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(FORM UPDATED: 08/11/2010)

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

### 2009-10

(session year)

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\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

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:

Board Order Number: AM-05-09

Clearinghouse Rule Number: CR09-020

Subject of Rules: Air pollution control rule changes relating to federal hazardous air pollutant regulations, biodiesel fuel, statutory changes, and permit applications and affecting small business.

Date of Transmittal: September 29, 2009

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

**Michael Scott  
DNR Bureau of Legal Services  
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or [robert.eckdale@wisconsin.gov](mailto:robert.eckdale@wisconsin.gov)

## REPORT TO LEGISLATURE

NR 406, 407, 409, 419, 439, and 484, Wis. Adm. Code  
Air pollution control rule changes relating to federal hazardous air pollutant regulations, biodiesel fuel, statutory changes, and permit applications and affecting small business.

Board Order Number: AM-05-09  
Clearinghouse Rule Number: CR09-020

### **BASIS AND PURPOSE OF THE PROPOSED RULE**

The main objective of the proposed rule is to update state air permitting rules to reflect federal language for small air pollution sources subject to federal hazardous air pollutant standards. This update would exempt sources subject only to Generally Available Control Technology (GACT) standards from requirements to obtain new source review and federal operation permits. Under the Clean Air Act, US EPA has discretion to exempt these sources from permit requirements when they promulgated a GACT standard. Wisconsin's permitting language is currently written in a manner that does not recognize this discretion, resulting in these sources being subjected to air permitting requirements. The proposed rule revises permit language in chs. NR 406 and 407 that would allow these sources to be exempt. Examples of sources affected include gasoline storage and dispensing facilities, auto body refinishing, and wood preserving operations.

Additional proposed amendments would change the current 12 to 18 month window for submittal of an operation permit renewal application to "at least 6 months" prior to the expiration of the current operation permit, making it consistent with current statutory language.

The proposed rule also includes a provision to allow bio-diesel to be used in small boilers without triggering the need to obtain a construction permit.

Clarifications are included that two copies of permit applications are needed when submitted only on paper. However, an option is provided to use electronic application submittal together with a single paper copy.

Other minor proposed changes of a cleanup nature include amendments related to the term friable asbestos, elimination of a notification requirement related to soil or water remediation projects, and an update to monitoring requirements for electrostatic precipitators.

### **SUMMARY OF PUBLIC COMMENTS**

Written comments were received from Alliant Energy suggesting changes regarding the time frame for submittal of operation permit renewal applications. The proposed changes in the operation permit renewal time frame were made based on, and consistent with, the current statute (s. 285.66(3), Stats.). A note was added explaining that under federal regulations, sources have a 6 to 18 month period in which to submit an operation permit renewal application. While this wasn't put into the regulation, it indicates to applicants that the Department would prefer that they don't submit their applications too far in advance of their current permit expiring. The Department may pursue amendments to the statutory language to mirror that of the federal regulations.

Edward Wilusz, representing the Wisconsin Paper Council, submitted written comments directed at the proposed definition of asbestos and its location in the administrative code, and the proposed addition of secondary voltage as a monitoring requirement for electrostatic precipitators (ESP), which control emissions of particulate matter. The location of the definition of asbestos has been moved to both chs. NR 406 and 407, Wis. Adm. Code, where the term is first used in

the code. The addition of secondary voltage as a required monitoring parameter for ESP was proposed to bring ESP monitoring requirements up-to-date. The current rule was written in about 1995 and additional knowledge has been gained in how to properly assess the operation of an ESP so as to better correlate the monitoring results with the compliance status of the process being controlled. No changes were made to this provision.

**MODIFICATIONS MADE**

Modifications made by the Department are detailed above in the Summary of Public Comments section of this report.

