

Chapter NR 406

**CONSTRUCTION OR MODIFICATION AND NEW
 OPERATION PERMITS**

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NR 406.01 Applicability; purpose. (1) **APPLICABILITY.** This chapter applies to all air contaminant sources required under s. 144.391, Stats., to obtain a construction or modification and new operation permit, unless the source is exempt from the requirement to obtain a permit under a provision of this chapter. This chapter also applies to air contaminant sources authorized to obtain an elective operation permit under s. 144.391, Stats.

(2) **PURPOSE.** This chapter is adopted under ss. 144.31, 144.391 (6), 144.393, 144.394 and 144.396, Stats., to exempt types of stationary sources from approval criteria to be used by the department from the requirement to obtain an air permit and to establish permit approval criteria to be used by the department for construction or modification and new operation permits.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

NR 406.02 Definitions. In addition to the definitions in this section, the definitions contained in ch. NR 400 apply to the terms used in this chapter.

- (1) "Aircraft operation" means a landing or takeoff.
- (2) "Average daily traffic" or "ADT" means the total traffic volume during a given time period in whole days greater than one day and less than one year divided by the number of days in that time period.
- (3) "Basic emissions unit" means the smallest collection of equipment which in combination emits or is capable of emitting any air contaminant.
- (4) "Highway" has the meaning given it in s. 340.01 (22), Stats.
- (5) "Highway project" means all or a portion of a proposed new or modified section of highway. Where an environmental impact document is to be prepared, the highway project may be taken to cover the same length of highway.
- (6) "Indirect source" means any stationary source which conveys motor vehicles or which attracts or may attract mobile source activity and thus indirectly causes the emission of any air contaminant. Such indirect sources include, but are not limited to highways and roads; parking facilities; retail, commercial and industrial facilities; recreation, amusement, sports and entertainment facilities; airports; office and government

buildings; apartment and condominium buildings; and education facilities.

(7) "Municipal garbage and refuse" means garbage and refuse, as those terms are defined in ch. NR 180, 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.

(8) "Parking capacity" means the maximum number of vehicles which a parking facility is designed to hold based on an allotment of not more than 350 square feet of stall and aisle area per vehicle.

(9) "Peak hour volume" means the highest one-hour traffic volume in a calendar year.

History: Cr. (intro.), renum from NR 154.01, Register, September, 1986, No. 369, eff. 10-1-86.

NR 406.03 Permit requirements and exemptions for construction or modification and new operation permits. No person may commence construction, reconstruction, replacement, relocation or modification of a stationary source or operate the constructed, reconstructed, replaced, relocated or modified stationary source unless the person has a construction or modification and new operation permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 144.391 (4) or (5), Stats., or under this chapter. Applications for the construction or modification and new operation permit shall be submitted on forms which are available from the department at its Madison headquarters and district offices.

History: Renum. from NR 154.04 (1), Register, September, 1986, No. 369, eff. 10-1-86.

NR 406.04 Sources exempt from construction or modification and new operation permit requirements. (1) SPECIFIC CATEGORIES OF EXEMPT SOURCES. The following categories of stationary sources are exempt from the requirement to obtain a construction or modification and new operation permit unless the construction, reconstruction, replacement, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source or the source is required to obtain a permit because of incremental growth as determined under sub. (7) (c):

(a) Fuel burning equipment which will not burn any hazardous waste identified under ch. NR 181, or which has been issued a permit under ch. NR 181, and which is designed to burn the following fuels at the rates indicated:

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

2. Wood alone or wood in combination with gaseous or liquid fuels at a heat input rate of not more than 5 million BTU per hour;

3. Residual or crude oil at a heat input rate of not more than 5 million BTU per hour;

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

5. Gaseous fuel at a heat input rate of not more than 30 million BTU per hour.

(b) Equipment designed to incinerate solid wastes, which are not pathological wastes and are not hazardous wastes under ch. NR 181, at a rate of not more than 500 pounds per hour.

(c) Equipment designed to dry grain at a rate of not more than 1,500 bushels per hour at 5% moisture extraction.

(d) Portland concrete batching plants which are not major sources.

(e) Storage tanks of petroleum liquid or nonvolatile organic compounds with a maximum capacity of not more than 40,000 gallons of petroleum liquid or of organic compounds which are not VOCs.

