

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 406.03 (1e) (a), (b), and (j), 406.04 (1f) (c) and (Note), 407.02 (6) (a) 3. (Note), 407.11 (1) (e) and (3) (c), and NR 407.12 (1) (b) (Note) and (e); to **amend** NR 400.02 (130), (136m) (intro.) and (b), 406.02 (6), 406.03 (1e) (intro.), (c), (1m) (a), (b), (2) (b) 2. c., and (g), 406.04 (1) (i) (intro.), 2., 3., 4., (m) (intro.), (zg) 1., (1k) (intro.), (1q) (f), (g), (2) (h), (4) (a) 5., (b) (title), (b), (h) 2., (j) 2., and (7), 406.17 (3) (d), 407.02 (9), 407.03 (1) (intro.), (1m) (a) 2., (c) 1., (2) (f) and (g), 407.05 (2) and (6), 407.105 (3) (b), 407.11 (1) (a), 407.14 (1m) (d), and 407.15 (5); and to **create** NR 400.02 (136m) (b) (Note), (136r), and (162) (a) 61. and 62, 406.04 (1) (a) 4m., (bm), (1f) (f) and (4) (e) 3., 407.03 (1) (a) 4m., (bm) and (2) (ba) relating to increasing the operational efficiency of and simplifying the air permit process, and affecting small business.

**AM-24-12b**

**Analysis Prepared by the Department of Natural Resources**

- 1. Statute Interpreted:** Sections 285.11 (1) and (16), 285.27 (2), 285.60 (6), 285.66 (2), and 285.67, Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.
- 2. Statutory Authority:** Sections 285.11 (1) and (16), 285.27 (2), 285.60 (6), 285.66 (2) and 285.67, Stats.
- 3. Explanation of Agency Authority:** Section 285.11 (1), Stats., requires the department to promulgate rules consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires the department 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 obtain a construction or operation 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 revocation of air pollution control permits.
- 4. Related Statutes or Rules:** There are no related statutes or rules not listed above.
- 5. Plain Language Analysis:** The primary objectives of the proposed rules are to improve operational efficiency for and to simplify the permitting processes administered under chs. NR 406 and 407, Wis. Adm. Code, while remaining consistent with the federal Clean Air Act (CAA). Specific proposed rule changes are described below.

In the statement of scope for this rule, the department committed to examining several areas of the permit program to assure consistency with federal rules and for clarification and streamlining.

Revisions made under this scope statement in a previous rule package

- Exemption from operation permitting for natural minor sources
- Changes to s. NR 445.09 to align state and federal engine testing requirements

- Removal of outdated tables and other changes to correct or clean up existing rule language
- Changes to the permit exemptions for emergency generators to include emergency fire pumps
- Changes to exclude certain activities from the definition of “commence construction”
- Other changes to correct citations, clarify language and delete obsolete language

Areas under this scope statement that were examined but no rule revisions will be pursued

- Definition of “cause or exacerbate”: The 1977 Clean Air Act Amendments created the new source review permit program, the purpose of which was to assure that construction and modification of industrial air pollution sources would not “cause or contribute” to the deterioration of air quality in a region. Wisconsin passed laws in 1979 and 1980 to implement the Clean Air Act permit program and minor source construction permit program. These laws laid out the criteria for permit issuance, including the requirement that a permit can only be issued if the department finds that the source does not “cause or exacerbate” the violation of an ambient air quality standard or ambient air increment. The 1979 statute also required the department to promulgate rules to define the cause or exacerbation of an ambient air quality standard or ambient air increment.

In August 1980, the department finalized air permit rules for construction and modification of air pollution sources and it began issuing air pollution control construction permits. Working groups were set up to discuss how to define “cause or exacerbate,” however no rule was ever promulgated to define the term. In 2012, the legislature directed the department to revisit this definition as part of a rule package aimed at finding opportunities to streamline current air permit processes. Beginning in 2013, the department held a series of meetings with internal and external stakeholders to discuss “cause or exacerbate” and reviewed the historical record of the previous attempt to define the term.

After much discussion of potential ways to define “cause or exacerbate” with both internal and external stakeholders, the department will not be proposing a definition of “cause or exacerbate.” EPA does not define its analogous term, “cause or contribute,” and EPA has consistently approved Wisconsin’s State Implementation Plans (SIP) implementing the air permit programs since 1980 without requiring the term to be defined. In addition, the department has issued thousands of permits since 1980, each of which include a finding that the source, as permitted, will not cause or exacerbate a violation of any standards or increment. Air permits undergo extensive public review and are sometimes challenged, however, the lack of a definition of “cause or exacerbate” has never been the stated reason for a permit challenge.

