

CR 92-190



George E. Meyer  
Secretary

**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )      ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Ronald L. Semmann, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. AM-39-92 was duly approved and adopted by this Department on February 25, 1993. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed the  
official seal of the Department at  
the Natural Resources Building in  
the City of Madison, this 20  
day of April, 1993.

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Ronald L. Semmann, Deputy Secretary

(SEAL.)

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

IN THE MATTER of repealing NR 400.02(53e), 405.02(27)(b), 406.04(1)(d) and (7), 406.05, 408.01 and 408.02; renumbering NR 408.025, 408.03, 408.06 and 408.07; renumbering and amending NR 405.02(14), 408.04 and 408.05; amending NR 400.02(100), 405.02(intro.), (1)(c), (7), (8) and (27)(a), 406(title), 406.01, 406.02(intro.), 406.03, 406.04(title), (1)(intro.), (a)(intro.) and 5, (b), (c), (e), (g), (h), (j) and (1), (2), (4)(intro.), (a), (b) and (c), (5)(a)(intro.) and (b) and (6)(intro.), 406.06(title), (1)(intro.), (2) and (3), 406.07(2), 408(title), 439.06(3)(intro.), 484.03(6) and 484.04(2)(d); repealing and recreating NR 400.02(55) and 406.04(4)(d); and creating NR 400.02(43e), (53m), 405.02(1)(d), (9m), (9s), (11m), (21)(b)8 to 11, (24m), (25g), (25m), (25s), (29), 405.03(4), 406.04(1)(1m), (2)(i), (4)(a)5 and 6, (e), (f) and (g) and 408.01 to 408.10 of the Wisconsin Administrative Code, pertaining to issuance of construction permits for air contaminant sources.

AM-39-92

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 144.30(16) and (20), 144.31(1)(f), (r) and (s), 144.38, 227.11(2)(a) and 227.14(1m)(b), Stats.

Statutes interpreted: ss. 144.30(16) and (20), 144.31(1)(f), (r) and (s), and 144.391(1) and (6), Stats.

The 1990 amendments to the federal Clean Air Act expanded the preconstruction review requirements for air pollution sources in areas not meeting the National Ambient Air Quality Standards. The Act gave states until November 15, 1992, to implement these requirements or the states would be subject to sanctions. In May of 1992, legislation revising Wisconsin's air pollution control statutes was enacted. This legislation made the statutory changes needed for Wisconsin to comply with the Clean Air Act and gave the Department the authority to enact changes to the air pollution control rules dealing with permits. The Department adopted emergency rules (AM-40-92(E)) which made changes to the new source review program to meet federal requirements. Those rules which became effective on November 15, 1992 will be replaced by the adoption of the proposed rule package.

Section 144.31(1)(r) and (s), Stats., requires that the Department promulgate rules consistent with, but no more restrictive than the Clean Air Act, that specify what major sources and modifications of sources are. The recreated ch. NR 408 establishes requirements for major sources located in nonattainment areas. "Major source" and "modification" are defined and the requirements for those are set in conformity to federal requirements. Chapter NR 405 is being

revised to conform to the federal air quality program. Section 144.391(6), Stats., allows the Department to exempt sources from the permitting process by rule. Chapter NR 406 is being revised to set exemptions from permitting requirements consistent with the new federal definitions of major sources. Additional changes to ch. NR 406 are being made to streamline the preconstruction review process. Chapter NR 408 is being renumbered to place permit issuance procedures in the same chapter as the other construction permit requirements and being revised to be consistent with the revised statutes. The renumbering also made room for the nonattainment major source permit rules in a recreated ch. NR 408. Portions of the proposed rule (ch. NR 408) are based on federal regulations for new source permits and follow the format of the federal regulation pursuant to s. 227.14(1m)(b), Stats.

SECTION 1. NR 400.02(43e) is created to read:

NR 400.02(43e) "Heat input" means the total gross calorific value per unit of time of all fuels being burned, where gross calorific value of a fuel is measured by ASTM Method D240-87, D1826-88 or D2015-91, incorporated by reference in ch. NR 484. Where the test method gives a higher and a lower heating value, heat input is calculated in BTU per hour using the higher heating value of the fuel.

SECTION 2. NR 400.02(53e) is repealed.

SECTION 3. NR 400.02(53m) is created to read.

NR 400.02(53m) "Maximum theoretical emissions" means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

SECTION 4. NR 400.02(55) is repealed and recreated to read:

NR 400.02(55) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted. A modification does not include any changes identified in s. NR 406.04(4).

SECTION 5. NR 400.02(100) is amended to read:

NR 400.02(100) "Volatile organic compound" or "VOC" means any organic compound which participates in atmospheric photochemical reactions ~~and which is measured by a reference method, equivalent method or an alternative method.~~

This includes any such organic compound other than the following compounds, which have been determined to have negligible photochemical reactivity:

- (a) Methane,
- (b) Ethane,
- (c) Methylene chloride (Dichloromethane),
- (d) 1,1,1-Trichloroethane (Methyl chloroform ~~(1,1,1-trichloroethane)~~),
- (e) Trichlorofluoromethane (CFC-11),
- (f) Dichlorodifluoromethane (CFC-12),
- (g) Chlorodifluoromethane (CFC-22),
- (h) Trifluoromethane (FC-23),
- (i) ~~Trichlorotrifluoroethane~~ 1,1,1-Trichloro-2,2,2-trifluoroethane  
(CFC-113),
- (j) ~~Dichlorotetrafluoroethane~~ 1,2-Dichloro-1,1,2,2-tetrafluoroethane  
(CFC-114),

- (k) Chloropentafluoroethane (CFC-115),
- (l) ~~Dichlorotrifluoroethane~~ 1,1,1-Trifluoro-2,2-dichloroethane (HCFC-123),
- (m) 2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124),
- (n) Pentafluoroethane (HFC-125),
- (o) 1,1,2,2-Tetrafluoroethane (HFC-134),
- ~~(m) Tetrafluoroethane~~ (p) 1,1,1,2-Tetrafluoroethane (HFC-134a),
- ~~(n) Dichlorofluoroethane~~ (q) 1,1-Dichloro-1-fluoroethane (HCFC-141b),
- and
- ~~(e) Chlorodifluoroethane~~ (r) 1-Chloro-1,1-difluoroethane (HCFC-142b),
- (s) 1,1,1-Trifluoroethane (HFC-143a),
- (t) 1,1-Difluoroethane (HFC-152a), and
- (u) Perfluorocarbon compounds which fall into the following classes:
1. Cyclic, branched or linear completely fluorinated alkanes.
  2. Cyclic, branched or linear completely fluorinated ethers with no unsaturations.
  3. Cyclic, branched or linear completely fluorinated tertiary amines with no unsaturations, and
  4. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Note: The test methods used to measure VOC are specified in s. NR 439.06(3).

SECTION 6. NR 405.02(intro.), and (1)(c) are amended to read:

NR 405.02 DEFINITIONS. (intro.) ~~In addition to the definitions in this section, the~~ The definitions contained in ch. NR 400 apply to the terms

used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(c) For any emissions unit, other than an electric utility steam generating unit, which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

SECTION 7. NR 405.02(1)(d) is created to read:

NR 405.02(1)(d) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the administrator of the U.S. environmental protection agency, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the administrator if the administrator determines such a period to be more representative of normal source post-change operations.

