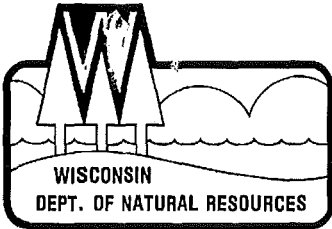


CR 94-43



George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

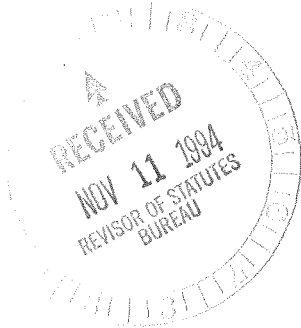
101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, 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-8-94 was duly approved and adopted by this Department on August 18, 1994. 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 hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 28th day of October, 1994.



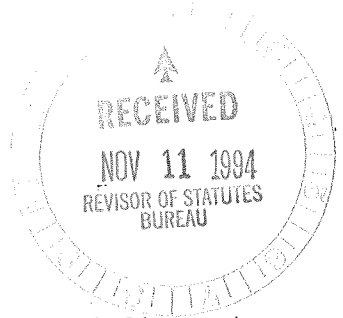
George E. Meyer
George E. Meyer, Secretary

(SEAL)

95
1-1-94



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



IN THE MATTER of renumbering ss. NR 445.01(1), renumbering and amending ss. NR 445.04(5), (7), 445.05(5), (6)(e) and (8), amending ss. NR 406.04(2)(f)3., (3)(a), 407.03(2)(d), 445.04(6)(a) and (b)2., 445.05(6)(intro), (c), (d)1. and 5., (f)1. and 3., (7)(c)1.b., 445.06(3) and 484.09(3) and creating ss. NR 400.02(98g), 406.04(2)(f)3m., 445.01(1)(b), 445.02(9g), 445.04(4r), (5)(b) and (c), (6)(b)4. and (f), (7)(b) and (c), Table 5, 445.05(4r), (5)(b) and (c), (6)(bm), (d)7., (e)2. and (8)(b) and (c), Wisconsin Administrative Code, pertaining to the regulation of hazardous air contaminants.

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 144.31(1)(a) and 227.11(2)(a), Stats.

Statutes interpreted: s. 144.31(1)(f), Stats. The State Implementation Plan developed under that provision is revised.

Regulations designed to protect Wisconsin residents from hazardous air contaminants were adopted by the Natural Resources Board in May of 1988 and became effective in October of 1988. Revisions to these regulations were adopted by the Board in September of 1991 and in April of 1992. These rules, which are contained in chs. NR 406, 407 and 445 of the Wisconsin Administrative Code, restrict the emissions of hazardous air contaminants which are considered to be toxic or carcinogenic.

In 1990 a department study concluded that the existing state regulation should be supplemented to adequately protect the public against chronic, noncarcinogenic health effects resulting from exposure to emissions of hazardous air pollutants by the use of the reference concentration methodology.

The following creation and amending of rules will allow the department to use the reference concentration methodology to provide for better protection of public health from emissions of hazardous air contaminants known to have chronic, noncarcinogenic health effects.

Amended sections of NR 406 and 407 lay out permit application procedures for significant sources of emissions of these hazardous air contaminants.

Created and amended sections of NR 445 include a supporting definition, emission limitations, compliance requirements and schedules and a variance procedure for sources.

SECTION 1 NR 400.02(98g) is created to read:

NR 400.02(98g) "Threshold limit value" means the airborne concentration of substances, which represents exposure conditions under which it is believed that nearly all workers may be repeatedly exposed to day after day without adverse health effects.