The air program currently uses a variety of techniques when making a finding that a source does not cause or exacerbate a violation of air standards or increment. These techniques include air quality dispersion modeling and a weight of evidence analysis that considers types of air pollutants, de minimis thresholds, ambient monitoring data, and inventories of emissions. Defining “cause or exacerbate” is not expected to provide additional streamlining to the permit process. Stakeholders expressed concern that defining the term didn’t lead to any known benefit and could point to several ways proposed definitions would have unintended consequences that could actually complicate and slow the permitting process.

- Definition of shutdown: The scope statement for the rule package included examination of

the current definition of “shutdown.” The requirement to define the actions or events which constitute the shutdown of a facility is required by statute and the term is already defined in s. NR 400.02 (144). After consultation with internal and external stakeholders, the department will not be proposing any changes to the definition of shutdown because there are no permit processes that would benefit from a clarification of the term, and defining the term may complicate, rather than simplify permit processes by inadvertently changing the historical implementation of the term. Also, the term is not defined in federal rules.

- Administrative revisions for construction permits: The department considered creating a procedure to administratively revise construction permits mirroring the procedures for administrative revisions of operation permits in ch. NR 407. The department will not be proposing a construction permit administrative revision because the underlying statutes do not allow revision of construction permits without notice, even for administrative purposes. Since most requests for administrative revision stem from a change of ownership or a new responsible official, the department will, outside of this rulemaking, examine whether changes to construction permit cover pages, approval letters or other template documents can minimize the need for revisions of construction permits.

Revisions proposed under the scope statement included in this rule package

- Definition of reconstruction.
  - SECTION 1 amends the definition of “reconstruction” to include minor sources. The current definition excludes minor sources. Minor sources should be included in the definition of “reconstruction” because the term is used throughout the minor source permitting regulations.
- Specific exemption for ultra-low sulfur diesel fuel for external combustions furnaces.
  - SECTION 10 creates an additional construction permit exemption for external combustion furnaces that burn ultra-low sulfur distillate fuel oil. The emission levels from equipment installed under the existing exemption for external combustion equipment burning natural gas were determined and those emission levels were used to select the appropriate heat input capacity for this exemption. Equipment installed under this proposed exemption will emit at the same rate or less than equipment burning other fuels at the maximum heat input rate already exempt from construction permitting.
  - SECTION 21 creates an additional operation permit exemption for external combustion furnaces that burn ultra-low sulfur distillate fuel oil. Equipment installed under this proposed exemption will emit at the same rate or less than equipment burning other fuels at the maximum heat input rate already exempt from operation permitting.
- Confiscated drug exemption.
  - SECTIONS 10 and 21 also create a construction and identical operation permit exemption for incineration of drugs confiscated by federal, state, or local law enforcement agencies. This exemption aligns state rules with the intent of federal rules to exclude incineration of confiscated drugs by law enforcement from federal standards covering incinerators.

The following rule language is proposed to improve operational efficiency for and to simplify the permitting processes administered under chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act (CAA).

Revisions proposed for consistency of wording of exclusion from exemptions due to regulation under certain federal standards

Many permit exemptions and simplified processes are available to sources unless those sources are regulated by federal standards listed in s. 111 or 112 of the Clean Air Act. Though the purpose of this exclusion appears to be identical in most cases, the wording differs slightly in many instances. The department is proposing to consistently use the term “emission limitation or emission standard” where this exclusion is listed. This term is defined in s. 285.01(16), Wis. Stats., and “means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.” This definition, by referring to the operation or maintenance of a source, includes work practices as long as they reduce emissions but the term would not include sources subject only to recordkeeping or reporting requirements. This maintains the historical interpretation of the language as it has been used in the specific exemptions in chs. NR 406 and 407. For consistent understanding of this exclusion, the department proposes to revise the rule to assure that the statement, wherever it appears, is always the same and will refer to a unit subject to “an emission limitation or emission standard” under section 111 or 112 of the Act. The exception is when the exclusion uses the term “triggers a regulation under.” This language is more stringent and the department proposes to leave this language unchanged.

Revisions proposed to implement electronic signature and promote electronic submittal and storage of documents

SECTIONS 8 and 25 remove the requirements to submit paper copies of application materials. This allows for streamlining through implementation of an electronic reporting system making reporting easier and encouraging timely and accurate reporting.