SECTION 8. NR 405.02(7) and (8) are amended to read:

NR 405.02(7) "Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant subject to regulation under the federal clean air act which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts,

and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including clean fuels, fuel cleaning or treatment or innovative fuel combination techniques for control of ~~such pollutant~~ the air contaminant. In no event may application of best available control technology result in emissions of any air contaminant which would exceed the emissions allowed by any applicable standard under chs. NR 440 and 445 to 449. Emissions from any source utilizing clean fuels or any other means to comply with this subsection may not be allowed to increase above the levels that would have been required under this subsection as it existed prior to enactment of the 1990 federal clean air act amendments. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(8) "Building, structure, facility, or installation" ~~and~~ or "facility, building, structure, equipment, vehicle or action" means all of the air contaminant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Air contaminant emitting activities shall be considered as part of the same industrial grouping if they ~~belong to the same~~



~~"major group" (i.e., which have are classified under the same 2-digit code)~~  
~~major group~~ as described in the Standard Industrial Classification Manual,  
~~1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock~~  
~~numbers 4101-0066 and 033-005-00176-0, respectively)~~ 1987, incorporated by  
reference in ch. NR 484.

SECTION 9. NR 405.02(9m), (9s) and (11m) are created to read:

NR 405.02(9m) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(9s) "Clean coal technology demonstration project" means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. environmental protection agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(11m) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for

sale is also considered in determining the electrical energy output capacity of the affected facility.

SECTION 10. NR 405.02(14) is renumbered 400.02(39m) and amended to read:

NR 400.02(39m) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the U.S. EPA environmental protection agency, including those requirements ~~set forth in developed pursuant to~~ chs. NR 440 and ~~445~~ 446 to 449, requirements within any applicable state implementation plan, and any permit requirements established pursuant to ~~this chapter~~ ch. NR 405, requirements in construction permits issued under ch. NR 406 or 408 and requirements in operation permits issued pursuant to ch. NR 407 and title V of the federal clean air act which are designated as federally enforceable.

Note: Permit or state implementation plan limitations generally considered federally enforceable are limitations on the allowable capacity of the equipment, requirements for the installation, operation and maintenance of pollution control equipment, limits on hours of operation and restrictions on amounts of materials combusted, stored, or produced. To be federally enforceable, restrictions on operation, production or emissions must reflect the shortest practicable time period, in no event for a period in excess of 30 days, and they must be tied to other enforceable operating restrictions at the source. General limitations on potential to emit, such as yearly limits in tons per year, by themselves, are not considered federally enforceable. The use of hourly, daily, weekly or monthly rolling averages are generally acceptable. Any federally enforceable limitations or conditions must be practically enforceable, ensure continuous compliance with the restrictions and include adequate testing, monitoring and recordkeeping procedures in an applicable federally issued permit, in a federally approved state implementation plan or in a permit issued under the state implementation plan.

SECTION 11. NR 405.02(21)(b)8. to 11. are created to read:

NR 405.02(21)(b)8. The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless

the department determines that the addition, replacement or use renders the unit less environmentally beneficial, or except:

a. When the department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the federal clean air act, if any; and

b. The department determines that the increase will cause or contribute to a violation of any national ambient air quality standard or air quality increment, or visibility limitation.

9. The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

a. The state implementation plan; and

b. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

10. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

11. The reactivation of a very clean coal-fired electric utility steam generating unit.

SECTION 12. NR 405.02(24m), (25g), (25m) and (25s) are created to read:

NR 405.02(24m) "Pollution control project" means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(a) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(b) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project, including, but not limited to natural gas or coal re-burning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(c) A permanent clean coal technology demonstration project conducted under title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. environmental protection agency; or

(d) A permanent clean coal technology demonstration project that constitutes a repowering project.

(25g) "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(a) Has not been in operation for the 2-year period prior to the enactment of the clean air act amendments of 1990, and the emissions from such

unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(b) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(c) Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of the clean air act.

(25m)(a) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator of the U.S. environmental protection agency, in consultation with the secretary of energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the department of energy.

(c) The administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under § 409 of the clean air act.

(25s) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit, (or a different consecutive 2-year period within 10 years after that change, where the administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the administrator shall:

(a) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the state or federal regulatory authorities, and compliance plans under title IV of the clean air act; and

(b) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

SECTION 13. NR 405.02(27)(a) is amended to read:

NR 405.02(27)(a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the air contaminants in

Table A, a rate of emissions that would equal or exceed any of the rates in Table A.

Table A  
Pollutant and Emissions Rate

1. Carbon monoxide: 100 tons per year (tpy)
2. Nitrogen oxides: 40 tpy
3. Sulfur dioxide: 40 tpy
4. Particulate matter: 25 tpy
5. PM<sub>10</sub>: 15 tpy
6. Ozone: 40 tpy of volatile organic compounds
7. Lead: ~~0.6~~ 0.60 tpy
8. ~~Asbestos: 0.007 tpy~~
9. ~~Beryllium: 0.0004 tpy~~
- 10-8. Mercury: ~~0.1~~ 0.10 tpy
11. ~~Vinyl chloride: 1 tpy~~
- 12-9. Fluorides: ~~3~~ 3.0 tpy
- 13-10. Sulfuric acid mist: ~~7~~ 7.0 tpy
- 14-11. Hydrogen sulfide (H<sub>2</sub>S): 10 tpy
- 15-12. Total reduced sulfur (including H<sub>2</sub>S): 10 tpy
- 16-13. Reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy
14. Municipal waste combustor (MWC) acid gases (measured as total sulfur dioxide and hydrogen chloride): 40 tpy
15. MWC metals (measured as particulate matter): 15 tpy

16. MWC organics (measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5x10<sup>-6</sup> tpy

17. CFC's 11, 12, 112, 114, 115: any emission rate

18. Halons 1211, 1301, 2402: any emission rate

SECTION 14. NR 405.02(27)(b) is repealed.

SECTION 15. NR 405.02(29) is created to read:

NR 405.02(29) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the state implementation plans for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

SECTION 16. NR 405.03(4) is created to read:

NR 405.03(4) The extent of the areas referred to in subs. (1) and (3) shall conform to any changes in the boundaries which have occurred subsequent to August 7, 1977.

SECTION 17. NR 406(title) is amended to read:

Chapter NR 406

~~CONSTRUCTION OR MODIFICATION~~

~~AND NEW OPERATION PERMITS~~



SECTION 18. NR 406.01 is amended to read:

NR 406.01(title) APPLICABILITY; PURPOSE. (1) APPLICABILITY. This chapter applies to all air contaminant sources which may be required under s. 144.391, Stats., to obtain construction ~~or modification and new operation~~ permits. In accordance with s. 144.391(6), Stats., this chapter exempts sources of certain sizes and types from the requirement to obtain a permit. ~~This chapter also applies to air contaminant sources authorized to obtain an elective operation permit under s. 144.391, Stats.~~ For nonattainment area major sources the construction permit requirements of ch. NR 408 apply in addition to the requirements of this chapter.

(2) PURPOSE. This chapter is adopted under ss. 144.31, 144.391(6), 144.393, 144.394 and 144.396, Stats., to exempt types of stationary sources from the requirement to obtain ~~an air pollution control~~ a construction permit and to establish permit ~~approval criteria to be used by the department and~~ permit review requirements and permit duration for construction ~~or modification and new operation~~ permits.

SECTION 19. NR 406.02(intro.) is amended to read:

NR 406.02 DEFINITIONS. (intro.) ~~In addition to the definitions in this section, the~~ The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

SECTION 20. NR 406.03 is amended to read:

NR 406.03(title) PERMIT REQUIREMENTS AND EXEMPTIONS FOR CONSTRUCTION PERMITS. No person may commence construction, reconstruction, replacement,

relocation or modification of a stationary source ~~or operate the constructed, reconstructed, replaced, relocated or modified stationary source~~ unless the person has a construction ~~or modification and new operation~~ permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 144.391~~(4)~~ or (5), Stats., or under this chapter. Applications for the construction ~~or modification and new operation~~ permit shall be submitted on forms which are available from the department at its Madison headquarters and district offices.

