

## Chapter NR 409

## ACID RAIN PORTION OF OPERATION PERMITS

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**NR 409.01 Applicability; purpose; and scope. (1) APPLICABILITY.** (a) Each of the following emissions units is an affected unit and any source that includes such a unit shall be an affected source subject to the requirements of the acid rain program:

1. A unit listed in Table 1 of 40 CFR 73.10 (a).
2. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit excluded under par. (b).
3. A utility unit, except a unit excluded under par. (b), that:
  - a. Is a new unit;
  - b. Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990;
  - c. Was a simple cycle combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;
  - d. Was an exempt cogeneration facility under par. (b) 4. but during any 3 calendar year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
  - e. Was an exempt qualifying facility under par. (b) 5. but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of a qualifying facility as defined in s. NR 409.02;
  - f. Was an exempt independent power production facility under par. (b) 6. but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
  - g. Was an exempt solid waste incinerator under par. (b) 7. but during any 3 calendar year period after November 15, 1990 consumes 20% or more of the total heat input, expressed on a Btu basis, as fossil fuel.

(b) The following types of utility units are exempt from the requirements of this chapter and the acid rain program:

1. A simple cycle combustion turbine that commenced operation before November 15, 1990.

2. Any unit that commenced commercial operation before November 15, 1990 and that did not, as of November 15, 1990, and does not serve a generator with a nameplate capacity of greater than 25 MWe.

3. Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not serve a generator that produces electricity for sale.

4. A cogeneration unit which:

a. For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale on a gross basis. If the purpose of construction is not known, it is presumed to be consistent with the actual operation from 1985 to 1987. However, if in any 3 calendar year period after November 15, 1990, the unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output on a gross basis, that unit is an affected unit, subject to the requirements of this chapter and the acid rain program; or

b. For a unit that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale on a gross basis. However, if in any 3 calendar year period after November 15, 1990, the unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output on a gross basis, that unit is an affected unit, subject to the requirements of this chapter and the acid rain program.

5. A qualifying facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of the total planned net output capacity.

If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

6. An independent power production facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

7. A solid waste incinerator, if more than 80%, on a Btu basis, of the annual fuel consumed at the incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 to 1987 shall be greater than 80% for an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first 3 years of operation shall be greater than 80% for an incinerator to be exempt. If, during any 3 calendar year period after November 15, 1990, the incinerator consumes 20% or more of the total heat input, expressed on a Btu basis, as fossil fuel, the incinerator is an affected source under this chapter and the acid rain program.

8. A unit that is not a utility unit.

(c) For a determination of applicability, a responsible official of any unit may petition the administrator under 40 CFR 72.6 (c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

(2) **PURPOSE.** The purpose of this chapter is to establish certain general provisions and the acid rain portion of the operation permit program requirements for affected sources and affected units under the acid rain program, pursuant to title IV of the clean air act (42 USC 7651 to 7651o), 40 CFR part 72 and s. 144.394 (11), Stats.

(3) **SCOPE.** The regulations under this chapter set forth certain generally applicable provisions under the acid rain program. The regulations also set forth requirements for obtaining and revising the acid rain portion of an operation permit issued by the department. The requirements under this chapter supplement, and in some cases modify, the requirements under chs. NR 406 and 407 as such requirements apply to affected sources under the acid rain program.

**History:** Cr. Register, September, 1986, No. 369, eff. 10-1-86; am. (2), Register, May, 1992, No. 437, eff. 6-1-92; am. Register, December, 1993, No. 456, eff. 1-1-94; renum. (1) to NR 406.15 (1), r. (2), cr. (1), (2), (3), Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.02 Definitions.** The definitions contained in chs. NR 400, 406 and 407 and title IV of the act (42 USC 7651 to 7651o) apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

Register, December, 1995, No. 480

(1) "Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with s. NR 409.09 or regulations implementing section 407 of the act (42 USC 7651f).

(2) "Acid rain emissions limitation" means:

(a) For the purposes of sulfur dioxide emissions:

1. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404 (a) (1) and (3) of the act (42 USC 7651c) or the basic phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year;

2. As adjusted:

a. By allowances allocated by the administrator pursuant to sections 403 (42 USC 7651b), 405 (a) (2) and (3), (b) (2), (c) (4), (d) (3) and (h) (2) (42 USC 7651d) and 406 of the act (42 USC 7651e);

b. By allowances allocated by the administrator pursuant to subpart D of 40 CFR part 72; and thereafter

c. By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34 (c).

**Note:** Nitrogen oxides emissions will also be included in the definition of acid rain emissions limitations. However, those limitations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). At a later date, this definition will be revised.

(3) "Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). Nitrogen oxides requirements will be added to this chapter at a later date.

(4) "Acid rain portion of an operation permit" means the legally binding written document, or portion of an operation permit, issued by the department following opportunity for appeal pursuant to 40 CFR part 78, s. NR 409.11 (2) or procedures in ss. 144.31, 144.403 and 227.40 to 227.60, Stats., including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(5) "Actual SO<sub>2</sub> emissions rate" means the annual average sulfur dioxide emissions rate for the unit, expressed in lb/mmBtu, for the specified calendar year; provided that, if the unit is listed in the national allowance database (NADB), the "1985 actual SO<sub>2</sub> emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

(6) "Affiliate" means the following:

(a) Any person that directly or indirectly owns, controls or holds with power to vote, 5% or more of the outstanding voting securities of the specified company.

(b) Any company 5% or more of whose outstanding voting securities are owned, controlled or held with power to vote, directly or indirectly, by the specified company.

(c) Any individual who is an officer or director of the specified company, or of any company which is an affiliate thereof under par. (a).

(d) Any person or class of persons that the United States securities and exchange commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be subject to the obligations, duties and liabilities imposed in 15 USC 79 et seq. upon affiliates of a company.

(7) "Allocate" or "allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

(8) "Allowance deduction" or "deduct", when referring to allowances, means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount to account for the number of tons of SO<sub>2</sub> emitted from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR part 75, or for any other allowance surrender obligations of the acid rain program.

(9) "Allowances held" or "hold allowances" means the allowances recorded by the administrator or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

(10) "Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts and tracks allowances.

(11) "Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring and using allowances.

(12) "Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

(13) "Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

(14) "Auxiliary firing" means combustion of a fuel that supplements the primary fuel, when more than 5% of an affected unit's heat input is provided by the supplemental fuel.

(15) "Baseline", for purposes of the acid rain program, means the annual average quantity of fossil fuel consumed by a unit, measured in millions of Btus for calendar years 1985 through 1987; provided that in the event that a unit is listed in the NADB, the baseline will be calculated for each unit-generator pair that includes the unit, and the unit's baseline will be the sum of such unit-generator baselines. The unit-generator baseline shall be as provided in the NADB under the data field "BASE8587", as adjusted by the outage hours listed in the NADB under the data field "OUTAGEHR" in accordance with the following equation:

$$\text{Baseline} = \text{BASE8587} \times [26280 / (26280 - \text{OUTAGEHR})] \times [36 / (36 - \text{months not on line})] \times 10^6,$$

where "months not on line" is the number of months during January 1985 through December 1987 prior to the commencement of firing for units that commenced firing in that period, i.e., the number of months, in that period, prior to the on-line month listed under the data field "BLRMNONL" and the on-line year listed in the data field "BLRYRONL" in the NADB.

(16) "Basic phase II allowance allocations" means:

(a) For calendar years 2000 to 2009, allocations of allowances made by the administrator pursuant to sections 403 and 405 (b) (1), (3) and (4); (c) (1), (2), (3) and (5); (d) (1), (2), (4) and (5); (e); (f); (g) (1), (2), (3), (4) and (5); (h) (1); (i); and (j) of the act (42 USC 7651b and 7651d).

