption claim shall identify the emission units which are being constructed, modified, replaced, relocated or reconstructed. The department shall respond to the claim of exemption submittal within 20 business days after receipt of the claim.

7. Any newly constructed emission unit is not subject to an emission limitation under section 111 or 112 of the Act (42 USC 7411 or 7412). Any modified, replaced, relocated or reconstructed emissions unit does not trigger any new emission limitation or other requirement for the emission unit under section 111 or 112 of the Act (42 USC 7411 or 7412).

Note: The application for an operation permit or operation permit revision required under this section will be evaluated by the department pursuant to the permit approval criteria in ss. 285.63 and 285.64, Stats. Application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits.

SECTION 5. NR 406.04(4)(h) is renumbered NR 406.04(4)(j)

SECTION 6. NR 406.04(4)(h) and (i) are created to read:

NR 406.04(4)(h) *Change to process lines emitting VOCs.* A change in a method of operation of a process line subject to s. NR 424.03(2)(c) that meets all of the following criteria:

1. The change does not result in annual potential VOC emissions from the process line which exceed the currently allowed annual potential VOC emissions based on conditions established under s. NR 424.03(2)(c).

2. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412).

Note: The permittee shall continue to comply with the conditions established under s. NR 424.03(2)(c) in its construction or operation permit until the permit is revised.

(i) *Change to use a clean fuel.* A change to an external combustion furnace to allow for the combustion of a clean fuel that meets all of the following requirements:

1. The external combustion furnace has a maximum heat input capacity of no greater than 10 mmBtu/hour if the ability to combust distillate oil is being added and 25 mmBtu/hour if the ability to combust natural gas or propane is being added.

2. The use of the new fuel does not cause or exacerbate the exceedance of any ambient air quality standard or increment in ch. NR 404.

3. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412).

SECTION 7. NR 407.03(1m) is created to read:

NR 407.03(1m) FACILITIES EXEMPT BASED ON ACTUAL EMISSIONS. (a) Any facility that is required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit following notification under par. (c), where all of the following criteria and requirements are met:

1. The actual emissions of each air contaminant from the facility do not exceed any of the following levels:

a. 10 tons in any calendar year for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM₁₀, carbon monoxide and volatile organic compounds.

b. 0.5 tons in any calendar year for lead.

c. Any stack-appropriate thresholds for emissions points in columns (c), (d), (e) and (f) of Table A, B or C of ch. NR 445. If the facility is a source of incidental emissions under s. NR.445.11, this subdivision only applies to emissions of air contaminants which are listed as substances of concern in Table E of ch. NR 445.

2. The facility is not subject to a standard under section 111 or 112 of the Act (42 USC 7411 or 7412).

3. The owner or operator conducts monitoring and maintains records sufficient to demonstrate compliance with the requirements of this paragraph, including the calculation of annual facility-wide

emissions. These records shall be maintained on site for at least 5 years, unless a longer period is required by statute or rule.

4. If a control device is used to limit actual emissions, the owner or operator uses a compliance monitoring method which is identified in s. NR 439.055.

(b) Any facility that is not required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit where all of the criteria and requirements in par. (a)1. to 4. are met.

(c)1. The owner or operator of a facility required to submit an air emission inventory report under s. NR 438.03 shall notify the department of their intent to operate the facility under the exemption criteria in par. (a). A claim of exemption made under s. NR 406.04(1q) from construction permit requirements shall satisfy this notification requirement.

2. Any existing permit shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn. A notification under subd. 1. shall serve as a request for revocation of an individual permit or withdrawal from coverage under a general or registration permit.

3. A notification under subd. 1. shall serve as a request for withdrawal of any pending permit application.

Note: An owner or operator exempt under this subsection is responsible for complying with all other applicable requirements in chs. NR 400 to 499.

SECTION 8. NR 410.03(1)(d) is amended to read:

NR 410.03(1)(d) Any person who applies for a construction permit for a direct source shall submit a \$1,350 fee with the application. This fee may not be refunded unless the department determines that a permit is not required. When a fee is required under par. (b) or (f), only the amount not required to cover the fee will be refunded.

