

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **renumber** NR 406.02(1) and 406.04(4)(h), to **amend** NR 410.03(1)(d) and to **create** NR 406.02(1), 406.04(1)(zh), (1q), (4)(h) and (i), 407.03(1m) and 410.03(1)(f) relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

AM-09-06

Analysis Prepared by the Department of Natural Resources

**Statute interpreted:** s. 285.60(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

**Statutory authority:** ss. 285.11(1) and (6) and 285.60(6), Stats.

**Explanation of agency authority:** The Department has had the authority under s. 285.60(6)(a), Stats., to exempt stationary sources from permitting requirements if potential emissions do not present a significant hazard to public health, safety or welfare or to the environment. In 2003, s. 285.60(6)(b), Stats., was created and requires the Department to exempt minor sources from the requirement to obtain air permits if emissions from the source do not present a significant hazard to public health, safety or welfare or to the environment.

**Related statute or rule:** Chapters NR 406 and 407, Wis. Adm. Code.

**Plain language analysis:** The rule proposal provides for sources that have less than 10 tons/year of actual emissions of criteria pollutants (particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds), and which are not subject to Federal air pollution requirements for hazardous air pollutants or new source performance standards, to be exempt from all permitting requirements.

For sources with emissions above these thresholds, projects undertaken at the facility that will meet the aforementioned criteria would be exempt from obtaining a construction permit prior to undertaking the project. The facility owner/operator would still need to apply for an operation permit for the project, but construction of the sources included in the project would be allowed. The proposal includes an \$800 fee for each construction permit exemption to defray engineering review costs incurred by the Department when evaluating whether a source qualifies for the exemption.

The Rule also includes provisions to exclude certain fuel changes at smaller boilers from being considered a modification of the boiler. The effect of this change is that boilers which switch to a clean fuel or convert from one clean fuel to another will not be subject to more stringent new source requirements such as more restrictive opacity limitations. Lastly, the rule also excludes sources which are subject to ch. NR 424 emission control requirements from construction permit review when they seek to change the control requirements required under ch. NR 424 without increasing potential VOC emissions from the affected source.

**Summary of, and comparison with, existing or proposed federal regulation:** A comparable federal regulation does not exist. The Federal Clean Air Act requires States to have a minor source construction permit program which allows for preconstruction review of new and modified sources of air pollution. The purpose of this program is to ensure that ambient air quality standards are protected.

The Clean Air Act also requires that each state manage an operation permit program for major sources of air pollution. The criteria for being a major source of air pollution is 100 tons/year of criteria pollutant emissions or being defined as a major Federal hazardous air pollution source.

**Comparison with rules in adjacent states:** All the states within EPA Region 5 manage a minor source construction and operation permit program. Some of these programs appear to be more “stringent” than Wisconsin’s program, while others appear to be less stringent. Comparisons between programs are difficult due to the varying ways sources may be exempt and how programs are funded. Based on a review done by the Air Management program, it appears that Wisconsin’s program offers more exemptions than most Region V States.

Wisconsin: Chapters NR 406 and 407 establish two types of exemptions from construction and operation permitting requirements. The first of these, specific exemptions, apply to specific processes such as small boilers, crematoriums and small coating operations. The second type, general exemptions, are based on the maximum source emissions and whether the source is subject to any Federal emission control requirements.

Minnesota: Exemptions from operation permits are based solely on the facility’s potential to emit. The term “potential to emit” for determining permit applicability is identical to the term “maximum theoretical emissions” used by the Department in its general permit exemptions. The Minnesota exemption thresholds are somewhat higher than those in Wisconsin for all pollutants. However, Minnesota does not provide for any specific exemptions from permitting requirements such as those available in Wisconsin for grain processing, storage facilities and other categories of sources. Additionally, Minnesota does not provide for the actual emissions based exemptions currently available in Wisconsin for coating and graphic arts operations nor does it provide any exemptions similar to the exemption proposed in this rule package for facilities using control equipment to limit actual emissions. Thus, for some smaller uncontrolled facilities (especially facilities not in coating or graphic arts industries) Minnesota may provide more extensive permit exemptions. But, for other types of facilities, it appears that Wisconsin has more extensive permit exemptions.

For construction permits, the Minnesota program appears to be based on changes in potential to emit, which may be limited by control devices in certain cases. The reviews may vary and are identified as insignificant, minor, moderate or major. For major (PSD) sources, any change requiring synthetic minor conditions must go through the most detailed level of review (major). Again, the emission increase thresholds are generally above those in Wisconsin, but no exemptions exist for specific source categories or for sources on an actual emission basis.

Michigan: Exemptions are mainly based on specific exemptions for certain processes/emissions sources. Examples include small boilers and small printing and coating operations. There is also an exemption for facilities with low emissions with a threshold significantly lower than that being proposed in this Rule package. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Illinois: Exemptions are based on specific exemptions for certain processes/emission sources. Examples include small boilers and small printing and coating operations. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Iowa: Exemptions are based on a limited number of identified processes and operations that have very low emission rates (lower than in this rule proposal).

**Summary of factual data and analytical methodologies:** Rule revisions to chs. NR 406, 407 and 410 are in response to s. 285.60(6)(b), Stats., which was part of 2003 Wisconsin Act 118. The law requires that small sources of emissions that do not present a significant hazard to public health, safety or welfare or to the environment be exempted from permit requirements.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** The proposed rule revisions will require Department resources to implement. The Department is proposing an addition to its construction permit fee schedule contained within chapter NR 410 to fund this work effort. A proposed fee of \$800 is included and is based upon the existing fee structure for Department review of another existing construction permit exemption. Businesses that choose to take advantage of the regulatory flexibility will have reduced permit fees in the long run because many projects that had previously required a construction permit will not be reviewed under that program under the proposed rule revisions.

