

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board adopt Board Order AM-24-12b, proposed rules affecting chapters NR 406 and NR 407 related to increasing the operational efficiency of and simplifying the air permit process.

FOR: September 2019 Board meeting

PRESENTER'S NAME AND TITLE: Kristin Hart, Permits & Stationary Source Modeling Section Chief

SUMMARY:

The primary objectives of the proposed rules are to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407 while remaining consistent with the federal Clean Air Act (CAA), and to address statutorily required rule making.

Why is the rule needed? The rule assures efficient, simplified permit processes while remaining consistent with federal Clean Air Act requirements. The rule also provides an opportunity to clean up outdated or confusing rule language and update definitions consistent with federal definitions.

What are the significant changes? The rule proposes many small changes that are cleanup and clarifying in nature including updates to definitions and changes to provide for electronic submittal of applications and reports. Also included are permit exemptions for incineration of confiscated drugs by law enforcement and revisions to exemptions that may promote use of ultra-low sulfur fuel oil and use of engines meeting the highest federal emission standards.

What are the key issues/controversies? The department involved stakeholders in discussions on how the rules could be streamlined and on specific changes being proposed. The main issue is to accomplish meaningful process improvements while assuring that the regulations maintain consistency with the federal Clean Air Act.

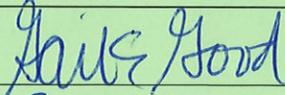
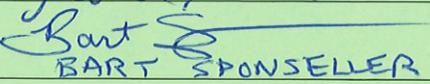
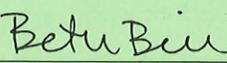
What was the last action of the Board? The Board last acted on this rule at its June 2015 meeting, approving AM-24-12, the first board order under this scope statement.

Will the proposed rule have an economic impact on small business, and if so, will it be minimal (level 3), moderate (level 2) or significant (level 1)? The proposed rule changes are expected to result in minimal (level 3) economic impact on small business.

RECOMMENDATION: That the Board adopt Board Order AM-24-12b.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule |
| <input checked="" type="checkbox"/> Response summary | <input type="checkbox"/> (insert document name) |

Approved by	Signature	Date
Gail Good, Air Management Program Director		8/15/19
Darsi J. Foss, Environmental Management Division Administrator <i>for</i>	 BART SPONSELLER	8/15/2019
<i>ff</i> Preston D. Cole, Secretary		8/16/19

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

by Beth Bier

CORRESPONDENCE/MEMORANDUM

DATE: August 16, 2019

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order AM-24-12b, relating to increasing the operational efficiency of and simplifying the air permit process

1. Subject of Proposed Rule:

The primary objectives of the proposed rules are to improve operational efficiency for and to simplify the permitting processes administered under chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act (CAA).

2. Background:

Section 285.60 (6) (c), Wis. Stats., was created in 2013 requiring the department to exempt natural minor sources from the requirement to obtain an operation permit and, if necessary to write rules to do so. This rulemaking was undertaken, in part, to fulfill the statutory requirement and to examine the statutory requirements in ss. 285.11 and 285.27 to define certain terms including what constitutes the cause or exacerbation of a violation of an ambient air quality standard.

Because there was urgency to promulgate an exemption from operation permits for natural minor sources, the department moved ahead with rules for a natural minor exemption with the understanding that it would continue to work through defining "cause or exacerbate" and other portions listed in the scope statement in a part b of the scope statement. Rules on natural minor exemptions and other streamlining and cleanup of the permit rules were finalized and effective on December 1, 2015.

The proposed rule revisions in AM-24-12 (a and b) were undertaken with extensive stakeholder involvement. Starting in the fall of 2013, DNR held a series of listening sessions throughout the state to hear from permit holders, environmental organizations, consultants, and interested members of the public on ways to streamline the air permitting processes. A stakeholder workgroup including representatives from regulated businesses, business advocates including Wisconsin Manufacturers and Commerce and the Wisconsin Paper Counsel, and environmental and public advocates including Clean Wisconsin and Sierra Club was formed. Stakeholder workgroup meetings began in January of 2014: ten meetings were held during the development of Phase 1 of this rule, and ten meetings were held during the development of Phase 2. All of the stakeholder workgroup meetings were publicly noticed on the DNR's website, and email notifications were sent to those who had attended previous meetings.

The proposed rule before the board today is under Board Order AM-24-12b and includes proposed changes to fulfill the remainder of elements in the scope statement.