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

Attention: Permit Application Forms

SECTION 21. NR 406.04(title), (1)(intro.), (a)(intro.) and 5, (b) and (c) are amended to read:

NR 406.04(title) DIRECT SOURCES EXEMPT FROM CONSTRUCTION PERMIT REQUIREMENTS. (1)(intro.) SPECIFIC CATEGORIES OF EXEMPT SOURCES. The following categories of direct sources are exempt from the requirement to obtain a construction ~~or modification and new operation~~ permit unless construction, reconstruction, replacement, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source or the source is required to obtain a permit under ch. NR 408 because of ~~incremental growth as determined under sub. (7)~~ a significant net increase in the emissions an air contaminant for which the area is designated nonattainment:

(a)(intro.) ~~Fuel burning equipment~~ An external combustion furnace which will not burn any hazardous waste identified under ch. NR 605, or which ~~has~~

have been issued a ~~permit~~ ~~[license]~~ under ch. NR 680, and which ~~is~~ are designed to burn the following fuels at the maximum rates indicated:

5. Gaseous fuel at a heat input rate of not more than ~~30~~ 40 million BTU per hour.

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

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

SECTION 22. NR 406.04(1)(d) is repealed.

SECTION 23. NR 406.04(1)(e), (g), (h), (j) and (l) are amended to read:

NR 406.04(1)(e) Storage tanks containing ~~petroleum liquid or~~ organic compounds ~~which are not VOCs~~ with a true vapor pressure in pounds per square inch absolute at 70°F of less than 1.52 with a maximum capacity of not more than 40,000 gallons.

(g) Painting or coating operations, including associated cleaning operations, ~~which use or will use not more than 250 total gallons of paint, coatings and solvents per month or~~ which emit or will emit not more than 1666 pounds of ~~volatile~~ organic compounds per month, ~~without considering~~ which are measured prior to entering any emission control devices.

(h) Graphic arts operations, including associated cleaning operations, ~~which use or will use not more than 250 total gallons of coatings, inks and~~

~~solvents per month~~ or which emit or will emit not more than 1666 pounds of organic compounds per month, ~~without considering~~ which are measured prior to entering any emission control devices.

(j) A laboratory which emits organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides or particulate matter or a combination thereof at a rate of less than 5.7 pounds per hour unless the emissions of any single hazardous air pollutant as defined by s. 112(b) of the federal clean air act equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants equal or exceed 25 tons per year. ~~Emissions~~ Hourly emissions shall be determined, ~~without considering~~ based on the quantitative estimate of air contaminants before they enter any emission control devices, by dividing the total uncontrolled emissions which would have occurred during a calendar month by the total hours of operation of the laboratory during that calendar month. A laboratory is in operation if laboratory apparatus or equipment is in use.

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

SECTION 24. NR 406.04(2) is amended to read:

NR 406.04(2) GENERAL CATEGORY OF EXEMPT SOURCES. In addition to the specific categories of exempt sources identified in sub. (1), no construction ~~or modification and new operation~~ permit is required prior to commencing construction, reconstruction, replacement, relocation or modification ~~and operation~~ of a direct source if:

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

(b) The maximum theoretical emissions from the source will not emit for sulfur dioxide, or carbon monoxide or nitrogen oxides at a rate of more than do not exceed 9.0 pounds per hour for each pollutant emitted, without considering emission control devices air contaminant;

(c) The maximum theoretical emissions from the source will not emit for particulate matter, nitrogen oxides or organic compounds at a rate of more than do not exceed 5.7 pounds per hour for each pollutant emitted, without considering emission control devices air contaminant;

(cm) The maximum theoretical emissions from the source will not emit for PM<sub>10</sub> at a rate of more than do not exceed 3.4 pounds per hour, without considering emission control devices;

(d) The maximum theoretical emissions from the source will not emit for lead at a rate of more than do not exceed 0.13 pounds per hour, without considering emission control devices;

(e) The source will not emit any of the ~~following~~ air contaminants listed in s. NR 405.02(27)(a) at a rate greater than the applicable emission rate listed in s. NR 405.02(27)(a):

1. ~~Fluorides, 3.0 tons per year;~~
2. ~~Hydrogen sulfide, 10 tons per year;~~
3. ~~Reduced sulfur compounds, 10 tons per year;~~
4. ~~Total reduced sulfur, 10 tons per year;~~
5. ~~Vinyl chloride, 1.0 ton per year.~~

(f)1. The maximum theoretical emissions from the source ~~source's potential emissions at full capacity, without considering emission control devices, of~~ for any hazardous air contaminant listed in Table 1 or Table 4 of s. NR 445.04 ~~are~~ is not greater than the emission rate listed in Table 1 or Table 4 of s. NR 445.04 for the air contaminant for the respective stack height;

2. The maximum theoretical emissions from a source which manufactures or processes pesticides, rodenticides, insecticides, herbicides or fungicides ~~and its potential emissions at full capacity, without considering emission control devices, of~~ for any hazardous air contaminant listed in Table 2 of s. NR 445.04 ~~are~~ is not greater than the emission rate listed in the table for the air contaminant for the respective stack height;

3. The maximum theoretical emissions from the source ~~source's potential emissions at full capacity, without considering emission control devices, of~~ for any hazardous emission contaminant listed in Table 3 of s. NR 445.04 ~~do~~ does not exceed the emission rate contained in ~~Table 3 of s. NR 445.04~~ the table; and

4. The source does not combust municipal solid waste ~~(as defined in s. NR 500.03(86))~~, or infectious wastes;

(g) The maximum theoretical emissions from the source ~~will not emit for~~ any air contaminant not mentioned in par. (b), (c), ~~(cm)~~, (d), (e) or (f), ~~at a rate of more than~~ do not exceed 6.0 pounds per hour for each pollutant emitted, ~~without considering emission control devices~~ air contaminant; and

(h) The source is not required to obtain a permit under ch. NR 408 because of ~~incremental growth as determined under sub. (7)~~ a significant net

increase in the emissions an air contaminant for which the area is designated nonattainment.

SECTION 25. NR 406.04(2)(i) is created to read:

NR 406.04(2)(i) The source is not subject to any standard or regulation under s. 111 or 112 of the federal clean air act.

SECTION 26. NR 406.04(4)(intro.) and (a) are amended to read:

NR 406.04(4)(title) EXCLUSIONS FROM MODIFICATION. ~~The following are in addition to the exempt modifications listed in s. 144.391(4), Stats. For the purpose of determining if a modification occurs, a physical change in, or change in the method of operation of, a stationary source, may not include:~~

(a) Use of alternate fuel or raw material. ~~No construction or modification and new operation permit is required for a source to use~~ Use of an alternate fuel or raw material which the source is designed to burn or use if:

1. The source has continuously had such design capability ~~as a result of construction or modification which commenced before April 1, 1972; and~~

2. ~~Such~~ The use will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment;

3. ~~Such~~ The use is not prohibited by any permit, plan approval or special order applicable to the source; ~~and~~

4. The use will not result in a net emissions increase of a hazardous air contaminant above the threshold amount listed for the contaminant in Tables 1 to 4 of ch. NR 445 or the source is subject to an emission limit under s. NR 445.04 or 445.05 and has an air pollution control permit which

~~regulates a substance in Table 1 or 2 of s. NR 445.04 and the product of the~~  
following equation is equal to or less than 1.0:

$$\frac{\text{TLV (old substance)}}{\text{TLV (new substance)}} \times \frac{\text{Emissions (proposed new substance)}}{\text{Emissions (permitted old substance)}} =$$

SECTION 27. NR 406.04(4)(a)5 and 6 are created to read:

NR 406.04(4)(a)5. The use will not result in a violation of any emission limit in chs. NR 405, 408 and 415 to 436; and

6. The use will not subject the source to any standard or regulation under s. 112 of the federal clean air act.

SECTION 28. NR 406.04(4)(b) and (c) are amended to read:

NR 406.04(4)(b) VOC RACT compliance. ~~No construction or modification and new operation permit is required for the modification of~~ 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 modification 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.