**APPEARANCES AT THE PUBLIC HEARING**

The Department conducted a public hearing on April 16, 2009 in Madison. The following appeared as indicated below:

In support: Steven B. Smith, 1509 S. Macedonia Ave, Muncie, IN 47307,  
representing Saint-Gobain Containers

In opposition: None

As interest may appear: None

**CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE**

Modifications were made to the plain language analysis section of the order to reflect the rule changes detailed in the Summary of Public Comments section of this report, and to reflect recommendations made by the Legislative Council Rules Clearinghouse.

No changes were made to the fiscal estimate.

**RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

All Legislative Council Rules Clearinghouse comments have been accepted and the analysis section of the order and the proposed rules revised accordingly, except for the recommendation made in the second paragraph of comment 4.a., which reads:

“In addition, the department could assist a reader who wants to correlate specific statutes interpreted and statutes providing authority for the rule to specific provisions in the rule by indicating in the plain language analysis accompanying the rules which statute is being interpreted and which statute provides authority for a particular provision summarized in that analysis.”

It was felt that the recommended change may unnecessarily complicate what is intended to be a plain language explanation of the rule. In addition, it was felt that the explanation of agency authority in section 3. of the analysis provided enough information for a reader to correlate cited statutes, either being interpreted or providing authority, to specific provisions in the rule being summarized in the plain language analysis.

**FINAL REGULATORY FLEXIBILITY ANALYSIS**

The proposed rule is not expected to have a significant impact on small businesses. However, it will allow some small businesses to become exempt from hazardous air pollutant permitting regulations, as is the case with the federal requirements. This could be a relief of time and monetary investment.

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 406.04(1)(m)9.(Note) and 407.03(1)(sm)9.(Note); to **amend** NR 406.02(1), 406.03(1), 406.04(1f)(b), (1k)(b), (1q)(intro.) and (g), (2)(h) and (4)(a)5., (h)2., (i)3. and (j)3., 407.02(6)(a)3., 407.03(1)(sq), (1m)(a)2., (2)(g) and (4)(intro.), 407.04(1)(intro.)(Note) and (2), 407.05(1) and (Note), (2) and (5) Tables 2 and 3 and (Note), 409.08(1)(c)1., 419.07(3)(intro), 439.055(2)(b)2., 439.07(8)(b)7. and 439.075(3)(a); to **repeal and recreate** NR 419.07(2); and to **create** NR 406.02(7), 406.03(1m), 407.02(6m), 407.04(2)(Note) and 484.10(55v) relating to federal hazardous air pollutant regulations, biodiesel fuel, incorporation of statutory changes, and air permit applications and affecting small business.

AM-05-09

Analysis Prepared by the Department of Natural Resources

**1. Statute interpreted:** Sections 227.11(2)(a), 285.11(1), Stats. The State Implementation Plan developed under s. 285.11(6), 285.60(6), and 285.67 Stats., is revised.

**2. Statutory authority:** Sections 227.11(2)(a), 285.11(1) and (16), 285.60(6), and 285.67, Stats.

**3. Explanation of Agency Authority:**

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., gives the Department the authority to develop a state implementation plan for the control of air pollution. Section 285.11(16), Stats., requires the Department to 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. Section 285.60(6) Stats., allows the Department to promulgate rules to exempt types of stationary sources from the requirement to get a construction permit, if the potential emissions from the sources do not present a significant hazard to public health, safety, welfare or to the environment. Section 285.67, Stats., requires the Department to promulgate rules establishing criteria and procedures for revising air pollution control permits.

**4. Related statute or rule:** Chapters NR 406, 407 and 409 relate directly to the permitting of activities that result in air emissions from stationary sources. Chapter NR 447 regulates asbestos emissions, but since permitting authority also regulates asbestos emissions the definition of asbestos is being added to Chapters NR 406 and 407. Chapter NR 439 relates directly to compliance demonstration for stationary sources.