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

(g) Painting or coating operations, including associated cleaning operations, which use or will use not more than 250 total gallons of paint, coatings and solvents per month or which emit or will emit not more than 1666 pounds of volatile organic compounds per month, without considering pollution control equipment.

(h) Graphic arts operations, including associated cleaning operations, which use or will use not more than 250 total gallons of coatings, inks and solvents per month or which emit or will emit not more than 1666 pounds of organic compounds per month, without considering pollution control equipment.

(i) Research and testing. 1. Equipment used or to be used for the purpose of testing or research provided:

a. 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; and

b. The department determines that the equipment to be used and 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.

2. The department shall approve or deny the application in writing within 45 days of receiving a complete application for exemption under this paragraph. 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. The department shall make all nonconfidential information available to the public upon request.

(j) A laboratory which emits 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. Emissions shall be determined, without considering pollution control equipment, by dividing the total emissions 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) Water chlorination facilities.

(m) An indirect source located in a standard metropolitan statistical area (SMSA) which meets one of the following criteria:

1. Any new parking facility, or other new indirect source, except a highway or airport, with an associated parking area, which has a parking capacity of not more than 1,000 cars.

2. Any modified parking facility or any modification of an associated parking area which increases parking capacity by not more than 500 cars.

3. Any new highway project with an anticipated annual peak hour traffic volume of not more than 1,200 vehicles per hour within 10 years of construction.

4. Any highway modification project which will increase the annual peak hour traffic volume by not more than 1,200 vehicles per hour within 10 years after modification.

(n) An indirect source located outside all SMSA's which meets one of the following criteria:

1. Any new parking facility or other new indirect source, except a highway or airport, with an associated parking area which has a parking capacity of not more than 1,500 cars.

2. Any modified parking facility or any modification of an associated parking area which increases parking capacity by not more than 750 cars.

3. Any new highway project which will carry not more than 3 lanes of traffic and which has an anticipated annual peak hour traffic volume of not more than 1,800 vehicles per hour within 10 years of construction.

4. Any highway modification project which will create not more than one additional lane of traffic and which will increase the annual peak hour traffic volume by not more than 1,800 vehicles per hour within 10 years after modification.

(o) An airport whose construction or general modification program is expected to result in the following activity within 10 years after construction or modification:

1. New airport: Not more than 50,000 operations per year by regularly scheduled certificated air carriers and use by not more than 1,000,000 passengers per year.

2. Modified airport: Increase of not more than 50,000 operations per year by regularly scheduled certificated air carriers over the existing volume of operations and an increase of not more than 1,000,000 passengers per year.

(2) GENERAL CATEGORY OF EXEMPT SOURCES. In addition to the specific categories of exempt sources identified in sub. (1), no construction or Register, September, 1986, No. 369

modification and new operation permit is required prior to commencing construction, reconstruction, replacement, relocation or modification and operation of a source if:

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

(b) The source will not emit sulfur dioxide, carbon monoxide or nitrogen oxides at a rate of more than 9 pounds per hour for each pollutant emitted, without considering pollution control equipment;

(c) The source will not emit particulate matter or organic compounds at a rate of more than 5.7 pounds per hour for each pollutant emitted, without considering pollution control equipment;

(d) The source will not emit any of the following air contaminants at a rate greater than the applicable emission rate listed:

1. Fluorides, 3 tons per year;
2. Hydrogen sulfide, 10 tons per year;
3. Reduced sulfur compounds, 10 tons per year;
4. Total reduced sulfur, 10 tons per year;
5. Vinyl chloride, 1 ton per year.

(e) The source will not emit asbestos, antimony, barium, beryllium, bromine, cadmium, chlorine, chromic acid, chromates, chromium, cobalt fume or dust, copper fume or dust, cyanides, fluorine, hydrogen chloride, hydrogen fluoride, iron (water soluble salts), lead, manganese, mercury, molybdenum, nickel carbonyl, nickel, nitric acid including anhydrides, phosphoric acid including anhydrides, phosphorus (yellow), platinum (water soluble salts), selenium, sulfuric acid, thallium (water soluble compounds), tin, uranium, vanadium, pesticides, their mixtures, or their compounds or any other pollutant not listed in par. (b), (c), (d), or this paragraph which is subject to regulation under the federal clean air act as of May 1, 1983;

(f) The source will not emit any air contaminant not mentioned in par. (b), (c), (d) or (e), at a rate of more than 6 pounds per hour for each pollutant emitted, without considering pollution control equipment; and

(g) The source is not required to obtain a permit because of incremental growth as determined under sub. (7) (c).

