



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

November 10, 2003

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 516: Exemption from Air Construction Permit Requirements for Certain Equipment at Nonmetallic Mineral Processing Facilities

Assembly Bill 516 would exempt a person from the requirement to obtain an air pollutant construction permit for certain equipment at a nonmetallic mineral processing facility, if the person has an air pollution operation permit for the facility. AB 516 was introduced on September 11, 2003. On October 15, 2003, the Assembly Committee on Natural Resources recommended passage by a vote of 8-2. On October 27, 2003, the Assembly referred the bill to the Joint Committee on Finance.

SUMMARY OF BILL

Assembly Bill 516 would exempt a person from the requirement to obtain a construction permit from the Department of Natural Resources (DNR) before beginning construction of a stationary source of air pollution for certain equipment at nonmetallic mineral processing facilities. Nonmetallic minerals include substances such as stone, sand, and gravel. A person would not be required to obtain a construction permit for any equipment, defined as an engine or generator used to power other equipment, other than an initial crusher or initial grinding mill, if the person has an air operation permit for the facility or has filed a complete application for an operation permit for the facility. An initial crusher would be defined as a crusher at a nonmetallic mineral processing facility into which nonmetallic minerals can be fed without prior crushing at that facility. An initial grinding mill would mean a grinding mill at a nonmetallic mineral processing facility into which nonmetallic minerals can be fed without prior crushing at that facility.

Currently, all new, modified, reconstructed, relocated or replaced air pollutant sources are required to obtain a construction permit (also known as a new source review permit) before

beginning construction, unless they are exempt under administrative rule NR 406. A construction permit allows a company to build, initially operate, and test the air pollution source. The permit expires after 18 months and can have one 18-month extension under certain instances. The source is required to have a complete operation permit on file with DNR by the time the construction permit expires in order to continue operating the source. DNR issues air pollution operation permits, under delegated authority from the United States Environmental Protection Agency. The permits specify the requirements that apply to a source, including emission limits and operating conditions, to ensure that the source is in compliance with federal and state air pollution requirements.

Under s. 285.60(6) of the Wisconsin Statutes, DNR is authorized to promulgate administrative rules to exempt types of stationary sources from the requirement to obtain a construction permit if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment. DNR has promulgated administrative code ch. NR 406.04 to list categories of direct sources that 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. NR 406.04 includes the following categories of exempt sources:

1. External combustion furnaces at a source which will not burn any hazardous waste if no individual furnace burns certain fuels at more than specified maximum rates;
2. Equipment to incinerate solid wastes at a rate of not more than 500 pounds per hour;
3. Equipment to dry grain at a rate of not more than 1,500 bushels per hour;
4. Grain storage facilities with an average tonnage of grain received of less than 5,500 tons per month;
5. Grain processing facilities with an average tonnage received of less than 4,500 tons per month;
6. Portland concrete batch plants which produce less than 20,000 cubic yards of concrete per month;
7. Certain small storage tanks containing organic compounds;
8. Small volatile organic compound storage tanks;
9. Painting or coating operations, automobile refinishing operations, or graphic arts operations which emit not more than 1,666 pounds of volatile organic compounds per month;
10. Equipment used for testing or research that meets certain requirements;

11. A laboratory which emits certain pollutants at a rate of less than 5.7 pounds per hour;
12. Equipment whose primary purpose is to transport or sort paper;
13. Facilities for chlorination of municipal drinking water, water for certain industrial processes or water for swimming pools, spas or other recreational establishments;
14. Certain procedures for the remediation or disposal of soil or water contaminated with organic compounds;
15. Renovation or demolition operations involving friable asbestos under certain conditions;
16. Certain batch cold cleaning or degreasing equipment;
17. Certain private alcohol fuel production systems;
18. Certain perchloroethylene dry cleaning area sources;
19. Certain chromium electroplating area sources;
20. Crematories;
21. Certain indirect malt dryers;
22. Gasoline dispensing facilities;
23. 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;
24. A quarry, mine or other nonmetallic mineral extraction facility that is not a ledge rock quarry or industrial sand mine;
25. Ledge rock quarries with actual production of less than 25,000 tons per month;
26. Industrial sand mines with actual production of less than 2,000 tons per month;
27. Fixed sand and gravel plants and fixed crushed stone plants with capacities of 25 tons per hour or less;
28. Portable sand and gravel plants and portable crushed stone plants with capacities of 150 tons per hour or less;