(c) Resumption of operation. ~~No construction or modification and new operation permit is required for the~~ 1. The resumption of operation of a source after a period of closure if the existing equipment was continuously included in the department's emissions inventory as an existing source covered by plans submitted under s. 144.31(1)(f), Stats.

2. The resumption of operation of a source after a period of closure if the source was never included and never required to be included in the source



emissions inventory as an existing source covered by plans submitted under s. 144.31(1)(f), Stats., and the resumption of operation of the source will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment ~~and~~, will not result in the emission of a new air contaminant and ~~the resumption of operation~~ is not prohibited by any permit, plan approval or special order applicable to the source.

SECTION 29. NR 406.04(4)(d) is repealed and recreated to read:

NR 406.04(4)(d) Increase in production rate. An increase in production rate if:

1. The increased production rate does not exceed the design capacity of the source;
2. The production rate increase does not require any change to existing equipment;
3. The increase is not prohibited by any permit, plan approval or special order applicable to the source; and
4. The increase will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment or violate an emission limit.

SECTION 30. NR 406.04(4)(e), (f) and (g) are created to read:

NR 406.04(4)(e) Increase in hours of operation. An increase in hours of operation if:

1. The increase is not prohibited by any permit, plan approval or special order applicable to the source; and

2. The increase will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment or violate an emission limit.

(f) Change of ownership. A change in ownership of a source.

(g) Routine maintenance or repair. The routine maintenance or repair of a source.

SECTION 31. NR 406.04(5)(a)(intro.) and (b) and (6)(intro.) are amended to read:

NR 406.04(5)(a)(intro.) In addition to the approved relocated sources which are exempt from the need for an additional permit under s. 144.391(5), Stats., and the relocation of an emissions unit within the contiguous property of an attainment area major source, no construction ~~or modification and new operation~~ permit is required for the relocation of an emissions unit within the contiguous property of a minor source or a nonattainment area major source if:

(b) If the criteria in par. (a)1-, 2-, and 3- are met but the emissions unit's stack height or stack gas exit velocity or temperature will be decreased, no construction ~~or modification and new operation~~ permit is required for the relocation of the emissions unit if the allowable emissions from the source will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment.

(6)(intro.) EXEMPT REPLACEMENTS. No construction ~~or modification and new operation~~ permit is required for the replacement of a source if:

SECTION 32. NR 406.04(7) is repealed.

SECTION 33. NR 406.05 is repealed.

SECTION 34. NR 406.06(title), (1)(intro.), (2) and (3) are amended to read:

NR 406.06(title) INDIRECT SOURCES EXEMPT FROM CONSTRUCTION PERMIT

REQUIREMENTS. (1) SPECIFIC CATEGORIES OF EXEMPT SOURCES. The following categories of indirect sources are exempt from the requirement to obtain a construction ~~or modification and new operation~~ permit unless the construction, reconstruction, replacement, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source or the source is required to obtain a permit because of incremental growth as determined under sub. (3).

(2) EXEMPT MODIFICATION OF EXISTING SOURCES. ~~In addition to the exempt modifications listed in s. 144.391(4), Stats., no~~ No construction ~~or modification and new operation~~ permit is required for the resumption of operation of an indirect source after a period of closure if the source meets all the conditions specified in s. NR 406.04(4)(c).

(3) INCREMENTAL GROWTH. If a person constructs or modifies an indirect source in increments which individually are exempt from the requirement for a permit under this section, the person is required to obtain a construction ~~or modification and new operation~~ permit for the source prior to commencing construction or modification of the increment which, in combination with the other increments occurring since July 1, 1975, or since the date of the last air pollution control permit or plan approval issued to the source, whichever is later, will cause the applicable permit exemption criteria specified in sub. (1) to be exceeded.

SECTION 35. NR 406.07(2) is amended to read:

NR 406.07(2) If a source undergoes a modification which is exempt from the requirement to obtain a construction ~~or modification and new operation~~ permit under s. NR 406.04(4) ~~or s. 144.391(4), Stats.~~, it will not ~~for this reason~~ be treated as a modified source for purposes of the emission limitations under chs. NR 400 to 499. ~~If a source which is subject to an air pollution control permit, or a source which has submitted a compliance plan as required in s. NR 445.05, undergoes a modification by substituting a raw material which is subject to an emission limitation under s. NR 445.04 or 445.05 and the source replaces that material with another material subject to an emission limitation under s. NR 445.04 or 445.05 and the product of the equation in s. NR 406.04(4)(a)4. is equal to or less than 1.0, the source will not be treated as a modified source for purposes of the emission limitations of chs. NR 400 to 499.~~

SECTION 36. NR 408(title) is amended to read:

Chapter NR 408

~~PERMIT REVIEW AND APPLICATION CRITERIA~~

NONATTAINMENT AREA MAJOR SOURCE PERMITS

SECTION 37. NR 408.01 and 408.02 are repealed.

SECTION 38. NR 408.025 and 408.03 are renumbered 406.08 and 406.09.

SECTION 39. NR 408.04 and 408.05 are renumbered 406.10 and 406.11 and are amended to read:

NR 406.10 VIOLATIONS. Any owner or operator who fails to construct a stationary source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate a stationary source in accordance with conditions imposed by the department under s. 144.394, Stats.; any owner or operator who modifies a stationary source in violation of conditions imposed by the department under s. 144.394, Stats.; or any owner or operator ~~of a stationary source~~ who commences construction or modification ~~thereof~~ of a stationary source without applying for and receiving a permit as required under ~~ch. NR 406, this chapter or ch. NR 408~~ shall be considered in violation of s. 144.391, Stats.

NR 406.11 PERMIT DURATION PERIODS. Approval to construct or modify a stationary source shall become invalid ~~if construction or modification is not commenced within~~ 18 months after the date when a construction permit ~~for construction or modification~~ was issued by the department unless the permit specifies otherwise. The department may only extend such a time period for up to 18 additional months on written request upon satisfactory showing that an extension is justified unless the permit specifies otherwise.

SECTION 40. NR 408.06 and 408.07 are renumbered 406.12 and 406.13.

SECTION 41. NR 408.01 to 408.10 are created to read:

NR 408.01 APPLICABILITY; PURPOSE. (1) APPLICABILITY. This chapter applies to all new major sources and all major modifications to major sources

located in areas designated as ozone transport regions or nonattainment areas by the U.S. environmental protection agency or by the department.

(2) PURPOSE. The purpose of this chapter is to establish requirements and procedures, in addition to those in ch. NR 406, for reviewing and issuing construction permits to all new major sources and all major modifications to major sources located in areas designated as ozone transport regions or nonattainment areas by the U.S. environmental protection agency or by the department.

