

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 407.02(6)(b)4. to 7.; to **renumber** NR 400.02(162)(a)49.; to **amend** NR 406.04(2m)(b), 406.15(3)(a), 407.02(4)(b)27., 407.10(4)(a) 2. and 410.03(4); to **create** NR 400.02(162)(a)49., 406.04(2m)(b) Note, 407.02(3e) and 407.10(4)(a)2. Note, relating to construction permits, portable source relocation and affecting small business.

AM-12-07

Summary Prepared by the Department of Natural Resources

Statutory authority: Sections 227.11(2)(a), 285.11(1) and (16), 285.60(6), 285.67 and 285.69(1)(a), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

Statutes interpreted: Sections 227.11(2)(a) and 285.11(1) and (16), Stats.

Explanation of Agency Authority

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(16), Stats., gives the Department the authority to develop a state implementation plan for the control of air pollution. Section 285.11(16), Stats., requires the Department to promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source. Section 285.60(6)(a), Stats., allows the Department to promulgate rules to exempt types of stationary sources from the requirement to get a construction permit, if the potential emissions from the sources do not present a significant hazard to public health, safety, welfare or to the environment. Section 285.67, Stats., requires the Department to promulgate rules establishing criteria and procedures for revising air pollution control permits. Section 285.69(1)(a), Stats., allows the Department to promulgate rules for the payment and collection of construction permit fees.

Related Statute or Rule

There are no related statutes not identified above.

Plain Language Analysis

The proposed rules contained in this order reflect changes made by the Environmental Protection Agency (EPA) in their regulations regarding the definition of a major source for air operation permits. The Department needs to make this change in order to retain EPA approval of Wisconsin's air operation permit

program.

As published in the federal register, and effective on January 18, 2007, EPA added 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane, also known as HFE-7300, to the list of compounds excluded from its definition of volatile organic compound (VOC) in 40 CFR 51.100(s)(1), on the basis that this compound makes a negligible contribution to ozone formation. This compound can be used as an alternative to some ozone depleting substances such as chlorofluorocarbons. The Department is proposing to include this compound on the list of compounds that have negligible photochemical reactivity under the definition of VOC in s. NR 400.02(162), thereby excluding it from the definition.

Another federal rule change excluded small sources of federal hazardous air contaminant emissions from Title V operation permit requirements. Additionally, the federal definition of fugitive emissions was changed to clarify when fugitive emissions are counted in determining whether a facility is subject to Title V operation permit requirements.

Chapter NR 406 is being revised to clarify the construction permit requirements for new sources that are covered under a general operation permit. Also, changes in the limitations for relocation within or into ozone nonattainment areas are being proposed. Under current regulations, the limitations are a numerical value which corresponded to a major source threshold. Under the proposed change, the numerical values will be removed in favor of generic language which states that the facility's potential to emit must be less than the thresholds in the major source definition in ch. NR 408 (which regulates nonattainment area major sources). The major source threshold for nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions in ozone nonattainment areas is dependant on the severity of the nonattainment classification. Portable sources that have potential emissions of NO_x and VOC that are greater than 25 tons per year currently must obtain a construction permit prior to relocation into a ozone nonattainment area. This threshold was established at a time when the nonattainment classification in Southeast Wisconsin was severe. The rule is being amended to clarify that portable sources that would be considered major sources are required to obtain a construction permit prior to relocation in a nonattainment area. This change makes the rule consistent with the nonattainment classification that is in effect at the time relocation occurs.

The Department is proposing to remove the prohibition on issuing an operation permit prior to payment of construction permit fees to accommodate permit streamlining efforts. Since the Department has the ability under NR 406.11(1)(e) to revoke a construction permit for the failure to pay application fees, the removal of this requirement will not impact the Department's ability to collect application fees associated with construction permits.

Summary of, and Comparison with, Existing or Proposed Federal Regulation

The proposed changes are being done so as to make state regulations similar to or the same as the federal regulations and to clarify other state requirements.

Comparison with Rules in Adjacent States

All the states within EPA Region 5 manage an air 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.