SECTION 2 NR 406.04(2)(f)3. is amended to read:

NR 406.04(2)(f)3. The maximum theoretical emissions from the source of any hazardous air contaminant listed in Table 3 of s. NR 445.04 do not exceed the emission rate contained in the table; and

SECTION 3 NR 406.04(2)(f)3m. is created to read:

NR 406.04(2)(f)3m. The maximum theoretical emissions from the source of any hazardous air contaminant listed in Table 5 of s. NR 445.04 are not greater than the emission rate listed in Table 5 of s. NR 445.04 for the air contaminant for the respective stack height; and

SECTION 4 NR 406.04(3)(a) is amended to read:

NR 406.04(3)(a) For the purpose of determining emissions under sub. (2)(f), the owner or operator of a source may rely on information on an approved material safety data sheet if the approved material safety data sheet lists a hazardous air contaminant listed in Tables 1 to 45 of s. NR 445.04 and the hazardous air contaminant listed in Tables 1, 2, ~~or~~ 4 or 5 of s. NR 445.04

constitutes 10,000 parts per million or more of the material or the hazardous air contaminant listed in Table 3 constitutes 1,000 parts per million or more of the material. If an approved material safety data sheet for a material is not classified as proprietary and does not list a hazardous air contaminant in Tables 1 to 4~~5~~ of s. NR 445.04 at or above the amounts listed in this paragraph, the material will be presumed not to result in emissions of a hazardous air contaminant unless a hazardous air contaminant is formed in processing the material.

SECTION 5 NR 407.03(2)(d) is amended to read:

NR 407.03(2)(d) ~~The source will not emit maximum theoretical emissions from the source for any hazardous air contaminant listed in Table 1, 2, 3 or 4 or 5 of s. NR 445.04 in amounts greater than~~ do not exceed the emission rate listed in ~~Table 1, 2, 3 or 4 of s. NR 445.04~~ the table for the hazardous air contaminant for the respective stack height; and

SECTION 6 NR 445.01(1) is renumbered 445.01(1)(a).

SECTION 7 NR 445.01(1)(b) is created to read:

NR 445.01(1)(b) Notwithstanding par. (a), after the effective date of emission limitations of this chapter, a source of hazardous air pollutants subject to a national emission standard under s. 112 of the act shall continue

to comply with the provisions of this chapter provided regulations promulgated under s. 112 of the act allow them to do so.

SECTION 8 NR 445.02(9g) is created to read:

NR 445.02(9g) "Reference concentration" means a verified reference concentration developed by the United States environmental protection agency which is an estimate of an exposure of the human population, including sensitive subgroups to a hazardous air contaminant, that is likely to be without an appreciable risk of deleterious effects during a lifetime. A reference concentration is based on continuous inhalation exposures to the hazardous air contaminant and is expressed in units of micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

SECTION 9 NR 445.04(4r) is created to read:

NR 445.04(4r) TABLE 5 SUBSTANCES. (a) *Annual limitations*. Except as provided in par. (b) or s. NR 406.07(2), no owner or operator of a stationary source on which construction or modification last commenced after the effective date of this subsection... [revisor insert date], may cause, allow or permit emissions from the constructed or modified source of a hazardous air contaminant listed in Table 5 of this section in such quantity or duration as to cause ambient air concentrations off the source's property that exceed the reference concentration shown in Table 5 of this section on an annual basis.

NOTE: For the purposes of this section a source shall be considered as a modified source and required to achieve compliance with the provisions of this section only for those hazardous air contaminants not previously emitted or those hazardous air contaminants where there would be an allowed increase in emissions as a result of the modification.

(b) *Exemptions.* All of the following emissions are exempt from the emission limitations for the hazardous air contaminants listed in Table 5 of this section:

1. Emissions from the combustion of group 1 virgin fossil fuels.
2. Emissions from the combustion of group 2 virgin fossil fuels vented from a stack which has downwash minimization stack height or a height approved by the department.
3. Emissions from a laboratory.
4. Indoor emissions which are exhausted to the ambient air through general building ventilation and which have a threshold limit value established by the American conference of governmental and industrial hygienists, in the threshold limit values and biological exposure indices for 1990-91, incorporated by reference in ch. NR 484, and for which the source is in compliance with applicable occupational safety and health administration requirements.

5. Emissions from sources required to meet national emission standards promulgated under 40 CFR part 63 prior to the effective date of this subsection...[revisor insert date].

6. Emissions from gasoline dispensing at any source which meets the requirements of s. NR 420.04(3)(b) to (i) or which dispenses less than one million gallons a year.