(b) For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to sections 403 and 405 (b) (1), (3) and (4); (c) (1), (2), (3) and (5); (d) (1), (2), (4) and (5); (e); (f); (g) (1), (2), (3), (4) and (5); (h) (1) and (3); (i); and (j) of the act (42 USC 7651b and 7651d).

(17) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam or any other medium.

(18) "Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of the sources and of the affected units at the sources with regard to matters under the acid rain program.

(19) "Clean coal technology" means 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, in consultation with the secretary of the U.S. department 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.

(20) "Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel, except a coal-derived gaseous fuel with a sulfur content no greater than natural gas, alone or in combination with any other fuel, where a unit is coal-fired if it uses coal or coal-derived fuel as its

primary fuel, expressed in mmBtu; provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL".

(21) "Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy, such as heat or steam, for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

(22) "Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

(23) "Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(24) "Commence operation" means to have begun any mechanical, chemical or electronic process, including startup of an emissions control technology or emissions monitor or of a unit's combustion chamber.

(25) "Common stack" means the exhaust of emissions from 2 or more units through a single flue.

(26) "Compensating unit" means a unit that is not otherwise subject to acid rain program emissions limitations or emissions reduction requirements during phase I and that is designated as a phase I unit in a reduced utilization plan under 40 CFR 72.43, provided that a unit that is not an affected unit under the acid rain program may not be a compensating unit.

(27) "Compliance certification" means a submission to the administrator or department that is required by this chapter, by 40 CFR part 72, 73, 75, 77 or 78 or by regulations implementing section 407 or 410 of the act (42 USC 7651f and 7651i) to report an affected source or an affected unit's compliance or non-compliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with subparts B and I of 40 CFR part 72, s. NR 409.13 and the acid rain program regulations generally.

(28) "Compliance option", for purposes of the acid rain program, means any of the 4 strategies specified in 40 CFR 72.40 to 72.44 for complying with the acid rain program. Subpart D lists 4 options: phase I substitution plans, phase I extension plans, phase I reduced utilization plans and phase II repowering extensions.

(29) "Compliance plan", for purposes of the acid rain program, means the document submitted to the department for an affected source in accordance with the acid rain portion of an operation permit application under this chapter and 40 CFR 72.30 to 72.33, specifying the methods, including one or more compliance options under this chapter, 40 CFR 72.40 to 72.44 or regulations implementing section 407 of the act (42 USC 7651f), by which each affected unit at the source will meet the applicable emissions limitations and emissions reduction requirements of the acid rain program.

(30) "Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31 (a) or (b), in which are held, from the date that allowances for the current calendar

year are recorded under 40 CFR 73.34 (a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35 (b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

(31) "Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

(32) "Construction" means fabrication, erection or installation of an affected unit or any portion of an affected unit.

(33) "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of federal or state law, in matters pertaining to the acid rain program and acid rain portion of the operation permit program. Whenever the term "designated representative" is used in this chapter, the term shall also be construed to include the alternate designated representative.

Note: Whenever the term "responsible official" is used in 40 CFR part 70, chs. NR 406 and 407, or in any other regulations implementing title V of the act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

(34) "Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined in ASTM D975-91, incorporated by reference in s. NR 484.10.

(35) "Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of equipment and facilities shall be measured on the basis of book value.

(36) "Emissions" means air contaminants exhausted from an affected unit or affected source into the atmosphere, as measured, recorded and reported to the administrator and the department by the designated representative and as determined by the administrator and the department, in accordance with the emissions monitoring requirements of 40 CFR part 75.

(37) "Excess acid rain emissions" means:

(a) Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the emissions limitation in the acid rain program for sulfur dioxide for the unit; and

(b) Any tonnage of nitrogen oxides emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the emissions limitation in the acid rain program for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

(38) "Excess emission offset requirement" means a requirement to reduce excess acid rain emissions pursuant to 40 CFR 77.1 to 77.6 by offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

(39) "Existing unit" means a unit, including a unit subject to new source performance standards, section 111 of the act (42 USC 7411), that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with a nameplate capacity of greater than 25 MWe. The term existing unit does not include simple cycle combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any existing unit that is modified, reconstructed or repowered after November 15, 1990 shall continue to be an existing unit.

(40) "Gas-fired" means the combustion of natural gas or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least 90% of the average annual heat input during the previous 3 calendar years and for at least 85% of the annual heat input in each of those calendar years; and any fuel, other than coal or any other coal-derived fuel, for the remaining heat input, if any.

(41) "General account" means an allowance tracking system account that is not a unit account.

(42) "Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States department of energy form 860 - 1990 edition.

(43) "Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

(44) "Heat input" means the product, expressed in mmBtu/time, of the gross calorific value of the fuel, expressed in Btu/lb, and the fuel feed rate into the combustion device, expressed in mass of fuel/time, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(45) "Independent power production facility" means a source that:

(a) Is nonrecourse project financed, as defined by the secretary of energy at 10 CFR part 715;

(b) Is used for the generation of electricity, 80% or more of which is sold at wholesale;

(c) Is a new unit required to hold allowances under title IV of the act (42 USC 7651 to 7651o); and

(d) Does not have direct public utility ownership of the equipment comprising the facility which exceeds 50%.

(46) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of the unit's total costs, pursuant to a contract:

(a) For the life of the unit;

(b) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(c) For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(47) "Nameplate capacity" means the maximum electrical generating output, expressed in megawatts of electricity, that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States department of energy standards if the generator is not listed in the NADB.

(48) "National allowance data base" or "NADB" means the data base established by the administrator under section 402 (4) (C) of the act (42 USC 7651a(4) (c)).

(49) "New unit" means a unit that commences commercial operation on or after November 15, 1990, including any unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple cycle combustion turbine.

(50) "Offset plan", for purposes of the acid rain program, means a plan pursuant to 40 CFR 77.1 to 77.6 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

(51) "Oil-fired" means the combustion of fuel oil for more than 10% of the average annual heat input during the previous 3 calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid or gaseous fuel, other than coal or any other coal-derived fuel, except a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for the remaining heat input, if any.

(52) "Owner" means any of the following persons:

(a) Any holder of any portion of the legal or equitable title in an affected unit.

(b) Any holder of a leasehold interest in an affected unit.

(c) Any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit.

(d) With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31 (c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

(53) "Owner or operator" means any person who is an owner or who operates, controls or supervises an affected unit or affected source and shall include, but not be limited to, any holding company, utility system or plant manager of an affected unit or affected source.

(54) "Permit revision" means a significant permit revision, fast track revision, administrative permit revision,

automatic permit revision or permit revision by the department, as provided in s. NR 409.12.

(55) "Phase I" means the acid rain program period beginning January 1, 1995 and ending December 31, 1999.

(56) "Phase II" means the acid rain program period beginning January 1, 2000 and continuing into the future.

(57) "Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR part 72, incorporated by reference in s. NR 484.04.

(58) "Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

(59) "Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to any of the following:

(a) A power sales agreement.

(b) A state regulatory authority order requiring a utility to:

1. Enter into a power sales agreement with the facility;
2. Purchase from the facility; or
3. Enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power.

(c) A letter of intent or similar instrument committing to purchase power, either actual electrical output or generator output capacity, from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1992.

(d) A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

(60) "Power sales agreement" means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with the facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

(61) "Primary fuel or primary fuel supply" means the main fuel type, expressed in mmBtu, consumed by an affected unit for the applicable calendar year.

(62) "Qualifying cogeneration facility" means a facility which produces electric energy and steam or forms of useful energy, such as heat which is used for industrial, commercial, heating or cooling purposes which:

(a) The federal energy regulatory commission determines, by rule, meets the requirements of this type of facility, including requirements for minimum size, fuel use, and fuel efficiency; and

(b) Is owned by a person not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

(63) "Qualifying facility" means a qualifying small power production facility or qualifying cogeneration facility.

