

## Chapter NR 406

### CONSTRUCTION PERMITS

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**Note:** Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1996, No. 492.

**NR 406.01 Applicability; purpose. (1) APPLICABILITY.** This chapter applies to all air contaminant sources, except indirect sources, which may be required under s. 285.60, Stats., to obtain construction permits. In accordance with s. 285.60 (6), Stats., this chapter exempts sources of certain sizes and types from the requirement to obtain a permit. For nonattainment area major sources the construction permit requirements of ch. NR 408 apply in addition to the requirements of this chapter.

**(2) PURPOSE.** This chapter is adopted under ss. 285.11, 285.60 (6), 285.63, 285.65 and 285.66, Stats., to exempt types of stationary sources from the requirement to obtain a construction permit and to establish permit and permit review requirements and permit duration for construction permits.

**History:** Cr. Register, September, 1986, No. 369, eff. 10–1–86; am. Register, April, 1988, No. 388, eff. 5–1–88; emerg. am. (1), eff. 11–15–92; am., Register, May, 1993, No. 449, eff. 6–1–93; am. (1), Register, June, 1995, No. 474, eff. 7–1–95.

**NR 406.02 Definitions.** The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

**(1)** “Clean fuel” means distillate oil, as defined in s. NR 440.205 (2) (h), with a sulfur content less than 0.05% by weight, natural gas, propane, biodiesel fuel, as determined using the procedures in ASTM D6751–09, incorporated by reference in s. NR 484.10 (55v), or any blend of distillate oil and biodiesel fuel.

**(1m)** “Facility” means all stationary sources emitting air contaminants which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control. Emissions resulting from loading, unloading or stockpiling materials to or from vessels or vehicles while at a facility shall be considered as part of the facility’s emissions. Air contaminant sources, other than transportation related activities, shall be considered as part of the same industrial grouping if they are classified under the same 2–digit major group as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in s. NR 484.05 (1).

**(2)** “Individual construction permit” means a construction permit which is not a general construction permit issued under s. NR 406.16 or a registration construction permit issued under s. NR 406.17.

**(3)** “Initial crusher” means, at a nonmetallic mineral processing plant, any crusher into which nonmetallic minerals can be fed without prior crushing in that plant.

**(4)** “Initial grinding mill” means, at a nonmetallic mineral processing plant, any grinding mill into which nonmetallic minerals can be fed without prior crushing in that plant.

**(5)** “Municipal garbage and refuse” means garbage and refuse, as those terms are defined in ch. NR 500, which are primarily generated by residential activities but which may include

minor amounts of commercial and industrial garbage and refuse that are in the total waste stream and are not hazardous. Municipal garbage and refuse does not include sludge which is generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility.

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

**(7)** “Regulated asbestos-containing material” has the meaning given in s. NR 447.02 (33).

**History:** Cr. (intro.), renum. from NR 154.01, Register, September, 1986, No. 369, eff. 10–1–86; r. (1), r. and recr. (2), renum. (3) to (7) and (9) to be NR 400.02 (17m), (43m), NR 406.02 (1), NR 400.02 (46s), NR 406.02 (6) and (10), cr. (3) to (5), (7), (9) and (11), (12) renum. from NR 400.02 (98) and am., Register, April, 1988, No. 388, eff. 5–1–88; correction in (6) made under s. 13.93 (2m) (6) 7., Stats., Register, April, 1988, No. 388; (1) renum. from NR 400.02 (16), renum. (1) to be (1m), am. (3), Register, August, 1991, No. 428, eff. 9–1–91; emerg. cr. (2m) and (13), eff. 11–15–92; am. (intro.), Register, May, 1993, No. 449, eff. 6–1–93; cr. (10m), Register, December, 1993, No. 456, eff. 1–1–94; r. (1) to (5), (7) to (10), (11) and (12), Register, June, 1995, No. 474, eff. 7–1–95; renum. (6) and (10m) to be (1) and (2), Register, December, 1996, No. 492, eff. 1–1–97; renum. (1) and (2) to be (3) and (4), cr. (1) and (2), Register, December, 1997, No. 504, eff. 1–1–98; CR 04–107: renum. (1) to (4) to be (3) to (6), cr. (1) and (2) Register August 2005 No. 596, eff. 9–1–05; CR 06–047: renum. (1) to be (1m), cr. (1) Register May 2007 No. 617, eff. 6–1–07; CR 09–020: am. (1), cr. (7) Register January 2010 No. 649, eff. 2–1–10; **CR 19–015: am. (6) Register September 2020 No. 777, eff. 10–1–20.**

**NR 406.03 Permit requirements and exemptions for construction permits. (1) PERMIT REQUIREMENT.** Except as provided in sub. (2), no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 285.60 (5), Stats., or under this chapter.

**(1e) EXCLUSIONS.** Notwithstanding the definitions of “commence construction” and “commence modification” in s. NR 400.02 (44) and (45) respectively, for projects reviewed under this chapter, all of the following activities may be excluded when determining if construction, reconstruction, replacement, relocation, or modification has commenced:

- (c) Erecting temporary storage structures.
- (d) Dismantling existing equipment or structures.
- (e) Ordering equipment or control devices.
- (f) Temporary storage of equipment on site.
- (g) Site clearing.
- (h) Programs undertaken to locate underground utilities.
- (i) Installation of erosion control measures.

**Note:** Undertaking any of the activities listed under s. NR 406.03 (1e) does not relieve the applicant from the obligation to comply with any other applicable regulations or requirements. If the applicant proceeds with any of the activities prior to receiving a construction permit, the applicant does so at their own risk and the department is not obligated to issue the air permit.

**(1m) APPLICATION AND FORMS.** (a) Applications for construction permits shall be made on forms supplied by the department for these purposes and supplemented with other materials as indicated on the forms. The forms may be supplied by the department in an electronic format, such as on a computer disk, or on line.

**Note:** Application forms may be obtained from Department Regional Headquarters or Service Center offices, or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707–7921, Attention: Construction permits. The internet web address is: <http://dnr.wi.gov/topic/AirPermits/Forms.html>.

(b) Application materials, including construction permit waiver requests, may be submitted on paper or in an electronic format. The applicant shall submit all forms and other required materials, as indicated on the forms. When electing to submit materials on paper, the applicant shall submit the materials to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707–7921, Attention: Construction permits.

**(2) WAIVER OF CONSTRUCTION PERMIT REQUIREMENTS.** (a) A person who is required to obtain a construction permit under s. 285.60, Stats., may request a waiver from the department in order to commence construction, reconstruction, replacement, relocation or modification of an air pollution source prior to the department issuing a construction permit to the source under this chapter. A waiver request shall be made in writing and shall include an explanation of the circumstances that justify the request and when those circumstances arose or may be anticipated to arise. The waiver request shall be signed by a responsible official for the facility.

(b) The department may grant a waiver provided that all of the following conditions are satisfied:

1. The person has submitted a complete construction permit application for the source to the department.

2. The person has submitted a complete waiver request to the department which demonstrates that undue hardship will be caused if a waiver is not granted. Undue hardship may result from any of the following:

- a. Adverse weather conditions.
- b. Catastrophic damage of existing equipment.
- c. A substantial economic or financial hardship.
- d. Other unique conditions.

3. The person has paid the waiver review fee required under s. NR 410.03 (1) (bm).

(c) The department shall act on the waiver request within 15 days of receipt of a complete request and respond to the applicant either approving or denying that request.

(d) The source may commence construction, reconstruction, replacement, relocation or modification when a waiver is granted.

**Note:** A waiver does not relieve the applicant from the obligation to comply with any other applicable regulations or requirements. If the applicant proceeds with construction after a waiver is granted, they do so at the applicant's own risk. Granting the waiver does not obligate the department to approve the air permit application for the source.

(e) The source referenced in par. (b) 1. may not be initially operated until a construction permit is issued.

(f) The department may not grant a waiver for a source that requires a permit under ch. NR 405 or 408 or requires a permit to establish enforceable limitations on potential to emit to avoid permit requirements of ch. NR 405 or 408.

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

(h) The department may rescind a waiver granted under this subsection if the owner or operator does not diligently respond to department inquiries on the construction permit application or if the department preliminarily determines that the source will not meet the criteria for permit approval under s. 285.63 (1), Stats.

**Note:** The address of the Madison headquarters is: Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707, Attention: Permit Application Forms

**History:** Renum. from NR 154.04 (1), Register, September, 1986, No. 369, eff. 10–1–86; emerg. am. eff. 11–15–92; am. Register, May, 1993, No. 449, eff. 6–1–93; CR 06–079: renum. to be (1) and am., cr. (2) Register May 2007 No. 617, eff. 6–1–07; CR 09–020: am. (1), cr. (1m) Register January 2010 No. 649, eff. 2–1–10; CR 15–005: cr. (1e) Register November 2015 No. 719, eff. 12–1–15; correction in (1e) (intro.) made under s. 35.17, Stats., Register November 2015 No. 719; **CR 19–015:**

am. (1e) (intro.), r. (1e) (a), (b), am. (1e) (c), r. (1e) (j), am. (1m) (a), (b), (2) (b) 2. c., (g) Register September 2020 No. 777, eff. 10–1–20.