3. Why is the rule being proposed?

Section 285.60 (6) (c), Wis. Stats., was created in 2013 requiring the department to exempt natural minor sources from the requirement to obtain an operation permit and, if necessary to write rules to

do so. This rulemaking was undertaken, in part, to fulfill that statutory requirement. The natural minor exemption was created under AM-24-12a effective December 1, 2015.

In the statement of scope for this rule, the department also committed to examining the air permit program to assure consistency with federal rules and for clarification and streamlining of the permit processes. In this second phase, AM-24-12b includes proposed rule revisions to remove outdated requirements and language that inadvertently prohibits processes that could take advantage of electronic, web based applications and reports. It also clarifies rules and requirements to assure consistent, efficient implementation of permit processes and updates rules so that they are consistent with current federal rules.

4. Summary of the rule.

The primary objective of the proposed rule is to improve operational efficiency for, and to simplify the air permitting processes administered under chs. NR 406 and 407 while remaining consistent with the federal Clean Air Act, and to address statutorily required rule making. Proposed revisions specifically include:

- Creation of an exemption from permit requirements to allow law enforcement to incinerate drugs confiscated by law enforcement as long as the incineration equipment meets certain specifications and appropriate records are kept.
- Revisions to the exemptions from permit requirements for external combustion furnaces to account for use of ultra-low sulfur fuel oil.
- Revisions to the list of allowed preconstruction activities to align with federal guidance so that this rule revision can be approved by EPA into the State Implementation Plan.
- Revisions providing operational flexibility for sources operating under a Plantwide Applicability Limitation (PAL) as intended by the federal rules.
- Revisions to language to allow the use of e-signature or the electronic submittal of application materials and reports in lieu of paper copies and ink signatures.
- Changes to align state and federal regulations.
- Updates to definitions.
- Other changes that are cleanup and clarifying in nature.

As directed in the scope statement, the department examined how to create a definition of what constitutes the “cause or exacerbation of an ambient air quality standard or an ambient air increment” and decided that adding such a definition would not result in improvement of operational efficiency or simplification of the permit processes. Some stakeholders were concerned that defining the term could, in fact, complicate permit processes. No comments were received on the decision to not define the term.

5. How does this proposal affect existing policy?

The portions of this rule that are cleanup in nature serve to clarify existing department policy. Other portions of this rule do not affect air program policy.

6. Has Board dealt with these issues before?

Yes. The Board approved the scope statement for AM-24-12 at its March 2013 meeting and authorized hearings at its December 2014 meeting. The board adopted the first board order under this scope statement, AM-24-12, at its June 2015 meeting.

7. Who will be impacted by the proposed rule? How?

The proposed rule could potentially impact any business that needs an air pollution control construction or operation permit. The proposed rule would affect mostly minor sources of air pollution, but some larger emitting facilities may also be able to benefit from portions of this rule. Because small businesses are usually minor air pollution sources, small businesses are more likely to be impacted by the improvements proposed in this rule.

This rule is being proposed to streamline and increase the efficiency of the air permitting processes and to make permitting easier to understand. Therefore, businesses are expected to experience positive impacts from this rule. The addition of air permit exemptions reduces the need for certain businesses or operations to obtain construction permits. Revisions that clarify exemption and exclusion language may increase the number of facilities that take advantage of existing permit exemptions. For those facilities that need an air construction permit, the proposed rule would allow some preconstruction activities to begin prior to permit issuance, ultimately leading to earlier project completion and an increased ability to respond to market demands.

The rule revisions reduce the need for construction permitting at sources operating under a Plantwide Applicability Limitation (PAL). The flexibility intended by the federal PAL rules is made available while assuring continued compliance with all applicable state and federal regulations including protection of ambient air quality standards.

All businesses that require permits or that must submit reports could potentially be impacted by portions of this rule that remove barriers to submittal of electronic documents and use of electronic signature in lieu of paper documents and ink signatures. This allows the department to fully implement and utilize e-signature and provides businesses with the advantages of electronic document submittal including feedback on completeness and near instant verification of submittal and receipt dates.

8. Soliciting public input on economic impact synopsis

A request for information concerning potential economic impacts of the proposed rule was sent by email to all air permit holders in the state. The request was also sent to several organizations that represent business in the state including the Small Business Environmental Council, the Printing Council, the Wisconsin Transportation Builders Association, Wisconsin Manufacturers and Commerce, the Wisconsin Paper Council, Badger State Sheriffs' Association, Wisconsin Sheriffs and Deputy Sheriffs Association and the American Council of Engineering Companies of Wisconsin. The information request was sent to the Wisconsin Public Service Commission, to the League of Wisconsin Municipalities and to the Wisconsin Counties Association as representatives of local units of government. The request for information was sent to the Air Management Study Group and to the members of the Air Permit Streamlining Workgroup and other nongovernmental organizations. These groups included members representing Clean Wisconsin, Sierra Club, Midwest Environmental Advocates, environmental consultants, environmental law attorneys, utilities and representatives of large and small businesses.