SECTION 9. NR 410.03(1)(f) is created to read:

NR 410.03(1)(f) Any person submitting a claim for a construction permit exemption under s. NR 406.04(1q) shall pay a fee of \$800.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

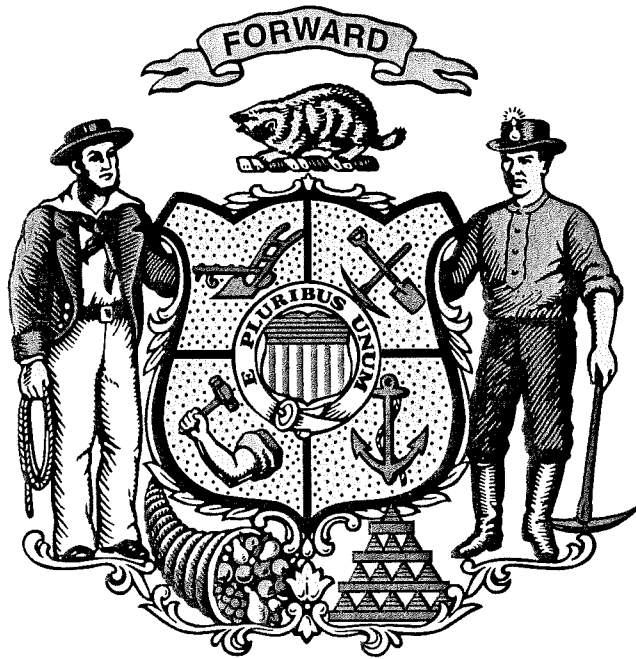
SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 16, 2006 and February 28, 2007.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)



State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. AM-09-06

Legislative Council Rules Clearinghouse Number 06-047

Subject of Rules Air pollution permit exemptions and
air pollution permit exemption fees, and
affecting small business

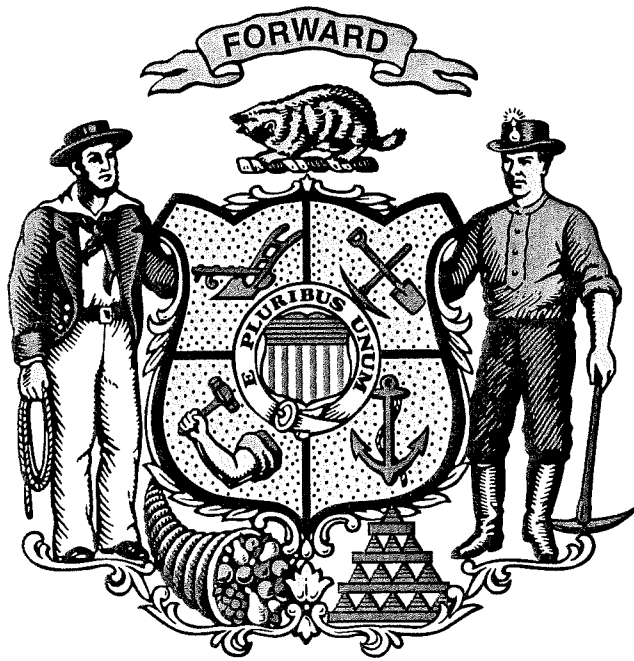
Date of Transmittal to Presiding Officers August 29, 2006

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster**

**Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us**

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner



Fiscal Estimate — 2005 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number AM-09-06	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 406, 407 and 410

Subject

Proposed changes of chs. NR 406, 407 and 410 to exempt certain sources from permit requirements.