**NR 406.035 Establishment or distribution of plant-wide applicability limitations.** Notwithstanding the provisions of s. NR 406.04 (1) and (2), a construction permit is required for each of the following:

(1) Establishing a plant-wide applicability limitation under s. NR 405.18 or 408.11.

(2) Distribution of allowable emissions following expiration of a plant-wide applicability limit under s. NR 405.18 (9) or 408.11 (9).

**Note:** Reopening of a plant-wide applicability limitation to accommodate an increase of the plant-wide applicability limitation is accomplished using the procedures in s. NR 405.18 (8) (b) 1. c. and (11) (a) 3. or 408.11 (8) (b) 1. c. and (11) (a) 3. Reopening of a plant-wide applicability limitation to accommodate a decrease of the plant-wide applicability limitation is accomplished using the procedures in s. NR 406.11 (1m).

**History:** CR 06–019: cr. Register June 2007 No. 618, eff. 7–1–07.

**NR 406.04 Direct sources exempt from construction permit requirements.** This section does not provide an exemption from construction permit requirements for a source that is required to obtain a permit under ch. NR 405 or 408 or s. NR 446.03 (2) (a). For any direct source not required to obtain a permit under ch. NR 405 or 408 or s. NR 446.03 (2) (a), no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification if the following conditions are met:

(1) **SPECIFIC CATEGORIES OF EXEMPT SOURCES.** The following categories of direct sources are exempt from the requirement to obtain a construction permit unless construction, reconstruction, replacement, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source:

(a) One or more external combustion furnaces at a source which will not burn any hazardous waste identified under ch. NR 661, or which have been issued a license or licenses under ch. NR 670, and if no individual furnace is designed to burn the following fuels at more than the maximum rates indicated:

1. Coal, coke or other solid fuels, except wood, at a heat input rate of not more than 1.0 million Btu per hour.

2. Wood alone or wood in combination with gaseous or liquid fossil fuels at a heat input rate of not more than 5.0 million Btu per hour.

3. Residual or crude oil at a heat input rate of not more than 5.0 million Btu per hour.

4. Distillate oil at a heat input rate of not more than 10 million Btu per hour.

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

5. Gaseous fossil fuel at a heat input rate of not more than 25 million Btu per hour.

(b) Equipment which is designed to incinerate solid wastes, which are not pathological wastes, infectious wastes, municipal wastes or hazardous wastes under ch. NR 661, at a rate of not more than 500 pounds per hour.

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

1. The equipment is a dual–chamber incinerator that complies with all of the following:

a. The equipment is designed to incinerate not more than 500 pounds of material per hour.

b. The equipment has a secondary chamber that operates at all times during drug incineration with a minimum temperature of

1,400 degrees Fahrenheit, and a minimum gas retention time of 0.5 seconds.

2. Stacks shall comply with all of the following:

a. Each stack shall have a height at least 1.5 times higher than the peak of the highest structure within 150 feet of the equipment.

b. Each stack shall be located at least 500 feet from nearest property line.

c. Each stack shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstructions.

3. The equipment shall be operated within all of the following limits:

a. The unit shall reach a minimum operating temperature of 1,400 degrees Fahrenheit prior to introducing the materials to be incinerated.

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

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

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

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

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

a. The time and date materials are charged.

b. The amount of material charged or burned in each 24-hour period.

c. The type and amount of fuel usage, including sulfur content for fuel oil.

d. The monitoring results.

e. The hours of operation.

f. Routine maintenance of abatement systems.

(ce) Grain storage facilities; including facilities with rack dryers designed to dry grain at a rate of not more than 1,500 bushels per hour at 5% moisture extraction, or rack dryers equipped with at least 50 mesh screens, or column dryers; with an average tonnage of grain received of less than 5500 tons per month and which are not subject to s. NR 440.47. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility sells, acting as a broker, which is never actually received or dried at the grain storage facility.

(cm) Grain processing facilities; including facilities with rack dryers designed to dry grain at a rate of not more than 1,500 bushels per hour at 5% moisture extraction, or rack dryers equipped with at least 50 mesh screens, or column dryers; with an average tonnage of grain received of less than 4500 tons per month and which are not subject to s. NR 440.47. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility receives that is packaged when received and remains packaged.

(d) Portland concrete batch plants which produce or will produce less than 20,000 cubic yards of concrete per month averaged over any 12 consecutive month period.

(e) Storage tanks containing organic compounds with a true vapor pressure in pounds per square inch absolute at 70°F of less than 1.52 with a combined total tankage capacity of not more than 40,000 gallons.

(f) VOC storage tanks with a combined total tankage capacity of not more than 10,000 gallons of volatile organic compounds.

(g) Painting or coating operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of volatile organic compounds per month, which are measured prior to entering any emission control devices, unless the emissions of any single hazardous air pollutant listed under section 112 (b) of the Act (42 USC 7412(b)) equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112 (b) of the Act equal or exceed 25 tons per year.

(gm) Automobile refinishing operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of volatile organic compounds per month, which are measured prior to entering any emission control devices, unless the emissions of any single hazardous air pollutant listed under section 112(b) of the Act (42 USC 7412(b)) equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112(b) of the Act equal or exceed 25 tons per year.

(h) Graphic arts operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of volatile organic compounds per month, which are measured prior to entering any emission control devices, unless the emissions of any single hazardous air pollutant listed under section 112 (b) of the Act equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112 (b) of the Act equal or exceed 25 tons per year.

(i) A temporary change in the method of operation or temporary equipment used or to be used for the purpose of testing or research provided that all of the following requirements are met:

1. A complete application for exemption is made describing the proposed testing or research and including an operating schedule and the types and quantities of emissions anticipated.

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

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

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

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

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

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

(j) A laboratory which emits volatile organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides or particulate matter or a combination thereof at a rate of less than 5.7 pounds per hour unless the emissions of any single hazardous air pollutant

listed under section 112 (b) of the Act equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112 (b) of the Act equal or exceed 25 tons per year. Hourly emissions shall be determined, based on the quantitative estimate of air contaminants before they enter any emission control devices, by dividing the total uncontrolled emissions which would have occurred during a calendar month by the total hours of operation of the laboratory during that calendar month. A laboratory is in operation if laboratory apparatus or equipment is in use.

(k) Equipment whose primary purpose is to transport or sort paper.

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

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

1. Landspreading of contaminated soil, including the agricultural landspreading of soil contaminated with pesticide or fertilizer.

2. Negative pressure venting of contaminated soil or bioremediation, provided the remediation is completed within 3 months or the potential to emit organic compounds from the remediation site is at a rate of not more than 5.7 pounds per hour, considering emission control devices.

3. Pilot testing of a negative pressure venting system provided the testing is limited to a total withdrawal of not more than 150,000 standard cubic feet (scf) of air.

**Note:** The total withdrawal may be determined by the equation: Total withdrawal (scf) = hours of operation of pilot test (hr) × average flow rate in cubic feet per minute at standard conditions (scfm) × 60 min/hr. An example is: 10 hours of operation × 250 scfm × 60 min/hr = 150,000 scf. When testing at multiple flow rates, determine the withdrawal for each flow rate and sum the withdrawals for a total withdrawal.

4. Landfilling of contaminated soil.

5. Installation and use of devices which remove organic compounds from a private or municipal potable water supply.

6. Installation and use of crop irrigation systems or dewatering wells to remediate contaminated water.

7. Installation and use of air strippers for treatment of contaminated water, provided the remediation is completed within 3 months or the potential to emit organic compounds from the remediation site is at a rate of not more than 5.7 pounds per hour, considering emission control devices.

8. Installation and use of any devices or techniques not listed in this paragraph which are used to remediate soil or water contaminated with organic compounds, if the device or technique is not portable and is not a thermal evaporation unit, and the remediation is completed within 3 months.

9. Installation and use of any technique or device to remediate soil or water contaminated with organic compounds as part of actions taken by EPA under the authority of the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC 9601 to 9675, by the department under the authority of s. 289.67 or ch. 292, Stats., or by a responsible party in compliance with the requirements of an administrative order, consent decree or contract issued pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 or s. 289.67 or ch. 292, Stats.

(n) Renovation or demolition operations involving regulated asbestos-containing material provided that the provisions of subd. 1. or 2. are met:

1. The amount of regulated asbestos-containing material is less than 260 linear feet on pipes or 160 square feet on other facility components.

2. If the amount of regulated asbestos-containing material is at least 260 linear feet on pipes or at least 160 square feet on other facility components, all of the following conditions are met:

a. Notice of intention is provided under s. NR 447.07.

b. The notice indicates that the project will meet all applicable requirements of ch. NR 447.

c. The fee required under s. NR 410.05 (2) and (3) is submitted with the notice.

(o) Batch cold cleaning equipment which does not use halogenated HAP solvent and has a total air to solvent interface of 1.0 square meters or less during operation.