DNR received two brief responses on the solicitation for economic impacts of this rule. One respondent indicated that the proposed rule would not have an economic effect on their facility which currently operates under an exemption. The other respondent indicated that there would be no significant adverse economic impacts to their operations and felt there could be some economic benefits from the rule as proposed.

Based on this response, no changes were made to the to the economic impact analysis.

9. Small Business Analysis

Small businesses with air pollution emissions will be affected by the proposed rules. In general, the revisions in this rule package provide clarification for applicability of permit exemptions. Small businesses that may not have dedicated environmental staff will be able to understand and take advantage of clarified permit exemptions and other exclusions in the rules. Other changes streamline processes or allow for implementation of online reporting and application submittals, which also provide a cost savings for small businesses.

The proposed rules will allow all Wisconsin businesses, including small businesses, seeking minor construction permits to begin certain preconstruction activities prior to permit issuance. The ability to begin certain preconstruction activities before receiving a permit can be economically beneficial to some businesses.

Some small businesses may need assistance in understanding what rules apply and which exemptions they qualify for. The Air Program's Small Business Environmental Assistance Program is available to help small businesses understand what permits and requirements apply and what options are available to demonstrate compliance.

Drafter: Kristin Hart

Air Permit Streamlining Rule Public Comments and DNR Responses Natural Resources Board Order No. AM-24-12b

August 12, 2019

This document presents a summary of public comments received on the proposed revisions of Chapters NR 400, 406, and 407, Wisconsin Administrative Code, and the Department of Natural Resources' (DNR's) responses.

OVERVIEW

In the statement of scope for this rule, the department committed to examining several areas of the permit program to assure consistency with federal rules and for clarification and streamlining of air permit processes.

The primary objectives of the proposed rules are to improve operational efficiency for and to simplify the permitting processes administered under chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act (CAA). The proposed rule removes outdated requirements and language that inadvertently prohibits processes that could take advantage of electronic, web based applications. It also clarifies rules and requirements to assure consistent implementation, and updates rules so that they are consistent with current federal rules.

Stakeholder Process - The proposed rule revisions in AM-24-12 (a and b) were undertaken with extensive stakeholder involvement. Starting in the fall of 2013, DNR held a series of listening sessions throughout the state to hear from permit holders, environmental organizations, consultants, and interested members of the public on ways to streamline the air permitting processes. A stakeholder workgroup including representatives from both WPC and WMC was formed. Stakeholder workgroup meetings began in January of 2014: ten meetings were held during the development of Phase 1 of this rule, and ten meetings were held during the development of Phase 2. All of the stakeholder workgroup meetings were publicly noticed on the DNR's website, and email notifications were sent to those who had attended previous meetings. Further details on this stakeholder involvement are available at <https://dnr.wi.gov/topic/AirQuality/PermitStreamlining.html>. The workgroup discussed results of the listening sessions, the direction of the rule scope statement, and proposed revisions.

Economic Impact Analysis (EIA) – A 30-day public comment period on the Draft EIA occurred from December 3-December 17, 2018. DNR received two responses to the solicitation for information on economic impacts. Neither response indicated that the rule would have negative economic impact for their facilities.

Public Hearing and Comment - The public comment period for the Draft Rule occurred from March 11 to April 24, 2019. During the public comment period, two written comments were received. The public hearing on the Draft Rule was held April 17, 2019. Three people attended the hearing. No one spoke at the hearing. One set of comments was received from two hearing attendees.

ECONOMIC IMPACTS ANALYSIS

DNR received two brief responses on the solicitation for economic impacts of the streamlining rule. One respondent indicated that the proposed rule would not have an economic effect on their facility which currently operates under an exemption. The other respondent indicated that there would be no adverse economic impacts to their operations and felt there could be some economic benefits from the rule as proposed.

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE (19-015)

Comments received from the Wisconsin Legislative Council Rules Clearinghouse (19-015) were related to form, style, placement in administrative code, clarity, grammar, punctuation and use of plain language. DNR made all requested changes except as follows:

Comment 5.b., Instead of “government agency such as police or sheriff’s department”, the department could create a definition of “government agency.”

