Chapter NR 436

EMISSION PROHIBITION, EXCEPTIONS, DELAYED COMPLIANCE ORDERS AND VARIANCES

NR 436.01 Applicability; purpose
NR 436.02 Definitions
NR 436.03 Emissions prohibited
NR 436.04 Delayed compliance orders
NR 436.05 RACT variances
NR 436.06 Alternate fuel variances
NR 436.07 Duty to comply with applicable provisions

NR 436.01 Applicability; purpose. (1) APPLICABILITY. This chapter applies to all air contaminant sources and to their owners and operators.

(2) PURPOSE. This chapter is adopted under ss. 144.31 and 144.38, Stats., to specify that emissions into the ambient air in excess of the limitations set in chs. NR 400 to 499 are prohibited and to establish the conditions under which the department may grant exceptions, delayed compliance orders and variances to these emission limitations in order to protect air quality.

History: Cr., Register, September, 1986, No. 369, eff. 10-1-86; am. Register, May, 1992, No. 437, eff. 6-1-92.

NR 436.02 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) "Emergency or reserve equipment" means that equipment used when normal equipment fails, or used only to meet high peak loads.

History: Renum. NR 154.01, Register, September, 1986, No. 369, eff. 10-1-86; **am. (intro.), Register, December, 1995, No. 480, eff. 1-1-96.**

NR 436.03 Emissions prohibited. (1) GENERAL PROHIBITION. No person may cause, allow or permit emissions into the ambient air in excess of the limits set in chs. NR 400 to 499. Where a numerical limit is specified as a 2 digit integer in which the second digit is zero, the zero is a significant figure.

(2) EXCEPTIONS. Emissions in excess of the emission limitations set in chs. NR 400 to 499 may be allowed in the following circumstances:

(a) When an approved program or plan with a time schedule for correction has been undertaken and correction is being pursued with diligence.

(b) When emissions in excess of the limits are temporary and due to scheduled maintenance, startup or shutdown of operations carried out in accord with a plan and schedule approved by the department.

(c) The use of emergency or reserve equipment needed for meeting of high peak loads, testing of the equipment or other uses approved by the department. Such equipment must be specified in writing as emergency or reserve equipment by the department. Upon startup of this equipment notification must be given to the department which may or may not give approval for continued equipment use.

History: Cr. (2) (intro.), renum. from NR 154.09 (1) and am., Register, September, 1986, No. 369, eff. 10-1-86; am. (1), Register, May, 1992, No. 437, eff. 6-1-92.

NR 436.04 Delayed compliance orders. (1) ORDER AUTHORITY. The department may, by order issued under ss. 144.31 (2) (b) and 144.423, Stats., authorize a source not in compliance with an emission limitation prescribed in chs. NR 400 to 499 to achieve compliance as expeditiously as practicable but not later than 3 years after such requirement became applicable. The department shall hold a public hearing in accordance with its rules prior to authorizing any period of delayed compliance which exceeds 30 days in duration.

(2) CRITERIA FOR ISSUANCE OF ORDERS. No order under sub. (1) may be issued unless:

(a) The cause of the violation was a malfunction, equipment failure, act of God or some other condition beyond the entity's control, when using all prudent planning.

(b) The air contaminant source is located so that it will not delay attainment or affect maintenance of an ambient air quality standard at any point beyond the property line of the entity.

(c) Good faith efforts have been made to comply with chs. NR 400 to 499.

(d) If the violation was caused by a malfunction or equipment failure, any plan required to be prepared by s. NR 439.11 was complied with.

(e) The air contaminant for which a deferral is sought is not a hazardous pollutant for which an emission standard has been established by the administrator of the U.S. environmental protection agency.

(f) The conditions listed in s. NR 436.03, if applicable, are met.

(g) The order contains:

1. An express provision whereby the order recipient consents to its issuance.

2. A requirement that the order recipient employ reasonable emission monitoring techniques to assess compliance with any interim requirements imposed by the order.

3. A requirement for submittal of reports showing whether any interim requirements, increments of progress, and final compliance have been achieved.

