(20) "Low terrain" means any area other than high terrain.

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

(a) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(b) A physical change or change in the method of operation may not include:

1. Routine maintenance, repair, and replacement;

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

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

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

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

a. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406; or

b. The source is approved to use under any permit issued under this chapter or ch. NR 406;

6. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to this chapter.

7. Any change in ownership at a stationary source.

(22) (a) "Major stationary source" means:

1. Any of the following stationary sources of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any air contaminant subject to regulation under the federal clean air act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units

with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subd. 1., any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air contaminant subject to regulation under the federal clean air act; or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection, as a major stationary source if the change would constitute a major stationary source by itself.

(b) A major source that is major for volatile organic compounds shall be considered major for ozone.

(c) Volatile organic compounds do not include methylene chloride, methyl chloroform, methane, ethane, and freon 113.

(23) "Necessary preconstruction approvals or permits" means those permits or approvals required under chs. NR 400 to 499.

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

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

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

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

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

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

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

(d) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

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

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

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

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

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

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

(25) "Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit an air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(26) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(27) (a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following air contaminants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate
Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl chloride: 1 tpy
Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H_2S): 10 tpy

Total reduced sulfur (including H_2S): 10 tpy

Reduced sulfur compounds (including H_2S): 10 tpy

(b) Volatile organic compounds do not include the following compounds: methylene chloride, methyl chloroform, methane, ethane, and freon 113.

(c) "Significant" means, in reference to a net emissions increase or the potential of a source to emit an air contaminant subject to regulation under the federal clean air act that par. (a) does not list, any emissions rate.

(d) Notwithstanding par. (a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/m^3 (24-hour average).

(28) "Stationary source" means any building, structure, facility or installation and any facility, building, structure, equipment, vehicle or action which emits or may emit any air contaminant subject to regulation under the federal clean air act.

Note: The ambient air increments contained in 40 CFR 51.24 have previously been promulgated in s. NR 404.04.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.03 Restrictions on area classifications. (1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated by the department:

(a) International parks,

(b) National wilderness areas which exceed 5,000 acres in size,

(c) National memorial parks which exceed 5,000 acres in size, and

(d) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this chapter.

(3) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

(c) The major source or major modification is a portable stationary source which has previously received a permit under requirements set forth in ss. NR 405.08 to 405.16 if:

1. The source proposes to relocate and emissions of the source at the new location would be temporary; and

2. The emissions from the source would not exceed its allowable emissions; and

3. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than 30 days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(5) The requirements of ss. NR 405.08 to 405.16 do not apply to a major stationary source or major modification with respect to a particular air contaminant if the owner or operator demonstrates that, as to that air contaminant, the source or modification is located in an area designed as nonattainment under section 107 of the federal clean air act.

(6) The requirements contained in ss. NR 405.09, 405.11, and 405.13 do not apply to a proposed major stationary source or major modification with respect to a particular air contaminant, if the allowable emissions of that air contaminant from a new source, or the net emissions increase of that air contaminant from a modification would be temporary and impact no Class I area and no area where an applicable increment is know to be violated.

(7) The requirements contained in ss. NR 405.09, 405.11, and 405.13 as they relate to any maximum allowable increase for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each air contaminant from the modification after the application of best available control technology would be less than 50 tons per year.

(8) The department may exempt a proposed major stationary source or major modification from the requirements of s. NR 405.11 with respect to monitoring for a particular air contaminant if:

(a) The emissions increase of the air contaminant from a new stationary source or the net emissions increase of the air contaminant from a major modification would cause, in any area, air quality impacts less than the following amounts:

1. Carbon monoxide — 575 ug/m^3, 8-hour average;

2. Nitrogen dioxide — 14 ug/m^3, annual average;

3. Total suspended particulates — 10 ug/m^3, 24-hour average;

4. Sulfur dioxide — 13 ug/m^3, 24-hour average;

5. Ozone;

Note: No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to regulation under this chap-

ter would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

6. Lead — 0.1 ug/m^3, 24-hour average;

7. Mercury — 0.25 ug/m^3, 24-hour average;

8. Beryllium — 0.0005 ug/m^3, 24-hour average;

9. Fluorides — 0.25 ug/m^3, 24-hour average;

10. Vinyl chloride — 15 ug/m^3, 24-hour average;

11. Total reduced sulfur — 10 ug/m^3, 1-hour average;

12. Hydrogen sulfide — 0.04 ug/m^3, 1-hour average;

13. Reduced sulfur compounds — 10 ug/m^3, 1-hour average; or

(b) The concentrations of the air contaminant in the area that the source or modification would affect are less than the concentrations listed in par. (a); or

(c) The air contaminant is not listed in par. (a).