**5. Plain language analysis:** The main objective of the proposed rule is to update permit language in chs. NR 406 and 407 regarding federal Generally Available Control Technology (GACT) rules for hazardous air pollutants. The current state rules do not exempt certain source categories from the need to obtain a construction or operation permit as is done on the federal level. Sources in Wisconsin potentially affected by this rule are bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities (gas stations), pipeline facilities and wood preserving facilities.

Rules are also proposed that add biodiesel fuel, by definition, as an alternative clean fuel. Currently a

permit modification for existing sources, or a construction permit for new sources, is required in order to burn it.

This proposal would also amend the time frame for submittal of operation permit renewal applications. Current rules require the application be submitted 12-18 months prior to the expiration of the operation permit. The Department proposes to change this deadline to no later than six months prior to the expiration of the operation permit to reflect updated statutory requirements in s. 285.66(3)(a), Stats. The only exception to this is that 40 CFR 70.5(a)(1)(iii) requires submittal to be in a 6-18 month window. Since the statutory change is different than this, a note will be added that refers to the Federal time frame.

Currently only selected portions of our rules require submittal of two copies of permit applications and related materials. The proposed rule would correct this inconsistency so that two copies are required in all cases. Additionally, language will be added to allow for electronic copies. Two copies are required as one is retained by the central office and one copy is sent to the appropriate regional office.

Other non-substantive changes are being proposed for consistency, to update outdated rule language and to provide clarification where needed.

**6. Summary of, and comparison with, existing or proposed federal regulation:** The changes to chs. NR 406 and 407, Wis. Adm. Code, are consistent with updates to federal rules, as referenced in Section 5. Chapters NR 407 and 409 are being changed as a result of a statutory change on the time frame for the submittal of an operation permit renewal application. The federal time frame for operation permit renewal applications requires that the application be submitted no later than six months prior to the expiration of the current operation permit for those permits that would be issued under 40 CFR part 70.5(a)(1)(iii) which is akin to Chapter NR 407. Other changes, to chs. 406, 407, 419 and 439 provide consistency within the rules by updating outdated language and providing clarification where appropriate. Chapter 484 is being amended to add an American Society of Testing and Materials (ASTM) method for the testing of bio-diesel fuels

**7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** All of the adjacent states manage an air construction and operation permit program.

The federal rules are effective nation-wide and the rules being proposed by the Department are similar to the federal rules except as mentioned in 6., above. Therefore, the portions of the proposed rules dealing with the GACT standard should be similar or identical to rules in effect in adjacent states that have similar programs.

**8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** Since the Department is proposing rules consistent with federal regulations, except for 6. above, and making consistency and clarification changes, the Department did not, with one exception, make use of any factual data or analytical methodologies in the rule development. That exception is the proposed amendment to ch. NR 484.

The only exception is the adding of biodiesel as a clean fuel. Based on emission information developed by EPA in "A Comprehensive Analysis of Biodiesel Impacts on Exhaust Emissions" (October 2002, <http://www.epa.gov/OMS/models/biodsl.htm>), emissions from the burning of biodiesel are less than those of distillate fuels, except for Nitrogen Oxides (NO<sub>x</sub>). NO<sub>x</sub> emissions are approximately 10% higher for a 20% blend of biodiesel and distillate fuels. Normally, biodiesel is not burned independently from other

fuel types. By blending the fuels, existing burner design and fuel feed systems do not need to be altered. Emissions of hydrocarbons were reduced by 21.1%, particulate matter 10.1% and carbon monoxide 11.0%. Carbon dioxide emissions remained approximately the same. Biodiesel blended with distillate oil will be considered a clean fuel.

**9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:** An analysis of the effect of the proposed rules on small business was not performed since most of the changes are identical requirements that are already in effect at a federal level, and the Department is required by statute to adopt federal regulations or to develop similar standards. Preparation of an economic impact report has not been requested. Those proposed changes not based on federal regulations, were clarifying in nature or updates to old or outdated language in the rules.