4. A provision prohibiting the reduction of employe wages where supplemental, intermittent or other dispersion-dependent control methods are to be used.

5. In the case of a major stationary source, a notice that it may be required to pay administrative noncompliance penalties for failure to comply with the order and that no order issued under this section will be effective until it is approved by the administrator of the U.S. environmental protection agency or designee.

(h) All reasonably available alternative operating procedures and interim control measures to minimize emissions shall be utilized by the air contaminant source during the period of delayed compliance.

History: Renum. from NR 154.02 (1) and (2) and am. Register, September, 1986, No. 369, eff. 10-1-86; am. (2) (g) 5., Register, May, 1992, No. 437, eff. 6-1-92.

NR 436.05 RACT variances. (1) VARIANCE AUTHORITY. The department may grant source-specific revisions to the state implementation plan setting alternate compliance schedules or alternate emission limitations, or both, where compliance with general RACT requirements of chs. NR 400 to 499 are shown to be technologically or economically infeasible.

(2) VARIANCE CRITERIA. A variance under sub. (1) may not be issued unless:

(a) The revision will not delay attainment or prevent maintenance of any ambient air quality standard, as determined by methods acceptable to the department.

(b) Construction or modification of the air contaminant source for which a revision is requested was commenced before the effective date of the requirement for which the revision is requested.

(bm) A written request from the owner or operator for a revision is received by the department before the date specified for achieving final compliance with the requirement for which the revision is requested.

(c) The owner or operator of the air contaminant source for which a revision is requested demonstrates that all direct or portable sources owned or operated in the state by such person are in compliance with all applicable requirements of chs. NR 400 to 499 or are on a schedule for compliance with such requirements.

(d) The owner or operator submits to the department information concerning the conditions or special circumstances which demonstrates, to the department's satisfaction, that the applicable general RACT requirements from which variance is sought are technologically or economically infeasible. In addition:

1. Where an alternate compliance schedule is sought, the owner or operator shall submit a proposed schedule which demonstrates reasonable further progress and contains a date for final compliance as soon as practicable.

2. Where alternate emission limitations are sought, the owner or operator shall submit proposed emission limitations.

3. Requests for revisions shall be signed by the principal executive officer; partner; sole proprietor; or principal governmental executive or elected official or a duly authorized representative, as appropriate.

4. Requests shall contain other relevant information as required by the department.

(3) PROCEDURES FOR ISSUANCE OF VARIANCES. The department, in acting upon any request for a revision under this section, shall:

(a) Act on requests for revisions within 3 months of the filing of a completed request.

(b) Offer, through public notice, the opportunity for public comments including, where requested, a public hearing.

(c) State in writing the reasons for denying, granting, or for granting in modified form any request.

(4) REVOCATION AND MODIFICATION OF VARIANCES. The department may, after notice and opportunity for hearing, revoke or modify any revision when:

(a) Any term or condition of the revision has been violated;

(b) Changes in ambient air quality indicate that the source has a significant adverse impact on the attainment or maintenance of any ambient air quality standard; or

(c) The owner or operator did not act in good faith in demonstrating the technological or economic infeasibility of compliance with the general RACT requirements or in submitting other relevant information in support of the revision request.

(5) EFFECTIVE DATE OF VARIANCES. When the department grants, modifies or revokes a source-specific revision to a general RACT requirement which has been approved by the administrator of the U.S. environmental protection agency as part of the state implementation plan, the revision will not become effective until both the following conditions have been met:

(a) The revision has been submitted to the administrator pursuant to applicable law, including but not limited to 42 USC 7410 and 40 CFR parts 51 and 52, and all such requirements have been met.

(b) The revision has been approved by the administrator or designee as a revision to the state implementation plan.

History: Renum. from NR 154.02 (3) and am. Register, September, 1986, No. 369, eff. 10-1-86; am. (5) (intro.), Register, May, 1992, No. 437, eff. 6-1-92; **am. (2) (b), (5), cr. (2) (bm), Register, December, 1995, No. 480, eff. 1-1-96.**

NR 436.06 Alternate fuel variances. The department may grant temporary variances from the emission limitations of chs. NR 400 to 499 to air contaminant sources which request such variances in order to switch from a regular fuel to an alternate fuel which is in more plentiful supply, provided that the conditions of this section are met.