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 s. 20.370 (2)(ci)

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules allow for small emission sources to be exempt from all permitting requirements and for larger sources to be exempt from construction permitting requirements. The elimination of all permit requirements for small sources will reduce Department costs for writing permits and for storing and reviewing compliance certification reports. The elimination of the permitting requirement for small sources should have little or no effect on program revenue. The construction permit exemption is estimated to allow for 40 large source projects per year that currently require a construction permit to be exempt from that requirement. However, these projects will still require the Department to issue an operation permit or to revise an existing operation permit. Based on a loss of 40 construction permits per year, and an average cost per construction permit of \$6,000, the revenue loss would be \$240,000/year. With the proposed \$800 exemption fee, the gain in fees would be \$32,000/year (40 exemptions at \$800 per exemption) for a net loss of funds of \$208,000/year. Any reduced workload for permit writing will likely be shifted into ensuring these sources are in compliance with Air requirements.

Long-Range Fiscal Implications

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No.	Date (mm/dd/ccyy) 07/10/06

Fiscal Estimate Worksheet — 2005 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number AM-09-06	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 406, 407 and 410

Subject

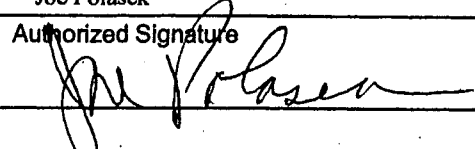
Proposed changes to chs. NR 406, 407 and 410 to exempt certain sources from permit requirements.

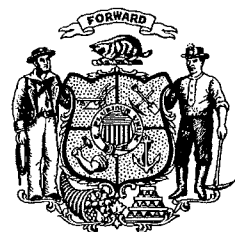
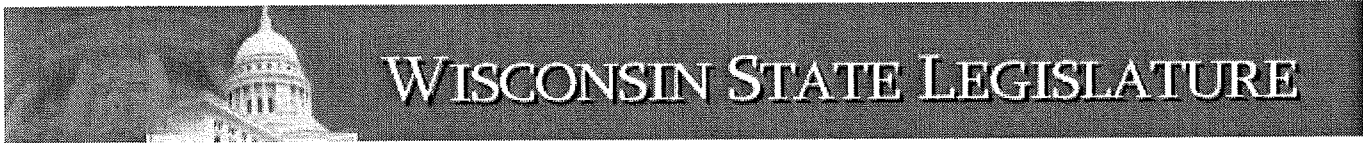
One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
Total State Costs by Category	\$	\$ -	
B. State Costs by Source of Funds			
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -	
GPR Earned		-	
FED		-	
PRO/PRS		32,000	- 240,000
SEG/SEG-S		-	
Total State Revenues	\$	\$ -	

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ -208,000	\$ _____

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-18-06



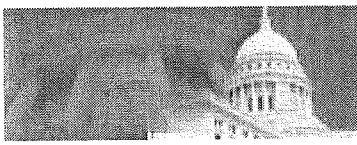
Hazardous Waste Manifest Rules

- Hazardous waste manifests provide a complete paper trail of movements/transportation of hazardous waste; from a generator, through treatment or storage, to final disposal.
- The purpose of the revision to the Hazardous Waste rules is to incorporate new, uniform Federal hazardous waste manifest regulations.
- The proposed rule eliminates conflicting state manifest requirements, which help to insure the safe transportation and management of hazardous wastes in Wisconsin.
- The mandatory Federal regulations went into effect on September 5, 2006. An emergency rule was adopted to implement the regulations in Wisconsin on this date. The emergency rule was recently extended to accommodate the statutory timeframe for Legislative review of the proposed final rule.
- These rules are not considered controversial and are largely supported by the regulated community.

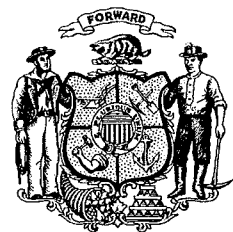
Contact: Joanie Burns - 267-0545

Air Permit Exemption Rule

- Rule exempts facilities with very low actual emissions (<10 tons/year) from construction and operation permit requirements.
- Affects @ 1% of all emissions
- Examples of facilities are small woodworking, small printing and coating operations, and wood chipping operations.
- Air regulations still apply – only requirement for permit application changed.
- WMC's objected to 3 rule provisions:
 - Wanted exemption cut off to be 25 tons/year;
 - Eliminate need to "claim" exemption; and
 - Reduce record keeping requirements.
- Rule sent back to DNR in October, '06.