NR 408.02 DEFINITIONS. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, determined as follows:

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2 year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination by the department that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates and types of materials processed, stored or combusted during the selected time period. Where the implementation plan for an area is based on allowable emissions, or where actual emissions exceed allowable emissions, the department may presume that the source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(b) For any emissions unit, other than an electric utility steam generating unit, which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(c) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the department if it determines a period to be more representative of normal source post-change operations.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source, or using federally enforceable limits which restrict the operating rate, or hours of operation or both, if the source is subject to such federally enforceable limits, and using the most stringent of the following:

- (a) Any applicable standards in chs. NR 440 and 446 to 449.
- (b) Any applicable emissions limitations in chs. NR 400 to 499.
- (c) Any applicable state implementation plan emissions limitation including a limitation with a future compliance date.
- (d) Any emissions rate specified as a federally enforceable permit condition, including a limitation with a future compliance date.

(3) "Begin actual construction" means the initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work and construction of

permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(4) "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each air contaminant subject to regulation under the federal clean air act which would be emitted from any proposed major source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including clean fuels, fuel cleaning or treatment or innovative fuel combination techniques for control of the air contaminant. In no event may application of best available control technology result in emissions of any air contaminant which would exceed the emissions allowed by any applicable standard under chs. NR 440 and 446 to 449. Emissions from any source utilizing clean fuels or any other means to comply with this subsection may not be allowed to increase above the levels that would have been required prior to enactment of the 1990 federal clean air act amendments. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of a design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.



(5) "Building, structure, facility or installation" means all of the air contaminant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control except the activity of any vessel. Air contaminant sources shall be considered as part of the same industrial grouping if they are classified under the same 2-digit major group as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in ch. NR 484.

(6) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam which was not in widespread use as of November 15, 1990.

(7) "Clean coal technology demonstration project" means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. environmental protection agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(8) "Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or

operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(9) "Commence operation" means the initial startup of an emissions unit following completion of construction which results in the emission of an air contaminant for which the area is designated nonattainment. Any replacement unit that requires shakedown commences operation after a reasonable shakedown period, not to exceed 180 days.

(10) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the department, for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

(11) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition or modification of an emissions unit, which would result in a change in actual emissions.

(12) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW of electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(13) "Emissions unit" means any part of a stationary source, including point and area sources, which emits or would have the potential to emit any pollutant, including fugitive emissions, subject to regulation under the federal clean air act or under chs. NR 400 to 499.

(14) "Fossil fuel-fired boiler" means a unit, or combination of units, which combusts fossil fuel, or receives heat from other fossil fuel-fired units, to produce steam by indirect heat transfer, and includes units that produce steam for electric generation. The heat input for the units includes any heat provided to the units from the combustion of fossil fuels in other units. The total heat input from fossil fuel-firing for a combination of units is the sum of the heat inputs from fossil fuel-firing for each unit.

(15) "Fossil fuel-fired electric plant" means one or more units that combust fossil fuel to produce electricity. The total heat input for a plant from fossil fuel-firing is the sum of the heat inputs from fossil fuel-firing for each combustion unit that is part of the plant.

(16) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(17) "Indian governing body" means the governing body of any tribe, band or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(18) "Indian tribe" means any Indian tribe, band, nation or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(19) "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emission rate for the new or modified emissions units within a stationary source. In no event may the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under a new source standard of performance which applies under ch. NR 440 or under 40 CFR part 60.

(20) "Major modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal clean air act. Further:

(a) Any physical change in, or change in the method of operation of a major source of VOCs located in an extreme nonattainment area for ozone which results in any increase in emissions of VOCs from any discrete operation, emissions unit or other pollutant emitting activity at the source shall be considered a major modification for ozone.

(b) Any net emissions increase that is considered significant for VOCs shall be considered significant for ozone.

(c) For the purpose of applying the requirements of s. NR 408.03(6) to major sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, any significant net emissions increase of nitrogen oxides is considered significant for ozone, in addition to any separate requirements for nitrogen oxides.

(d) For the purposes of applying the requirements of s. NR 408.03(5) to major sources of PM<sub>10</sub> precursors, any significant net emissions increase of a PM<sub>10</sub> precursor is considered significant for PM<sub>10</sub>.

(e) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair and replacement.

2. Use of an alternative fuel or raw material by reason of an order under s. 2(a) and (b) of the federal energy supply and environmental coordination act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the federal power act;

3. Use of an alternative fuel by reason of an order or rule under s. 125 of the federal clean air act;

4. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

5. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before December 21, 1976, unless a change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to ch. NR 405 or 406 or under operation permits issued pursuant to ch. NR 407;

b. The source is approved to use under any permit issued under this chapter.

6. An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to ch. NR 405 or 406 or this chapter, or under operation permits issued pursuant to ch. NR 407.

7. Any change in ownership at a stationary source.

8. The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the department

determines that the addition, replacement or use renders the unit less environmentally beneficial, or except:

a. When the department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any air contaminant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the federal clean air act, if any; and

b. The department determines that the increase will cause or contribute to a violation of any ambient air quality standard or air quality increment, or visibility limitation.

9. The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

a. The state implementation plan; and

b. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(21) "Major source" means:

(a)1. Any direct stationary source of air pollutants which emits or has the potential to emit 100 tons per year (tpy) or more of any pollutant for which the area in which the source is located is nonattainment, except that lower emissions thresholds shall apply as follows to any stationary source for which a complete construction permit application was submitted or was required to be submitted after November 15, 1992:

a. 70 tpy of  $PM_{10}$ , or where applicable, a  $PM_{10}$  precursor, in any serious nonattainment area for  $PM_{10}$ ;

b. 50 tpy of VOC in any serious nonattainment area for ozone;

c. 50 tpy of VOC in areas within ozone transport regions except for any severe or extreme nonattainment area for ozone;

- d. 25 tpy of VOC in any severe nonattainment area for ozone;
- e. 10 tpy of VOC in any extreme nonattainment area for ozone;
- f. 50 tpy of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area.

Note: If any serious nonattainment area for CO is designated in the state, the department will make the determination of whether stationary sources contribute significantly to the CO levels in accordance with rules or guidance issued by the U.S. environmental protection agency.

2. Any stationary source of nitrogen oxides identified under par. (b);  
and

3. Any physical change that would occur at a stationary source not qualifying under subd. 1 or 2 as a major source, if the change would constitute a major source by itself.

(b) For the purposes of applying the requirements of s. NR 408.03(5), a stationary source for which a complete construction permit application was submitted or was required to be submitted after November 15, 1992 is major for nitrogen oxides if it is located in any ozone nonattainment area or ozone transport region and it emits, or has the potential to emit, nitrogen oxides as follows:

1. 100 tpy or more of nitrogen oxides in:  
a. Any ozone nonattainment area classified as marginal or moderate;  
b. Any ozone nonattainment area classified as transitional, submarginal or an incomplete or no data area, that is located in any ozone transport region;

c. Areas classified under the federal clean air act as attainment or unclassifiable for ozone that are located in any ozone transport region;

2. 50 tpy or more of nitrogen oxides in any serious nonattainment area for ozone;

3. 25 tpy or more of nitrogen oxides in any severe nonattainment area for ozone;

4. 10 tpy or more of nitrogen oxides in any extreme nonattainment area for ozone;

(c) A stationary source that is major for VOC shall be considered major for ozone and subject to the requirements for ozone in this chapter.

(d) For purposes of implementing the requirements of s. NR 408.03(4), a stationary source that is major for any  $PM_{10}$  precursor shall be considered major for  $PM_{10}$ .