(om) Batch cold cleaning equipment which uses halogenated HAP solvent and meets both of the following requirements:

1. The equipment has a total air to solvent interface of 1.0 square meters or less during operation.

2. The equipment is not a major source or located at a major source, as defined in s. NR 460.02 (24).

(p) Batch open top vapor degreasing equipment which does not use halogenated HAP solvent and has a total air to vapor interface of 1.0 square meters or less during operation.

(pm) Batch open top vapor degreasing equipment which uses halogenated HAP solvent and meets both of the following requirements:

1. The equipment has a total air to solvent interface of 1.0 square meters or less during operation.

2. The equipment is not a major source or located at a major source, as defined in s. NR 460.02 (24).

(pr) Conveyorized non-vapor degreasing and conveyorized vapor degreasing equipment which uses halogenated HAP solvent and is not a major source or located at a major source, as defined in s. NR 460.02 (24).

(q) Private alcohol fuel production systems as defined in s. 289.44 (1) (c), Stats.

(r) Perchloroethylene dry cleaning area sources as defined in s. NR 468.20 (2) (am).

(rm) Chromium electroplating area sources and chromium anodizing area sources as defined in s. NR 460.02 (5).

(s) Crematories.

(t) Indirect malt dryers which are designed to burn fuels specified in par. (a) at a heat input rate less than the rates specified in par. (a).

(u) Gasoline dispensing facilities which dispense gasoline or other petroleum products.

(v) Bulk gasoline plants which distribute gasoline or other petroleum products.

(w) Restricted use reciprocating internal combustion engines which are fueled by gaseous fuels, gasoline, or a clean fuel and which have a combined total electrical output of less than 3,000 kilowatts, or the equivalent in brake horsepower. An owner or operator claiming exemption under this paragraph shall maintain records of all of the following:

1. The electrical output or equivalent in brake horsepower of each engine.

2. The total hours each engine is operated during a year.

(x) Any quarry, mine or other facility where nonmetallic minerals are extracted that is not a ledge rock quarry or industrial sand mine.

(y) Ledge rock quarries with actual production of less than 25,000 tons per month on a rolling 12 month average, or with actual operation of less than 365 days per 5 year period.

(z) Industrial sand mines with actual production of less than 2,000 tons per month on a rolling 12 month average.

(za) Fixed sand and gravel plants and fixed crushed stone plants with capacities of 25 tons per hour or less.

(zb) Portable sand and gravel plants and portable crushed stone plants with capacities of 150 tons per hour or less.

(zc) The addition or replacement of the following equipment at a nonmetallic mineral processing facility which has an operation permit or which has filed a complete application for an operation permit pursuant to ch. NR 407:

1. Any crusher other than an initial crusher.
2. Any grinding mill other than an initial grinding mill.
3. Any screening operation.
4. Any bucket elevator.
5. Any belt conveyor.
6. Any bagging operation.
7. Any storage bin.
8. Any grizzly.
9. Any pan feeder.

10. Any other nonmetallic mineral processing equipment subject to s. NR 440.688 other than an initial crusher or initial grinding mill.

(zg) Equipment that temporarily increases steam generation capability at a source provided that all of the following conditions are met:

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

2. The equipment will not be operated for more than 3,200 hours and will be shut down and removed within 9 calendar months after installation.

3. Only natural gas will be used as fuel in the equipment.
4. The equipment will meet all applicable emission limits.

5. All applicable monitoring requirements will be met during the equipment's period of use.

6. Use of the equipment will not cause or exacerbate an exceedance of any ambient air quality standard or ambient air increment in s. NR 404.04 or 404.05.

7. A complete application for exemption is submitted to the department for approval. The application shall contain all of the following:

- a. A description of the equipment.
- b. The reason for the need to use the equipment.
- c. A description of how the conditions in subsds. 1. to 6. will be met.

8. The department approves the application for exemption submitted under subd. 7. The department shall approve or deny the exemption in writing within 10 business days after receipt of a complete application.

(zh) 1. Any construction, modification, replacement, relocation or reconstruction of an emissions unit at a stationary source which is exempt from the requirement to obtain an operation permit under s. NR 407.03 (1m), provided the stationary source still qualifies for the exemption under s. NR 407.03 (1m) after completion of the proposed construction, modification, replacement, relocation or reconstruction.

2. Construction of a new facility if the facility will be exempt from the requirement to obtain an operation permit under s. NR 407.03 (1m) after completion of the proposed construction.

(zi) Secondary aluminum production facilities as defined by s. NR 463.12 (36).

**(1f) MODIFICATIONS TO SOURCES UNDER PLANT-WIDE APPLICABILITY LIMITATIONS.** Notwithstanding the provisions of subs. (1) and (2), no construction permit is required for modification of a source that is regulated by a plant-wide applicability limitation under s. NR 405.18 or 408.11 provided all of following criteria are met:

(a) The modification will not cause or exacerbate an exceedance of an ambient air quality increment or standard.

(b) The modification does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(d) Emissions from the source, as modified, will be able to comply with the plant-wide applicability limit.

(e) Any increase in emissions, due to the modification, of air contaminants not regulated by a plant-wide applicability limitation, does not exceed the maximum theoretical emission levels specified in sub. (2) (b), (c), (cm), (d) and (f).

(f) For new or modified sources for which no construction permit is required, an operation permit application shall be submitted as required under s. NR 407.04 (1) (b) 3. prior to commencing construction or modification.

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

(a) The modification will not cause or exacerbate an exceedance of an ambient air quality increment or standard.

(b) The modification does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(c) The modification does not require enforceable conditions to limit potential to emit.

**Note:** For new or modified sources for which no construction permit is required, an operation permit application may be required to be submitted under s. NR 407.04 (1) (b) 3. prior to commencing construction or modification.

**(1m) ASBESTOS ABATEMENT NOTICE.** Each asbestos abatement notice of intention is considered an application for permit exemption. The department may place conditions on any permit exemption granted under sub. (1) (n).

**(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS.** No construction permit is required for any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:

(a) The owner or operator of the stationary source has a facility-wide operation permit under ch. NR 407 or has submitted a timely and complete application for a facility-wide operation permit.

(b) Actual emissions from all of the constructed, modified, replaced, relocated and reconstructed emissions units do not exceed any of the following levels:

1. 1,666 pounds in any month averaged over any consecutive 12-month period for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM<sub>10</sub>, carbon monoxide and volatile organic compounds.

2. 10 pounds in any month averaged over any consecutive 12-month period for lead.

(c) None of the emissions units constructed, modified, replaced, relocated or reconstructed requires a new BACT or LAER determination under ch. NR 445 as a result of the new project.

(d) None of the emissions units constructed, modified, replaced, relocated or reconstructed are subject to new permitting requirements under ch. NR 405 or 408 as a result of the new project.

(e) The owner or operator of the stationary source submits to the department a complete application for an operation permit revision, or an updated application for an operation permit, which includes each new, modified, replaced, relocated or reconstructed emissions unit, prior to commencing construction, modification, replacement, relocation or reconstruction and does all of the following:

1. In the operation permit revision application, or updated operation permit application, proposes monitoring of any control equipment used to limit actual emissions from any emissions unit being constructed, modified, replaced, relocated or reconstructed in accordance with the monitoring requirements in s. NR 439.055.

2. Commences monitoring of any control equipment as proposed in subd. 1., and maintains any records necessary to demonstrate compliance with any applicable emission limitation, upon startup of any newly constructed, modified, replaced, relocated or reconstructed emissions unit.

(f) Prior to commencing construction, the owner or operator of the source submits to the department a claim of exemption from construction permitting requirements. The exemption claim shall identify the emissions units that are being constructed, modified, replaced, relocated, or reconstructed. The department shall respond to the claim of exemption submittal within 20 business days after receipt of the claim.

(g) Any newly constructed emissions unit is not subject to an emission limitation or emission standard under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used. Any modified, replaced, relocated, or reconstructed emissions unit is not subject to any new emission limitation or emission standard or other requirement for the emissions unit under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used.

**Note:** The application for an operation permit or operation permit revision required under this section will be evaluated by the department pursuant to the permit approval criteria in ss. 285.63 and 285.64, Stats. Application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707–7921, Attention: operation permits.

**(2) GENERAL CATEGORY OF EXEMPT SOURCES.** In addition to the specific categories of exempt sources identified in sub. (1), no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a direct source if all of the following conditions are met:

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

(b) The maximum theoretical emissions from the source for sulfur dioxide or carbon monoxide do not exceed 9.0 pounds per hour for each air contaminant.

(c) The maximum theoretical emissions from the source for particulate matter, nitrogen oxides or volatile organic compounds do not exceed 5.7 pounds per hour for each air contaminant.

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

(cs) The maximum theoretical emissions from the source for PM<sub>2.5</sub> do not exceed 2.2 pounds per hour.

(d) The maximum theoretical emissions from the source for lead do not exceed 0.13 pounds per hour.