WISCONSIN STATE LEGISLATURE



Air Permit Exemption Rule: Questions & Answers

Q: Why is regulatory reform needed in Wisconsin?

WMC conducted extensive research from the business community regarding air permits. We received overwhelming feedback on three points: (1) it takes too long to get an air permit in Wisconsin; (2) the air permit process is too costly and complex; and (3) Wisconsin requires permit conditions that other states do not. Each of these factors contributed to the belief that Wisconsin is a less-desirable place to create or expand jobs than other states.

Q: What did the Legislative Audit Bureau Report on air permitting find?

The report found thousands of backlogged air permits at DNR, making Wisconsin one of the slowest states in the country. Nearly 30% of DNR construction permits were backlogged for at least 2-years. In addition, 39% of respondents stated that DNR permit delays unnecessarily increased the cost of their project. We cannot afford to lose jobs because of costly delays in the air permit process.

Q: What did the legislature do to address permit streamlining in Act 118?

Among many other important air permit reforms, the legislature directed DNR to exempt minor sources from construction and operation permit requirements if the emissions from the sources do not present a significant hazard to public health, safety, welfare or the environment¹. The statutory presumption is that DNR is required to exempt minor sources by rule, unless the exemption would pose a "significant hazard" as described above. Minor sources are generally defined as facilities with the potential to emit 100 tons-per-year (TPY) or less of each pollutant.

Q: What does the EPA require under federal law through the Clean Air Act?

The Clean Air Act generally exempts facilities from the need to obtain construction or operation permits if the facility's potential to emit is 100 TPY or less for each pollutant. EPA does not require states to permit facilities below this threshold.

Q: How do our neighbors in Minnesota and Michigan treat minor sources?

Michigan does not generally require minor sources to obtain operation permits. Minnesota does not generally require permits for minor sources, with the exception of facilities that have the potential to emit 50 TPY of SO₂ or the potential to emit 25 TPY of PM₁₀. Therefore, our competitors in Michigan and Minnesota often do not need permits that the DNR requires of Wisconsin businesses.

Q: Do minor sources contribute significant amounts to our overall air pollution?

No. In fact, the Legislative Audit Bureau report found that minor sources account for only 1.2 percent of statewide air emissions. That is why the legislature made the determination in Act 118 that minor sources should be presumed exempt, as they are in Minnesota and Michigan, in the absence of a significant hazard to public health or the environment.

Q: What does the proposed exemption rule exempt?

The rule exempts new facilities with emissions at or below 10 TPY from both construction and operation permits. Existing minor facilities at or below 10 TPY could become exempt from operation permits in the future. Finally, specific projects totaling 10 TPY or less could be exempt from construction permit requirements at either major or minor source facilities.

¹ §285.60(6)(b) states, in relevant part, "the department shall, by rule, exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment."

Air Permit Exemption Rule: Industry Position

Industry supports the rule's approach of exempting facilities based upon actual emissions.

A facility's "potential" emissions are often a worst case scenario that greatly exaggerates actual operating conditions. Thus, an exemption based upon actual emissions more accurately reflects the environmental impact of a facility's operations.

The proposed 10 ton-per-year (TPY) threshold is too low.

Given that a number of VOC source categories such as painting, coating, automobile refinishing, and graphic arts operations currently enjoy an exemption at this level under current law, the proposed 10 TPY threshold is not sufficiently bold.

The 10 TPY threshold fails to meet the legislature's Act 118 statutory mandate.

The statutory mandate presumes minor sources should be exempt, unless the DNR determines the exemption would result in a significant hazard. Prior DNR analysis has found 25 TPY is protective of air quality in the context of registration permits, as well as for exemptions based upon maximum theoretical emissions under NR 406.04(2)(c). Therefore, we believe DNR has a statutory obligation to exempt sources, at a minimum, at the 25 TPY threshold.