**10. Effect on small business:** Because the proposed GACT rule changes for permitting sources of hazardous air pollutants may result in a limited number of sources becoming subject to federal operation permit requirements, some small businesses may be required to report their compliance status semi-annually instead of annually.

The proposed rule is not expected to have a significant economic impact on small businesses nor have a significant economic effect on any entity.

**11. Agency contact person:** Joseph Brehm, telephone 608/267-7541, e-mail; Joseph.Brehm@wisconsin.gov

The consent of the Attorney General will be requested for the incorporation by reference of a new test method in ch. NR 484.

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SECTION 1. NR 406.02(1) is amended 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, biodiesel fuel, as determined using the procedures in ASTM D6751-09, incorporated by reference in s. NR 484.10(55v), or any blend of distillate oil and biodiesel fuel.

SECTION 2. NR 406.02(7) is created to read:

NR 406.02(7) "Regulated asbestos-containing material" has the meaning given in s. NR 447.02(33).

SECTION 3. NR 406.03(1) is amended to read:

NR 406.03(1) PERMIT REQUIREMENT. Except as provided in sub. (2), no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 285.60(5), Stats., or under this chapter. ~~Applications for the construction permit shall be submitted on forms which are available from the department at its Madison headquarters and regional offices.~~

SECTION 4. NR 406.03(1m) is created to read:

NR 406.03(1m) APPLICATION AND FORMS. (a) Applications for construction permits shall be made on forms supplied by the department for these purposes and supplemented with other materials as indicated on the forms. The forms may be supplied by the department in an electronic format, such as on a computer disk, or on line, if so requested by the applicant.

**Note:** Application forms may be obtained from Department Regional Headquarters or Service Center offices, or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Construction permits. The internet web address is: <http://dnr.wi.gov/air/permits.html>.

(b) Application materials, including construction permit waiver requests, may be submitted on paper or in an electronic format. The applicant shall submit 2 copies of all forms and other required materials, as indicated on the forms, which are submitted on paper. The applicant shall submit one copy of all forms and other required materials, as indicated on the forms, which are submitted in an electronic format. These materials shall be submitted to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Construction permits.

SECTION 5. NR 406.04(1)(m)9.(Note) is repealed.

SECTION 6. NR 406.04(1f)(b), (1k)(b), (1q)(intro.) and (g), (2)(h) and (4)(a)5., (h)2., (i)3. and (j)3. are

amended to read:

NR 406.04(1f)(b) The modification does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(1k)(b). The modification does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS. (intro.) Any No construction permit is required for any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:

(g) Any newly constructed emissions 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 emissions unit under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(2)(h) The source is not subject to any standard or regulation under section 111 or 112 or the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)). ~~If a source is subject to regulations or requirements under section 112 only because of section 112(r) of the Act (42 USC 7412(r)), the source is not for that reason required to obtain a construction permit under this paragraph.~~

(4)(a)5. The use will not subject the source to any standard or regulation under section 112 of the Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(h)2. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(i)3. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

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

or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

SECTION 7. NR 407.02(6)(a)3. is amended to read:

NR 407.02(6)(a)3. Any source subject to a standard or other requirement under section 112 of the ~~act~~ Act (42 USC 7412), except for a source subject solely to regulations or requirements under section 112(~~d~~)(5) or (r) of the ~~act~~ Act (42 USC 7412 (~~d~~)(5) or (r)).

SECTION 8. NR 407.02(6m) is created to read:

NR 407.02(6m) “Regulated asbestos-containing material” has the meaning given in s. NR 447.02(33).

SECTION 9. NR 407.03(1)(sm)9.(Note) is repealed.

SECTION 10. NR 407.03(1)(sq), (1m)(a)2., (2)(g) and (4)(intro.) are amended to read:

NR 407.03(1)(sq) Renovation or demolition operations involving ~~friable asbestos-containing~~ regulated asbestos-containing material.