(f) 1. The maximum theoretical emissions from the source for any hazardous air contaminant listed in Table A, B or C of s. NR 445.07 are not greater than the emission rate for the air contaminant listed in column (c), (d), (e) or (f) of Table A, B or C of s. NR 445.07 for the respective stack height or the owner or operator of the source meets the compliance demonstration and notification requirements of s. NR 445.08 (7) (b).

**Note:** Owners and operators of facilities emitting less than 3 tons of volatile organic compounds and 5 tons of particulate matter on an annual basis, or who engage in limited or no manufacturing activities, should refer to s. NR 445.11 prior to determining applicable requirements under this paragraph.

2. The source is not subject to a best available control technology or lowest achievable emission rate requirement in s. NR 445.07 (1) (c), (2), (3) or (4).

3. The source does not combust fuel oil in a compression ignition internal combustion engine subject to a best available control technology requirement in s. NR 445.09 (3) (a).

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

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

**Note:** Sections 285.60 (1) (b) 1. and 285.62 (8), Stats., and s. NR 407.04 (1) (b) 3. require that a complete operation permit application or revision to an application be submitted to the department prior to commencing construction or modification of the equipment exempted under this section. A source which already has an operation permit must apply for a revision of that permit under s. NR 407.11, 407.12 or 407.13.

**(2m) EXEMPTIONS FOR SOURCES WITH GENERAL OPERATION AND REGISTRATION OPERATION PERMITS.** Notwithstanding the provisions in s. NR 406.04 (1) and (2), no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a stationary source if all the following criteria are met:

(a) The source is covered under a general operation permit issued under s. NR 407.10 or a registration operation permit issued under s. NR 407.105.

(b) The construction, reconstruction, replacement, relocation or modification will not result in the source violating any term or condition of the general operation permit or the registration operation permit.

**Note:** Some general operation permits issued prior to September 1, 2005 may have required a construction permit even if the change at the source would not violate any term or condition of the permit. Those sources are now exempt from the requirement to obtain a construction permit if the change at the source will not violate any term or condition of the general operation permit.

(c) The construction, reconstruction, replacement, relocation or modification does not require a permit under ch. NR 405 or 408.

**Note:** This exemption applies to new or modified facilities if they are covered under a general or registration operation permit.

**(3) DETERMINATION OF HAZARDOUS EMISSIONS.** (a) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source may rely on information on an approved material safety data sheet if the approved material safety data sheet lists a hazardous air contaminant listed in Table A, B or C of s. NR 445.07 and for any hazardous air contaminant with a standard expressed as an ambient air concentration in column (g) of Table A or B of s. NR 445.07 constitutes 1% (10,000 parts per million) or more of the material or for any hazardous air contaminant with a standard expressed as a control requirement in column (i) of Table A, B or C of s. NR 445.07 constitutes 0.1% (1,000 parts per million) or more of the material. If an approved material safety data sheet for a material does not list a hazardous air contaminant in Table A, B or C of s. NR 445.07 at or above the amounts listed in this paragraph, the material will be presumed not to result in emissions of a hazardous air contaminant unless a hazardous air contaminant is formed in processing of the material.

(b) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source may rely upon mass balance, or other use, consumption and analytical methodologies for calculating potential emissions. However, the department may require that a stack test be conducted to affirm the accuracy of emission estimations.

(c) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source is not required to consider indoor fugitive emissions in calculating emissions of any substance with a standard expressed as an ambient air concentration in Table A, B or C of s. NR 445.07.

(d) For the purpose of determining emissions under sub. (2) (f), the owner or operator of a source is not required to consider emissions resulting directly from naturally occurring constituents in windblown soil.

(e) For the purposes of determining emissions under sub. (2) (f), the owner or operator of a source is not required to consider emissions of hazardous air contaminants associated with agricultural waste.

**Note:** Par. (e) is shown as affected by 2011 Wis. Act 122. On May 24, 2011, the Joint Committee for the Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Stats., that suspended s. NR 406.04 (3) (e) in part as shown below. Pursuant to s. 227.26 (2) (f), Stats., JCRAR introduced 2011 Assembly Bill 195 and 2011 Senate Bill 138, in support of the JCRAR suspension. 2011 Senate Bill 138 was enacted, effective March 22, 2012, resulting in the repeal of the rules as suspended by the May 24, 2011 JCRAR motion, as provided in s. 227.26 (2) (i), Stats., and creating s. 285.28, Stats., as set forth below.

**NR 406.04 (3) (e)** For the purposes of determining emissions under sub. (2) (f), the owner or operator of a source is not required to consider emissions of hazardous air contaminants associated with agricultural waste prior to July 31, 2011.

**285.28 Agricultural waste; hazardous air contaminants.** The department may not regulate the emission of hazardous air contaminants associated with agricultural waste except to the extent required by federal law.

**(4) EXCLUSIONS FROM MODIFICATION.** None of the following changes at a stationary source constitutes a modification:

(a) *Use of alternate fuel or raw material.* Use of an alternate fuel or raw material which the source is designed to burn or use if:

1. The source has continuously had such design capability.
2. The use will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment.
3. The use is not prohibited by any permit, plan approval or special order applicable to the source.
4. The use will not result in a violation of any emission limit in chs. NR 405, 408, 409, 415 to 436 and 445.
5. The use will not subject the source to an emission limitation or emission standard under section 112 of the Act (42 USC 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used.

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

(c) *Resumption of operation.* 1. The resumption of operation of a source after a period of closure if the existing equipment was continuously included in the department's emissions inventory as an existing source covered by plans submitted under s. 285.11 (6), Stats.

2. The resumption of operation of a source after a period of closure if the source was never included and never required to be included in the emissions inventory as an existing source covered by plans submitted under s. 285.11 (6), Stats., and the resumption of operation of the source will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment, will not result in the emission of a new air contaminant and is not

prohibited by any permit, plan approval or special order applicable to the source.

(d) *Increase in production rate.* An increase in production rate if:

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

(e) *Increase in hours of operation.* An increase in hours of operation if:

1. The increase is not prohibited by any permit, plan approval or special order applicable to the source.
2. The increase will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment or violate an emission limit.
3. The change is not subject to an emission limitation or emission standard under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)).

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

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

(h) *Change to process lines emitting VOCs.* A change in a method of operation of a process line subject to s. NR 424.03 (2) (c) that meets all of the following criteria:

1. The change does not result in annual potential VOC emissions from the process line which exceed the currently allowed annual potential VOC emissions based on conditions established under s. NR 424.03 (2) (c).
2. The change for the process line does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)).

**Note:** The permittee shall continue to comply with the conditions established under s. NR 424.03 (2) (c) in its construction or operation permit until the permit is revised.

(i) *Change to use a clean fuel.* A change to an external combustion furnace to allow for the combustion of a clean fuel that meets all of the following requirements:

1. The external combustion furnace has a maximum heat input capacity of no greater than 10 mmBtu/hour if the ability to combust distillate oil is being added and 25 mmBtu/hour if the ability to combust natural gas or propane is being added.
2. The use of the new fuel does not cause or exacerbate the exceedance of any ambient air quality standard or increment in ch. NR 404.
3. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)).

(j) *Other changes.* A change where all of the following conditions are met:

1. The change is not prohibited by any permit, plan approval or special order applicable to the source.
2. The change is exempt under sub. (1), or the increased emissions due to the change do not exceed the maximum theoretical emission levels specified in sub. (2) (b), (c), (cm), (cs), (d) and (f).
3. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112 (d) (5) or (r) (42 USC 7412 (d) (5) or (r)).

**(5) EXEMPT RELOCATIONS.** (a) In addition to the approved relocated sources which are exempt from the need for an additional permit under s. 285.60 (5), Stats., and the relocation of an emis-

sions unit within the contiguous property of an attainment area major source, no construction permit is required for the relocation of an emissions unit within the contiguous property of a minor source or a nonattainment area major source if all of the following conditions are met:

1. The relocation of the emissions unit is not prohibited by any permit, plan approval or special order applicable to the source.
2. The emissions unit will not be modified.
3. The emissions unit meets all applicable emission limitations.
4. The emissions unit's stack height or stack gas exit velocity or temperature will not be decreased.

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

**(6) EXEMPT REPLACEMENTS.** No construction permit is required for the replacement of a source if all of the following conditions are met:

- (a) The replacement is for only a portion of a basic emissions unit.
- (b) Such replacement is not prohibited by any permit, plan approval or special order applicable to the source.
- (c) The essential components of the basic emissions unit are not replaced through several partial replacements within a 12-month period.

**(7) CONDITIONS FOR SPECIFIC EXEMPTIONS.** To be eligible for a specific exemption under sub. (1) (a) 5., (ce), (cm), (d), (e), (g), (gm), (h), (j), (m), (o), (w), (y) or (z), the owner or operator of a direct stationary source shall keep and maintain records, for a minimum of 5 years, of materials used, emissions, or production rates, that are adequate to demonstrate that the source qualifies for the exemption. Any direct stationary source that ever exceeds any level listed in sub. (1) (a) 5., (ce), (cm), (d), (e), (g), (gm), (h), (j), (m), (o), (w), (y) or (z) is not thereafter eligible for the exemption under that subsection.