(64) "Qualifying phase I technology" means a technological system of continuous emission reduction that is demonstrated to achieve at least a 90% reduction in emissions of sulfur dioxide relative to the emissions that would have resulted from the use of fossil fuels that were not subject to treatment prior to combustion, as provided in 40 CFR 72.42.

(65) "Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

(a) The identity of the electric output purchaser, the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and

(b) The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

(66) "Qualifying repowering technology" means:

(a) Replacement of an existing coal-fired boiler with one of the clean coal technologies; or

(b) Any oil-fired or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the U. S. department of energy.

(67) "Qualifying small power production facility" means a facility which is an eligible solar, wind, waste or geothermal facility, or a facility which:

(a) Produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources or any combination of these; and

(b) Has a power production capacity which, together with any other facilities located at the same site, as determined by the federal energy regulatory commission, is not greater than 80 MWe.

(68) "Receive" or "receipt of" means the date the administrator or department comes into possession of information or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or department in the regular course of business.

(69) "Recordation", "record" or "recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

(70) "Reduced utilization" means a reduction, during any calendar year in phase I, in the heat input, expressed in millions of Btus for the calendar year, at a phase I unit

below the unit's baseline, where the reduction subjects the unit to the requirement to file a reduced utilization plan under 40 CFR 72.43.

(71) "Reduced utilization plan" means a compliance plan submitted by the designated representative under 40 CFR 72.43 for the purpose of identifying an affected unit's method of complying with the applicable sulfur dioxide and nitrogen oxides emission limitations.

(72) "Repowering extension plan" means a compliance plan submitted by the designated representative under 40 CFR 72.44 for the purpose of identifying an affected unit's method of complying with the applicable sulfur dioxide emission limitations.

(73) "Schedule of compliance" means an enforceable sequence of actions, measures or operations designed to achieve or maintain compliance or correct non-compliance, with an applicable requirement of the acid rain program, including any applicable acid rain portion of an operation permit requirement.

(74) "Secretary of energy" means the secretary of the United States department of energy or the secretary's duly authorized representative.

(75) "Simple cycle combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 to 1987 and does not use auxiliary firing at any time after November 15, 1990.

(76) "Solid waste incinerator" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public, including single and multiple residences, hotels and motels. The term does not include incinerators or other units required to have a permit under 42 USC 6925. The term solid waste incinerator does not include:

(a) Materials recovery facilities, including primary or secondary smelters which combust waste for the primary purpose of recovering metals.

(b) Qualifying small power production facilities or qualifying cogeneration facilities which burn homogeneous waste, such as units which burn tires or used oil, but not including refuse-derived fuel, for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy, such as heat, which are used for industrial, commercial, heating or cooling purposes.

(c) Air curtain incinerators provided that the incinerators only burn wood wastes, yard wastes and clean lumber and that air curtain incinerators comply with opacity limitations established by the department and the administrator by rule.

(77) "Submit" or "serve" means to send or transmit a document, information or correspondence to the person specified in accordance with the applicable regulation in one of the following ways:

(a) In person.

(b) By United States postal service certified mail with the official postmark or, if service is by the administrator or the department, by any other mail service by the United States postal service.

(c) By other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission", "service" or "mailing" deadline shall be determined by the date of dispatch, transmission or mailing and not the date of receipt.

(78) "Substitution plan" means a compliance plan submitted by the designated representative under 40 CFR 72.41 for the purpose of identifying an affected unit's method of complying with the applicable sulfur dioxide emission limitations.

(79) "Substitution unit" means an affected unit, other than a unit under section 410 of the act (42 USC 7651i), that is designated as a phase I unit in a substitution plan under 40 CFR 72.41.

(80) "Total installed net output capacity" means the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

(81) "Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

(82) "Unit" means a fossil fuel-fired combustion device.

(83) "Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

(84) "Utility" means any person that sells electricity.

(85) "Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility or independent power production facility may be regarded as having been "selected" in the solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

(86) "Utility regulatory authority" means an authority, board, commission or other entity, limited to the local-, state- or federal-level, whenever so specified, responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

(87) "Utility unit" means a unit owned or operated by a utility that serves a generator that produces electricity for sale or that, during 1985, served a generator that produced electricity for sale, except as provided in pars. (a) and (b):

(a) A unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the acid rain program.

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(b) A unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

**History:** Cr. Register, September, 1986, No. 369, eff. 10-1-86; r. and recr., renum. from NR 407.02 (5) to (12), (14), (15), (18), (19), (21), (23) to (30), (33), (34) to be (10), (11), (15), (19), (22), (26), (28), (29), (37), (38), (47), (48), (50), (55), (56), (64), (66), (69) to (72), (78), (79) and am. (72), (78), (79), Register, April, 1995, No. 472, eff. 5-1-95; am. (76) (intro.), Register, December, 1995, No. 480, eff. 1-1-96.

**NR 409.025 Permit requirement. History:** Renum. from NR 154.055 (1) (intro.) and am. Register, September, 1986, No. 369, eff. 10-1-86; am. Register, May, 1992, No. 437, eff. 6-1-92; am. Register, December, 1993, No. 456, eff. 1-1-94; renum. to NR 406.15 (3), Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.03 Relocation into and within ozone nonattainment areas. History:** Renum. from NR 154.055 (2) and (4), cr. (1) and am. (3), Register, September, 1986, No. 369, eff. 10-1-86; r. and recr. Register, December, 1993, No. 456, eff. 1-1-94; renum. to NR 406.15 (3), Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.04 New units exemption. (1) APPLICABILITY.** This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with sub. (4) (a).

**(2) PETITION FOR WRITTEN EXEMPTION.** The designated representative of a source that includes a unit under sub. (1) may petition the department for a written exemption, or to renew a written exemption, for the unit from certain requirements of this chapter and the acid rain program. The petition shall be submitted on a form approved by the department which includes:

- (a) Identification of the unit.
- (b) The nameplate capacity of each generator served by the unit.
- (c) A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with sub. (4) (a).
- (d) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.
- (e) The special provisions in sub. (4).

**Note:** These forms may be obtained from the district and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, Permit Section, PO Box 7921, Madison WI 53707-7921.

**(3) DEPARTMENT'S ACTION.** (a) The department shall issue, for any unit meeting the requirements of subs. (1) and (2), a written exemption from the requirements of this chapter and the acid rain program except for the requirements specified in this section, 40 CFR 72.1 to 72.6 and 40 CFR 72.10 to 72.13; provided that no unit may be exempt unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR 72.7 (c) (1) (i) and 40 CFR 72.7 (d) (1).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written

exemption is issued as a final department action subject to judicial review, in accordance with par. (b); provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of this chapter and the acid rain program concerning all years for which the unit was not exempt, even if the requirements arise, or must be complied with, after the exemption takes effect.

2. The exemption is not a defense against any violation of the requirements of this chapter and the acid rain program concerning years for which the unit was not exempt.

(b) In considering and issuing or denying a written exemption under par. (a), the department shall apply the procedures in s. 144.3925, Stats., by:

1. Treating the petition as an operation permit application under s. 144.391, Stats.;

2. Issuing and noticing to the public an analysis on the approvability of the request as specified in s. 144.3925 (2) and (3), Stats.; and

3. Issuing a proposal to issue or deny the request under s. 144.3925 (5m), Stats.; provided that no provision under ch. NR 407 or s. NR 409.10 concerning the content, effective date or term of an acid rain portion of an operation permit may apply to the written exemption or proposed written exemption under this section.

(c) A written exemption issued under this section shall have a term of 5 years from its effective date, except as provided in sub. (4) (c).

**(4) SPECIAL PROVISIONS.** (a) The owners and operators of each unit exempt under this section shall determine the sulfur content by weight of its fuel as follows:

1. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of fuel shall be tested using ASTM methods D4057-88 and D129-91, D2622-92 or D4294-90, incorporated by reference in s. NR 484.10.

2. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.

3. For gaseous fuel, other than natural gas, that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of fuel shall be tested using ASTM methods D1072-90 and D1265-92, incorporated by reference in s. NR 484.10; provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method D1072-90.

(b) The owners and operators of each unit exempt under this section shall retain at the source that includes the unit, the records of the results of the tests performed under par. (a) 1. and 3. and a copy of the purchase agreements for the fuel under par. (a), stating the sulfur content of the fuel. Records and documents shall be retained for 5 years from the date they are created.



(c) On the earlier of the date the written exemption expires, the date a unit exempt under this section burns any fuel with a sulfur content in excess of 0.05% by weight, as determined in accordance with par. (a), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempt under this section and shall be subject to all requirements of this chapter and the acid rain program, except that:

1. Notwithstanding s. NR 409.08 (1) (b) and (c), the designated representative of the source that includes the unit shall submit a complete request for a revision to its operation permit to the department on the later of January 1, 1998 or the date the unit is no longer exempt under this section. If no operation permit has been issued to the source, the source shall amend the application for an operation permit for that source.

2. For purposes of applying monitoring requirements under 40 CFR part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of sub. (1).

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.05 Retired units exemption. (1) APPLICABILITY.** This section applies to any affected unit that is retired prior to the issuance, including renewal, of an acid rain portion of an operation permit for the unit as a final department action.

**(2) PETITION FOR WRITTEN EXEMPTION.** (a) The designated representative of a source that includes a unit under sub. (1) may petition the department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program.

(b) A petition under this section shall be submitted on or before:

1. The deadline for submitting an acid rain portion of an operation permit application for phase II in s. NR 409.08.

2. If the unit has a phase II acid rain portion in its operation permit, the deadline for renewal of the permit.

(c) The petition under this section shall be submitted on a form approved by the department and shall include all of the following:

1. Identification of the unit.

2. The applicable deadline under par. (b).

3. The actual or expected date of retirement of the unit.

4. The following statement: "I certify that this unit [is' or 'will be', as applicable] permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date."

5. A description of any actions that have been or will be taken and provide the basis for the certification in subd. 4.

6. The special provisions in sub. (4).

**(3) DEPARTMENT'S ACTION.** (a) The department shall issue, for any unit meeting the requirements of subs. (1) and (2), a written exemption from the requirements of this chapter and 40 CFR part 72 except for the requirements

specified in this section and 40 CFR 72.1 to 72.6, 72.8 and 72.10 to 72.13.

1. The exemption shall take effect on January 1 of the year following the date on which the written exemption is issued as a final department action subject to judicial review, in accordance with par. (b); provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of this chapter and 40 CFR part 72 concerning all years for which the unit was not exempt, even if the requirements arise or must be complied with after the exemption takes effect.

2. The exemption is not a defense against any violation of the requirements of this chapter and the acid rain program concerning years for which the unit was not exempt.

(b) In considering and issuing or denying a written exemption under par. (a), the department shall apply the procedures in s. 144.3925, Stats., by:

1. Treating the petition as an operation permit application under s. 144.391, Stats.;

2. Issuing an analysis and preliminary determination on the approvability of the request for the exemption under s. 144.3925 (3), Stats.; and

3. Issuing a proposal to issue or deny the exemption request that is treated as a proposed permit under s. 144.3925 (5m), Stats.

(c) A written exemption issued under this section shall have a term of 5 years, except as provided in sub. (4) (c).

**(4) SPECIAL PROVISIONS.** (a) A unit exempt under this section may not emit any sulfur dioxide and nitrogen oxides starting on the date it is exempt.

(b) The owners and operators of a unit exempt under this section shall comply with monitoring requirements in accordance with 40 CFR part 75 and shall be allocated allowances in accordance with 40 CFR part 73.

(c) A unit exempt under this section may not resume operation unless the designated representative of the source, that includes the unit, submits an acid rain portion of an operation permit application for the unit, to the department, not less than 24 months prior to the later of January 1, 2000, or the date the unit is to resume operation. The unit may no longer be exempt under this section and shall be subject to all requirements of this chapter and 40 CFR part 72 on the earlier of:

1. The date the written exemption expires.

2. The date an acid rain portion of an operation permit application is submitted or is required to be submitted under this chapter.

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.06 Standard requirements. (1) PERMIT REQUIREMENTS.** (a) The designated representative of each affected source and each affected unit at the source shall:

1. Except for a phase I acid rain permit to be issued by EPA, submit a complete acid rain portion of an operation permit application under this chapter in accordance with the deadlines specified in s. NR 409.08 (1);

2. Submit in a timely manner any supplemental information that the department determines is necessary in order to review an application for the acid rain portion of an operation permit and issue or deny an acid rain portion of an operation permit.

(b) The owners and operators of each affected source and each affected unit at the source shall:

1. Operate the unit in compliance with a complete acid rain portion of an operation permit application or a superseding acid rain portion of an operation permit issued by the department; and

2. Have an acid rain portion of an operation permit.

**(2) MONITORING REQUIREMENTS.** (a) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR part 75 and section 407 of the act (42 USC 7651f) and regulations implementing section 407 of the act.

(b) The emissions measurements recorded and reported in accordance with 40 CFR part 75 and section 407 of the act (42 USC 7651f) and regulations implementing section 407 of the act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

(c) The requirements of 40 CFR part 75 and regulations implementing section 407 of the act (42 USC 7651f) do not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the act and other provisions of the operation permit for the source.

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). Nitrogen oxides requirements will be added to this chapter at a later date.

**(3) SULFUR DIOXIDE REQUIREMENTS.** (a) The owners and operators of each affected source and each affected unit at the source shall:

1. Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount, after deductions under 40 CFR 73.34 (c), not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

2. Comply with the applicable acid rain emissions limitation for sulfur dioxide.

(b) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation.

(c) An affected unit is subject to the requirements under par. (a) as follows:

1. Starting January 1, 2000, an affected unit under s. NR 409.01 (1) (a) 2.; or

2. Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR part 75, an affected unit under s. NR 409.01 (1) (a) 3.

(d) Allowances shall be held in, deducted from or transferred among allowance tracking system accounts in accordance with the acid rain program.

(e) An allowance may not be deducted, in order to comply with the requirements under par. (a) 1., prior to the calendar year for which the allowance was allocated.

(f) An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain portion of an operation permit application, the acid rain portion of an operation permit or the written exemption under ss. NR 409.04 and 409.05 and no provision of law may be construed to limit the authority of the United States to terminate or limit the authorization.

(g) An allowance allocated by the administrator under the acid rain program does not constitute a property right.

**Note:** A new subsection (NR 409.06 (4), nitrogen oxides requirements), will be created when nitrogen oxide regulations are promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). Under this subsection, the owners and operators of the source and each affected unit at the source will have to comply with the applicable acid rain emissions limitation for nitrogen oxides.

**(5) EXCESS EMISSIONS REQUIREMENTS.** (a) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR part 77, and submit a copy to the department.

(b) The owners and operators of an affected unit that has excess emissions in any calendar year shall:

1. Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR part 77; and

2. Comply with the terms of an approved offset plan, as required by 40 CFR part 77.

**(6) RECORDKEEPING AND REPORTING REQUIREMENTS.** (a) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the administrator or department.

1. The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond the 5-year period until the documents are superseded because of the submission of a new certificate of representation changing the designated representative.

2. All emissions monitoring information, in accordance with 40 CFR part 75.

3. Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

4. Copies of all documents used to complete an acid rain portion of an operation permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of this chapter and the acid rain program.

(b) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under s. NR 409.13 and 40 CFR part 75.