(1m)(a)2. The facility is not subject to a standard under section 111 or 112 or the Act (42 USC 7411 or 7412) except for a source subject solely to regulations or requirements under section 112(d)(5) or (r) of the Act (42 USC 7412 (d)(5) or (r)).

(2)(g) The source is not subject to any standard or regulation under section 112 of the ~~act~~ Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(4) CONDITIONS FOR SPECIFIC EXEMPTIONS. (intro.) In order to be eligible for a specific exemption under sub. (1) (ce), (cm), (d), (g), (gm), (h), (o), (s), (w) or (x), the owner or operator of a direct stationary source shall keep and maintain the records required under pars. (a) to (f), as applicable. The

records shall be kept in a manner that allows the source to accurately calculate the required information on a monthly basis. The owner or operator of a direct stationary source shall begin keeping the records required under pars. (b) to (f) no later than January 1, 1994, and the records required under par. (a) no later than January 1, 1998, or the date that the source commences operation, whichever is later, and maintain them for a minimum of 5 years. After January 1, 1994, any direct stationary source that ever exceeds any level listed in sub. (1) (d), (g), (h), (o), (s), (sm), (w) or (x) is not eligible for the exemption under that subsection. After January 1, 1998, any direct stationary source that ever exceeds any level listed in sub. (1) (ce) or (cm) is not eligible for the exemption under that subsection. After ~~January 1, 2001~~ February 1, 2001, any direct stationary source that ever exceeds any level listed in sub. (1)(gm) is not eligible for the exemption under that subsection. The records required are as follows:

SECTION 11. NR 407.04(1)(intro.)(Note) and (2) are amended to read:

NR 407.04(1)(intro.)(Note) Application forms may be obtained from the ~~regional and area~~ Department Regional Headquarter or Service Center 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.

(2) PERMIT RENEWAL. Pursuant to s. 285.66(3), Stats., a permittee shall apply for renewal of an operation permit at least ~~12 months, but not more than 18 months,~~ 6 months before the permit expires. No permittee may continue operation of a source after the operation permit expires, unless the permittee submits a timely and complete application for renewal of the permit.

SECTION 12. NR 407.04(2)(Note) is created to read:

NR 407.04(2)(Note) **Note:** Under 40 CFR 70.5(a)(1)(iii), the renewal application must be submitted at least 6 months, but not more than 18 months before the permit expires.

SECTION 13. NR 407.05(1) including the (Note) and (2) are amended to read:

NR 407.05(1) Applications for operation permits and renewals of operation permits shall be made on forms supplied by the department for these purposes and supplemented with other materials as required indicated on the forms. The forms may be supplied by the department in an electronic format, such as on a computer disk, or on line, if so requested by the applicant.

(Note) Application forms may be obtained from the ~~regional and area~~ Department Regional Headquarters or Service Center 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. The internet web address is: <http://dnr.wi.gov/air/permits.html>.

(2) Application materials may be submitted on paper or in an electronic format. The applicant shall ~~file~~ submit 2 copies of all forms and other required materials, as indicated on the forms, which are submitted on paper. The applicant shall submit one copy of all forms and other required materials, as indicated on the forms, which are submitted in an electronic format. These materials shall be submitted to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Operation permits.

SECTION 14. In Table 2 of NR 407.05(5), the Air Contaminant Name shown as 3,3-Dichlorobenzidine is amended to read 3,3'-Dichlorobenzidine

SECTION 15. NR 407.05(5) Table 2, Footnote 8 and Table 3, Footnote 8 are amended to read:

NR 407.05(5) Table 2, Footnote 8

Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol,  $R-(OCH_2CH_2)_n-OR'$

where:  $n = 1, 2$  or  $3$

$R =$  alkyl C7 or less

or R = phenyl or alkyl substituted phenyl

R' = H; or alkyl C7 or less, or OR' consists of carboxylic acid ester, sulfate, phosphate, nitrate or sulfonate.