(c) *Records*. The owner or operator of a source not subject to sub. (6) shall maintain the following records in writing at the source, as appropriate:

1. The hazardous air contaminants in Table 5 of this section the source is capable of emitting;

2. The allowable emissions for each hazardous air contaminant identified in subd. 1 for each emissions unit;

3. The methods used to calculate allowable emissions under subd. 2, including:

a. All calculations which show the dimensional units for all values used;

b. Emission factors used and reference to stack tests, mass balance calculations or EPA documents that the emission factor is based on; or

4. Information to support exemption claims including fuels used, laboratory status or downwash minimization stack height calculations as appropriate.

SECTION 10 NR 445.04(5) is renumbered 445.04(5)(a) and amended to read:

NR 445.04(5) INCINERATORS. (a) Any owner or operator of a stationary source on which construction or modification commenced after October 1, 1988 and which combusts municipal solid waste as defined in s. NR 500.03(86) or infectious waste shall comply with subs. (1) and (4) and shall control emissions of hazardous air contaminants listed in Table 3 to a level which is the lowest achievable emission rate. ~~A source which combusts refuse derived fuel in a boiler and obtains less than 50% of its heat input from the refuse derived fuel is not subject to this subsection.~~

SECTION 11 NR 445.04(5)(b) and (c) are created to read:

NR 445.04(5)(b) Any owner or operator of a stationary source on which construction or modification last commenced after the effective date of this subsection... [revisor insert date] and which combusts municipal solid waste as defined in s. NR 500.03(86) or infectious waste shall comply with sub. (4r).

(c) A source which combusts refuse derived fuel in a boiler and obtains less than 50% of its heat input from the refused derived fuel is not subject to this subsection.

SECTION 12 NR 445.04(6)(a) and (b)2. are amended to read:

NR 445.04(6)(a) *Compliance timing.* Except as provided for in pars. (d) and (e) and (f), any source which commences construction or modification on or after October 1, 1988 shall meet the emission limitations in this section upon startup.

(b)2. The owner or operator of a source may demonstrate compliance with emission limitations of sub. (1), (2), (4), (4r) or (5) by demonstrating that the concentration of the substance in Table 1, 2 ~~or 4~~ or 5 in the stack is less than the ambient concentration allowed under sub. (1), (2) ~~or (4)~~ or (4r).

SECTION 13 NR 445.04(6)(b)4. and (f) are created to read:

NR 445.04(6)(b)4. The owner or operator of a source may rely on information on an approved material safety data sheet if the approved material safety data sheet lists a hazardous air contaminant listed in Tables 1 to 5 of this section and the hazardous air contaminant listed in Table 1, 2, 4 or 5 of this section constitutes 10,000 parts per million or more of the material or the hazardous air contaminant listed in Table 3 of this section constitutes 1,000 parts per million or more of the material. If an approved material safety data sheet for a material is not classified as proprietary and does not list a hazardous air contaminant in Tables 1 to 5 of this section at or above the amounts listed in this paragraph, that material will be presumed not to result in emissions of a hazardous air contaminant unless a hazardous air contaminant is formed in processing the material.

(f) *Compliance schedule for Table 5 substances.* The owner or operator of a stationary source on which construction or modification last commenced prior to the effective date of this subsection... [revisor insert date] and whose allowable emissions of any hazardous air contaminant listed in Table 5 of this section are equal to or greater than the emission rate listed in Table 5 for the respective stack height, shall meet the emission limitations in sub. (4r) for these contaminants in accordance with s. NR 445.05(6)(bm).

SECTION 14 NR 445.04(7) is renumbered NR 445.04(7)(a) and amended to read:

NR 445.04(7) VARIANCE. (a) The owner or operator of a source may apply for and the department may grant a variance from an emission limitation of sub. (3)(a), (4r)(a) or (5) if the applicant demonstrates to the satisfaction of the department that ~~compliance with sub. (3)(a) or (5) would be economically infeasible, and that residual emissions of the hazardous air contaminant in question would not cause significant harm to the environment or public health, and the source's emissions are controlled to a level which is the best available control technology~~ applicable provisions under par. (b) or (c) are met. The department shall publish a notice of and hold a public hearing on any preliminary determination to approve a variance request under this subsection. The department shall grant or deny a variance request within 90 business days after the close of the public ~~hearing~~ comment period on the request. The department shall review any variance granted under this subsection on a 5 year basis. Following its review and after notice and an opportunity for a public hearing and public comment, the department may modify, extend or rescind the variance.