Revisions proposed to clarify rule applicability

SECTIONS 1 through 2 clarify that the definition of “restricted use reciprocating internal combustion engine” refers to stationary engines. Stakeholders noted that non-road engines are not covered by the stationary source permit programs in chs. NR 406 and 407. The word “stationary” was added to clarify that the rule applies to “stationary engines.”

SECTION 3 was added in response to comments to assure that construction permit revisions can be fully and consistently utilized where appropriate.

SECTIONS 4 through 7 revise the list of activities that do not constitute commencing construction for purposes of minor source construction permitting to align with the federal definition and guidance on activities that do not constitute commencing construction. These changes are proposed to address a determination of incompleteness by USEPA regarding the state’s submittal of the current rule to EPA for inclusion into the State Implementation Plan.

SECTION 8 removes from the construction permit waiver rule, language restricting economic or

financial hardship that could “preclude the project in its entirety,” thus clarifying the circumstances under which a facility can apply for the minor source construction waiver.

SECTION 9 creates a restriction for the construction permit waiver such that a source may not have already commenced construction, reconstruction, replacement, relocation, or modification before applying for the waiver. This change assures that a source does not violate the federal requirement to obtain a permit prior to commencing construction of a major source or major modification.

SECTION 11 clarifies the requirements for the research and testing exemption indicating that the change must be temporary. This allows a consistent understanding of the appropriate use of this exemption and assures that a source does not violate the federal requirement to obtain a permit prior to commencing construction of a major source or major modification.

SECTION 11 allows simultaneous operation of permanent and temporary steam generating equipment for a short period of time to allow for coverage during startup and shutdown of the steam generating equipment under the temporary steam generating equipment exemption.

SECTIONS 10 and 13 include changes to the exemption from minor source construction permitting for sources constructing or modifying under a plant-wide applicability limitation (PAL). These changes assure that the flexibility intended by the federal PAL rules is available while assuring that changes made under a PAL comply with all applicable state and federal regulations and are protective of ambient air quality standards.

SECTION 14 clarifies that the exemption for projects evaluated for significant net emissions increase can only be requested prior to commencing construction. It also clarifies how requirements of federal rules affect the exemption, including that this exemption is only available for the modification of an existing emission unit and not for the construction of a new emission unit. These clarifications result in consistent and fair application of this exemption. In response to public comments, revisions are proposed to exclude from modification changes to permit requirements needed to comply with reasonably available control technology (RACT) rules and to make the exclusion available to all RACT and not just VOC RACT.

SECTION 15 clarifies that an increase in hours of operation does not constitute an exclusion from modification if the change is subject to certain federal requirements.

SECTION 16 clarifies that the emission increase being referred to is the maximum theoretical emissions increase. This clarification ensures fair and consistent use of this exclusion from modification.

SECTION 19 amends the definition of “synthetic minor source” to match the federal policy and guidance on the types of actions and permit conditions necessary to establish a facility as a synthetic minor source. The department considered adding language to state that synthetic minor permit conditions must be federally enforceable or legally and practicably enforceable by a State or local air pollution control agency. However, in *Clean Air Implementation Project v. EPA*, No. 96-1224 (D.C. Cir. June 28, 1996), the court vacated and remanded the requirement for federal enforceability for PTE limits under 40 C.F.R. Part 70. In a July 10, 1998 memorandum titled “Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy,” EPA stated that the term “federally enforceable” in section 70.2 should now be read to mean “federally enforceable or legally and practicably enforceable by a State or local air pollution control agency” pending any additional rulemaking by the EPA. As stated in the August 1996 memorandum, EPA

interprets the court order vacating the part 70 definition as not affecting any requirement for federal enforceability in existing State rules and programs. Therefore, the department will not add the additional language to the definition at this time and will continue to follow EPA's policy.

SECTION 20 clarifies that the emissions from facilities using the exemption for sources with a combination of emission units in specified categories must not exceed Title V or Part 70 permit thresholds and clarifies that a combination of categories is allowed under section (1) (t) of the rule. This clarification assures consistent and fair application of this operation permit exemption.

SECTIONS 27 and 30 clarify that only typographical errors that have no material effect on the permit may be corrected by administrative revision. This assures consistent application of the administrative revision process for changes that are administrative in nature and assures that substantive changes undergo appropriate public notice and public comment.

SECTION 34 adds references to state statutes for clarification.