Table 3, Footnote 8

Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol,  $R-(OCH_2CH_2)_n-OR'$

where: n = 1, 2 or 3

R = alkyl C7 or less

or R = phenyl or alkyl substituted phenyl

R' = H; or alkyl C7 or less, or OR' consists of carboxylic acid ester, sulfate, phosphate, nitrate or sulfonate.

SECTION 16. NR 407.05(5)(Note) is amended to read:

NR 407.05(5)(Note) These forms may be obtained from the ~~regional and area~~ Department Regional Headquarter or Service Center 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, or U.S. EPA, Region 5, 77 W Jackson Blvd, Chicago IL 60604.

SECTION 17. NR 409.08(1)(c)1. is amended to read:

NR 409.08(1)(c) *Duty to reapply*. 1. The designated representative shall submit a complete acid rain portion of an operation permit application for each source with an affected unit at least ~~12~~ 6 months, ~~but not more than 18 months~~, before the permit expires.

SECTION 18. NR 419.07(2) is repealed and recreated to read:

NR 419.07(2) GENERAL REQUIREMENTS. Except as provided in sub. (3), no person may use any procedure to remediate or dispose of soil or water contaminated with organic compounds unless the remediation project meets all of the following conditions:

(a) The project meets the emission limits in sub. (4) and the requirements of sub. (5).

(b) The project will not cause emissions in such quantity, concentration, or duration as to be injurious to human health.

(c) The project will not cause emissions in quantities which will substantially contribute to the exceedance of an ambient air quality standard or ambient air increment or cause air pollution.

SECTION 19. NR 419.07(3)(intro.) is amended to read:

NR 419.07(3)(intro.) EXEMPTIONS. Any procedure or activity listed in this subsection is exempt from the ~~requirement for submittal of a remediation notification form under sub. (2) and is exempt from~~ the emission limits specified in sub. (4), except those contained in ch. NR 445:

SECTION 20. NR 439.055(2)(b)2. is amended to read:

NR 439.055(2)(b)2. Current and secondary current in electrostatic precipitators.

SECTION 21. NR 439.07(8)(b)7. is amended to read:

NR 439.07(8)(b)7. ~~The~~ Except for sources subject to emission testing requirements in ch. NR 440, the department may require the owner or operator of a source, ~~with the exception of sources subject to the requirements of ch. NR 440,~~ capable of emitting condensible particulate matter, to include an analysis of the back half of the stack sampling train catch in the total particulate catch for any emission test using Method 5, 5A, 5B, 5D, 5E, 5F, 5G, 5H, 5I, or 17, in 40 CFR part 60, Appendix A, incorporated by reference in s. NR 484.04(13). This procedure and analysis shall be performed using Method 202 in 40

CFR part 51, Appendix M, incorporated by reference in s. NR 484.04(9).

SECTION 22. NR 439.075(3)(a) is amended to read:

NR 439.075(3)(a) The owner or operator of a direct stationary source which has received a construction permit shall perform the compliance emission tests required under sub. (2)(a) during the initial operating period authorized by the permit.

SECTION 23. NR 484.10(55v) is created to read:

NR 484.10

Standard Number	Standard Title	Incorporated by Reference For
(55v) ASTM D6751-09	Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels	NR 406.02(1)

SECTION 24. CAPITALIZATION CHANGES. Wherever the term "act" appears in the following sections to mean the federal Clean Air Act, the term "Act" is substituted:

NR 407.02(4)(a), (b)27., (c)(intro.), 1. and 2. and (6)(a)2. and (b)3.

NR 407.03(1)(g), (gm), (h), (o), (sm)(intro.) and (2)(e) and (f)

NR 407.05(4)(e), (h)5. and (i)4.

NR 407.07(3)(c)3.

NR 407.09(1)(a)2., (2)(d)1., (3), (4)(a)3.e. and (5)(b)1. and 4.