(e) The fugitive emissions of a stationary source may not be included in determining, for any of the purposes of this chapter, whether it is a major source unless the source belongs to one of the following categories of stationary sources:

1. Carbon black plants (furnace process)
2. Coal cleaning plants (with thermal dryers)
3. Coke oven batteries
4. Charcoal production plants
5. Chemical process plants
6. Fuel conversion plants
7. Fossil fuel-fired boilers (or combination thereof) totaling more than 250 million BTU per hour heat input
8. Fossil fuel-fired electric plants of more than 250 million BTU per hour heat input
9. Glass fiber manufacturing plants
10. Hydrofluoric acid plants
11. Iron and steel mills
12. Kraft pulp mills
13. Lime plants



14. Municipal incinerators (or combinations thereof) capable of charging more than 50 tons of refuse per day
15. Nitric acid plants
16. Petroleum refineries
17. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
18. Phosphate rock processing plants
19. Portland cement plants
20. Primary aluminum ore reduction plants
21. Primary copper smelters
22. Primary lead smelters
23. Primary zinc smelters
24. Secondary metal production plants
25. Sintering plants
26. Sulfuric acid plants
27. Sulfur recovery plants
28. Taconite ore processing plants
29. Any other stationary source category regulated under s. 111 or 112 of the federal clean air act before November 15, 1990.

(22) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

(23)(a) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

1. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

2. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

1. The date 5 years before construction on the particular change commences, and

2. The date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this chapter, which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is federally enforceable at and after the time that actual construction on the particular change begins; and

3. The department has not relied on it in issuing any permit under ch. NR 405, 406 407 or this chapter or the state has not relied on it in demonstrating attainment or reasonable further progress;

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

5. The unit was actually operated and emitted the air contaminant for which the decrease is being sought. Reductions of permitted emissions for

units that were never operated cannot be considered creditable emissions decreases.

(f) An emissions increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(24)(a) "Nonattainment area" means any area that does not meet the primary or secondary ambient air quality standard for a pollutant and that is designated nonattainment with respect to that pollutant by the administrator of the U.S. environmental protection agency pursuant to s. 107(d) of the federal clean air act or by the department pursuant to s. 144.371(2), Stats.

(b) For certain pollutants, nonattainment areas are classified for the purpose of applying an attainment date or for other purposes, in accordance with procedures in the federal clean air act. The following nonattainment area classifications have been established:

1. For ozone: marginal, moderate, serious, severe and extreme;
2. For  $PM_{10}$ : moderate and serious; and
3. For carbon monoxide: moderate and serious.

Note: See 40 CFR part 81 for a listing of the specific areas.

(25) "Ozone transport region" means any interstate transport region which has been established for ozone pursuant to s. 176A of the federal clean air act.

(26) " $PM_{10}$  precursor" means, for the purposes of implementing the requirements of s. NR 408.03(4), sulfur dioxide, nitrogen oxides or volatile organic compounds.

(27) "Pollution control project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from the unit. Activities or projects are limited to:

(a) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(b) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal re-burning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(c) A permanent clean coal technology demonstration project conducted under title II, s. 101(d) of the further continuing appropriations act of 1985, 42 USC 5903(d), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. environmental protection agency; or

(d) A permanent clean coal technology demonstration project that constitutes a repowering project.

(28) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operation limitation on the capacity of the source to emit a pollutant shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Limitations which can be considered in the determination of potential to emit include the application of air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed.

Secondary emissions may not be counted in determining a sources's potential to emit.

Note: A permit limitation on emissions from any source, including a minor source which would otherwise be considered a major source, shall include adequate testing, monitoring and recordkeeping procedures in order to be considered a federally enforceable limitation.

(29) "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant required by part D of the federal clean air act or may reasonably be required by the department or the administrator of the U.S. environmental protection agency for the purpose of ensuring attainment of the applicable national ambient air quality standards in an area by the applicable statutory deadline.

(30) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit, or a different consecutive 2-year period within 10 years after that change, where the department determines that the period is more representative of normal source operations, considering the effect any change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall:

(a) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the state or federal regulatory authorities, and compliance plans under title IV of the federal clean air act; and

(b) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected

capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(31) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself. For the purpose of this chapter, secondary emissions shall be specific, well defined, quantifiable and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include tailpipe emissions from any source regulated under title II of the federal clean air act or any emissions from in-transit marine vessels.

(32)(a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following, except as provided in pars. (b) to (h):

1. Carbon monoxide: 100 tons per year (tpy).
2. Nitrogen oxides: 40 tpy.
3. Sulfur dioxide: 40 tpy.
4. Particulate matter: 25 tpy.
5.  $PM_{10}$ : 15 tpy.
6. Ozone: 40 tpy of VOC.
7. Lead: 0.60 tpy.

(b) Notwithstanding the significant emission rate for carbon monoxide under par. (a), a net increase in carbon monoxide emissions resulting from any

physical change in, or change in the method of operation of, a stationary source in a serious nonattainment area for carbon monoxide is significant if the increase exceeds 50 tpy, provided stationary sources contribute significantly to carbon monoxide levels in that area.

Note: If any serious nonattainment area for CO is designated in the state, the department will make the determination of whether stationary sources contribute significantly to the CO levels in accordance with rules or guidance issued by the U.S. environmental protection agency.

(c) Notwithstanding the significant emissions rate for ozone under par. (a), a net increase in emissions of VOCs that would result from any physical change in, or change in the method of operation of, a stationary source for which a complete construction permit application was submitted or was required to be submitted after November 15, 1992 and which is located in a serious or severe nonattainment area for ozone is significant if the increase exceeds 25 tpy when aggregated with all creditable increases and decreases in emissions of that precursor from the source over any period of 5 consecutive years, which includes the calendar year in which the increase will occur.

(d) Notwithstanding the significant emissions rates for ozone under pars. (a) and (c), any increase in VOC emissions from any discrete operation, unit or other pollutant emitting activity at a major source of VOCs located in an extreme nonattainment area for ozone shall be considered significant.

(e) Notwithstanding the significant emission rates for PM<sub>10</sub> under par. (a), a net increase in PM<sub>10</sub> emission resulting from a physical change in, or a change in the method of operation of, a stationary source in a serious nonattainment area for PM<sub>10</sub> is significant if the increase exceeds 10 tpy.

(f) For the purposes of applying the requirements of s. NR 408.03(5) to major sources of nitrogen oxides for which a complete construction permit application was submitted or was required to be submitted after November 15, 1992 and which are located in ozone nonattainment areas or in ozone transport

regions, the significant emission rates and other requirements for VOC in this subsection shall apply to nitrogen oxides emissions.

(g) For the purposes of applying the requirements of s. NR 408.03(4) to a major source of a PM<sub>10</sub> precursor located in a moderate PM<sub>10</sub> nonattainment area, the significant emission rate for the PM<sub>10</sub> precursor is 15 tpy.

(h) For the purposes of applying the requirements of s. NR 408.03(4) to a major source of a PM<sub>10</sub> precursor located in a serious PM<sub>10</sub> nonattainment area, the significant emission rate for the PM<sub>10</sub> precursor is 10 tpy.

(33) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

NR 408.03 SOURCE APPLICABILITY AND EXEMPTIONS. (1) No person may begin actual construction of a major source or major modification to which the requirements of this chapter apply unless the person has a permit which states that the stationary source or modification will meet the requirements of ss. NR 408.04 to 408.10.

(2) The requirements of ss. NR 408.04 to 408.10 shall apply only to any new major source or major modification that is major for the pollutant, or the precursor of the pollutant, as applicable, for which an area is designated as nonattainment, or as an ozone transport region, as of the date the permit is issued, if the stationary source or modification would be constructed anywhere in the designated nonattainment area or ozone transport region.

(3) The requirements of ss. NR 408.04 to 408.10 shall apply with respect to any air contaminant for which an applicable source is major and in



the case of a modification, would result in a significant net emissions increase for that pollutant.