SECTION 15 NR 445.04(7)(b) and (c) are created to read:

NR 445.05(7)(b) An applicant for a variance from the emission limitation of sub. (3)(a) or (5) shall demonstrate all of the following to the satisfaction of the department:

1. Compliance with sub. (3)(a) or (5) would be economically infeasible.

2. Residual emissions of the hazardous air contaminant in question would not cause significant harm to the environment or public health.

3. The source's emissions are controlled to a level which is the best available control technology.

(c) An applicant for a variance from the emission limitation of sub. (4r)(a) shall demonstrate all of the following to the satisfaction of the department:

1. All direct or portable sources owned or operated in the state by the owner or operator of the air contaminant source for which a variance is requested are in, or are on a schedule for, compliance with all applicable requirements of chs. NR 400 to 499.

2. The emission limitation from which variance is sought is technologically or economically infeasible to meet due to conditions or special circumstances at the source, including adverse environmental or energy impacts.

3. Residual emissions of the hazardous air contaminant in question under the emission limitations proposed for inclusion in the variance would not cause significant harm to public health.

4. Good faith efforts have been made to comply with sub. (4r)(a) and all reasonably available alternative operating procedures and interim control measures to minimize emissions of the hazardous air contaminant will be utilized during the duration of the variance.

SECTION 16 Table 5 of NR 445.04 is created to read:

Table 5

Hazardous Air Contaminants With Acceptable Ambient
Concentrations Based on the U.S. Environmental Protection Agency's
Reference Concentration Methodology

Contaminant	CAS Number	Emission Rate in lbs/yr with emission points		Reference Concentration (micrograms per cubic meter)	Total Uncertainty Factor	Date of last revision to Wis. Adm. Code
		<25 ft.	≥25 ft.			
Ammonia	7664-41-7	21,039	91,264	100	30	[revisor insert date]
Bromomethane	74-83-9	631,174	2,737,907	3000	100	[revisor insert date]
1,2-Dichloropropane	78-87-5	842	3651	4	300	[revisor insert date]
1,3-Dichloropropene	542-75-6	4208	18,253	20	30	[revisor insert date]
Diesel engine emissions		1052	4563	5	30	[revisor insert date]
N,N-Dimethylformamide	68-12-2	6312	27,380	30	300	[revisor insert date]
Epichlorohydrin	106-89-8	210	913	1	300	[revisor insert date]
Ethyl chloride	75-00-3	2,103,914	9,126,358	10,000	300	[revisor insert date]
Ethyl benzene	100-41-4	210,391	912,636	1000	300	[revisor insert date]
n-Hexane	110-54-3	42,078	182,527	200	300	[revisor insert date]
Mercury (inorganic)	7439-97-6	63	274	0.3	30	[revisor insert date]
Methyl tert-butyl ether	1634-04-4	631,174	2,737,907	3000	100	[revisor insert date]
Propylene glycol monomethyl ether	107-98-2	420,783	1,825,272	2000	300	[revisor insert date]
Propylene oxide	75-56-9	6312	27,380	30	100	[revisor insert date]
Styrene	100-42-5	210,391	912,636	1000	30	[revisor insert date]
Toluene	108-88-3	84,157	365,054	400	300	[revisor insert date]
Vinyl acetate	108-05-4	42,078	182,527	200	30	[revisor insert date]

SECTION 17 NR 445.05(4r) is created to read:

NR 445.05(4r) TABLE 5 SUBSTANCES. (a) *Annual limitations*. Except as provided in par. (b), no owner or operator of a stationary source on which construction or modification last commenced on or before the effective date of this subsection... [revisor insert date], may cause, allow or permit emissions from the source of a hazardous air contaminant listed in Table 5 of s. NR 445.04 in such quantity or duration as to cause ambient air concentrations off the source's property that exceed the reference concentration shown in Table 5 of s. NR 445.04 on an annual basis.