Response

DNR did not create a definition for “government agency” as the term is used in proposed exemption in 406.04(1) (bm) (intro) and 407.03(1) (bm) (intro) because federal rules that exclude government agencies that incinerate illegal drugs use this term and do not define it.

SUMMARY OF PUBLIC COMMENTS AND DNR RESPONSE

Comments on the proposed revisions to chs. NR 400, 406, and 407, Wis. Adm. Code, concerning board order AM-24-12b, Phase 2 of the Air Permit Streamlining Rule, were received on April 23, 2019, from TransCanada Pipeline Corporation and on April 24, 2019 from Wisconsin Paper Council (WPC), Wisconsin Manufacturers and Commerce (WMC), Midwest Food Processors Association (MWFPA) and Wisconsin Industrial Energy Group (WIEG) (in a joint comment). The following is a summary of comments and the DNR’s response. In addition, both sets of comments are attached to this response.

Comments from WPC, MFPA, WIEG, WMC

1. The Economic Impact Analysis should be updated.

Response

A draft economic impact analysis specific to AM-24-12b was prepared and made available to a large group of stakeholders, along with the draft board order including proposed rule language, in a solicitation for information on economic impacts sent December 3, 2018. The solicitation was posted to DNR’s rules website and sent by email to all air permit holders in the state as well as the Small Business Environmental Council, the Printing Council, the Wisconsin Transportation Builders Association, Wisconsin Manufacturers and Commerce, the Wisconsin Paper Council, Badger State Sheriffs' Association, Wisconsin Sheriffs and Deputy Sheriffs Association, the American Council of Engineering Companies of Wisconsin, the Wisconsin Public Service Commission, the League of Wisconsin Municipalities, the Wisconsin Counties Association, members of the Air Management Study Group, members of the Air Permit Streamlining Workgroup, Clean Wisconsin, Sierra Club, Midwest

Environmental Advocates, environmental consultants, environmental law attorneys, utilities, and representatives of large and small businesses.

DNR received two responses to the solicitation for information on economic impacts. One respondent indicated that the proposed rule would not have an economic effect on their facility which currently operates under an exemption. The other respondent indicated that there would be no adverse economic impacts to their operations and felt there could be some economic benefits from the rule as proposed.

DNR concludes that the EIA does not need to be updated.

2. The DNR should rescind, revise, and resubmit the scope statement for the rule in light of the legislative intent behind recent changes to the rulemaking process.

Response

Both 2017 Wisconsin Acts 39 and 57, which seem to be the revisions alluded to in the comment, expressly grandfather scope statements that had been approved prior to the effective date of the legislation. 2017 Wisconsin Act 39 states that scope statements approved prior to the legislation expire 30 months from the effective date of the law. Based on that provision, this scope statement expires on February 4, 2020. Therefore, this scope statement remains valid.

3. Statute requires one rule for one scope statement.

Response

The decision to undertake this rulemaking in two phases was shared with stakeholders at a January 24, 2014, kickoff meeting of the Permit Streamlining Rule Stakeholder Workgroup and at numerous Air Management Study Group meetings thereafter. No concerns about the phased rulemaking proposal were raised in any of those meetings.

The rulemaking was split to accommodate changes proposed by stakeholders without delaying the natural minor exemption added by AM-24-12a. Nothing in the current rulemaking packages goes beyond the description of proposed rulemaking that is in the scope statement.

4. The rule proposes substantive changes not included in the original scope statement.

Response

The scope statement approved for this rule has a general directive "to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407..." while remaining consistent with the Clean Air Act (CAA). DNR interprets the directive to improve operational efficiency as authority in the scope statement to review chs. NR 406 and 407 for areas that delay processes for permitting or exemption determinations. Improving operational efficiency includes revising sections that are unclear or confusing.

Furthermore, the scope statement states, in reference to the objective to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, "The Wisconsin Department of Natural Resources (WDNR) may encounter potential opportunities related to this objective which are unforeseen and therefore not described. The WDNR will evaluate and act on such opportunities consistent with the stated objective." The scope statement's listing of specific rules and issues to be examined is not intended to be limiting.

5. Changes proposed to the definition of reconstruction are not included in the original scope statement and will increase regulatory burden for minor sources.

Response

The term "reconstruction" or "reconstruct" is used more than 30 times in ch. NR 406, yet the term is not defined for minor sources in rule. Removing inconsistent or ambiguous language fulfills the scope statement goal to "improve operational efficiency."