(4) The requirements of ss. NR 408.04 to 408.10 applicable to new major sources or major modifications of  $PM_{10}$  shall also apply to each  $PM_{10}$  precursor for which the source is a major source, except that the requirements do not apply where the administrator of the U.S. environmental protection agency determines that the sources of  $PM_{10}$  precursors do not significantly contribute to  $PM_{10}$  levels which exceed the  $PM_{10}$  ambient standards.

(5) The requirements of ss. NR 408.04 to 408.10 applicable for new major sources or major modifications of VOC shall apply to nitrogen oxides emissions from new major sources or major modifications of nitrogen oxides, except that the requirements do not apply if the administrator of the U.S. environmental protection agency determines, when the administrator approves a plan, plan revision or petition under provisions of s. 182(f) of the federal clean air act, that the statutory requirements of s. 182(f) do not apply.

(6) For any major modification which results in a significant net emissions increase of VOCs in a serious or severe nonattainment area for ozone, if the source's potential to emit is less than 100 tpy of VOCs, the requirements of ss. NR 408.04 to 408.10 will not apply with respect to the VOCs if the owner or operator of the source elects to offset the increase in VOC emissions by a greater reduction in emissions of VOCs from other operations, units or activities within the source, at an internal offset ratio of at least 1.3 to 1.

(7) Notwithstanding the requirements for offsets under s. NR 408.06, emission offsets for an increase in the emissions of VOCs will not be required for a major modification which results in a significant increase in VOC emissions in an extreme nonattainment area for ozone if the modification consists of the installation of equipment required to comply with the

applicable implementation plan, permit or provision under the federal clean air act.

(8) The provisions of this chapter do not apply to a source or modification that would be a major source or major modification only if fugitive emissions to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the source categories contained in s. NR 408.02(21)(e).

(9) For attainment or unclassifiable areas within an ozone transport region, the permitting requirements of both ch. NR 405 and this chapter shall apply and where requirements conflict or overlap, the more stringent requirements shall prevail.

NR 408.04 CONTROL TECHNOLOGY REVIEW. (1) A major source or major modification shall meet each applicable emission limitation under this chapter and each applicable emission standard or standard of performance under chs. NR 440 and 446 to 449.

(2) A new major source shall apply the lowest achievable emission rate for each pollutant subject to the provisions of this chapter that it would have the potential to emit in an amount which makes the source a major source. This provision applies to each new emissions unit at which emission increases would occur.

(3) A major modification shall apply the lowest achievable emission rate for each pollutant subject to the requirements of this chapter for which it would result in a significant net emissions increase at the source. This requirement applies to each emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no more than 18 months prior to commencement of construction of each independent phase of the project. At the time of the review, the owner or operator of the affected stationary source may be required to demonstrate the adequacy of any previous determination of the lowest achievable emission rate for the source.

(5) In the case of any major modification which results in a significant net emissions increase in VOC emissions in a serious or severe nonattainment area for ozone, if the modification occurs at a source which emits or has the potential to emit 100 tons or more of the VOCs per year, the requirements of sub. (3), concerning compliance with the lowest achievable emission rate, will not apply if the owner or operator of the source elects to offset the increase of emissions of the VOCs by a greater reduction in emissions of VOCs from other operations, units or pollutant emitting activities within the source at an internal offset ratio of at least 1.3 to 1.

(6) In the case of any major modification which results in a significant net emissions increase in VOC emissions in a serious or severe nonattainment area for ozone, if the source's potential to emit is less than 100 tpy of VOCs, the source shall be required to comply with BACT as a substitute for the LAER otherwise required under sub. (3).

(7) The department shall, for each new major source and major modification, submit to the U.S. environmental protection agency, within 60 days of issuance of the construction permit, all information on the emissions prevention or control technology for the new major source or major modification.

Note: The data submitted by the department will be included in the U.S. environmental protection agency's RACT/BACT/LAER Clearinghouse.

NR 408.05 REASONABLE FURTHER PROGRESS. (1) By the time the proposed major source or major modification is to commence operation, sufficient offsetting emissions shall be in effect such that the total emissions from existing sources in the area, from new or modified sources which are not major sources and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for the permit to construct or modify so as to represent, when considered together with the plan provisions required under s. 172 of the federal clean air act, reasonable further progress.

(2) For the purposes of satisfying the requirements of sub. (1):

(a) The determination of total emissions at both the time prior to the application for a permit subject to the requirements of this chapter and the time the permitted source or modification would commence operation, shall be made in a manner consistent with the assumptions in the applicable state implementation plan approved by the administrator of the U.S. environmental protection agency concerning baseline emissions for the demonstration of reasonable further progress and attainment of the national ambient air quality standards for the particular pollutant subject to review under this chapter.

(b) To demonstrate reasonable further progress a new or modified source subject to review under this chapter shall obtain offsets in an amount equal to or greater than the amount specified by the applicable offset ratio. If an offset ratio is not specified, the offset ratio shall be at least 1 to 1.

NR 408.06 EMISSIONS OFFSETS. (1) To be eligible for use under this chapter, emissions offsets shall meet all of the following criteria:

(a) Offsets shall be of the same air contaminant class, that is, volatile organic compounds, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide or lead.

(b) Offsets for particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead shall be in a time frame compatible with the applicable air quality standard.

(c) Offsets for volatile organic compounds and nitrogen oxides, where applicable, shall be quantified on an annual basis. In addition, the source shall submit emission estimates in a time frame consistent with the air quality standard for ozone.

Note: The time frame for the air quality standard for each pollutant is given in s. NR 404.04.

(d) Offsets shall result in a net air quality benefit.

Note: The term "net air quality benefit" will be interpreted based on U.S. EPA's December 4, 1986 Emission Trading Policy Statement until revised by the U.S. EPA or the department.

(e) The emission reductions used as offsets shall be generated after the date used as a baseline or shall be included in the baseline for the portion of the latest state implementation plan which relates to the nonattainment status of the area. Emission reductions occurring before August 7, 1977 may not be used as offsets.

(f) The assumptions used to calculate the offset shall be consistent with the assumptions used to develop the area's implementation plan.

(g) Offsets shall be surplus, permanent, quantifiable and federally enforceable at the time of their use.

(2) Prior to the issuance of a permit under this chapter, federally enforceable emissions offsets shall be obtained from the same source or other sources in the same nonattainment area, except that the emissions offsets may be obtained from a source in another nonattainment area if:

(a) The other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) Emissions from the other area contribute to a violation of a national ambient air quality standard in the nonattainment area in which the proposed new or modified source would be constructed.

(3) The total annual tonnage of emissions of any applicable air contaminant allowed from the proposed new source, or net emissions increase from the modification, shall be offset by an equal or greater reduction, as applicable, in the actual emissions of the air contaminant from the same or other sources.

(4) In meeting the requirements of sub. (3) for ozone nonattainment areas classified under s. 182 of the federal clean air act, the ratio of total actual emission reductions of VOCs, and nitrogen oxides where applicable, to the net emissions increase for the same air contaminant class shall be as follows:

- (a) In any marginal nonattainment area for ozone: at least 1.1 to 1;
- (b) In any moderate nonattainment area for ozone: at least 1.15 to 1;
- (c) In any serious nonattainment area for ozone: at least 1.2 to 1;
- (d) In any severe nonattainment area for ozone: at least 1.3 to 1;
- (e) In any extreme nonattainment area for ozone: at least 1.5 to 1.

(5) Within an ozone transport region, for any area designated for ozone attainment, unclassifiable or marginal nonattainment, the ratio of total actual emissions reductions of VOCs and nitrogen oxides where applicable to the net emissions increase for the same air contaminant class shall be at least 1.15 to 1.