**History:** Cr. Register, March, 1972, No. 195, eff. 4-1-72; r. and recr. Register, June, 1975, No. 234, eff. 7-1-75; am. 1, renum. 2) and (3) to be (3) and (4) and am., cr. (2), Register, April, 1977, No. 256, eff. 5-1-77; r. and recr. Register, April, 1983, No. 328, eff. 5-1-83; reprinted to correct error in (2) (a) 8., Register, July, 1983, No. 331; renum. from NR 154.04 (2) to (6), Register, September, 1986, No. 369, eff. 10-1-86; am. (1) (intro.), (e) and (f), (2) (intro.) and (g), (4) (a) (intro.), r. (1) (m) to (o), renum. (3) (intro.), (a) to (c), (7) (a) to (c) to be (4) (intro.), (e) 1. to 3., NR 406.07 (1) and (2) and NR 406.04 (7) and am. (4) (intro.), (e) 3., NR 406.07 and NR 406.04 (7), cr. (4) (e) (intro.), Register, April, 1988, No. 388, eff. 5-1-88; r. (2) (e) and (4) (d), renum. (2) (d), (f), (g) and (4) (e) to be (2) (e), (g), (h) and (4) (d) and am. (2) (g), cr. (2) (d), (f), (3) and (4) (a) 4., am. (4) (a) 2. and 3., Register, September, 1988, No. 393, eff. 10-1-88; cr. (2) (cm), Register, December, 1988, No. 396, eff. 1-1-89; cr. (1) (m), am. (1) (a) 1. to 3., (g), (h), and (j), (2) (b), (c), (cm), (d), (e), (f) 1. and 5., (f) 1. to 3. and (g), (7) (a), (b) and (c) 1. and 5., Register, August, 1991, No. 428, eff. 9-1-91; cr. (1) (n), Register, October, 1991, No. 430, eff. 11-1-91; correction in (1) (a) and (b), (4) (d) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1991, No. 430; correction in (1) (a) and (n) made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, May, 1992, No. 437; emerg. am. (1) (intro.), (a) (intro.) and 5., (b), (c), (e), (g), (h), (j) and (l), (2), (4) (intro.) to (c), (5) and (6) (intro.), cr. (1) (lm), (4) (e) to (g), r. and recr. (4) (d), r. (7), eff. 11-15-92; am. (1) (intro.), (a) (intro.) and 5., (b), (c), (e), (g), (h), (j) and (l), (2), (4) (intro.) to (c), (5) (a) (intro.), (b) and (6) (intro.), r. (1) (d) and (7), cr. (2) (i), (4) (a) 5. and 6., (e) to (g), r. and recr. (4) (d), Register, May, 1993, No. 449, eff. 6-1-93; corrections made under s. 13.93 (2m) (b) 12., Stats., Register, May, 1993, No. 449; cr. (1) (d), (o) to (w), am. (1) (e) and (f), Register, December, 1993, No. 456, eff. 1-1-94; cr. (1) (x) to (z), Register, June, 1994, No. 462, eff. 7-1-94; am. (1) (m) (intro.) to 3., r. (1) (m) 5., renum. (1) (m) 6. to 10. to be 5. to 9. and am. 7. and 9., Register, September, 1994, No. 465, eff. 10-1-94; am. (2) (f) 3., (3) (a), cr. (2) (f) 3m., Register, December, 1994, No. 468, eff. 1-1-95; am. (1) (n) 2. c., Register, February, 1995, No. 470, eff. 3-1-95; am. (1) (a) 5., re. and recr. (1) (r), Register, June, 1995, No. 474, eff. 7-1-95; am. (1) (m) (intro.), Register, August, 1995, No. 476, eff. 9-1-95; am. (1) (intro.), (g), (h), (j), (2) (intro.), (c), (f) 3m., (h), (i) and (4) (a) 6., cr. (7), Register, December, 1995, No. 480, eff. 1-1-96; am. (1) (g), (i) 1. (intro.) (m) 9., (n) (intro.), 2., (2) (i), (3) (c), (4) (a) 4., 5., 6., (5) (a) (intro.), (6) (intro.), Register, December, 1996, No. 492, eff. 1-1-97; am. (1) (o) and (p) and cr. (1) (om) and (pm), Register, March, 1997, No. 495, eff. 4-1-97; cr. (1) (rm), Register, September, 1997, No. 501, eff. 10-1-97; am. (1) (c) and (7), cr. (1) (ce), (cm), (i) 1. c., (zc) and (zg); r. (2) (g), Register, December, 1997, No. 504, eff. 1-1-98; cr. (intro.) and (4) (h); am. (1) (intro.), (a) (intro.), 2., 5., (g), (h) and (j); renum. (1) (i) 1. (intro.) and a. to c. to be (1) (i) (intro.) and 1. to 3.; renum. and am. (1) (i) 2. to be (1) (i) 4. and (2) (i) to be (2) (h); r. (2) (e) and (h) and r. and recr. (4) (intro.), Register, October, 1999, No. 526, eff. 11-1-99; cr. (1) (gm), am. (7), Register, January, 2001, No. 541,

eff. 2-1-01; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register June 2004 No. 582; CR 02-097: am. (2) (f) 1., (3) (a) and (c), cr. (3) (e), r. and recr. (2) (f) 2. and 3., r. (2) (f) 3m. and (4) (a) 4., renum. (4) (a) 5. and 6. to be 4. and 5. and am. 4., Register June 2004 No. 582, eff. 7-1-04; CR 01-081: am. (intro.) Register September 2004 No. 585, eff. 10-1-04; CR 04-107: r. (1) (c), am. (1) (ce), (cm) and (m) (intro.), cr. (2m) Register August 2005 No. 596, eff. 9-1-05; CR 06-047: cr. (1) (zh), (1q), (4) (h) and (i), renum. (4) (h) to be (4) (j), Register May 2007 No. 617, eff. 6-1-07; corrections in (1) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617; CR 06-019: cr. (1f) and (1k) Register June 2007 No. 618, eff. 7-1-07; CR 07-040: am. (2m) (b), cr. (2m) (b) (note) Register April 2008 No. 628, eff. 5-1-08; CR 07-076: am. (3) (e) Register July 2008 No. 631, eff. 8-1-08; CR 07-036: am. (intro.) Register November 2008 No. 635, eff. 12-1-08; CR 04-023: cr. (1) (zi) Register December 2008 No. 636, eff. 1-1-09; CR 09-020: am. (1f) (b), (1k) (b), (1q) (intro.), (g), (2) (h), (4) (a) 5., (h) 2., (i) 3., (j) 3. Register January 2010 No. 649, eff. 2-1-10; CR 10-050: am. (1) (n) (intro.), 1., 2. (intro.), cr. (2) (cs) Register November 2010 No. 659, eff. 12-1-10; 2011 Wis. Act 122: r. in part (3) (e) eff. 3-22-12; CR 15-005: renum. (1) (w) to (1) (w) (intro.) and am., cr. (1) (w) 1., 2. Register November 2015 No. 719, eff. 12-1-15; **CR 19-015: cr. (1) 4m., (bm), am. (1) (i) (intro.), 2., 3., renum. (1) (i) 4. to (1) (i) 4. (intro.), a., b., c., and am. (intro.), am. (1) (m) (intro.), (zg) 1., r. (1f) (c), cr. (1f) (f), am. (1k) (intro.), (1q) (f), (g), (2) (h), (4) (a) 5., (b), cr. (4) (e) 3., am. (4) (h) 2., (j) 2., (7) Register September 2020 No. 777, eff. 10-1-20.**

**NR 406.07 Scope of permit exemption.** (1) Exemption or the granting of an exemption under this chapter from the requirement to obtain a permit does not relieve any person from compliance with the emission limitations of chs. NR 400 to 499, the air quality requirements of ch. NR 404, the reporting requirements of ch. NR 438, or with any other provision of law.

(2) If a source undergoes a modification which is exempt from the requirement to obtain a construction permit under s. NR 406.04 (4), it will not be treated as a modified source for purposes of the emission limitations under chs. NR 400 to 499.

(3) A source that undergoes a modification which is exempt from the requirement to obtain a construction permit under s. NR 406.04 (1f) or (1k) shall be treated as a new or modified source for the purposes of the emission limitations under chs. NR 400 to 499 unless the modification is excluded from being considered a modification under s. NR 406.04 (4).

**History:** Renum. from NR 406.04 (7) (a) and (b), Register, April, 1988, No. 388, eff. 5-1-88; am. (2), Register, September, 1988, No. 393, eff. 10-1-88; emerg. am. (2), eff. 11-15-92; am., Register, May, 1993, No. 449, eff. 6-1-93; CR 06-019: cr. (3) Register June 2007 No. 618, eff. 7-1-07.

**NR 406.075 Federally enforceable requirements.**

(1) Except as provided in sub. (2), all terms and conditions in a construction permit, including any provisions designed to limit a stationary source's potential to emit, are federally enforceable by the administrator under section 113 of the Act (42 USC 7413).