Other proposed revisions to clean up outdated language, correct rule language, and to maintain consistency with federal rules

SECTION 2 adds 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2) and cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) to the list of substances excluded from the definition of volatile organic compounds. This change aligns the state and federal definitions of volatile organic compounds.

SECTION 16 includes the specific exemptions listed in s. NR 406.04(1) (a) 5. and (1) (w) in the list of specific exemptions requiring maintenance of records. This demonstrates that the exempt source's operational design is limited in a way that is federally and practicably enforceable and clarifies that if records are not kept the source is no longer eligible for the exemption. The qualification date ranges are being removed since they have all passed and records need only be maintained for a minimum of five years. These changes assure consistency among all exemptions that rely on limiting operational design elements that require records in order to be considered practically enforceable, such as limits on the type or amount of fuel or material throughput or hours of operation.

SECTION 18 removes the note referencing previous EPA guidance on determining when a source can become an area source for the purposes of determining applicability with Federal Hazardous Air Pollution Standards, referred to as "once in always in" policy. On January 25, 2018, EPA issued a guidance memorandum withdrawing the "once in always in" policy.

SECTION 23 corrects an error by creating an exemption threshold for PM<sub>10</sub> which was previously not included for the general category of exempt sources. Inclusion of the exemption threshold for PM<sub>10</sub> makes the general categories of exempt sources in s. NR 407.03(2) consistent with those in s. NR 406.04(2).

SECTIONS 28 and 29 remove eligibility criteria that was overly limiting or otherwise not able to be used based on other statutory requirements.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

Several of the proposed rule changes are being made to align existing state rules with federal regulations. These include:

- Amending the list of activities excluded from commencing construction in NR 406.03 (1e) to match federal guidelines.

- Clarifying when being subject to regulations from sections 111 (New Source Performance Standards - NSPS) or 112 (National Emission Standards for Hazardous Air Pollutants – NESHAPs) of the Act (42 USC 7411 or 7412) disqualify activities or emissions units from being exempt.
- Aligning the definition of synthetic minor source in s. NR 407.02(9) with federal policy and guidance on the types of actions and permit conditions necessary to establish a synthetic minor source.

**7. Comparison with Similar Rules in Adjacent States (Illinois, Iowa, Michigan and Minnesota):** Adjacent states implement federal regulations using one of two methods. Illinois is a delegated state directly implementing the federal program. Iowa, Minnesota, and Michigan, like Wisconsin, implement the federal program through approved State Implementation Plans (SIP) and their own state rules. SIP-approved states must implement federal programs in accordance with the regulations set out in federal code. The portions of this rule that are being changed to align with federal regulations result in rules similar to those in neighboring states.

Other proposed rule changes are limited to minor source construction permits and minor source operation permits. Wisconsin's neighboring states also have minor source construction permit programs. Each state's program varies, but all adjacent states provide for exemptions from construction permits for certain types of sources, operations and activities depending on type, size, capacity, hours of operation, emissions or other similar criteria.

Each adjacent state also issues minor source operation permits. Generally, these are issued to facilities requesting federally enforceable conditions limiting emissions to less than major source thresholds. These "synthetic minor" operation permit programs are similar to Wisconsin's. Each adjacent state offers different types of exemptions from operation permitting for natural minor sources. The majority of natural minor sources in neighboring states are not required to obtain an operation permit.

**8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** The department is proposing rules consistent with federal regulations, making consistency and clarification changes, and developing rules as directed by the state legislature, which did not require use of any factual data or analytical methodologies.

**9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:** The economic impact of the proposed rules is expected to be minimal. In most cases, the changes proposed will result in clarity and cost savings for business, especially for small business.

**10. Effect on Small Business (initial regulatory flexibility analysis):** Small businesses with air pollution emissions will be affected by the proposed rules. In general, the revisions in this rule package provide clarification for applicability of permit exemptions. Small businesses that may not have dedicated environmental staff will be able to understand and take advantage of clarified permit exemptions and other exclusions in the rules. Other changes streamline processes or allow for implementation of online reporting and application submittals, which also provide a cost savings for small businesses.

The proposed rules will allow all Wisconsin businesses, including small businesses, seeking minor construction permits to begin certain preconstruction activities prior to permit issuance. The ability to begin certain preconstruction activities before receiving a permit can be economically beneficial to some businesses.

Some small businesses may need assistance in understanding what rules apply and which exemptions they qualify for. The Air Program's Small Business Environmental Assistance Program is available to help small businesses understand what permits and requirements apply and what options are available to demonstrate compliance.