The federal rules are effective nation-wide and the rules being proposed by the Department are essentially identical to the federal rules so those portions of the proposed rules should be similar or identical to rules in effect in adjacent states that have similar programs.

Summary of Factual Data and Analytical Methodologies

This rule is being developed as a clean up package. The Department reviewed changes in federal regulations and ozone classifications in the rule development.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

An analysis of the effect of the proposed rules on small business was not performed since most of the changes are identical requirements that are already in effect at a federal level. Other rule changes may impact small business that need air permits. Preparation of an economic impact report has not been requested.

Effect on Small Business

Because the proposed rule change may result in a limited number of sources becoming subject to federal operation permit requirements, some small business may be required to report their compliance status semi-annually instead of annually. Other small businesses, such as dry cleaners and chrome electroplaters, may be exempted from federal operation permit requirements because they are low emitting sources of hazardous air pollutants.

The proposed rule is not expected to have a significant economic impact on small businesses nor have a significant economic effect on any entity.

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SECTION 1. NR 400.02(162)(a)49. is renumbered NR 400.02(162)(a)50.

SECTION 2. NR 400.02(162)(a)49. is created to read:

NR 400.02(162)(a)49. 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (C₂F₅CF(OCH₃)CF(CF₃)₂ or HFE-7300).

SECTION 3. NR 406.04(2m)(b) is amended to read:

NR 406.04(2m)(b) ~~Except for any provisions contained in any general operation permit issued prior to September 1, 2005 specifying when a construction permit is needed, the~~ The construction, reconstruction, replacement, relocation or modification will not result in the source violating any term or condition of the general operation permit or the registration operation permit.

SECTION 4. NR 406.04(2m)(b) Note is created to read:

NR 406.04(2m)(b) **Note:** Some general operation permits issued prior to September 1, 2005 may have required a construction permit even if the change at the source would not violate any term or condition of the permit. Those sources are now exempt from the requirement to obtain a construction permit if the change at the source will not violate any term or condition of the general operation permit.

SECTION 5. NR 406.15(3)(a) is amended to read:

NR 406.15(3)(a) ~~The source has the~~ source's potential to emit is less than ~~25 tons per year of VOC and less than 25 tons per year of NO_x.~~ the major source thresholds for both VOCs and NO_x contained in s. NR 408.02(21).

SECTION 6. NR 407.02(3e) is created to read:

NR 407.02(3e) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

SECTION 7. NR 407.02(4)(b)27. is amended to read:

NR 407.02(4)(b)27. All other stationary source categories regulated on or after August 7, 1980, by a standard promulgated under section 111 or 112 of the ~~act~~ Act (42 USC 7411 or 7412), ~~but fugitive emissions shall be considered only for those air contaminants that have been regulated for that category.~~

SECTION 8. NR 407.02(6)(b)4. to 7. are repealed.

SECTION 9. NR 407.10(4)(a)2. is amended to read:

NR 407.10(4)(a)2. ~~Except for any provisions contained in any general operation permit issued prior to September 1, 2005 specifying when a construction permit is needed, the~~ The construction, reconstruction, replacement, relocation or modification does not require a permit

under [http://folio.legis.state.wi.us/cgi-](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=25710517&infobase=code.nfo&jump=ch.%20NR%20405&softpage=Document - JUMPDEST_ch. NR 405)

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SECTION 10. NR 407.10(4)((a)2. Note is created to read:

NR 407.10(4)(a)2. **Note:** Some general operation permits issued prior to September 1, 2005 may have required a construction permit, even if the change at the source would not violate any term or condition of the permit. Those sources are now exempt from the requirement to obtain a construction permit if the change at the source will not violate any term or condition of the general operation permit.

SECTION 11. NR 410.03(4) is amended to read:

NR 410.03(4) PAYMENT. The department shall bill the applicant for the construction permit application fee when the permit is issued. The application fee shall be paid within 30 days of the date of the billing statement. ~~The department may not issue the operation permit to the facility until the application fee is paid in full.~~

SECTION 12. 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 13. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 24, 2007.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)