(b) *Exemptions*. All of the following emissions are exempt from the emission limitations for the hazardous air contaminants listed in Table 5 of s. NR 445.04:

1. Emissions from the combustion of group 1 virgin fossil fuels.
2. Emissions from the combustion of group 2 virgin fossil fuels vented from a stack which has downwash minimization stack height or a height approved by the department.
3. Emissions from a laboratory.
4. Indoor emissions which are exhausted to the ambient air through general building ventilation and which have a threshold limit value established by the American conference of governmental and industrial hygienists, in the threshold limit values and biological exposure indices for

1990-91, incorporated by reference in ch. NR 484, and for which the source is in compliance with applicable occupational safety and health administration requirements.

5. Emissions from sources required to meet national emission standards promulgated under 40 CFR part 63 prior to the effective date of this subsection... [revisor insert date].

6. Emissions from gasoline dispensing at any source which meets the requirements of s. NR 420.04(3)(b) to (i) or which dispenses less than one million gallons a year.

(c) *Records.* The owner or operator of a source not subject to sub. (6) shall maintain the following records in writing at the source, as appropriate:

1. The hazardous air contaminants in Table 5 of s. NR 445.04 the source is capable of emitting;

2. The allowable emissions for each hazardous air contaminant identified in subd. 1 for each emissions unit;

3. The methods used to calculate allowable emissions under subd. 2, including:

a. All calculations which show the dimensional units for all values used;

b. Emission factors used and reference to stack tests, mass balance calculations or EPA documents that the emission factor is based on; or

4. Information to support exemption claims including fuels used, laboratory status or downwash minimization stack height calculations as appropriate.

SECTION 18 NR 445.05(5) is renumbered 445.05(5)(a) and amended to read:

NR 445.05(5) INCINERATORS. (a) Any owner or operator of a stationary source on which construction or modification last commenced on or before October 1, 1988 and which combusts municipal solid waste as defined in s. NR 500.03(86) or infectious waste shall comply with subs. (1) and (4), and shall control emissions of hazardous air contaminants listed in Table 3 of s. NR 445.04 to a level which is the lowest achievable emission rate. ~~A source which combusts refuse derived fuel in a boiler and obtains less than 50% of its heat input from the refuse derived fuel is not subject to this subsection.~~

SECTION 19 NR 445.05(5)(b) and (c) are created to read:

NR 445.05(5)(b) Any owner or operator of a stationary source on which construction or modification last commenced on or before the effective date of this subsection... [revisor insert date] and which combusts municipal solid waste as defined in s. NR 500.03(86) or infectious waste shall comply with sub. (4r).

(c) A source which combusts refuse derived fuel in a boiler and obtains less than 50% of its heat input from the refused derived fuel is not subject to this subsection.

SECTION 20 NR 445.05(6)(intro) is amended to read:

NR 445.05(6)(intro) COMPLIANCE REQUIREMENTS. Any source whose allowable emissions of any hazardous air contaminant in Table 1, 2, 3 ~~or~~ 4 or 5 of s. NR 445.04 is equal to or greater than the emission rate listed in the table for the hazardous air contaminant for the respective stack height and any incinerator subject to sub. (5) shall achieve compliance with the emission limitations of this section according to the compliance schedules in this subsection. Any source whose allowable emissions of diisobutyl ketone, methylene bis(4-cyclohexylisocyanate), p-nitrochlorobenzene or xylidine is equal to or greater than the emission rate as listed in Table 4 for the respective stack height on June 1, 1992 shall achieve compliance with sub. (4) according to the compliance schedule in par. (b)1m, 2 and 3.