NR 407.12(1)(d)2.

SECTION 25. 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 26. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin  
Natural Resources Board on September 23, 2009.

Dated at Madison, Wisconsin \_\_\_\_\_.

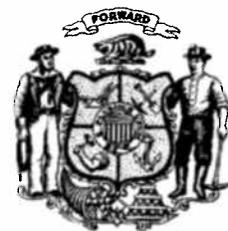
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)



# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **09-020**

AN ORDER to repeal NR 406.04 (1) (m) 9. Note and 407.03 (1) (sm) 9. Note; to amend NR 406.02 (1), 406.03 (1), 406.04 (1) (n) (intro.), 1. and 2. (intro.), 406.04 (1f) (b), (1k) (b), (1q) (intro.) and (g), (2) (h), and (4) (a) 5., (h) 2., (i) 3., and (j) 3., 407.02 (6) (a) 3., 407.03 (1) (sq), (1m) (a) 2., (2) (g), and (4) (intro.), 407.04 (1) (intro.) (Note) and (2), 407.05 (1) and (Note), (2), and (5) Tables 2 and 3, and (Note), 419.07 (3) (intro.), 439.055 (2) (b) 2., 439.07 (8) (b) 7. and 439.075 (3) (a); to repeal and recreate NR 419.07 (2); and to create NR 406.03 (1m) and 484.10 (55v), relating to federal hazardous air pollutant regulations, biodiesel fuel, incorporation of statutory changes, and air permit applications and affecting small business.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-09-2009 RECEIVED BY LEGISLATIVE COUNCIL.

04-06-2009 REPORT SENT TO AGENCY.

RNS:JES

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES             NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES             NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES             NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES             NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-020

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The department should review the list of statutes interpreted and statutes providing statutory authority for the rule that are listed in the analysis accompanying the rule to ensure that these lists are complete. For example, the rule includes provisions that amend construction and operation permit requirements and exemptions in chs. NR 406 and 407. These amendments suggest that the department is interpreting specific provisions in ss. 285.60 to 285.67, Stats., yet none of these statutory sections are cited in the list of statutes interpreted. Similarly, the analysis accompanying the rule indicates that the rule modifies when a permit modification is required when biodiesel fuel is being used. However, the list of statutes providing authority for the rule does not include s. 285.11 (17), Stats., which directs the department to promulgate rules modifying the meaning of the term “modification.”

In addition, the department could assist a reader who wants to correlate specific statutes interpreted and statutes providing authority for the rule to specific provisions in the rule by indicating in the plain language analysis accompanying the rule which statute is being interpreted and which statute provides authority for a particular provision summarized in that analysis.

b. In item 4 of the analysis, reference to the Revisor of Statutes should be deleted. Also, the final sentence in item 12 of the analysis should be deleted since it is duplicative of the sentence in item 4.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The addition of biodiesel fuel to the definition of "clean fuel" in s. NR 406.02 (1) appears to include only biodiesel fuel that contains 100% biodiesel fuel blend stock (B100), based on the title of the ASTM standard specified in s. NR 484.10 (55v). If the department intends that "clean fuel" can include blends of biodiesel fuel and petroleum-based middle distillate fuels, then the department should revise the definition of "clean fuel" in s. NR 406.02 (1) to specify the acceptable ranges of blending.

b. Amendments to ss. NR 406.04 (1) (n) (intro.), 1. and 2. (intro.) and 407.03 (1) (sq) refer to "regulated asbestos containing material." This term is not defined in these provisions, but it is defined in s. NR 447.02 (33). If the department intends for the uses of this term to be the same as in the s. NR 447.07 (33) definition, then it should amend the appropriate definition sections in s. NR 400.02, or ss. NR 406.02 and 407.02.

c. In s. NR 406.04 (1f) (b) and (1k) (b), a final parenthesis is needed at the end of the provision. This was done correctly later in the rule.