(7) **LIABILITY.** (a) Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain portion of an operation permit application, an acid rain portion of an operation permit or a written exemption under s. NR 409.04 or 409.05, shall be subject to enforcement by the department pursuant to ch. NR 494 and ss. 144.423 and 144.426, Stats.

(b) Any person who knowingly makes a false, material statement in any record, submission or report under the acid rain program shall be subject to criminal enforcement by the department pursuant to ch. NR 494 and ss. 144.423 and 144.426, Stats.

(c) No permit revision may excuse any violation of the requirements of this chapter and the acid rain program that occurs prior to the date that the revision takes effect.

(d) Each affected source and each affected unit shall meet the requirements of this chapter and the acid rain program.

(e) Any provision of the acid rain program that applies to an affected source, including a provision applicable to the designated representative of an affected source, shall also apply to the owners and operators of the source and of the affected units at the source.

(f) Any provision of the acid rain program that applies to an affected unit, including a provision applicable to the designated representative of an affected unit, shall also apply to the owners and operators of the unit. Except as provided under s. NR 409.09 (2), section 407 of the act (42 USC 7651f) and regulations implementing section 407 of the act, and except with regard to the requirements applicable to units with a common stack under 40 CFR part 75, including 40 CFR 75.16, 75.17 and 75.18, the owners and operators and the designated representative of one affected unit are not liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(g) Each violation of a provision of this chapter and 40 CFR parts 72, 73, 75, 77 and 78 and regulations implementing sections 407 and 410 of the act (42 USC 7651f and 7651i) by an affected source or affected unit, or by an owner or operator or designated representative of the source or unit, shall be a separate violation.

(8) **EFFECT ON OTHER AUTHORITIES.** No provision of the acid rain program, an acid rain portion of an operation permit application, an acid rain portion of an operation permit or a written exemption under s. NR 409.04 or 409.05 may be construed as:

(a) Except as expressly provided in title IV of the act (42 USC 7651 to 7651o), exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the act, including the provisions of title I of the act relating to applicable national ambient air quality standards or state implementation plans;

(b) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit may not affect the source's obligation to comply with any other provisions of the act;

(c) Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding the state regulation, or limiting the state regulation, including any prudence review requirements under state law;

(d) Modifying the federal power act (16 USC 791a et seq.) or affecting the authority of the federal energy regulatory commission under the federal power act; or

(e) Interfering with or impairing any program for competitive bidding for power supply in a state in which the program is established.

**History:** Cr Register, April, 1995, No. 472, eff. 5-1-95; am. (8) (d), Register, December, 1995, No. 480, eff. 1-1-96.

**NR 409.07 Designated representative. (1) SUBMISSIONS.**

(a) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with subpart B of 40 CFR part 72 and, concurrently, shall submit a copy to the department.

(b) Each submission under the acid rain program shall be submitted, signed and certified by the designated representative for all sources on behalf of which the submission is made.

(c) In each submission under the acid rain program, the designated representative shall certify, by his or her signature:

1. The following statement, which shall be included verbatim in the submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

2. The following statement, which shall be included verbatim in the submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(d) The department shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has

been made, signed and certified in accordance with pars. (b) and (c).

(e) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

1. By the date of submission, of any acid rain program submissions by the designated representative;
2. Within 10 business days of receipt of a determination, of any written determination by the administrator or the department; and
3. Provided that the submission or determination covers the source or the unit.

(f) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under par. (e), unless the owner or operator expressly waives the right to receive a copy.

(2) **OBJECTIONS.** (a) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of a communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

(b) The department may not adjudicate any private legal dispute concerning the authorization or any submission, action or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

*History:* Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.08 Application for the acid rain portion of an operation permit.** (1) **REQUIREMENT TO APPLY.** (a) *Duty to apply.* The designated representative of any source with an affected unit shall submit a complete acid rain portion of an operation permit application by the applicable deadline in pars. (b) and (c), and the owners and operators of the source and any affected unit at the source may not operate the source or unit without a permit or permit application meeting the requirements of sub. (3) that states its acid rain program requirements.

*Note:* Application forms may be obtained from the district and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, Permit Section, PO Box 7921, Madison WI 53707-7921.

(b) *Deadlines.* 1. For any source with an existing unit described under s. NR 409.01 (1) (a) 2., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department on or before January 1, 1996.

2. For any source with a new unit described under s. NR 409.01 (1) (a) 3. a., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

3. For any source with a unit described under s. NR 409.01 (1) (a) 3. b., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

4. For any source with a unit described under s. NR 409.01 (1) (a) 3. c., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

5. For any source with a unit described under s. NR 409.01 (1) (a) 3. d., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department before the later of January 1, 1998 or March 1 of the year following the 3 calendar year periods in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output, on a gross basis.

6. For any source with a unit described under s. NR 409.01 (1) (a) 3. e., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

7. For any source with a unit described under s. NR 409.01 (1) (a) 3. f., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

8. For any source with a unit described under s. NR 409.01 (1) (a) 3. g., the designated representative shall submit a complete acid rain portion of an operation permit application governing the unit to the department before the later of January 1, 1998 or March 1 of the year following the 3 calendar year periods in which the incinerator consumed 20% or more fossil fuel, on a Btu basis.

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

(d) *Number of copies.* The original and 3 copies of all permit applications shall be submitted to the department.

*Note:* Application forms may be obtained from the district and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, Permit Section, PO Box 7921, Madison WI 53707-7921.

(2) **INFORMATION REQUIREMENTS FOR THE ACID RAIN PORTION OF OPERATION PERMIT APPLICATIONS.** A complete acid rain portion of an operation permit application shall be submitted on a form approved by the department and shall include the following elements:

(a) Identification of the affected source for which the acid rain portion of the permit application is submitted;

(b) Identification of each affected unit at the source for which the acid rain portion of the permit application is submitted;

(c) A complete compliance plan for each unit, in accordance with s. NR 409.09;

(d) The standard requirements under s. NR 409.06; and

(e) If the unit is a new unit, the date that the unit has commenced or shall commence operation and the deadline for monitor certification under 40 CFR part 75.

**(3) PERMIT APPLICATION SHIELD AND BINDING EFFECT OF PERMIT APPLICATION.** (a) 1. Once a designated representative submits a timely and complete acid rain portion of an operation permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain portion of an operation permit under ss. NR 409.06 (1) (b) and 409.08 (1) (a).

2. After an application for an operation permit has been initially deemed complete, the department may require additional information, including other information than that requested on the application forms, as needed to process the application. The department shall specify, in writing, a reasonable time period, of not less than 30 days, for the applicant to submit the requested information. The applicant may request and the department may grant a reasonable extension of the time period to submit the requested information. If the applicant does not supply the information requested by the date specified, the authorization for an existing source to operate under s. 144.3925 (7), Stats., no longer applies to the source.

(b) Prior to the date on which an acid rain portion of a permit is issued or denied as a final department action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain portion of an operation permit application shall be deemed to be operating in compliance with the acid rain program.

(c) A complete acid rain portion of an operation permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain portion of an operation permit from the date of submission of the permit application until the issuance or denial of the permit as a final department action subject to judicial review.

**(4) RELATIONSHIP TO CH. NR 407 OPERATION PERMIT PROGRAM.** (a) The department shall act in accordance with this chapter and chs. NR 406 and 407 for the purpose of incorporating acid rain program requirements into each affected source's operation permit or for issuing written exemptions under ss. NR 409.04 and 409.05. To the extent that any requirements of this chapter are inconsistent with the requirements of ch. NR 406 or 407, this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal and appeal of the acid rain portion of an operation permit. For purposes of applying this subsection, the provisions of this chapter and of chs. NR 406 and 407 applicable to acid rain portions of

operation permit applications and acid rain portions of operation permits shall also apply to petitions for exemption and proposed and final written exemptions respectively for new or retired units to the extent consistent with ss. NR 409.04 and 409.05.