SECTION 21 NR 445.05(6)(bm) is created to read:

NR 445.05(6)(bm) *Compliance schedule for Table 5.* 1. The owner or operator of any facility subject to this subsection for emissions of any hazardous air contaminant in Table 5 of s. NR 445.04 shall:

a. Submit to the department's bureau of air management a plan describing how the facility will achieve compliance with sub. (4r)(a) according to the schedule in subd. 3.

b. Achieve final compliance with sub.(4r)(a) according to the schedule in subd. 4.

2. The compliance plan required under subd. 1 a shall:

a. For sources required to obtain an operation permit under s. NR 407.04, be submitted on the application forms required for an operation permit, an amendment to an application, renewal of the operation permit, or for a significant revision under s. NR 407.13.

b. For sources exempt from s. NR 407.04 permitting requirements, be submitted on the application forms used for significant permit revisions under s. NR 407.13.

c. Include at a minimum the forms required under subpars. a and b that provide information on the amount of hazardous air contaminants emitted; the emitting process, control equipment and the exhaust stack; the facility plot plan and proposals for a compliance schedule and methods to demonstrate compliance. The compliance plan shall also include any emission factors used in calculating facility emissions and an explanation of any exemptions claimed.

NOTE: The owner or operator may incorporate by reference forms previously submitted to the department under ch. NR 407.

3. The compliance plan required under subd. 1 a shall be submitted according to the following schedule:

NOTE: The following references to 40 CFR part 63 as in effect on July 1, 1994.

a. For a facility which is included in a single category identified in 40 CFR part 63 with a schedule deadline of November 15, 1994, submit the compliance plan for all emission units at the facility within 12 months after the effective date for a national emission standard applicable to the source under s. 112(d) of the act, but no later than May 15, 1996.

b. For a facility which is included in a single category identified in 40 CFR part 63 with a schedule deadline of November 15, 1997, submit the compliance plan for all emission units at the facility within 12 months after the effective date for a national emission standard applicable to the source under s. 112(d) of the act, but no later than May 15, 1999.

c. For a facility which is included in a single category identified in 40 CFR part 63 with a schedule deadline of November 15, 2000, submit the compliance plan for all emission units at the facility within 12 months after the effective date for a national emission standard applicable to the source under s. 112(d) of the act, but no later than May 15, 2002.

d. For any facility subject to sub. (4r)(a) not included in a category identified in 40 CFR part 63, submit the compliance plan no later than May 15, 2002.

e. For facilities with emissions units included in more than one category identified in 40 CFR part 63, submit a compliance plan for each hazardous air contaminant within 12 months after the effective date for the last scheduled national emission standard applicable to the affected emissions units under s. 112(d) of the act, but no later than May 15, 2002. The affected emissions units only include emissions units that are capable of emitting the hazardous air contaminant and those emissions units which though not capable of emitting the hazardous air contaminant, otherwise have a causal affect on the emissions of the hazardous air contaminant.

4. Achieve final compliance with sub. (4r)(a) according to the following schedule:

a. For a facility which is included in a single category identified in 40 CFR part 63 with a schedule deadline of November 15, 1994, achieve compliance by the final compliance deadline set by a national emission standard applicable to the source under s. 112(d) of the act, but no later than May 15, 1999.

b. For a facility which is included in a single category identified in 40 CFR part 63 with a schedule deadline of November 15, 1997, achieve compliance by the final compliance deadline set by a national emission

standard applicable to the source under s. 112(d) of the act, but no later than May 15, 2002.

c. For a facility which is included in a single category identified in 40 CFR part 63 with a schedule deadline of November 15, 2000, achieve compliance by the final compliance deadline set by a national emission standard applicable to the source under s. 112(d) of the act, but no later than May 15, 2005.

d. For any facility subject to sub. (4r)(a) not included in a category identified in 40 CFR part 63, achieve compliance no later than May 15, 2005.

e. For facilities with emissions units which are included in more than one category identified in 40 CFR part 63, achieve final compliance with sub. (4r)(a) by the final compliance deadline set by the last scheduled national emission standard applicable to the emissions units under s. 112(d) of the act, but no later than May 15, 2005. The affected emissions units only include emissions units that are capable of emitting the hazardous air contaminant and those emissions units which though not capable of emitting the hazardous air contaminant, otherwise have a causal affect on the emissions of the hazardous air contaminant.