The 10 TPY threshold does not level the playing field with neighboring states.

While Minnesota and Michigan continue to exempt minor sources under many circumstances, DNR is proposing a "bare minimum" exemption. The rule fails to meet the legislature's directive under §285.60(6)(b), and fails to recognize that minor sources only account for 1.2 percent of air pollution statewide.

The exemption "claim" requirement sets a legal trap for small businesses.

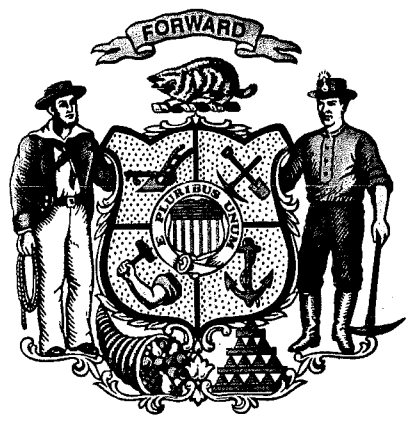
By requiring exempt facilities to actively claim the exemption, the rule establishes an unfair and unwarranted legal trap. Small businesses could be subject to enforcement, even while meeting all applicable criteria in the proposed rule, simply because they forgot to "claim" they are exempt.

The proposed recordkeeping, reporting and compliance demonstration requirements are too burdensome for facilities that are supposedly "exempt."

The rule applies the NR 400 series recordkeeping, reporting and compliance demonstration requirements to "exempt" sources in the same manner as these requirements apply to traditional *major permit* sources. For example, a small printer or sheet metal shop that is supposedly "exempt" will be forced to comply with the same regulatory burdens as major facilities like power plants and oil refineries.

The proposed \$800 exemption fee is unjustified.

Industry objects to the legal trap and unwarranted paperwork requirement associated with the proposed exemption "claim" requirement. Accordingly, industry objects to the \$800 fee associated with filing this unnecessary form.



Permit Exemption Rule

Quick description of the rule.

The rule creates two new exemptions from air permit requirements.

One is for facilities with very low actual emissions and the other, for low-emission projects at larger facilities.

Together, the exemption rule and the registration permit rule (adopted in April 2005) are the centerpieces of the Department's air permit streamlining effort for smaller sources.

This rule was adopted by the Board in August 2006 and sent to the Legislature for review.

- Both the Senate and Assembly committees returned it to the department for unspecified modifications
- The department agreed to consider modifications.

Testimony at the Legislative hearings on the rule centered on three items:

1. Raise the threshold for the exemption
2. Streamline the reporting requirements
3. Modify the exemption claim requirement.

The department has modified the exemption claim requirement, but did make modifications in the other two areas.

With respect to the threshold level

Stakeholders: raise from 10 to 25 tons/year

DNR: the 10 ton/year threshold is the appropriate level that achieves a balance between regulatory relief for small businesses and protecting public health at the local, neighborhood level.

Over 1000 businesses will be eligible for this exemption.

Registration permits are available for up to 25 tons/year. These are quick, flexible and have very low transaction costs.

With respect to reporting requirements,

Stakeholders: streamline compliance reporting requirements

DNR: we plan to address requirements for exempt companies as part of a more comprehensive review of compliance monitoring and reporting requirements.

Exemption Claim:

Stakeholders: created unnecessary bureaucratic hurdles with liability consequences for no purpose.

DNR: the claim does serve a purpose.

Facilities that are eligible for this exemption either already have an operation permit, have an application pending for a permit, or should have.

The exemption claim serves to inform the department that the facility elects to operate under the exemption. This documentation was recommended by the LAB in their 2004 Evaluation of Air management Programs.

The modification to the rule adds that the exemption claim will serve as a request for the Air Program to either revoke an existing permit or to withdraw a pending permit application.