**11. Agency Contact Person:** Kristin L. Hart, Chief – Permits and Stationary Source Modeling Section, Phone: (608) 266-6876, Fax: (608) 267-0560, E-mail: Kristin.Hart@wisconsin.gov

**12. Place where comments are to be submitted and deadline for submission:** A public hearing was held on April 17, 2019. The department accepted comments by regular mail, email and at the public hearing. The comment period ended on April 24, 2019.

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**SECTION 1. NR 400.02 (130), (136m) (intro.), and (b) are amended to read:**

NR 400.02 (130) "Reconstruction" means the removal of components of a stationary source and the substitution of those components with similar new components to such an extent that the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new stationary source. The term "reconstruction" does not apply to minor ~~or indirect~~ sources.

(136m) (intro.) "~~Restricted use reciprocating internal combustion engine~~" or "restricted use RICE" means a ~~reciprocating internal combustion engine~~ stationary RICE that is one of the following:

(b) Operated in accordance with the definition of limited use stationary RICE in 40 CFR 63.6675.

**SECTION 2. NR 400.02 (136m) (b) (Note), (136r), and (162) (a) 61. and 62. are created to read:**

NR 400.02 (136m) (b) Note: An internal combustion engine that meets the definition of non-road engine in 40 CFR 63.6675 is not a stationary RICE.

(136r) "RICE" means a reciprocating internal combustion engine.



- (162) (a) 61. 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2).  
62. *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z)

**SECTION 3. NR 406.02 (6) is amended to read:**

NR 406.02 (6) “Permit revision” means any change to a construction permit to reflect a change at a source that is not a modification of the source or that is an exempt modification of the source.

**SECTION 4. NR 406.03 (1e) (intro.) is amended to read:**

NR 406.03 (1e) (intro.) EXCLUSIONS. Notwithstanding the definitions of “commence construction” and “commence modification” in s. NR 400.02 (44) and (45) respectively, for projects reviewed under this chapter ~~that, prior to issuance of a permit, would not be considered a major modification or construction of a major source under ch. NR 405 or 408,~~ all of the following activities may be excluded when determining if construction, reconstruction, replacement, relocation, or modification has commenced:

**SECTION 5. NR 406.03 (1e) (a) and (b) are repealed.**

**SECTION 6. NR 406.03 (1e) (c) is amended to read:**

NR 406.03 (1e) (c) Erecting temporary storage structures.

**SECTION 7. NR 406.03 (1e) (j) is repealed.**

**SECTION 8. NR 406.03 (1m) (a) and (b), (2) (b) 2.c., and (g) are amended to read:**

NR 406.03 (1m) (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.~~

(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~~ When electing to submit materials on paper, the applicant shall be submitted—submit the materials to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707–7921, Attention: Construction permits.

(2) (b) 2. c. A substantial economic or financial hardship ~~that may preclude the project in its entirety.~~

(g) The department may not grant a waiver ~~to~~ for a source located or to be located within 10 kilometers of a Class I area under this subsection.

**SECTION 9. NR 406.04 (1) (a) 4m. and (bm) are created to read:**

NR 406.04 (1) (a) 4m. Distillate oil meeting the on-road sulfur content for diesel fuel specified in 40 CFR 80.510 (b) at a heat input rate of not more than 25 million Btu per hour.

(bm) Equipment owned or operated by a government agency, such as police or sheriff's department, that is used to incinerate only drugs confiscated by federal, state, or local law enforcement agencies, provided the equipment meets all of the following requirements:

1. The equipment is a dual-chamber incinerator that complies with all of the following:
  - a. The equipment is designed to incinerate not more than 500 pounds of material per hour.
  - b. The equipment has a secondary chamber that operates at all times during drug incineration with a minimum temperature of 1,400 degrees Fahrenheit, and a minimum gas retention time of 0.5 seconds.
2. Stacks shall comply with all of the following:
  - a. Each stack shall have a height at least 1.5 times higher than the peak of the highest structure within 150 feet of the equipment.
  - b. Each stack shall be located at least 500 feet from nearest property line.
  - c. Each stack shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstructions.
3. The equipment shall be operated within all of the following limits:
  - a. The unit shall reach a minimum operating temperature of 1,400 degrees Fahrenheit prior to introducing the materials to be incinerated.

b. The quantity of material incinerated, including packaging, is limited to no more than 25 pounds in any 24-hour period, with the exception of marijuana. Marijuana may be incinerated in quantities up to the design capacity of the incinerator.

c. Fuel for the equipment shall be limited to natural gas, liquid petroleum gas, distillate fuel oil with less than 0.0015% sulfur by weight, or the equipment shall use electric power.

d. The manufacturer's recommended operating instructions shall be posted at the incinerator, and the unit shall be operated in accordance with these instructions. The incinerator shall be operated in accordance with the manufacturer's specifications and maintained in good working order.