SECTION 22 NR 445.05(6)(c) is amended to read:

NR 445.05(6)(c) *Department review.* The department shall review any compliance plan submitted under par. (a) ~~or~~ (am) or (bm) to determine whether

the control technology is adequate. Department approval, conditional approval, or disapproval of any compliance plan shall be completed within 6 months after the applicable deadline date provided in par. (a)1 b, 2 b, 3 b ~~or~~ (am)2 or (bm)3. If the department does not complete its review and approve, disapprove or conditionally approve a source's compliance plan within 6 months after the applicable deadline date provided in par. (a)1 b, 2 b, 3 b ~~or~~ (am)2 or (bm)3 the source's compliance requirements under par. (a)1 c, 2 c, 3 c ~~or~~ (am)3 or (bm)3, shall be extended by 6 additional months.

SECTION 23 NR 445.05(6)(d)1. and 5. are amended to read:

NR 445.05(6)(d)1. The owner or operator of a source may rely on information on an approved material safety data sheet if the approved material safety data sheet lists a hazardous air contaminant listed in Tables 1 to 45 of s. NR 445.04 and the hazardous air contaminant listed in Table 1, 2 ~~or~~ 4 or 5 ~~of s. NR 445.04~~ constitutes 10,000 parts per million or more of the material or the hazardous air contaminant listed in Table 3 ~~of s. NR 445.04~~ constitutes 1,000 parts per million or more of the material. If an approved material safety data sheet for a material is not classified as proprietary and does not list a hazardous air contaminant in Tables 1 to 45 ~~of s. NR 445.04~~ at or above the amounts listed in this paragraph, that material will be presumed not to result in emissions of a hazardous air contaminant unless a hazardous air contaminant is formed in processing ~~of~~ the material.

5. The owner or operator of a source may demonstrate compliance with the emission limitations of sub. (1), (2) ~~or~~ (4) or (4r) by demonstrating

that the concentration of the hazardous air contaminant in Table 1, 2 ~~or~~ 4 or 5 of s. NR 445.04 in the stack is less than the ambient concentration allowed under sub. (1), (2) ~~or~~ (4) or (4r).

SECTION 24 NR 445.05(6)(d)7. is created to read:

NR 445.05(6)(d)7. The owner or operator of a source is not required to consider emissions exempt under s. NR 445.05(4r)(b) in calculating emissions of any hazardous air contaminant in Table 5 of s. NR 445.04.

SECTION 25 NR 445.05(6)(e) is renumbered 445.05(6)(e)1. and amended to read:

NR 445.05(6)(e) *Subsequent requirements*. 1. The owner or operator of a source which has achieved compliance with this section by installing emission control equipment may not be required to install additional control equipment to achieve compliance with this section for a period of 10 years after the installation of the control equipment or the useful life of the control equipment as determined by the department, whichever is less. For the purposes of this ~~paragraph~~ subdivision, increasing stack height, other dilution measures, or material reformulations may not be construed as installation of emission control equipment. Material reformulation which requires substantial capital expenditures for process equipment which was made with prior department approval and which results in a reduction of emissions of hazardous air contaminants which is sufficient to comply with the limitations of this section, may be construed as installation of emission control equipment under this ~~paragraph~~ subdivision.

SECTION 26 NR 445.05(6)(e)2. is created to read:

NR 445.05(6)(e)2. The owner or operator of a source which has achieved compliance with sub. (4r)(a) may not be required to meet additional requirements under this section if the reference concentration, as listed in Table 5 of s. NR 445.04, is amended after the effective date of a national emission standard applicable to the source is promulgated under s. 112 of the act for that hazardous air contaminant.

SECTION 27 NR 445.05(6)(f)1. and 3. are amended to read:

NR 445.05(6)(f)1. The department may, at the request of the owner or operator of a source, grant an extension of any compliance deadline in par. (a) ~~or~~ (am) or (bm) for a period ~~of~~ not to exceed 6 months.