Furthermore, defining the term "reconstruction" in the context of minor construction permitting is not expected to result in any change in eligibility of existing exemptions or result in additional permit requirements.

No change based on this comment has been made.

6. Changes to the exclusion from commence construction are not included in the original scope statement

Response

The exclusion from commence construction in section 406.03(1e) did not exist at the time the original scope statement was written. This section was promulgated in Phase 1 of the Air Permit Streamlining Rule. The exclusion was created to align the state and federal definitions of "Commence Construction." At the urging of stakeholders, DNR also included additional activities not allowed by the federal definition to be used only for minor construction projects.

DNR submitted the exclusion in s. NR 406.03(1e) to EPA for approval into Wisconsin's State Implementation Plan (SIP). EPA has not approved the submittal because, as the exclusion is written, DNR cannot provide a demonstration that projects utilizing the exclusion would not ultimately require a major source permit. Without approval into the SIP, facilities may be at risk of federal enforcement for commencing construction without a permit.

During Phase 2 of the Air Permit Streamlining Rule, stakeholders reviewed revision options that would qualify for SIP approvability. Based on this feedback, the rule language was simplified. DNR removed the three activities that are not allowed under the federal definition of "begin actual construction" in 40 CFR § 51.165 (a)(1)(xv). This will allow all sources, regardless of size, to engage in the remaining activities excluded from being considered commencing construction prior to receiving, or even applying for, a permit. This change

simplifies a rule, provides certainty to sources on what activities they can begin without a permit in hand, and aligns state and federal rules.

Stakeholders continued to express concerns that the 3 activities removed from the exclusion are activities that, when delayed, can significantly impact the economic viability of a construction project. In response, DNR proposed changes to the waiver rule in s. NR 406.03(2)(b)2.c., Wis. Adm. Code, to clarify and simplify demonstration of hardship, making the waiver easier to obtain. The construction waiver allows all construction activities to begin before a permit is issued. The waiver rule contains processes that enable DNR to determine whether a project is major and has already obtained approval into the SIP. The impacts of the revisions to s. NR 406.03(1e) on minor sources are offset, in part, because the proposed changes to the waiver rule will make it less burdensome to demonstrate a hardship and make it easier for minor sources to qualify for a waiver, fulfilling the goal of the exclusion from commencing construction.

No change based on this comment has been made.

7. Changes to Wisconsin's Construction Waiver rule in s. NR 406.03(2)(gm) are outside the scope statement and limits the availability of waivers.

Response

The changes to s. NR 406.03(2) were proposed expressly to increase the availability of waivers to minor sources by making it less burdensome to demonstrate a hardship. The addition of s. NR 406.03(2)(gm) clarifies waiver applicability to improve operational efficiency. The addition is not intended to affect whether a source could apply for and obtain a waiver for a construction permit revision request.

In response to received comments, the DNR has changed the rule language as follows:

SECTION 9. NR 406.03 (2) (gm) is created to read:

NR 406.03 (2) (gm) The department may not grant a waiver for a source that commenced construction, reconstruction, replacement, relocation, or modification without a permit prior to requesting a waiver under this paragraph.

8. Changes relating to exemptions from minor source construction permitting for facilities making changes under Plant-Wide Applicability Limitations (PALs) are more restrictive and limit the exemptions available which is outside the scope statement.

Response

Repealing s. NR 406.04(1f)(c), Wis. Adm. Code, reduces construction permitting requirements for facilities making changes under an established PAL by allowing construction of new emissions units to qualify for the exemption. Repealing the note and creating s. NR 406.04(1f)(f) makes it clear that an operation permit application is required for modifications made under this exemption. The note contained ambiguous language regarding submittal of an operation permit application while the existing requirement in s.

NR 407.04(1)(b) is clear that such an application is required for all such modifications. This clarification will improve operational efficiency.

No change based on this comment has been made.

9. Changes to the exclusion from modification in s. NR 406.04(4)(j) will result in fewer exemptions and thus are outside the scope statement.

Response

The current exclusion cannot be implemented if interpreted as described by the commenter. While it is true that use of the term “emissions” with no modifier in chs. NR 406 and 407 may have been historically interpreted by some to mean actual emissions, any exemption based on actual emissions must have a compliance demonstration element to be enforceable. Additionally, the thresholds being referred to in s. NR 406.04(4)(j)2. are maximum theoretical emissions thresholds.