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.09 Acid rain compliance plan and compliance options.** (1) **GENERAL.** (a) *Acid rain portion of an operation permit application.* For each affected unit included in the acid rain portion of an operation permit application, a complete compliance plan shall include, for sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative shall hold allowances in the unit's compliance subaccount, after deductions under 40 CFR 73.34 (c), not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with this section, one or more of the acid rain compliance options.

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f). Nitrogen oxides regulations will require, for nitrogen oxides emissions, a compliance plan which includes a certification that the unit shall comply with the applicable limitation established by regulations implementing section 407 of the act or which specifies one or more acid rain compliance options, in accordance with section 407 of the act and regulations implementing section 407.

(b) *Multi-unit compliance plan option.* The compliance plan may include a multi-unit compliance option under sub. (2) or, for nitrogen oxides, under section 407 of the act (42 USC 7651f) or regulations implementing s. 407.

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f).

1. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

a. The plan is signed and certified by the designated representative for each source with an affected unit governed by the plan; and

b. A complete permit application is submitted covering each unit governed by the plan.

2. The department's approval of a plan under subd. 1. that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any unit has approved the plan with the same modifications or conditions, if any.

(c) *Conditional approval.* In the compliance plan, the designated representative of an affected unit may propose, in accordance with this section, any acid rain compliance option for conditional approval; provided that an acid rain compliance option under section 407 of the act (42 USC 7651f) may be conditionally proposed only to the extent provided in regulations implementing section 407 of the act.

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f).

1. To activate a conditionally-approved acid rain compliance option, the designated representative shall notify the department in writing that the conditionally-approved compliance option shall actually be pursued beginning January 1 of a specified year. Notification shall be subject to the limitations on activation under sub. (2) and regulations implementing section 407 of the act (42 USC 7651f). If the conditionally-approved compliance option includes a

plan described in par. (b) 1., the designated representative of each source governed by the plan shall sign and certify the notification.

2. The notification under subd. 1. shall specify the first calendar year and the last calendar year for which the conditionally-approved acid rain compliance option is to be activated. A conditionally-approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option is not a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

3. Upon submission of a notification meeting the requirements of subds. 1. and 2., the conditionally-approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally-approved compliance option.

4. A notification meeting the requirements of subds. 1. and 2. shall be treated as an administrative permit revision under s. NR 409.12 (4) (a) 1.

(d) *Termination of compliance option.* 1. The designated representative for a unit may terminate an acid rain compliance option by notifying the department in writing that an approved compliance option shall be terminated beginning January 1 of a specified year. Notification shall be subject to the limitations on termination under sub. (2) and regulations implementing section 407 of the act (42 USC 7651f). If the compliance option includes a plan described in par. (b) 1., the designated representative for each source governed by the plan shall sign and certify the notification.

2. The notification under subd. 1. shall specify the calendar year for which the termination shall take effect.

3. Upon submission of a notification meeting the requirements of subds. 1. and 2., the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

4. A notification meeting the requirements of subds. 1. and 2. shall be treated as an administrative permit revision under s. NR 409.12 (4) (a) 6.

Note: Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f).

(2) REPOWERING EXTENSIONS (a) *Applicability.* 1. This section shall apply to the designated representative of:

a. Any existing affected unit that is a coal-fired unit and has a 1985 actual SO<sub>2</sub> emissions rate equal to or greater than 1.2 lbs/mmBtu;

b. Any new unit that is a replacement unit, as provided in par. (b) 2., for a unit meeting the requirements of subd. 1. a.; or

c. Any oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the secretary of energy.

2. A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan

from the requirement to comply with the unit's acid rain emissions limitations for sulfur dioxide.

(b) *Repowering extension plan.* The designated representative of any unit meeting the requirements of par. (a) 1. a. may include in the unit's acid rain portion of an operation permit application a repowering extension plan that includes a demonstration that:

1. The unit shall be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or

2. The unit shall be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit shall be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

(c) *Submittal dates.* In order to apply for a repowering extension, the designated representative of a unit under par. (a) shall:

1. Submit to the department, by January 1, 1996, a complete repowering extension plan;

2. Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44 (d) and submit a copy to the department; and

3. If the repowering extension plan is submitted for conditional approval, submit to the department by December 31, 1997, a notification to activate the plan in accordance with sub. (1) (c).

(d) *Contents of repowering extension plan.* A complete repowering extension plan shall be sent to the department and include the following elements:

1. Identification of the existing unit governed by the plan.

2. The unit's federally-approved state implementation plan sulfur dioxide emissions limitation.

3. The unit's 1995 actual SO<sub>2</sub> emissions rate or best estimate of the actual emissions rate; provided that the actual emissions rate is submitted to the department by January 30, 1996.

4. A schedule for construction, installation and commencement of operation of the repowering technology approved or submitted for approval to the administrator under 40 CFR 72.44 (d) with dates for the following milestones:

a. Completion of design engineering;

b. For a plan under par. (b) 1., removal of the existing unit from operation to install the qualified repowering technology;

c. Commencement of construction;

d. Completion of construction;

e. Startup testing;

f. For a plan under par. (b) 2., shutdown of the existing unit; and

g. Commencement of commercial operation of the repowering technology.

5. For a plan under par. (b) 2.:

a. Identification of the new unit. A new unit may not be included in more than one repowering extension plan.

b. Certification that the new unit shall replace the existing unit.

c. Certification that the new unit has the same designated representative as the existing unit.

d. Certification that the existing unit shall be permanently retired from service on or before the date the new unit commences commercial operation.

6. The special provisions of par. (g).

(e) *Department's action on repowering extension plan.* 1. The department may not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the department approves the plan subject to the conditional determination of the administrator.

2. a. Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the department that the plan meets the requirements, the department shall issue the acid rain portion of the operation permit, including the approved repowering extension plan and a schedule of compliance with enforceable milestones for construction, installation and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section are met.

b. Except as otherwise provided in par. (f), the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date specified in the acid rain portion of an operation permit, on which the existing unit shall be removed from operation, to install the qualifying repowering technology, or shall be permanently removed from service for replacement by a new unit with the technology; provided that the repowering extension shall end no later than December 31, 2003.

c. The portion of the operation permit specifying the repowering extension and other requirements under subd. 2. a. shall be subject to the administrator's final determination, under 40 CFR 72.44 (d) (4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

3. Allowances shall be allocated in accordance with 40 CFR 72.44 (f) (3) and (g).

(f) *Failed repowering projects.* 1. If, at any time before the end of the repowering extension under par. (e) 2. b., the designated representative of a unit governed by an approved repowering extension plan submits the notification under s. NR 409.13 (2) (d) that the owners and operators have decided to terminate efforts to properly design, construct and test the repowering technology specified in the plan before completion of construction or startup testing, the designated representative may submit to the department a proposed permit revision demonstrating that

the efforts were in good faith. If the demonstration is to the satisfaction of the administrator, the unit may not be deemed in violation of the act because of a termination and the department shall revise the operation permit in accordance with subd. 2.

2. Regardless of whether notification under subd. 1. is given, the repowering extension shall end beginning on the earlier of the date of the notification or the date by which the designated representative was required to give the notification under s. NR 409.13 (2) (d).

3. The designated representative of a unit governed by an approved repowering extension plan may submit to the department a proposed significant permit revision demonstrating that the repowering technology specified in the plan was properly constructed and tested on the unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve the limits. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of multiple combustion emissions, including sulfur dioxide and nitrogen oxides, from the unit while operating the technology at nameplate capacity. If the demonstration is to the satisfaction of the administrator:

a. The unit may not be deemed in violation of the act because of the failure to achieve the emissions reduction limitations;

b. The department shall revise the acid rain portion of the operation permit in accordance with subd. 3. c. and d.;

c. The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

d. The repowering extension shall continue in effect until the earlier of the date the existing unit commences commercial operation with the control technology or December 31, 2003.