3. Notwithstanding the compliance deadlines in ~~par.~~ pars. (a)1 c, 2 c, 3 c ~~and~~ (am)3 and (bm)4, if the department is required to review a source's compliance plan under par. (c), the source shall achieve final compliance with subs. (1) to (3) and (4r):

SECTION 28 NR 445.05(7)(c)1.b. is amended to read:

NR 445.05(7)(c)1.b. Good faith effort has been made to comply with ~~sub. (7)~~ par. (b)(3).

SECTION 29 NR 445.05(8) is renumbered NR 445.05(8)(a) and amended to read:

NR 445.05(8) VARIANCE. (a) The owner or operator of a source may apply for and the department may grant a variance from an emission limitation of sub. (3)(a), (4r)(a) or (5) if the applicant demonstrates to the satisfaction of the department that ~~compliance with sub. (3)(a) or (5) would be economically infeasible, and that residual emissions of the hazardous air contaminant in question would not cause significant harm to the environment or public health, and the source's emissions are controlled to a level which is the best available control technology~~ applicable provisions under par. (b) or (c) are met. The department shall publish a notice of and hold a public hearing on any preliminary determination to approve a variance request under this subsection. The department shall grant or deny a variance request within 90 business days after the close of the public hearing comment period on the request. The department shall review any variance granted under this subsection on a 5 year basis. Following its review and after notice and an opportunity for a public hearing and public comment, the department may modify, extend or rescind the variance.

SECTION 30 NR 445.05(8)(b) and (c) are created to read:

NR 445.05(8)(b) An applicant for a variance from the emission limitation of sub. (3)(a) or (5) shall demonstrate all of the following to the satisfaction of the department:

1. Compliance with sub. (3)(a) or (5) would be economically infeasible.
2. Residual emissions of the hazardous air contaminant in question would not cause significant harm to the environment or public health.

3. The source's emissions are controlled to a level which is the best available control technology.

(c) An applicant for a variance from the emission limitation of sub. (4r)(a) shall demonstrate all of the following to the satisfaction of the department:

1. All direct or portable sources owned or operated in the state by the owner or operator of the air contaminant source for which a variance is requested are in, or are on a schedule for, compliance with all applicable requirements of chs. NR 400 to 499.

2. The emission limit from which variance is sought is technologically or economically infeasible to meet due to conditions or special circumstances at the source, including adverse environmental or energy impacts.

3. Residual emissions of the hazardous air contaminant in question under the emission limitations proposed for inclusion in the variance would not cause significant harm to public health.

4. Good faith efforts have been made to comply with sub. (4r)(a) and all reasonably available alternative operating procedures and interim control measures to minimize emissions of the hazardous air contaminant will be utilized during the duration of the variance.

SECTION 31 NR 445.06(3) is amended to read:

NR 445.06(3) The department shall monitor changes in the classifications of hazardous air contaminants in Tables 1 to 4~~5~~ of s. NR 445.04 as reported by the American conference of governmental industrial hygienists, the United States environmental protection agency, the international agency for research on cancer, and the national toxicology program and shall prepare rule modifications to the tables to incorporate these changes. The department shall presume that any hazardous air contaminant which is included on a list of known or suspected carcinogens by both the international agency for research on cancer and the national toxicology program is a hazardous air contaminant which should be listed in Table 3 ~~of s. NR 445.04~~. This presumption may be overcome for adding or removing contaminants to or from Table 3 ~~of s. NR 445.04~~ if the greater weight of evidence demonstrates the presumption is incorrect.

SECTION 32 NR 484.09(3) is amended to read:

NR 484.09(3) The 1990-1991 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, published by the American conference of governmental industrial hygienists (publication ISBN: 0-936712-86-4), is incorporated by reference for ss. NR 445.04(4)(a)1 and 2 ~~and~~, (b) and (4r)(b)4, 445.05(4)(a)1 and 2 ~~and~~, (b) and (4r)(b)4 and 445.06(4). This publication may be purchased for personal use from the American Conference of Governmental Industrial Hygienists (ACGIH), 6500 Glenway Avenue, Cincinnati, OH 45211.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 18, 1994.

The rule shall take effect 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 October 28, 1994.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)

