

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.

Note: Construction permit application requirements for indirect sources are contained in ch. NR 411.

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

(2) "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.

(3) "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.

(4) "Permit revision" means any change to a construction permit to reflect a change at a source that is not a modification of the source.

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.

NR 406.03 Permit requirements and exemptions for construction permits. 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. Applications for the construction permit shall be submitted on forms which are available from the department at its Madison headquarters and regional offices.

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.

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. For any direct source not required to obtain a permit under ch. NR 405 or 408, 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 605, or which have been issued a license or licenses under ch. NR 680, 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.

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 605, at a rate of not more than 500 pounds per hour.

(c) Equipment which is designed to dry grain at a rate of not more than 1,500 bushels per hour at 5% moisture extraction and which is not subject to s. NR 440.47.

(ce) Grain storage facilities 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 at the grain storage facility.

(cm) Grain processing facilities 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) 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 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.

3. The equipment will be in operation for less than 12 months.

4. The department approves the application for exemption submitted under subd. 1. The department shall approve or deny the application in writing within 45 days of receiving a complete application. 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 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 1 to Table 5 of s. NR 445.04 is not greater than the emission rate listed in Table 1 to Table 5 of s. NR 445.04 for the air contaminant at the respective stack height, and the procedure is not subject to any standard or regulation 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.

Note: Even though these sources are exempt from permit requirements, they are still subject to the notification requirements under s. NR 419.07 (2).

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

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

2. If the amount of 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) Emergency electric generators powered by internal combustion engines which are fueled by gaseous fuels, gasoline or distillate fuel oil with an electrical output of less than 3,000 kilowatts.

(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.

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 subsd. 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.

(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).

(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 PM₁₀ do not exceed 3.4 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 any standard or regulation under section 111 or 112 of the act (42 USC 7411 or 7412). If a source is subject to regulations or requirements under section 112 only because of section 112(r) of the act (42 USC 7412(r)), the source is not for that reason required to obtain a construction permit under this paragraph.

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.

(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 prior to July 31, 2007.

(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 any standard or regulation under section 112 of the act (42 USC 7412).

(b) *VOC RACT compliance.* 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.

(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) *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), (d) and (f).

3. The change does not trigger a requirement under section 111 or 112 of the act (42 USC 7411 or 7412).

(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 emissions 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. In order to be eligible for a specific exemption under sub. (1) (ce), (cm), (d), (g), (gm), (h), (j), (m), (o), (y) or (z), the owner or operator of a direct stationary source shall keep and maintain records of materials used, emissions or production rates, that are adequate to demonstrate that the source qualifies for the exemption. The owner or operator of a direct stationary source shall begin keeping these records no later than January 1, 1996 in order to qualify for exemption under sub. (1) (d), (g), (h), (j), (m), (o), (y) or (z), January 1, 1998, in order to qualify for exemption under sub. (1) (ce) or (cm), or the date that the source commences operation, whichever is later, and maintain them for a minimum of 5 years. Any direct stationary source that ever exceeds any level listed in sub. (1) (ce), (cm), (d), (g), (gm), (h), (j), (m), (o), (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) 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 (zb), 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.**

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.

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.

NR 406.08 Action on permit applications. (1) This section applies to actions on permits for which applications are received on or after September 1, 2000. This section does not apply to actions on applications for permits where the source commences construction 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, 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.

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.

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 or modification of a stationary source without applying for and receiving a permit as required under this chapter or ch. NR 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.

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., the department may revise, suspend or revoke a construction permit, part of that permit or the conditions of that permit if there is or was any of the following:

(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 shall be revised 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.

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

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.

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 has the potential to emit less than 25 tons per year of VOC and less than 25 tons per year of NO_x.

(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.