**Anticipated costs incurred by private sector:** Although the proposed rule revision requires a fee of \$800 for one type of construction permit exemption evaluated under these rules, this cost is less than that which would be incurred if the source were required to obtain a construction permit.

**Effect on small business:** These proposed rule revisions should lower compliance costs for many small businesses.

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SECTION 1. NR 406.02(1) is renumbered NR 406.02(1m).

SECTION 2. NR 406.02(1) is created to read:

NR 406.02(1) "Clean fuel" means distillate oil, as defined in s. NR 440.205(2)(h), with a sulfur content less than 0.05% by weight, natural gas or propane.

SECTION 3. NR 406.04(1)(zh) is created to read:

NR 406.04(1)(zh)1. Any construction, modification, replacement, relocation or reconstruction of an emissions unit at a stationary source which is exempt from the requirement to obtain an operation permit under s. NR 407.03(1m), provided the stationary source still qualifies for the exemption under s. NR 407.03(1m) after completion of the proposed construction, modification, replacement, relocation or reconstruction.

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

SECTION 4. NR 406.04(1q) is created to read:

NR 406.04(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS. Any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:

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

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

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

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

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

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

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

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

b. Commences monitoring of any control equipment as proposed in subd. 5.a., and maintains any records necessary to demonstrate compliance with any applicable emission limitation, upon startup of any newly constructed, modified, replaced, relocated or reconstructed emissions unit.

6. The owner or operator of the source submits to the department a claim of exemption from construction permitting requirements. The exemption claim shall identify the emission units which are being constructed, modified, replaced, relocated or reconstructed. The department shall respond to the claim of exemption submittal within 20 business days after receipt of the claim.

7. Any newly constructed emission unit is not subject to an emission limitation under section 111 or 112 of the Act (42 USC 7411 or 7412). Any modified, replaced, relocated or reconstructed emissions unit does not trigger any new emission limitation or other requirement for the emission unit under section 111 or 112 of the Act (42 USC 7411 or 7412).

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

SECTION 5. NR 406.04(4)(h) is renumbered NR 406.04(4)(j)

SECTION 6. NR 406.04(4)(h) and (i) are created to read:

NR 406.04(4)(h) *Change to process lines emitting VOCs.* A change in a method of operation of a process line subject to s. NR 424.03(2)(c) that meets all of the following criteria:

1. The change does not result in annual potential VOC emissions from the process line which exceed the currently allowed annual potential VOC emissions based on conditions established under s. NR 424.03(2)(c).

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

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

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

1. The external combustion furnace has a maximum heat input capacity of no greater than 10 mmBtu/hour if the ability to combust distillate oil is being added and 25 mmBtu/hour if the ability to combust natural gas or propane is being added.

2. The use of the new fuel does not cause or exacerbate the exceedance of any ambient air quality standard or increment in ch. NR 404.

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

SECTION 7. NR 407.03(1m) is created to read:

NR 407.03(1m) FACILITIES EXEMPT BASED ON ACTUAL EMISSIONS. (a) Any facility that is required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit following notification under par. (c), where all of the following criteria and requirements are met:

1. The actual emissions of each air contaminant from the facility do not exceed any of the following levels:

a. 10 tons in any calendar year for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide,  $PM_{10}$ , carbon monoxide and volatile organic compounds.

b. 0.5 tons in any calendar year for lead.

c. Any stack-appropriate thresholds for emissions points in columns (c), (d), (e) and (f) of Table A, B or C of ch. NR 445. If the facility is a source of incidental emissions under s. NR 445.11, this subdivision only applies to emissions of air contaminants which are listed as substances of concern in Table E of ch. NR 445.

2. The facility is not subject to a standard under section 111 or 112 of the Act (42 USC 7411 or 7412).

3. The owner or operator conducts monitoring and maintains records sufficient to demonstrate compliance with the requirements of this paragraph, including the calculation of annual facility-wide

emissions. These records shall be maintained on site for at least 5 years, unless a longer period is required by statute or rule.

4. If a control device is used to limit actual emissions, the owner or operator uses a compliance monitoring method which is identified in s. NR 439.055.

(b) Any facility that is not required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit where all of the criteria and requirements in par. (a)1. to 4. are met.

(c)1. The owner or operator of a facility required to submit an air emission inventory report under s. NR 438.03 shall notify the department of their intent to operate the facility under the exemption criteria in par. (a). A claim of exemption made under s. NR 406.04(1q) from construction permit requirements shall satisfy this notification requirement.

2. Any existing permit shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn. A notification under subd. 1. shall serve as a request for revocation of an individual permit or withdrawal from coverage under a general or registration permit.

3. A notification under subd. 1. shall serve as a request for withdrawal of any pending permit application.

**Note:** An owner or operator exempt under this subsection is responsible for complying with all other applicable requirements in chs. NR 400 to 499.

SECTION 8. NR 410.03(1)(d) is amended to read:

NR 410.03(1)(d) Any person who applies for a construction permit for a direct source shall submit a \$1,350 fee with the application. This fee may not be refunded unless the department determines that a permit is not required. When a fee is required under par. (b) or (f), only the amount not required to cover the fee will be refunded.

SECTION 9. NR 410.03(1)(f) is created to read:

NR 410.03(1)(f) Any person submitting a claim for a construction permit exemption under s. NR 406.04(1q) shall pay a fee of \$800.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 16, 2006 and February 28, 2007.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)