4. The owner or operator shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the temperature of the secondary chamber of the incinerator.

5. The owner or operator shall maintain records sufficient to demonstrate that each of the requirements listed in this paragraph are met. The records shall be retained for a minimum of 5 years and shall include all of the following:

- a. The time and date materials are charged.
- b. The amount of material charged or burned in each 24-hour period.
- c. The type and amount of fuel usage, including sulfur content for fuel oil.
- d. The monitoring results.
- e. The hours of operation.
- f. Routine maintenance of abatement systems.

**SECTION 10. NR 406.04 (1) (i) (intro.), 2., 3. and 4., (m) (intro.), and (zg) 1. are amended to read:**

NR 406.04 (1) (i) ~~Equipment~~—A temporary change in the method of operation or temporary equipment used or to be used for testing or research, provided that all of the following requirements are met:

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

3. The temporary change in the method of operation or temporary equipment will be in

operation for less than 12 months. Upon completion of the testing, the temporary change in the method of operation or operation of temporary equipment shall cease. Operation beyond the testing period is prohibited unless approved by a different construction permit exemption or by a construction permit.

4. The department approves the application for exemption submitted under subd. 1. in accordance with the following procedure:

a. The department shall approve or deny the application in writing within 45 days of receiving a complete application.

b. The department may provide public notice of an application for research and testing exemption, may provide an opportunity for public comment and an opportunity to request a public hearing and may hold a public hearing on any application under this paragraph.

c. The department shall make all nonconfidential information available to the public upon request.

(m) The following procedures for the remediation or disposal of soil or water contaminated with organic compounds, provided the potential to emit, considering emission control devices, for any hazardous air contaminant listed in Table A to Table C of s. NR 445.07 is not greater than the emission rate listed in Table A to Table C of s. NR 445.07 for the air contaminant at the respective stack height, and the procedure is not subject to ~~any standard or regulation~~ an emission limitation or emission standard under section 111 or 112 of the Act (42 USC 7411 or 7412):

(zg) 1. The equipment will be installed and operated only when at least one of the permanent steam generating units at the source is out of service for maintenance, repair, or an emergency, except that the temporary equipment and the permanent steam generating equipment being taken out of service for maintenance, repair, or an emergency may operate simultaneously for up to 24 hours during startup or shutdown of the permanent steam generating equipment.

**SECTION 11. NR 406.04 (1f) (c) and (Note) are repealed.**

**SECTION 12. NR 406.04 (1f) (f) is created to read:**

NR 406.04 (1f) (f) For new or modified sources for which no construction permit is required, an operation permit application shall be submitted as required under s. NR 407.04 (1)

(b) 3. prior to commencing construction or modification.

**SECTION 13. NR 406.04 (1k) (intro.), (1q) (f) and (g), (2) (h), (4) (a) 5., (b) (title) and (b) are amended to read:**

NR 406.04 (1k) PROJECTS EVALUATED FOR SIGNIFICANT NET EMISSIONS INCREASE.

Notwithstanding the provisions of s. NR 406.04 (1) and (2), no construction permit is required for a modification to an existing emissions unit, as defined in s. NR 405.02 (12) or 408.02 (13), at an existing major stationary source, as defined in s. NR 405.02 (22), or an existing major source, as defined in s. NR 408.02 (21), which does not result in a significant emissions increase, as defined in s. NR 405.02 (27m) or 408.02 (32m), provided all of the following criteria are met:

(1q) (f) ~~The~~ Prior to commencing construction, 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 emissions units ~~which~~ that 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.

(g) Any newly constructed emissions unit is not subject to an emission limitation or emission standard 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)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart III or JJJJ for each fuel used. Any modified, replaced, relocated, or reconstructed emissions unit ~~does not trigger any new~~ is not subject to any new emission limitation or emission standard 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)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart III or JJJJ for each fuel used.

(2) (h) The source is not subject to ~~any standard or regulation~~ an emission limitation or emission standard under section 111 or 112 ~~or~~ of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart III or JJJJ for each fuel used.

(4) (a) 5. The use will not subject the source to ~~any standard or regulation~~ an emission limitation or emission standard under section 112 of the Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)) and excluding engines certified to meet the emission

standards in 40 CFR part 60, subpart III or JJJJ for each fuel used.