Note: The advance notice requirement for relocation of a portable source in the federal regulations (not less than 10 days advance notice) has been changed to not less than 30 days in s. NR 405.07 (4) (c).

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; corrections in (6) to (8) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1988, No. 388.

NR 405.08 Control technology review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under chs. NR 400 to 499.

(2) A new major stationary source shall apply best available control technology for each air contaminant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each air contaminant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.09 Source impact analysis. The owner or operator of the proposed major source or major modification shall demonstrate that allowable emission increases from the proposed major source or major modification, in conjunction with all other applicable emissions increases or reduction (including secondary emissions) would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.10 Air quality models. (1) All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the Guidelines on Air Quality Models (Revised) (OAQPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, July 1986. This publication is incorporated by reference in sub. (6).

(2) Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted.

(3) A substitution or modification of a model shall be subject to the public comment procedures set forth in s. NR 405.16.

(4) Written approval of the administrator of U.S. EPA shall be obtained for any modification or substitution.

(5) Methods like those outlined in the Workbook for the Comparison of Air Quality Models (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, May 1978) should be used to determine the comparability of air quality models. This publication is incorporated by reference in sub. (6).

(6) INCORPORATED BY REFERENCE. The *Guidelines on Air Quality Models* and the *Workbook for the Comparison of Air Quality Models* listed in sub. (1) or (5) are incorporated by reference. Copies of these materials are available for inspection in the offices of the department of natural resources, secretary of state, and revisor of statutes, Madison, Wisconsin. Copies are available as supplies permit from the Library Service Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. Also, copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) and (5), Register, April, 1988, No. 388, eff. 5-1-88.

NR 405.11 Air quality analysis. (1) PREAPPLICATION ANALYSIS. (a) Any application for a permit under this chapter shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following air contaminants:

1. For the major source, each air contaminant that it would have the potential to emit in a significant amount;

2. For the major modification, each air contaminant for which it would result in a significant net emissions increase.

(b) Any air contaminant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air

quality for that air contaminant in any area that the emissions of that air contaminant would affect.

(c) Any air contaminant (other than nonmethane hydrocarbons) for which a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that air contaminant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air monitoring data that is required shall be gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than 4 months), the data that is required shall be gathered over at least that shorter period.

(e) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, section IV, incorporated by reference in sub. (4), may provide post-approval monitoring data for ozone in lieu of providing pre-construction data as required under this section.

(2) POST-CONSTRUCTION MONITORING. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) OPERATION OF MONITORING STATIONS. The owner or operator of major stationary source or a major modification shall meet the requirements of Appendix B to 40 CFR Part 58 incorporated by reference in sub. (4), during the operation of monitoring stations for purposes of satisfying this section.

(4) INCORPORATION BY REFERENCE CODE OF FEDERAL REGULATIONS. The federal regulations or appendix materials in effect on June 30, 1984 listed in sub. (1) or (3) are incorporated by reference in the respective subsection. Copies of these materials are available for inspection in the offices of the department of natural resources, secretary of state, and revisor of statutes, Madison, Wisconsin or may be purchased for personal use from the Superintendent of Documents, U.S Government Printing Office, Washington, D.C. 20402.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.12 Source information. (1) The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or make any determination required under procedures established in accordance with this chapter.