(g) *Special provisions.* 1. a. Sulfur dioxide allowances allocated during the repowering extension under pars. (e) 3. and (f) to a unit governed by an approved repowering extension plan may not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

b. Any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with section 407 of the act (42 USC 7651f) and regulations implementing section 407 of the act beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f).

c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under section 111 (j) of the act (42 USC 7411 (j)).

d. No new unit governed by an approved repowering extension plan shall receive an exemption from the re-

quirements imposed under section 111 of the act (42 USC 7411).

2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of s. NR 409.13 (2).

3. a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan.

b. The units governed by the plan under par. (b) 2. shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

4. Except as provided in par. (f), a repowering extension plan may not be terminated after December 31, 1999.

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.10 Acid rain portion of an operation permit. (1) CONTENTS.** (a) Each acid rain portion of an operation permit, including any draft or proposed acid rain portion of an operation permit, shall contain the following elements:

1. All elements required for a complete acid rain portion of an operation permit application under s. NR 409.08 (2), as approved or adjusted by the department;

2. The applicable acid rain emissions limitation for sulfur dioxide; and

3. The applicable acid rain emissions limitation for nitrogen oxides.

(b) Each acid rain portion of an operation permit is deemed to incorporate the definitions of terms under s. NR 409.02, chs. NR 400, 406 and 407, and the definitions in title IV of the act (42 USC 7651 to 7651o).

(2) *Permit shield.* Each affected unit operated in accordance with the acid rain portion of an operation permit that governs the unit and that was issued in compliance with title IV of the act (42 USC 7651 to 7651o), as provided in this chapter, 40 CFR parts 72, 73, 75, 77 and 78 and the regulations implementing section 407 of the act (42 USC 7651f), shall be deemed to be operating in compliance with the acid rain program, except as provided in s. NR 409.06 (7) (f).

**Note:** Nitrogen oxides regulations have not yet been promulgated by EPA, pursuant to section 407 of the act (42 USC 7651f).

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.11 Acid rain portion of an operation permit issuance procedures. (1) GENERAL.** The department shall issue or deny all acid rain portions of title V permits in accordance with s. 144.3925, Stats. and s. NR 409.10.

**Note:** These regulations are intended to follow the requirements in 40 CFR 72.72 regarding state permit program approval criteria.

(a) *Permit issuance deadline and effective date.* 1. On or before December 31, 1997, the department shall issue an operation permit with a phase II acid rain portion to each affected source whose designated representative submitted a timely and complete application for the acid rain portion of its operation permit by January 1, 1996 in accordance with s. NR 409.07 (1) and which meets the requirements of this chapter and ch. NR 407.

Register, December, 1995, No. 480

2. Not later than January 1, 1999, the department shall reopen the acid rain portion of the permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain portion of an operation permit application for nitrogen oxides in accordance with s. NR 409.07 (1). The reopening may not affect the term of the acid rain portion of an operation permit.

3. Each acid rain portion of an operation permit issued in accordance with subd. 1. shall take effect by the later of January 1, 2000 or, where the permit governs a unit under s. NR 409.01 (1) (a) 3., the deadline for monitor certification under 40 CFR part 75.

4. The acid rain portion of an operation permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(b) *Acid rain portion of an operation permit requirements.* Each acid rain portion of an operation permit shall contain all applicable acid rain requirements, shall be a portion of the operation permit that is complete and segregable from all other air quality requirements and may not incorporate information contained in any other documents, other than documents that are readily available.

(c) *Severability.* Invalidation of the acid rain portion of an operation permit does not affect the continuing validity of the rest of the operation permit, nor shall invalidation of any other portion of the operation permit affect the continuing validity of the acid rain portion of the permit.

(2) **ACID RAIN APPEAL PROCEDURES.** (a) Appeals of the acid rain portion of an operation permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR parts 72, 73, 75, 77 and 78 and regulations implementing sections 407 and 410 (42 USC 7651f and 7651i) of the act shall be conducted according to the procedures in ch. NR 407 and ss. 144.31 (2) (a), 144.403 and 227.40 to 227.60, Stats. The permit shield under s. NR 409.10 (2) shall continue to be in effect during the appeal process. Appeals of the acid rain portion of a permit that challenge or involve decisions or actions of the administrator shall follow the procedures under 40 CFR part 78 and section 307 of the act (42 USC 7607). Decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems and determinations of whether a technology is a qualifying repowering technology.

(b) No state administrative or judicial appeal of the acid rain portion of an operation permit may be allowed to commence more than 30 days following issuance of the acid rain portion of an operation permit, as provided by ss. 144.403 and 227.53, Stats.

(c) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain portion of an operation permit or denial of an acid rain portion of an operation permit.

(d) No administrative appeal concerning an acid rain requirement may result in a stay of the following requirements:

1. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted.

2. Any standard requirement under s. NR 409.06.



3. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR part 75.

4. Uncontested provisions of the decision on appeal.

5. The terms of a certificate of representation submitted by a designated representative under subpart B of 40 CFR part 72.

(e) The department shall serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operation permit or denial of an acid rain portion of any operation permit within 30 days of the filing of the appeal.

(f) The department shall serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids or otherwise relates to any portion of an acid rain portion of an operation permit. Following any such determination or order, the administrator may review and veto the acid rain portion of an operation permit or revoke the permit for cause in accordance with this chapter and chs. NR 406 and 407.

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.

**NR 409.12 Revisions of acid rain provisions. (1) GENERAL.**

(a) This section governs revisions to the acid rain provisions contained in any operation permit issued by the department under ch. NR 407. Any determination or interpretation by the department or by the state, including a state court, modifying or voiding any provision of the acid rain portion of an operation permit shall be subject to review by the administrator in accordance with 40 CFR 70.8 (c) as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 40 CFR 72.83 and sub. (4).

(b) A request for a permit revision may be submitted to the department at any time. No permit revision may affect the duration of the permit to be revised. No permit revision may excuse any violation of an applicable requirement of the acid rain program that occurred prior to the effective date of the revision.

(c) The terms of the permit shall apply while the request for a permit revision is pending.

(d) The standard requirements of the acid rain program in 40 CFR 72.9 may not be modified or voided by a permit revision.

(e) Any request for a permit revision to incorporate a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for that compliance option under 40 CFR 72.40 to 72.44 and regulations implementing section 407 of the act (42 USC 7651f).

(f) For permit revisions not described in sub. (2) or (3), the department may, at its discretion, determine whether the revision request will be processed under sub. (2) or (3).

**(2) SIGNIFICANT PERMIT REVISIONS.** (a) Applications for the following revisions shall be processed as significant permit revisions except as provided in sub. (4) (a) 11.:

1. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;

2. Incorporation of a final nitrogen oxides alternative emission limitation pursuant to section 407 (d) of the act (42 USC 7651f(d)); and

3. Determinations concerning failed repowering projects under 40 CFR 72.44 (g) (1) (i) and (2).

(b) Requests for the following permit revisions shall be processed, at the option of the designated representative submitting the request for the permit revision, under either the significant permit revision procedures in par. (c) or under the fast-track revision procedures in sub. (3):

1. Use of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process, except that incorporation of a reduced utilization plan that does not designate a compensating unit, and that meets the requirements for phase I reduced utilization plans in 40 CFR 72.43, may be processed using the administrative permit revision procedures in sub. (4);

2. Changes in a substitution plan or reduced utilization plan that result in the addition of a new substitution unit or a new compensating unit under the plan;

3. Addition of a nitrogen oxides averaging plan to a permit; and

4. Changes in a phase I extension plan, phase II repowering extension plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

(c) Requests for significant permit revisions shall be processed in accordance with s. 144.3925, Stats., except that the department shall act on the majority of the requests for significant permit revisions within 9 months after receipt of a complete application.