(2) Notwithstanding sub. (1), the department shall specifically designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act, under any of the federal regulations implementing the Act or under the state implementation plan.

**History:** CR 04-106: cr. Register November 2005 No. 599, eff. 12-1-05.

**NR 406.08 Action on permit applications.** (1) This

section applies to actions on permits for which applications are received on or after August 1, 2015. This section does not apply to actions on applications for permits where the source commences construction, reconstruction, replacement, relocation, or modification prior to issuance of a construction permit. This section does not apply to construction permits which are subject to the notice, comment, and hearing provisions of s. 293.43, 295.45, or 295.57, Stats.

(2) (a) The department shall make a determination under s. 285.61 (8), Stats., on a permit application within 205 business days of receipt of a complete application for construction or modification of a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21), unless compliance with s. 1.11, Stats., requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11, Stats., within one year.

(b) The department shall make a determination under s. 285.61 (8), Stats., on a permit application within 145 business days of receipt of a complete application for construction or modification



of any stationary source not described in par. (a), unless compliance with s. 1.11, Stats., requires a longer time.

(3) If the department does not make a determination within the applicable time period specified in sub. (2), the department may not impose an application fee for the permit under s. NR 410.03, and shall refund any application fee submitted with the application.

(4) (a) The Forest County Potawatomi Community shall have the opportunity to review best available control technology (BACT) or maximum achievable control technology (MACT) determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m).

2. Wholly or partially locating or located within 62 miles of the FCPC Class I area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the Forest County Potawatomi Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act on a permit application according to time period requirements under ss. 285.61 and 285.62, Stats.

**Note:** The geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area.

The Department has determined that any source wholly located outside of a circle with a radius of 74.25 miles from the geographic center of the FCPC Class I area is not within 62 miles of the FCPC Class I area. The 74.25-mile radius was determined by adding 62 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. It is the Department's intent that this circle be used as a screening tool for determining applicability of this subsection, and evidence that a source is wholly outside of this circle will be accepted as proof that the source is not within 62 miles of the FCPC Class I area.

The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. Dispute resolution follows a process agreed to by the Department and the Forest County Potawatomi Community pursuant to the Final Agreement.

The Final Agreement and a map showing the approximate 22.25-mile and 74.25-mile radii are available from the Department upon request, or may be found on the Department's web site.

**History:** Cr. Register, September, 1986, No. 369, eff. 10–1–86; emerg. renum. from NR 408.025, eff. 11–15–92; renum. from NR 408.025, Register, May, 1993, No. 449, eff. 6–1–93; r. and recr., Register, August, 2000, No. 536, eff. 9–1–00; CR 10–048; cr. (4) Register November 2010 No. 659, eff. 12–1–10; CR 13–057; am. (1) Register July 2015 No. 715, eff. 8–1–15; CR 15–005; am. (1) Register November 2015 No. 719, eff. 12–1–15.

**NR 406.09 Air quality analysis.** The air quality impact of a proposed stationary source will be determined at such locations where members of the public might reasonably be exposed for time periods consistent with the ambient air quality standards for the pollutants for which analysis is carried out.

**History:** Renum. from NR 154.05 (8) and am. Register, September, 1986, No. 369, eff. 10–1–86; emerg. renum. from NR 408.03, eff. 11–15–92; renum. from NR 408.03, Register, May, 1993, No. 449, eff. 6–1–93.

**NR 406.10 Violations.** Any owner or operator who fails to construct a stationary source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate a stationary source in accordance with conditions imposed by the department under s. 285.65, Stats.; any owner or operator who modifies a stationary source in violation of conditions imposed by the department under s. 285.65, Stats.; or any owner or operator who commences construction, reconstruction, replacement, relocation, or modification of a stationary source without applying for and receiving a permit as required under this chapter or ch. NR 405 or 408 shall be considered in violation of s. 285.60, Stats.

**History:** Renum. from s. NR 154.05 (1) and am. Register, September, 1986, No. 369, eff. 10–1–86; emerg. renum. from NR 408.04 and am., eff. 11–15–92; renum. from NR 408.04 and am., Register, May, 1993, No. 449, eff. 6–1–93; CR 15–005; am. Register November 2015 No. 719, eff. 12–1–15.

**NR 406.11 Construction permit revision, suspension and revocation.** (1) After providing 21 days written notice to the permit holder and to the persons listed under s. 285.61 (5) (a) 2. to 5., Stats., except as provided in par. (h), the department may revise, suspend, revoke, or withdraw a source from coverage under a construction permit, part of that permit, or the conditions of that permit. Permit revision, suspension, withdrawal from coverage, or revocation may occur for any of the following reasons:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or ambient air increment or which causes air pollution.

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation or a deliberate failure to disclose fully all relevant, significant facts when obtaining the permit.

(c) *Department determination.* A determination by the department that the permit must be revised or coverage withdrawn to assure compliance with the applicable requirements.

(d) *Request.* A request by the permit holder to revise, suspend or revoke the permit.

(e) *Failure to pay fees.* An intentional failure by the permit holder to pay in full the fees required under ch. NR 410, except the department may not suspend or revoke the permit for failure to pay fees while those fees are being disputed under s. NR 410.04 (6).

(f) *Failure to file annual emission inventory reports.* An intentional failure by the permit holder to file annual emission inventory reports required under ch. NR 438.

(g) *Cause or exacerbate.* 1. A determination by the department that the emissions unit or units covered under a general or registration construction permit cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment. The determination shall be made through an air quality assessment using the following procedures, as appropriate, which may be conducted after the determination that the source was covered under the general or registration construction permit.

a. For general construction permits, the department shall use criteria, methodologies or modeling consistent with criteria, methodologies or modeling used for any air quality analysis conducted under s. NR 406.16 (1) (c).

b. For registration construction permits, the department shall use either an air dispersion model using maximum actual emissions on an annual or hourly basis or criteria, methodologies or modeling consistent with criteria, methodologies or modeling used for any air quality analysis conducted under s. NR 406.17 (1) (b).

2. Notwithstanding a determination made under subd. 1., the owner or operator will be deemed to be in compliance with the requirement to obtain a construction permit until the department takes final action on a subsequent application for a construction permit, if the application is submitted to the department by the owner or operator within 30 days after the department notifies the owner or operator of its determination under this paragraph and the owner or operator is in compliance with the otherwise applicable general or registration construction permit from the time the determination is made under subd. 1. until the department takes final action under this subdivision.

(h) *Source shutdowns.* A permanent shutdown of operations of a stationary source so that it no longer requires a permit. Upon confirmation obtained by the department that a source has been permanently shut down or at the request of the source permit holder, the department may revoke a permit or withdraw a source from coverage under a permit without providing a 21 day written notice as otherwise required under this subsection.

(1m) The department may reopen or revise a construction permit to reflect a decrease in a plant-wide applicability limit pur-

suant to s. NR 405.18 (8) (b) or 408.11 (8) (b), using the procedures in s. NR 405.18 (5) or 408.11 (5), respectively.

(2) Any revised permit may be issued only if it meets the criteria in s. 285.63, Stats.

(3) After providing 14 days written notice to the permit holder and to the persons listed under s. 285.61 (5) (a) 2. to 5., Stats., the department may revise or revoke an individual construction permit if requested by the permit holder in order to be eligible for a general construction or operation permit or a registration construction or operation permit.

**History:** Cr. Register, December, 1993, No. 456, eff. 1–1–94; am. (1) (f), Register, June, 1995, No. 474, eff. 7–1–95; am. (1) (intro.), Register, December, 1996, No. 492, eff. 1–1–97; CR 04–107: am. (1) (intro.) and (c), cr. (1) (g) and (3) Register August 2005 No. 596, eff. 9–1–05; CR 06–019: cr. (1m) Register June 2007 No. 618, eff. 7–1–07; CR 15–005: am. (1) (intro.), cr. (1) (h) Register November 2015 No. 719, eff. 12–1–15.

**NR 406.12 Permit duration periods.** Approval to construct or modify a stationary source shall become invalid 18 months after the date when a construction permit was issued by the department unless the permit specifies otherwise. The department may only extend such a time period for up to 18 additional months on written request upon satisfactory showing that an extension is justified unless the permit specifies otherwise.

**History:** Renum. from NR 154.05 (12), (13) and (14) and am. Register, September, 1986, No. 369, eff. 10–1–86; renum. (1) and am., r. (2) and (3), Register, May, 1992, No. 437, eff. 6–1–92; emerg. renum. from NR 408.05 and am., eff. 11–15–92; renum. from NR 408.05 and am., Register, May, 1993, No. 449, eff. 6–1–93; renum. from NR 406.11, Register, December, 1993, No. 456, eff. 1–1–94.

**NR 406.13 Duty to comply.** Approval to construct or modify does not relieve any owner or operator of the responsibility to comply with the emission limits of chs. NR 400 to 499, the air quality standards of ch. NR 404 or the control strategies of all local, state and federal regulations which are part of the state implementation plan.