(2) Such information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the major source or major modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the major source or major modification;

(c) A detailed description as to what system of continuous emission reduction is planned by the major source or major modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied;

(3) The owner or operator shall also provide information on:

(a) The air quality impact of the major source or major modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts and the nature and extent of any or all general, commercial, residential, industrial and other growth which has occurred since August 7, 1977, in the area the major source or major modification would affect.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.13 Additional impact analyses. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the major source or major modification and general commercial, residential, industrial and other growth associated with the major source or major modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general, commercial, residential, industrial and other growth associated with the major source or major modification.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.14 Sources impacting federal Class I areas — additional requirements. (1) NOTICE TO EPA. The department shall transmit to the administrator of U.S. EPA a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of U.S. EPA of every action related to the consideration of such permit.

(2) FEDERAL LAND MANAGER. The federal land manager and the federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the administrator of U.S. EPA, whether a proposed source or modification would have an adverse impact on such values.

(3) DENIAL — IMPACT ON AIR QUALITY RELATED VALUES. The department shall allow the federal land manager of any Class I lands the opportunity to present to the department after the department's preliminary determination required under procedures developed in accordance with s. NR 405.16, a demonstration that the emissions from the proposed major source or major modification would have an adverse impact on the air quality related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the permit may not be issued.

(4) CLASS I VARIANCES. The owner or operator of a proposed major source or major modification may demonstrate to the federal land manager that the emissions from such source would have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may, provided that applicable requirements of this chapter are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the following maximum allowable increases over baseline concentration for such air contaminants.

	Maximum allowable increase (micrograms per cubic meter)
Particulate matter	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

(5) SULFUR DIOXIDE VARIANCE BY DEPARTMENT WITH FEDERAL LAND MANAGER'S CONCURRENCE. (a) The owner or operator of a proposed major source or major modification which cannot be approved under procedures developed pursuant to sub. (4) may demonstrate to the department that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24-hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this subsection would not adversely affect the air quality related values of the area (including visibility).

(b) The department, after consideration of the federal land manager's recommendation (if any) and subject to his or her concurrence, may grant, after notice and an opportunity for a public hearing, a variance from such maximum allowable increase; and

(c) If such variance is granted, the department shall issue a permit to such major source or major modification in accordance with provisions developed pursuant to sub. (7), provided that the applicable requirements of this chapter are otherwise met.

(6) VARIANCE BY THE DEPARTMENT WITH THE CONCURRENCE OF THE PRESIDENT OF THE UNITED STATES. (a) The recommendations of the department and the federal land manager shall be transferred to the president in any case where the department recommends a variance in which the federal land manager does not concur;

(b) The president may approve the department's recommendation if he or she finds that such variance is in the national interest; and

(c) If such a variance is approved, the department shall issue a permit in accordance with provisions developed pursuant to the requirements of

sub. (7), provided that the applicable requirements of this chapter are otherwise met.

(7) EMISSION LIMITATIONS FOR PRESIDENTIAL DENIAL OR DEPARTMENTAL VARIANCE. In the case of a permit issued under procedures developed pursuant to sub. (5) or (6), the major source or major modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the major source or major modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increase for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period.

MAXIMUM ALLOWABLE INCREASE

(Micrograms per cubic meter)

Period of exposure	Terrain areas	
	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.15 Public participation. (1) The department shall notify all applicants within 20 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

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

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

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

(c) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing, as well as written public comment.

(d) Send a copy of the notice of public comment to the applicant, the administrator of U.S. EPA and to officials and agencies having cognizance over the location where the proposed concentration would occur as follows; any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the major source or major modification.

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

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

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

(h) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available pre-construction information and public comments relating to the source.

Note: The requirement that a preliminary determination and notice of an application be accomplished within one year of receipt of a permit application in the federal regulations has been changed to within 120 days of receipt of application in s. NR 405.15 (2).

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.16 Source obligation. (1) Approval to construct does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the chs. NR 400 to 499 and any other requirements under local, state or federal law.

(2) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit an air contaminant such as a restriction on hours of operation, then the requirements of ss. NR 405.08 to 405.17 shall apply to the source or modification as though construction had not yet commenced on the major source or major modification.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

NR 405.17 Innovative control technology. (1) An owner or operator of a proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

(2) The department may, with the consent of the governor(s) of other affected state(s), determine that the major source or major modification may employ a system of innovative control technology if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under