29. 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: (a) crusher other than an initial crusher; (b) grinding mill other than an initial grinding mill; (c) screening operation; (d) bucket elevator; (e) belt conveyor; (f) bagging operation; (g) storage bin; (h) grizzly; (i) pan feeder; and (j) any other nonmetallic mineral processing equipment other than an initial crusher or initial grinding mill;

30. Equipment that temporarily increases steam generation capability at a source if certain conditions are met.

DNR officials indicate that the types of equipment at nonmetallic mining facilities that are exempt under NR 406.04(1)(zc) and shown as Item 29 in the list above are exempt because the equipment is included in federal regulations related to nonmetallic mining facilities. Engines or generators that are not a component of other equipment, but are used to power other equipment, are not included in the federal regulations and are not exempted under NR 406.04(1)(zc). Thus, under current statute and administrative rule, an air construction permit is required for new or replacement engines or generators at nonmetallic mining facilities. A construction permit would establish the terms and conditions for a new or replacement engine or generator, such as stack heights or emission rates. The conditions in the new construction permit would be rolled into the operation permit and replace the previous conditions placed on an engine or generator at the facility.

Under AB 516, an air construction permit would not be required for such engines or generators used to power other equipment at nonmetallic mining processing facilities. DNR officials indicate that if the bill would be enacted, DNR would need to modify the State Implementation Plan, the document in which the State describes to the U.S. Environmental Protection Agency how the State will meet federal Clean Air Act requirements. In the modification, the state would have to demonstrate that the exemption provided under the bill would not result in violations of ambient air quality standards.

DNR is currently authorized to promulgate administrative rules that specify the types of sources that may obtain general construction permits. A general construction permit may cover several similar sources and would be used instead of issuing an individual construction permit for each source covered by the general construction permit. DNR is in the process of promulgating administrative rules to allow for issuance of a general construction permit for engines or generators (such as gasoline or diesel powered generators) at nonmetallic mineral processing facilities. DNR officials anticipate that in January or February of 2004, the Department will request the Natural Resources Board to authorize taking a draft rule to public hearings, and that the rule could be sent to the Legislature for review in the summer of 2004. Under a general construction permit, a simplified application would be used by the applicant to demonstrate compliance with general criteria and requirements for various sizes and models of engines and generators.

Representatives of nonmetallic mineral processing facilities testified at a public hearing of the Assembly Committee on Natural Resources that they believe it is unnecessary to require a

separate air construction permit for a replacement engine or generator at a nonmetallic mineral processing facility because it is duplicative of an air operation permit or an application for an operation permit for the facility. They indicated that the operation permit for the facility would cover the diesel engines or generators that are currently subject to construction permit requirements. They also indicate that the bill would eliminate a wait for issuance of a construction permit. DNR officials indicate a construction permit may be needed since emissions characteristics of replacement generators can vary considerably.

Industry representatives also testified that the bill would eliminate the permit cost for affected facilities of an estimated \$5,000. DNR officials indicate that the construction permit cost for a replacement engine or generator at a nonmetallic mineral processing facility would be approximately \$3,000 (\$2,300 base fee plus \$700 for air emissions modeling), plus \$2,650 if the applicant requests expedited review.

DNR's records for the past five years do not identify any construction permits that were issued solely for an engine or generator that would have been affected by the bill. DNR's database includes one generator at a nonmetallic mineral or asphalt plant in the last five years, and it was exempt from a construction permit because it was used for emergency purposes. However, DNR's records show that the Department processed 46 construction permits over the past five years for new crushing facilities, most of which included generators, but which would not be affected by the bill because a permit would still be required for the initial crusher. For the 18 applications received in 2001 and subsequent years, DNR processed the construction permits in an average of 87 days (three months) from receipt of a complete application to approval, with a median of 70 days. Seven of the 18 permits were issued within 50 days of receipt of a complete application.

FISCAL EFFECT

DNR estimates that the equipment at nonmetallic mining facilities that would become exempt from air construction permit requirements under the bill currently is assessed approximately \$6,000 in permit fees annually, estimated to be 0.3% of annual permit fee program revenue of approximately \$2,000,000 per year. DNR estimates that there would be up to two facilities affected by the bill annually, which would equal an average permit cost of \$3,000. However, DNR could not identify any construction permits in the last five years that would have been affected by the bill. DNR further estimates that department costs of reviewing and processing construction permits would decrease by a corresponding \$6,000 per year. Thus, the net fiscal effect would be \$0.

Prepared by: Kendra Bonderud