**History:** Renum. from NR 154.05 (15), Register, September, 1986, No. 369, eff. 10–1–86; am. Register, May, 1992, No. 437, eff. 6–1–92; emerg. renum. from NR 408.06, eff. 11–15–92; renum. from NR 408.06, Register, May, 1993, No. 449, eff. 6–1–93; renum. from NR 406.12, Register, December, 1993, No. 456, eff. 1–1–94.

**NR 406.15 Relocation of portable sources.** (1) **APPLICABILITY.** This section applies to all portable sources of air contaminants which are required under s. 285.60, Stats., to have a construction permit and to notify the department prior to relocation.

(2) **PERMIT REQUIREMENT.** No person may cause, allow or permit the relocation of a portable source to a new site without first obtaining a construction permit unless the portable source is exempt from the requirement to obtain a permit under s. NR 406.04, the portable source is an approved relocated source under s. 285.60 (5), Stats., or the portable source is exempt from the requirement to obtain an additional permit under sub. (3).

(3) **RELOCATION INTO AND WITHIN OZONE NONATTAINMENT AREAS.** Notwithstanding s. 285.60 (5) (a) 1., Stats., and pursuant to s. 285.60 (6), Stats., a portable source may relocate into or within a nonattainment area for ozone without obtaining an additional permit if all of the following requirements are met:

(a) The source's potential to emit is less than the major source thresholds for both VOCs and NO<sub>x</sub> contained in s. NR 408.02 (21).

(b) The source has an operation permit under s. 285.60, Stats., prior to relocation.

(c) The owner or operator of the source provides written notice to the department at least 20 days prior to relocation and the department does not object to the relocation.

(d) The source in its new location will meet all applicable emission limitations and any visibility requirements in chs. NR 401 to 499.

(e) The source is not an affected source.

**History:** Renum. (1) from NR 409.01 (1) and am., (2) from NR 409.025 and am., (3) from NR 409.03, Register, April, 1995, No. 472, eff. 5–1–95; CR 07–040: am. (3) (a) Register April 2008 No. 628, eff. 5–1–08.

## NR 406.16 General construction permits.

(1) **ISSUANCE OF GENERAL CONSTRUCTION PERMITS.** (a) The department may issue general permits for the construction, reconstruction, replacement, relocation or modification of stationary sources in accordance with s. 285.60 (3), Stats.

**Note:** A general construction permit is not required prior to commencing construction, reconstruction, replacement, relocation or modification of a stationary source if the source is covered under a general operation permit and the project meets the criteria in s. NR 407.10 (4) (a).

(b) A general construction permit may be issued for a source category if the sources in the category meet all of the following criteria:

1. Perform the same or similar operations.
2. Emit the same class of air contaminants.

**Note:** An example of "the same class of air contaminants" is volatile organic compounds.

3. Employ the same or similar capture and control systems, if applicable.

4. Are subject to the same or similar emission limitations and other state and federal requirements that are applicable to the sources in the category.

**Note:** An example of "similar emission limitations" is emission limitations for the same air contaminant but that differ based on the size of the source, its location, or its date of construction.

(c) When proposing to issue a general construction permit, the department shall prepare an air quality analysis and a preliminary determination on the approvability of the proposed general construction permit. The department shall use the applicable procedures in s. 285.61, Stats., to issue a general construction permit. The department may issue the general construction permit if the applicable criteria in s. 285.63, Stats., are met. The procedural requirements in s. 285.61 (2) to (8), Stats., do not apply to the determination of whether an individual source is covered by a general construction permit for a source category.

**Note:** The statutes cited above require that when issuing a general construction permit, the department distribute a notice of the availability of the proposed general construction permit and of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing. There will be a 30-day public comment period and the department may hold a public hearing within 60 days after the deadline for requesting one.

(d) The general construction permit shall contain applicability criteria, emission limits, monitoring and recordkeeping requirements, reporting requirements, compliance demonstration methods and general conditions appropriate for the stationary source category. The permit terms and conditions shall include those required to comply with the Act and those required to assure compliance with applicable provisions in ch. 285, Stats., and chs. NR 400 to 499. Notwithstanding the requirement in s. NR 424.03 (2) (c) to determine the latest available control techniques and operating practices demonstrating best current technology (LACT) for a specific process line, the department may include conditions in the general construction permit that represent LACT, if the requirements of s. NR 424.03 (2) (a) or (b) are determined to be technologically infeasible.

**Note:** If an area is designated nonattainment for particulate matter, PM<sub>10</sub>, sulfur dioxide, nitrogen oxides, carbon monoxide or lead, the department may revise the general construction permit, or issue a different one, to include nonattainment area specific applicability criteria.

(2) **SOURCES INELIGIBLE FOR COVERAGE UNDER A GENERAL CONSTRUCTION PERMIT.** Notwithstanding the existence of a general construction permit for a stationary source category, the stationary source may not be covered by the general construction permit if any of the following criteria apply to the emissions unit or units for which coverage is sought:

(a) The emissions unit or units are an affected source under ch. NR 409, a municipal solid waste combustion source under s. NR 500.03 (86) or an infectious waste combustion source.

(b) The proposed project would result in one or more new or existing emissions units at the facility being required to obtain a permit under ch. NR 405 or 408.

**Note:** An example is the addition of an emissions unit at a PSD or nonattainment area major source that is considered a major modification to that source. Another example is a project that results in an emissions unit either upstream or downstream from the project increasing its emissions such that it would be required to obtain a permit under ch. NR 405 or 408.

(c) The emissions unit or units cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment, as determined by the department through an air quality assessment conducted in accordance with s. NR 406.11 (1) (g).

**(3) PROCEDURE FOR DETERMINING COVERAGE UNDER A GENERAL CONSTRUCTION PERMIT FOR AN INDIVIDUAL SOURCE.** (a) An owner or operator of a stationary source who applies for coverage under a general construction permit shall submit an application using department approved permit application forms.

**Note:** Contact the regional offices or service centers of the department or the Permits and Stationary Source Modeling Section of the Bureau of Air Management, 608-266-7718, for information on how to obtain and submit the department approved general permit application forms.

(b) An owner or operator of a stationary source who requests or requires emission limits, terms or conditions other than, or in addition to, those contained in the general construction permit shall apply for a different type of permit.

(c) Within 15 days after the receipt of an application for coverage under a general construction permit, the department shall provide one of the following to an applicant:

1. Written notice of the department's determination that the source is covered under the general construction permit.
2. A written description of any information that is missing from the application for coverage under the general construction permit.
3. Written notice of the department's determination that the source does not qualify for coverage under the general construction permit, specifically describing the reasons for that determination.

(d) The department shall grant coverage under the general construction permit if the owner or operator of the source applies for coverage and meets the eligibility requirements of the general construction permit, unless the source is ineligible under sub. (2).

**(4) INCORPORATION OF A GENERAL CONSTRUCTION PERMIT INTO THE FACILITY OPERATION PERMIT.** (a) When submitting an application for coverage under a general construction permit, the owner or operator of the source shall also submit an application for an operation permit or a request to revise its operation permit pursuant to ch. NR 407. Prior to issuing or revising the operation permit, the department shall determine that the applicable permit approval criteria under ss. 285.63 and 285.64, Stats., have been met.

(b) The general construction permit requirements and emission limitations shall be established as conditions in the operation permit.

**(5) APPLICATION FOR A DIFFERENT PERMIT.** (a) An owner or operator of a stationary source which is covered under a general construction permit may submit a request to the department to withdraw the source from coverage under the general construction permit and allow the source to be covered under a registration construction permit, a general construction permit for another source category or an individual construction permit. The owner or operator shall submit a written request for withdrawal from coverage under the general construction permit and a complete application for the different construction permit.

(b) An owner or operator of a stationary source that has an individual construction permit may submit a request to the department

to revise or revoke the individual construction permit pursuant to s. NR 406.11 (3) and allow the source to be covered under a general construction permit. The owner or operator shall submit to the department a written request for revision or revocation of the individual construction permit and a complete application for a general construction permit under this section.

(c) An owner or operator of a stationary source that is covered under a registration construction permit may submit a request to the department to withdraw the source from coverage under the registration construction permit and allow the source to be covered under a general construction permit. The owner or operator shall submit to the department a written request for withdrawal from coverage under the registration construction permit and a complete application for a general construction permit under this section.

(d) The owner or operator shall submit the request for revision or revocation of an individual construction permit or withdrawal from coverage under a general or registration construction permit on department approved forms.

**Note:** Contact the regional offices or service centers of the department or the Permits and Stationary Source Modeling Section of the Bureau of Air Management, 608-266-7718, for information on how to obtain and submit the department approved forms.

(e) The owner or operator of a facility submitting an application for a different permit under this subsection shall comply with the existing permit until the department has issued or granted coverage under the different permit.

**History:** CR 04-107; cr. Register August 2005 No. 596, eff. 9-1-05; CR 15-005; r. (2) (d) Register November 2015 No. 719, eff. 12-1-15.