(d) An affected source requesting a significant permit revision under this subsection shall comply with all applicable requirements proposed in the request for revision, if the request is complete, while the request is pending. Where a conflict exists between an applicable requirement proposed in the request for revision and an existing permit provision, the source shall comply with the existing permit provision.

**(3) FAST-TRACK REVISIONS.** The following procedures shall apply to requests for fast-track revisions submitted under sub. (2):

(a) The designated representative shall serve a copy of a request for a fast-track revision on the administrator, the department, the public service commission of Wisconsin and any other state or local utility regulatory authority with jurisdiction over the owners of any source or any unit covered by the permit, the state or local air pollution agency for any affected state and any interested person. Within 5 business days of serving the copies, the designated representative shall provide public notice of the request for revision by publication in a newspaper of general circulation in the area where the source is located or in the official state newspaper. The department shall provide the notice to any person or group that requests the notice. The notice shall be designed to give public notice of the

substance of the requested permit revision and of the opportunity for public comments.

(b) Anyone who wishes to comment shall have a period of 30 days, commencing on the date of publication of the notice under par. (a), to comment on the request for a fast-track revision. Comments shall be submitted in writing to the department and to the designated representative.

(c) Within 30 days of the close of the public comment period provided under par. (b), the department shall review the request for fast-track revision and the comments received on it and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the request for revision.

**(4) ADMINISTRATIVE PERMIT REVISION.** (a) Requests for the following revisions shall be processed as administrative permit revisions:

1. Revisions to a permit to include a compliance option that has previously been conditionally approved by the department, provided that the following requirements are met:

a. The designated representative shall notify the department in writing that the conditionally-approved compliance option will be pursued beginning January 1 of a specified year. If the conditionally-approved compliance option includes a plan involving units at more than one affected source, the designated representative of each source governed by the plan shall sign and certify the notification in accordance with 40 CFR 72.21. The notification shall be subject to the limitations on activation under subd. 1. b. and 40 CFR 72.40 to 72.44.

b. The notification under subd. 1. a. shall specify the first calendar year and the last calendar year for which the conditionally-approved compliance option is to be activated. A conditionally-approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option may not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated;

2. Changes in the designated representative or alternate designated representative, provided that a new certificate of representation has been submitted to the administrator;

3. Correction of typographical errors;

4. Changes in names, addresses, or telephone or facsimile numbers;

5. Changes in the owners or operators, provided that a new certificate of representation is submitted to the administrator at least 30 days prior to the changes;

6. Termination of a compliance option in the permit, provided that the following requirements for termination are met:

a. This procedure may not be used to terminate a phase II repowering extension plan after December 31, 1999 or to terminate a phase I extension plan.

b. The designated representative for a unit may request termination of a compliance option by notifying the de-

partment in writing that an approved compliance option will be terminated beginning January 1 of a specified year. If the compliance option includes a plan involving units at more than one affected source, the designated representative of each source governed by the plan shall sign and certify the notification in accordance with 40 CFR 72.21. The notification shall be subject to the limitations on termination under this paragraph, 40 CFR 72.40 to 72.44 and regulations implementing section 407 of the clean air act (42 USC 7651f).

c. The notification under subd. 6. b. shall specify the calendar year for which the termination will take effect;

7. Changes in a substitution or reduced utilization plan that do not result in the addition of a new substitution unit or a new compensating unit under the plan;

8. Changes in the date, specified in a permit, of commencement of operation of qualifying phase I technology, provided that the new date is in accordance with the phase I extension plan requirements in 40 CFR 72.42;

9. Changes in the date, specified in a permit, of commencement of operation or a change in the deadline for continuous emission or opacity monitor certification, provided that they are in accordance with the standard requirements for permits in 40 CFR 72.9; and

10. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of section 407 of the act (42 USC 7651f) are met.

11. When an EPA issued phase I acid rain portion of an operation permit is revised by EPA as a permit modification under 40 CFR 72.81, the revision to the department issued portion of an operation permit.

12. Incorporation of changes that the administrator has determined to be similar to those listed in subs. 1. to 10.

(b) Requests for administrative revisions shall be processed in accordance with s. NR 407.11 (3) and (4).

**(5) AUTOMATIC PERMIT REVISIONS.** The following permit revisions shall be deemed to revise automatically, and become a part of, the affected source's permit by operation of law without any further action or review by the department:

(a) Upon recordation by the administrator under 40 CFR 73.10 to 73.53, all allowance allocations to transfers to, and deductions from an affected source's allowance tracking system account; and

(b) Incorporation of an offset plan that has been approved by the administrator under 40 CFR 77.4.

**(6) PERMIT REVISIONS BY THE DEPARTMENT.** (a) 1. The department, on its own motion, shall revise an acid rain provision of a permit whenever additional requirements become applicable to any affected source governed by the permit.

2. No later than January 1, 1999, the department shall revise any permits of affected sources to add the acid rain program nitrogen oxides requirements, provided that the designated representative of the affected source submits a timely and complete acid rain permit application for nitrogen oxides, in accordance with 40 CFR 72.21. The revision

may not affect the duration of the acid rain portion of an operation permit.

(b) Permit revisions under this subsection shall be processed in accordance with ss. NR 407.14 (3) and (4). When revising a permit to an affected source under this subsection, the department shall make a determination on the approvability of a revised permit which would change the provisions, or add the requirements, for which the reopening was necessary. The revised permit shall contain the following elements:

1. All elements required for acid rain permit content under 40 CFR 72.50;
2. The applicable acid rain emissions limitation for sulfur dioxide; and
3. The applicable acid rain emissions limitation for nitrogen oxides.

**History:** Cr. Register, December, 1993, No. 456, eff. 1-1-94; renum. from NR 407.17 and am. (1) (a), (d), (e), (2) (a) (intro.), (d), (3) (a), (4) (a) 1. a., 6. b., (b), cr. (4) (a) 11., 12., Register, April, 1995, eff. 5-1-95.

**NR 409.13 Compliance certification. (1) ANNUAL COMPLIANCE CERTIFICATION REPORT. (a) Applicability and deadline.** For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90. For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 CFR part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

(b) *Satisfying other requirements.* The submission of complete compliance certifications in accordance with par. (a) and 40 CFR part 75 shall be deemed to satisfy the requirement to submit compliance certifications under this chapter and chs. NR 406 and 407 with regard to the acid rain portion of the source's operation permit.

**(2) UNITS WITH REPOWERING EXTENSION PLANS. (a) Design and engineering and contract requirements.** No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the department:

1. Satisfactory documentation of a preliminary design and engineering effort.
2. A binding letter agreement for the executed and binding contract, or for each in a series of executed and binding

contracts, for the majority of the equipment to repower the unit using the technology conditionally-approved by the administrator under 40 CFR 72.44 (d) (3).

3. The letter agreement under subd. 2. shall be signed and dated by each party and specify:

- a. The parties to the contract;
- b. The date each party executed the contract;
- c. The unit to which the contract applies;
- d. A brief list identifying each provision of the contract;
- e. Any dates to which the parties agree, including construction completion date;
- f. The total dollar amount of the contract; and
- g. A statement that a copy of the contract is on site at the source and shall be submitted upon written request of the administrator or the department.

(b) *Removal from operation to repower.* The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the department in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

(c) *Commencement of operation.* Not later than 60 days after the unit repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR part 75.

(d) *Decision to terminate.* If at any time before the end of the repowering extension and before completion of construction and startup testing, the owners and operators decide to terminate good faith efforts to design, construct and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the department by the earlier of the end of the repowering extension or a date within 30 days of the decision, stating the date on which the decision was made.

**History:** Cr. Register, April, 1995, No. 472, eff. 5-1-95.