(3) EXEMPT MODIFICATIONS OF EXISTING SOURCES. In addition to the exempt modifications listed in s. 144.391 (4), Stats., no construction or modification and new operation permit is required prior to commencing modification of a source which is modified by the addition of a new emissions unit or by any other modification if:

(a) The modification is not prohibited by any permit, plan approval or special order applicable to the source;

(b) The modification is exempt under sub. (1) or the emissions from the modification do not exceed the exemption levels set forth in sub. (2) (b), (c), (d), (e) and (f); and

(c) The source is not required to obtain a permit because of incremental growth as determined under sub. (7) (c).

(4) **EXEMPT MODIFICATIONS.** (a) *Use of alternate fuel or raw material.* In addition to the exempt modifications listed in s. 144.391 (4), Stats., no construction or modification and new operation permit is required for a source to use 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 as a result of construction or modification which commenced before April 1, 1972; and
2. Such use will not cause or exacerbate the violation of an ambient air quality standard or an ambient air increment; and
3. Such use is not prohibited by any permit, plan approval or special order applicable to the source.

(b) *VOC RACT compliance.* No construction or modification and new operation permit is required for the modification of 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 modification 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.* No construction or modification and new operation permit is required for 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 source inventory as an existing source covered by plans under s. 144.31 (1) (f), 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 and will not result in the emission of a new air contaminant and the resumption of operation is not prohibited by any permit, plan approval or special order applicable to the source.

(d) *Municipal waste fuel.* No construction or modification and new operation permit is required for the modification of a steam-generating unit to use an alternate fuel, whether or not the unit has the design capability to use the alternate fuel, to the extent that the alternate fuel is generated from municipal garbage and refuse which has undergone a separation process to minimize noncombustible materials, if the department publishes a written determination under this paragraph that:

1. Such use will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment; and
2. Any emissions of hazardous air contaminants resulting from such use will not present a significant hazard to public health, safety or welfare or to the environment.

(5) **EXEMPT RELOCATIONS.** (a) In addition to the approved relocated sources which are exempt from the need for an additional permit under s. 144.391 (5), Stats., and the relocation of an emissions unit within the contiguous property of an attainment area major source, no construction or modification and new operation 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:

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; and
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 or modification and new operation 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 or modification and new operation permit is required for the replacement of a source if:

- (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; and
- (c) The essential components of the basic emissions unit are not replaced through several partial replacements within a 12-month period.

(7) SCOPE OF EXEMPTION. (a) 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 101, or with any other provision of law.

(b) If a source undergoes a modification which is exempt from the requirement to obtain a construction or modification and new operation permit under sub. (4) or s. 144.391 (4), Stats., it will not for this reason be treated as a modified source for purposes of the emission limitations under chs. NR 400 to 499.

(c) Subsequent to May 1, 1983, if a person constructs or modifies a stationary source in increments which individually are exempt from the requirements for a permit under this chapter, the person is required to obtain a construction or modification and new operation permit for the source prior to commencing construction or modification of the increment which in combination with the other increments occurring since July 1, 1975 or since the date of the last construction or modification and new operation permit or plan approval issued to the stationary source, whichever is later, will:

1. Emit sulfur dioxide, carbon monoxide or nitrogen oxides at a rate of more than 9 pounds per hour for each pollutant emitted, without considering pollution control equipment;
2. Emit particulate matter or organic compounds at a rate of more than 5.7 pounds per hour for each pollutant emitted, without considering pollution control equipment; or
3. Emit any of the following air contaminants at a rate greater than the applicable emission rate listed:

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- a. Fluorides, 3 tons per year;
- b. Hydrogen sulfide, 10 tons per year;
- c. Reduced sulfur compounds, 10 tons per year;
- d. Total reduced sulfur, 10 tons per year;
- e. Vinyl chloride, 1 ton per year.

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.

NR 406.05 Elective operating permits. The department may issue elective operating permits for air contaminant sources in accordance with ss. 144.391 and 144.392, Stats.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.