(6) A major modification which has a significant net emissions increase of VOCs, or nitrogen oxides where applicable, which is located in an extreme nonattainment area for ozone will be considered to comply with the offset requirements under s. NR 408.05 if the owner or operator of the source elects to offset the proposed emissions increase of VOCs, and nitrogen oxides where

applicable, by a greater reduction in actual emissions from other discrete operations, units or pollutant emitting activities within the source at an internal offset ratio at least 1.3 to 1.

(7)(a) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if:

1. The reductions are surplus, permanent, quantifiable and federally enforceable;

2. The area has a U.S. environmental protection agency approved state implementation plan, except as provided in par. (b);

3. The source notifies the department in writing prior to the date the shutdown or curtailment occurs. The notification shall include documentation of the type and quantity of emission reduction credit to be generated;

4. The shutdown or curtailment occurs on or after the date specified for this purpose in the state implementation plan, and if the date specified is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. The department may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from the previously shutdown or curtailed sources. However, no credit is available for shutdowns which occurred prior to August 7, 1977.

(b) The emission reductions described in par. (a) may be credited in the absence of a U.S. environmental protection agency approved state implementation plan only if the shutdown or curtailment occurs on or after the date the construction permit application is filed or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of par. (a)4. are observed.

(8) No emissions reduction credit may be allowed for reductions in any organic compound specifically excluded from the definition of "VOC" in s. NR 400.02(100).

(9) Credit for an emissions reduction may be claimed to the extent that the department has not relied on it in issuing any permit under ch. NR 405, 406, 407 or this chapter or the state has not relied on it in demonstrating attainment or reasonable further progress. Incidental emissions reductions which are not otherwise required under the federal clean air act or chs. NR 400 to 499 may be creditable as emissions reductions for such purposes if the emissions reductions meet the applicable requirements of subs. (1) and (2).

NR 408.07 SOURCE IMPACT ANALYSIS. The applicant for a permit under this chapter shall demonstrate to the satisfaction of the department that:

(1) The emissions offsets required under s. NR 408.06, when considered in conjunction with the proposed emissions increase, will have a net air quality benefit in the affected area, as required under s. NR 408.06(1)(d);

(2) The emissions from the proposed new major source or major modification, when considered in conjunction with the emissions offsets required under s. NR 408.06, will not contribute to nonattainment in, or interfere with maintenance by, any other state with respect to any national primary or secondary ambient air quality standard; and

(3) The emissions from the proposed new major source or major modification, when considered in conjunction with the emissions offsets required under s. NR 408.06, will not interfere with measures required to be included in the applicable implementation plan for any other state under a program for the prevention of significant deterioration or for the protection of visibility.



NR 408.08 ADDITIONAL CONDITIONS FOR APPROVAL. For the department to approve a permit required or allowed under s. 144.391, Stats., and this chapter the following criteria shall be met:

(1) All major sources owned or operated by the owner or operator of the proposed source, or by any entity controlling, controlled by, or under common control with the owner or operator, in the state are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emissions limitations and standards under the federal clean air act and chs. NR. 400 to 499.

(2) By means of an analysis of alternative sites, sizes, production processes and environmental control techniques for proposed new or modified stationary source, the owner or operator of the proposed stationary source or modification can demonstrate to the satisfaction of the department that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(3) The administrator of the U.S. environmental protection agency has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed stationary source or modification is to be constructed in accordance with the requirements of part D of the federal clean air act.

NR 408.09 PERMIT APPLICATION REVIEW; PUBLIC PARTICIPATION. (1) The department shall notify all applicants within 20 days as to the completeness of the construction permit application or any deficiency in the application or information submitted. In the event of a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

(2) Within 120 days after receipt of a complete application, the department shall:

(a) Make a preliminary determination as to whether construction should be approved, approved with conditions or disapproved.

(b) Make available in at least one location in each area in which the proposed source would be constructed a copy of all materials the applicant has submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(c) Notify the public, by advertisement in a newspaper of general circulation in each area in which the proposed source would be constructed, of the application, the preliminary determination, a description of the amount and location of emission reductions that will offset the emissions increase from the new source, or significant net emissions increase from the modification; the determination of lowest achievable emission rate; and the opportunity for comment at a public hearing as well as for written public comment.

(d) Send a copy of the notice of the opportunity for public comment to the applicant, the administrator of the U.S. environmental protection agency, region 5, and officials and agencies having jurisdiction over the location where the proposed construction would occur, including any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any comprehensive regional land use planning agency, and any state, federal land manager or Indian governing body whose lands may be affected by emissions from the source or modification.

(e) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required and other appropriate considerations.

(f) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearings in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department earlier made available preconstruction information relating to the proposed source or modification.

(g) Make a final determination as to whether construction should be approved, approved with conditions or disapproved.

(h) Notify the applicant in writing of the final determination and make the notification available for public inspection at the same locations where the department earlier made available preconstruction information and public comments relating to the source.

NR 408.10 SOURCE OBLIGATION. (1) Any owner or operator who constructs or operates a stationary source or modification not in accordance with the application submitted under this chapter or with the terms of any approval to construct, or any owner or operator of a stationary source or modification subject to this chapter who commences construction after the effective date of this rule....[revisor inserts date] without applying for and receiving approval as described in this chapter, shall be subject to enforcement action and penalties as provided in ch. NR 494.

(2) The approval to construct or modify a stationary source shall become invalid 18 months after the date a construction permit is issued by the department unless the permit specifies otherwise. The department may extend the 18 month period upon a satisfactory showing that an extension is justified unless otherwise specified in the construction permit.

(3) The approval to construct does not relieve any owner or operator of the responsibility to comply fully with applicable provision of chs. NR 400 to 499 or any other requirements under local, state or federal law.

(4) At the time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of ss. NR 408.04 to 408.10 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

SECTION 42. NR 439.06(3)(intro.) is amended to read:

NR 439.06(3)(intro.) ORGANIC COMPOUND EMISSIONS. The owner or operator of a source shall use the test methods and procedures listed in this subsection to determine compliance with an organic compound emission limitation. If a test method inadvertently measures compounds which are listed in s. NR 400.02(100) as having negligible photochemical reactivity, the owner or operator may exclude these compounds when determining compliance with a VOC emission limit if the amount of these compounds is accurately quantified and the exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any subsequent time, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly reactive compounds in the source's emissions. Unless a source achieves compliance through an averaging method specifically authorized by the department, organic compound emission limitations in chs. 419 to 424 shall be achieved on an instantaneous basis.

SECTION 43. NR 484.03(6) [as affected by Clearinghouse Rule 92-184] is amended to read:

NR 484.03(6) The following materials may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia PA 19103:

(a) ASTM D240-87, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, for s. NR 400.02(43e).

(b) ASTM D396-89a, Standard Specification for Fuel Oils, for s. NR 400.02(80). ~~Copies of this document may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.~~

(c) ASTM D1826-88, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, for s. NR 400.02(43e).

(d) ASTM D2015-91, Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter, for s. NR 400.02(43e).

SECTION 44. NR 484.04(2)(d) [as affected by Clearinghouse Rule 92-184] is amended to read:

NR 484.04(2)(d) Standard Industrial Classification Code Manual, 1987, NTIS order no. PB 87-100012, for s. NR 405.02(8), 407.04(1)(a), 408.02(5) and 410.02(4).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 25, 1993.

The 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.

Dated at Madison, Wisconsin April 20, 1993.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E Meyer  
George E. Meyer, Secretary

(SEAL)

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