(b) ~~VOC-RACT compliance~~. A change to a permit condition needed to assure compliance with a new or revised RACT rule, a change at a source which is made primarily for the purpose of complying with the requirements of a RACT compliance plan approved under chs. NR 419 to 425, or a VOC RACT variance approved under s. NR 436.05, if the change does not cause or exacerbate the violation of an ambient air quality standard or ambient air increment for any air contaminant other than ozone.

**SECTION 14. NR 406.04 (4) (e) 3. is created to read:**

NR 406.04 (4) (e) 3. The change is not subject to an emission limitation or emission standard 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 15. NR 406.04 (4) (h) 2., (j) 2. and (7) are amended to read:**

NR 406.04 (4) (h) 2. The change for the process line does not trigger a requirement under section 111 or 112 of the ~~act~~Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(j) 2. The change is exempt under sub. (1), or the increased emissions due to the change do not exceed the maximum theoretical emission levels specified in sub. (2) (b), (c), (cm), (cs), (d) and (f).

(7) CONDITIONS FOR SPECIFIC EXEMPTIONS. ~~In order to~~To be eligible for a specific exemption under sub. (1) (a) 5., (ce), (cm), (d), (e), (g), (gm), (h), (j), (m), (o), (w), (y) or (z), the owner or operator of a direct stationary source shall keep and maintain records, for a minimum of 5 years, of materials used, emissions, or production rates, that are adequate to demonstrate that the source qualifies for the exemption. ~~The owner or operator of a direct stationary source shall begin keeping these records no later than January 1, 1996 to qualify for exemption under sub. (1) (d), (g), (h), (j), (m), (o), (y) or (z), January 1, 1998, to qualify for exemption under sub. (1) (ee) or (em), or the date that the source commences operation, whichever is later, and maintain them for a minimum of 5 years.~~ Any direct stationary source that ever exceeds any level listed in sub. (1) (a) 5., (ce), (cm), (d), (e), (g), (gm), (h), (j), (m), (o), (w), (y) or (z) is not thereafter eligible for the exemption under that subsection.

**SECTION 16. NR 406.17 (3) (d) is amended to read:**

NR 406.17 (3) (d) The construction, reconstruction, replacement, relocation, or modification of the emissions unit or units would be subject to ~~a standard or regulation~~ an emission limitation or emission standard under section 111 of the Act (42 USC 7411) or under section 112 of the Act (42 USC 7412), other than those contained in the registration construction permit, or ~~which~~ that are determined by the department to not preclude eligibility for the registration construction permit.

**SECTION 17. NR 407.02 (6) (a) 3. (Note) is repealed.**

**SECTION 18. NR 407.02 (9) is amended to read:**

NR 407.02 (9) “Synthetic minor source” means any stationary source that has its potential to emit limited by ~~federally enforceable~~ permit conditions that are federally enforceable so that it is not a major source.

**SECTION 19. NR 407.03 (1) (intro.) is amended to read:**

NR 407.03 (1) SPECIFIC CATEGORIES OF EXEMPT SOURCES. Any direct stationary source ~~which~~ that is not an affected source and is not required to obtain a permit under 40 CFR part 70 and that consists solely of one of the following categories of stationary sources or consists of a combination of the categories of stationary sources listed under sub. (1) (t) is exempt from the requirement to obtain an operation permit provided the requirements ~~of~~ under sub. (4) are met:

**SECTION 20. NR 407.03 (1) (a) 4m. and (bm) are created to read:**

NR 407.03 (1) (a) 4m. Distillate oil with a maximum sulfur content of 15 ppm at a heat input rate of not more than 25 million Btu per hour.

(bm) Equipment owned or operated by a government agency, such as police or sheriff’s department, that is used to incinerate only drugs confiscated by federal, state, or local law enforcement agencies, provided the equipment meets all of the following design requirements:

1. The equipment shall be a dual-chamber incinerator that complies with all of the following:

- a. The equipment is designed to incinerate not more than 500 pounds of material per hour.
  - b. The equipment has a secondary chamber that operates at all times with a minimum temperature of 1,400 degrees Fahrenheit and a minimum gas retention time of 0.5 seconds.
  - c. The secondary chamber has a continuous temperature monitor.
2. Stacks shall comply with all of the following:
    - a. Each stack shall have a height at least 1.5 times higher than the peak of the highest structure within 150 feet.
    - b. Each stack shall be located at least 500 feet from nearest property line.
    - c. Each stack shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstructions.
3. The incinerator shall be operated with the following limits:
    - a. The unit shall reach a minimum operating temperature of 1,400 degrees Fahrenheit prior to introducing the materials to be incinerated.
    - b. The quantity of material incinerated, including packaging, is limited to no more than 25 pounds in any 24-hour period, with the exception of marijuana. Marijuana may be incinerated in quantities up to the design capacity of the incinerator.
    - c. Fuel for the incinerator shall be limited to natural gas, liquid petroleum gas, distillate fuel oil with less than 0.0015% sulfur by weight, or the equipment shall use electric power.
    - d. The manufacturer's recommended operating instructions shall be posted at the incinerator and the unit shall be operated in accordance with these instructions. The incinerator shall be operated in accordance with the manufacturer's specifications and maintained in good working order.
4. The owner or operator shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the temperature of the secondary chamber of the incinerator.
5. The owner or operator shall maintain records sufficient to demonstrate that each of the requirements listed in this paragraph are met. The records shall be retained for a minimum of 5 years, and shall include all of the following:
    - a. The time and date materials are charged.
    - b. The amount of material charged or burned in each 24-hour period.



- c. The type and amount of fuel usage, including sulfur content for fuel oil.
- d. The monitoring results.
- e. The hours of operation.
- f. Routine maintenance of abatement systems.

**SECTION 21. NR 407.03 (1m) (a) 2. and (c) 1. are amended to read:**

NR 407.03 (1m) (a) 2. The facility is not subject to ~~a standard~~ an emission limitation or emission standard under section 111 or 112 of 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)) or engine certified to meet the emission standards in 40 CFR part 60, subpart III or JJJ for each fuel used.

(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.~~

**SECTION 22. NR 407.03 (2) (ba) is created to read:**

NR 407.03 (2) (ba) The maximum theoretical emissions from the source for PM<sub>10</sub> do not exceed 3.4 pounds per hour.

**SECTION 23. NR 407.03 (2) (f) and (g) are amended to read:**

NR 407.03 (2) (f) The source is not subject to ~~any standard or regulation~~ an emission limitation or emission standard under section 111 of the Act (42 USC 7411) excluding engines certified to meet the emission standards in 40 CFR part 60, subpart III or JJJ for each fuel used.

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

**SECTION 24. NR 407.05 (2) and (6) are amended to read:**

NR 407.05 (2) Application materials 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~~ When electing to submit materials on paper, the applicant shall be submitted submit the materials to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Operation permits.

(6) The applicant shall specifically identify all information in the permit application for which confidential status is sought and shall follow procedures in s. 285.70, Stats., and s. NR 2.19 to request confidential status for that information. In addition to the ~~copies~~ submission of the complete application required under sub. (2), an applicant requesting confidentiality shall also supply to the department ~~3 copies of the application with all confidential material deleted for~~ redacted from forms and other materials ~~which that~~ are submitted on paper. The applicant shall file one copy of all forms and other materials with all confidential material ~~deleted~~ redacted if submitted in electronic format.

**SECTION 25. NR 407.105 (3) (b) is amended to read:**

NR 407.105 (3) (b) One or more emissions units at the facility would be subject to a ~~standard or regulation~~ an emission limitation or emission standard under section 111 of the Act (42 USC 7411) or under section 112 of the Act (42 USC 7412), other than those contained in the registration operation permit or determined by the department to not preclude eligibility for the registration operation permit.

**SECTION 26. NR 407.11 (1) (e) and (3) (c) are repealed.**

**SECTION 27. NR 407.12 (1) (b) (Note) and (e) are repealed.**

**SECTION 28. NR 407.14 (1m) (d) is amended to read:**

NR 407.14 (1m) (d) The permit contains a typographical error that does not substantively change the meaning of a permit condition.

**SECTION 29. NR 407.15 (5) is amended to read:**

NR 407.15 (5) FAILURE TO PAY FEES. An intentional failure by the permittee to pay in

full the fees required under ch. NR 410 or s. 285.69, Stats., except the department may not suspend or revoke the permit for failure to pay fees while those fees are being disputed under s. NR 410.04 (6) or s. 285.81, Stats.

**SECTION 30. EFFECTIVE DATE.** This rule takes 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 31. BOARD ADOPTION.** This rule was approved and adopted with amendments by the State of Wisconsin Natural Resources Board on May 27, 2020.

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_

For Preston D. Cole, Secretary