(1) If the department of administration, division of energy and intergovernmental relations has certified that a switch from the fuel regularly used by the applicant to an alternate fuel which would cause an emission limitation to be exceeded is needed to protect public health, safety or welfare in the applicant's part of the state, the depart-

ment may grant a temporary variance from such requirements provided that:

(a) The applicant has submitted a list of steps which will be implemented without delay to minimize adverse effects caused by the switch in fuels permitted by the variance, including all feasible steps to minimize use of the alternate fuel through energy conservation and other measures; and

(b) The applicant has provided, or has agreed to provide within 5 days after the date the variance is granted, information on the type, quantity and quality of fuel and rate of consumption in use before and to be used after the switch in fuels; and

(c) Granting the variance would be unlikely to cause or exacerbate a violation of any primary ambient air quality standard; and

(d) Litigation for violation of an emission limitation prescribed in chs. NR 400 to 499 or an ambient air quality standard prescribed in ch. NR 404 is not presently pending; and

(e) The applicant has agreed to submit no later than 90 days from the date that the variance is granted a plan and time schedule for preventing the recurrence of the conditions which necessitated a variance request; and

(f) The applicant submitted and implemented in good faith any plan required to be submitted as a condition to a previously-granted variance; and

(g) After July 1, 1978, if the applicant uses natural gas or distillate oil as a regular fuel, the applicant has submitted and received department approval of a plan to minimize dependence on these fuels while complying with the emission limitations of chs. NR 400 to 499.

(2) If the division of energy and intergovernmental relations has not certified that a switch in fuels is needed, the department may grant a temporary variance from the emission limitations of chs. NR 400 to 499 only if the conditions of sub. (1) are met and the applicant has submitted documentation of the unavailability of the fuel regularly used and of any alternate fuel which the air contaminant source has the capability to burn in compliance with emission limitations.

(3) When granting a variance is likely to cause a secondary standard (but not a primary standard) to be violated or exacerbated, the following conditions shall apply:

(a) The variance must specify an expiration date no later than 45 days from the date the variance is granted.

(b) Prior to granting a variance extension which expires on a date more than 45 days after the date the variance was originally granted, the department shall:

1. Determine either that the applicant's regular fuel is unavailable or that certification by the division of energy and intergovernmental relations of the need for a switch in fuels in the applicant's part of the state remains in effect; and

2. Evaluate through ambient air quality monitoring and/or dispersion modeling the air quality impact of granting the variance and determine that maintenance of the primary standards is not being endangered; and

3. Solicit and consider public comment on permitting the extension.

(4) When granting a variance is unlikely to cause any ambient air quality standard to be violated, the following conditions shall apply:

(a) The variance must specify an expiration date no later than 60 days from the date the variance is granted.

(b) Prior to granting a variance extension which expires on a date more than 60 days after the date the variance was originally granted, the department shall:

1. Determine either that the applicant's regular fuel is unavailable or that certification by the division of energy and intergovernmental relations of the need for a switch in fuels in the applicant's part of the state remains in effect; and

2. Evaluate through ambient air monitoring and/or dispersion modeling the air quality impact of granting the variance. If the evaluation indicates that maintenance of the air standards is not being endangered, an extension may be granted. If the evaluation indicates that a secondary air standard has been or may be violated, the procedure set forth in sub. (3) (b) shall apply.

(5) The department may rescind or amend a variance granted under this section at any time.

History: Renum. NR 154.02 (4) and am. Register, September, 1986, No. 369, eff. 10-1-86.

NR 436.07 Duty to comply with applicable provisions. The issuance or granting of any order or variance under this chapter does not relieve any person of the duty to comply with all other applicable federal, state and local laws and rules.

History: Renum. NR 154.02 (5) and am. Register, September, 1986, No. 369, eff. 10-1-86; am. Register, May, 1992, No. 437, eff. 6-1-92.