#### NR 406.17 Registration construction permits.

**(1) ISSUANCE OF REGISTRATION CONSTRUCTION PERMITS.** (a) The department may issue registration permits for the construction, reconstruction, replacement, relocation or modification of stationary sources with low actual or potential emissions in accordance with s. 285.60 (2g), Stats.

**Note:** A registration construction permit is not required prior to commencing construction, reconstruction, replacement, relocation or modification of a stationary source if the source is covered under a registration operation permit and the project meets the criteria in s. NR 407.105 (5) (a).

(b) When proposing to issue a registration construction permit, the department shall prepare an air quality analysis and a preliminary determination on the approvability of the proposed registration construction permit. The department shall use the applicable procedures in s. 285.61, Stats., to issue a registration construction permit. The department may issue the registration construction permit if the applicable criteria in s. 285.63, Stats., are met. The procedural requirements in s. 285.61 (2) to (8), Stats., do not apply to the determination of whether an individual stationary source may be covered by a registration construction permit.

**Note:** The statutes cited above require that when issuing a registration construction permit, the department distribute a notice of the availability of the proposed registration construction permit and of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing. There will be a 30-day public comment period and the department may hold a public hearing within 60 days after the deadline for requesting one.

(c) The registration construction permit shall contain applicability criteria, emission caps and limitations, monitoring and recordkeeping requirements, reporting requirements, compliance demonstration methods and general conditions. The permit terms and conditions shall include those required to comply with the Act and those required to assure compliance with applicable provisions in ch. 285, Stats., and chs. NR 400 to 499. Notwithstanding the requirement in s. NR 424.03 (2) (c) to determine the latest available control techniques and operating practices demonstrating best current technology (LACT) for a specific process line, the department may include conditions in the registration construction permit that represent LACT, if the requirements of s. NR 424.03 (2) (a) or (b) are determined to be technologically infeasible.

**Note:** If an area is designated nonattainment for particulate matter, PM10, sulfur dioxide, nitrogen oxides, carbon monoxide or lead, the department may revise the

registration construction permit, or issue a different one, to include nonattainment area specific applicability criteria.

**(2) CRITERIA FOR ISSUANCE OF A REGISTRATION CONSTRUCTION PERMIT.** (a) A registration construction permit shall be issued for the construction, reconstruction, replacement, relocation or modification of stationary sources that meet all of the following criteria:

1. Actual emissions of each air contaminant from the construction, reconstruction, replacement, relocation or modification of the stationary source or sources will not exceed 25% of any major source threshold in s. NR 407.02 (4), over any 12 consecutive month period, except that emissions of lead may not exceed 0.5 tons over any 12 consecutive month period.

2. The facility is not, and will not as a result of the project be, a major source under ch. NR 405, 407 or 408.

(b) Notwithstanding par. (a), the department may issue registration construction permits for coverage of other types of stationary sources that the department determines have or will have low actual or potential emissions, in response to a petition submitted under s. NR 406.18.

**(3) SOURCES INELIGIBLE FOR COVERAGE UNDER A REGISTRATION CONSTRUCTION PERMIT.** Notwithstanding the existence of a registration construction permit, an individual stationary source may not be covered under a registration construction permit if any of the following criteria apply:

(a) The emissions unit or units are an affected source under ch. NR 409, a municipal solid waste combustion source under s. NR 500.03 (151) or an infectious waste combustion source.

(b) The proposed project would result in one or more new or existing emissions units at the facility being required to obtain a permit under ch. NR 405 or 408.

**Note:** An example is the addition of an emissions unit at a PSD or nonattainment area major source that is considered a major modification to that source. Another example is a project that results in an emissions unit either upstream or downstream from the project increasing its emissions such that it would be required to obtain a permit under ch. NR 405 or 408.

(c) The emissions unit or units cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment, as determined by the department through an air quality assessment conducted in accordance with s. NR 406.11 (1) (g).

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

**(4) PROCEDURE FOR DETERMINING COVERAGE UNDER A REGISTRATION CONSTRUCTION PERMIT FOR AN INDIVIDUAL SOURCE.** (a) An owner or operator of a stationary source who applies for coverage under a registration construction permit shall submit an application using department approved registration permit application forms.

**Note:** Contact the regional offices or service centers of the department or the Permits and Stationary Source Modeling Section of the Bureau of Air Management, 608-266-7718, for information on how to obtain the department approved registration permit application forms.

(b) An owner or operator of a stationary source who requests or requires emission limits, terms or conditions that require case-by-case review and approval by the department, or emission limits, terms or conditions other than, or in addition to, those contained in the registration construction permit, shall apply for a different type of permit.

(c) Within 15 days after the receipt of the application form prescribed by the department, the department shall provide one of the following to an applicant for a registration construction permit:

1. Written notice of the department's determination that the source is covered under the registration construction permit.

2. A written description of any information that is missing from the application for coverage under the registration construction permit.

3. Written notice of the department's determination that the source does not qualify for coverage under the registration construction permit, specifically describing the reasons for that determination.

(d) The department shall grant coverage under the registration construction permit if the owner or operator of the source applies for coverage and meets the eligibility requirements in the registration construction permit, unless the source is ineligible under sub. (3).

(e) For the purpose of determining whether a source is eligible for coverage under a registration construction permit, the source's emissions shall be calculated using the terms and conditions listed in the registration construction permit.

**Note:** The permit terms and conditions may include capture and control efficiencies. The Air Emissions Management System (AEMS) requires the owner or operator of a source to calculate actual annual emissions for reporting to the inventory using the terms and conditions in a permit.

**(5) INCORPORATION OF REGISTRATION CONSTRUCTION PERMIT INTO THE FACILITY OPERATION PERMIT.** (a) When submitting an application for coverage under a registration construction permit, the owner or operator of the source shall also submit an application for an operation permit or a request to revise its operation permit pursuant to ch. NR 407. Prior to issuing or revising the operation permit, the department shall determine that the applicable permit approval criteria under ss. 285.63 and 285.64, Stats., have been met.

(b) The registration construction permit requirements, emission caps and limitations shall be established as conditions in the operation permit.

**(6) APPLICATION FOR A DIFFERENT PERMIT.** (a) An owner or operator of a stationary source that is covered under a registration construction permit may submit a request to the department to withdraw coverage under the registration construction permit and allow the source to be covered under a general construction permit or be issued an individual construction permit. The owner or operator shall submit a written request for withdrawal of coverage under the registration construction permit and a complete application for a general or individual construction permit.

(b) An owner or operator of a stationary source that has an individual construction permit may submit a request to the department to revise or revoke the individual construction permit pursuant to s. NR 406.11 (3) and allow the source to be covered under a registration construction permit. The owner or operator shall submit to the department a written request for revision or revocation of the individual construction permit and a complete application for a registration construction permit under this section.

(c) An owner or operator of a stationary source that is covered under a general construction permit may submit a request to the department to withdraw the source from coverage under the general construction permit and allow the source to be covered under a registration construction permit. The owner or operator shall submit to the department a written request for withdrawal of the general construction permit and a complete application for a registration construction permit under this section.

(d) The owner or operator shall submit a request for revision or revocation of a construction permit or withdrawal from coverage under a construction permit under this subsection on department approved forms.

**Note:** Contact the regional offices or service centers of the department or the Permits and Stationary Source Modeling Section of the Bureau of Air Management, 608-266-7718, for information on how to obtain and submit the department approved forms.

(e) The owner or operator of a facility submitting an application for a different permit under this subsection shall comply with

the existing permit until the department has issued or granted coverage under the different permit.

**History:** CR 04-107: cr. Register August 2005 No. 596, eff. 9-1-05; correction in (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register February 2014 No. 698; CR 15-005: r. (3) (e) Register November 2015 No. 719, eff. 12-1-15; **CR 19-015: am. (3) (d) Register September 2020 No. 777, eff. 10-1-20.**

**NR 406.18 Petition for issuance of general construction permits and registration construction permits.** (1) A person may petition the department to make a determination that a category of stationary source meets the criteria for a general construction permit under s. 285.60 (3), Stats., and s. NR 406.16 (1). A person may petition the department to make a determination that a stationary source meets the criteria for a registration construction permit under s. 285.60 (2g), Stats., and s. NR 406.17 (1) and (2) (b). The department may consider the number of sources that would be eligible for the permit, the complexity of

air regulations applicable to the sources, the likelihood that sources would need source-specific emission limitations and other relevant factors in determining its priority for developing a general or registration construction permit. Within 30 days after receipt of the petition, the department shall provide a written response to the petitioner granting or denying the petition. If the department grants the petition, the department shall issue the general construction permit or the registration construction permit as soon as practicable, but no later than 365 days after receipt of the petition.

(2) The person shall submit the petition on department approved forms.

**Note:** Contact the regional offices or service centers of the department or the Permits and Stationary Source Modeling Section of the Bureau of Air Management, 608-266-7718, for information on how to obtain and submit the department approved forms.

**History:** CR 04-107: cr. Register August 2005 No. 596, eff. 9-1-05.