The DNR considers the changes made to be clarifying and has no evidence that an interpretation of the emissions increase was ever widely interpreted by DNR permitting staff to be “actual emissions.” Therefore, this revision will not have any real effect on the number of projects that are able to avoid air permitting based on this exclusion.

Regarding the removal of “change is exempt under sub. (1), or increased” from s. NR 406.04(4)(j)2., it appears the commenter is confusing sub. (1), which refers to s. NR 406.04(1), with subd. 1., which would refer to s. NR 406.04(4)(j)1. Section NR 406.04(4)(j) already requires that changes must meet all of the conditions in s. NR 406.04(4)(j)1. to 3. in order to qualify for this exclusion from modification. The proposed change to s. NR 406.04(4)(j)2. does not impact this requirement.

No change based on this comment has been made.

10. The repeal of s. NR 407.11(1)(e), Wis. Adm. Code, increases permit burden on sources and so is outside the scope statement.

Response

DNR does not have authority to administratively revise an operation permit to include a construction permit because the notice and comment procedures are not substantially equivalent, as required in 40 CFR § 70.7(d)(1)(v). DNR made procedural changes to address this issue during previous streamlining efforts by integrating construction and operation permits. Since the late 2000's DNR reviews, public notices and issues operation permit revisions concurrently with construction permits to minimize regulatory burden and increase the efficiency of the permitting processes. Removing this unusable provision substantially eliminates confusion and delays caused by such confusion.

No change based on this comment has been made.

11. An administrative construction permit revision process should have been created.

Response

DNR investigated the creation of an administrative process for construction permits. Construction permitting revision rules are already considerably less burdensome than rules covering significant revisions to operation permits. Any revision to a construction permit is handled through a notification and 21-day waiting period. DNR does not require construction permits to be revised to reflect administrative changes to ownership or responsible official. These changes are handled through operation permitting. Adding an administrative revision process requirement for construction permits would add an unnecessary process for permittees.

No change based on this comment has been made.

12. DNR should have created an exemption for like-kind replacement.

Response

DNR did investigate a like-kind replacement exemption and presented potential rule language at an April 13, 2017, Air Permit Streamlining Stakeholder workgroup meeting. Feedback from stakeholders indicated that the constraints associated with a like-kind replacement exemption were such that the types of changes that would be allowed under the exemption were so narrow in scope that the exemption would not be useful. DNR also contacted EPA and learned that no nearby states have like-kind replacement exemptions. Based on this feedback, DNR did not pursue a like-kind exemption replacement any further.

DNR has proposed revisions to the exemption for projects evaluated for significant net emissions increase under s. NR 406.04(1k) clarifying that this exemption covers "existing emission units" as defined in s. NR 405.02(12) or s. NR 408.02(13), Wis. Adm. Code. These definitions state that "replacement unit, as defined in sub. 405.02(25k) or 408.02(29s), is an existing emissions unit." Therefore, the proposed changes to 406.04(1k) clarify that such replacement units, which are already exempt under federal PSD and NNSR permit rules, are also exempt from minor construction permit requirements.

No change based on this comment has been made.

13. DNR should have created an 'up-to' limit so facilities can obtain a permit that would allow for some minimal changes, such as the addition of a space-heating unit, without being forced to reapply for a new permit.

Response

DNR proposes to revise the definition of "permit revision" in s. NR 406.02(6), Wis. Adm. Code, as follows:

SECTION 3. NR 406.02 (6) is amended to read:

"Permit revision" means any change to a construction permit to reflect a change at a source that is not a modification of the source or that is an exempt modification of the source.

14. The rule should have included language clarifying that a construction permit covers all categories of construction: construction, reconstruction, replacement, and modification of a source, and prescribing a method for administrative permit revision (in lieu of a new application) if the underlying reason for the construction or the construction category changes.

Response

This issue was not discussed during the stakeholder meetings on this rule, and it is not clear how such a change would 'improve operational efficiency.' DNR welcomes more formal suggestions of how future rulemaking could consider these questions.

15. The rule should include language to clarify that notice and hearing requirements do not apply to revisions that do not amend the total emission limits.

Response

Construction permit revision procedures are described in the existing rule in s. NR 406.11(1), Wis. Adm. Code, and do not require notice and hearing requirements. Construction permits can be revised after providing 21 days written notification to the permit holder and to the persons listed under s. 285.61 (5) (a) 2. to 5., Stats.

No change based on this comment has been made.

16. DNR should have considered removal of non-air pollution related conditions from permits and allow permits to reference other documents rather than listing specifics so that the non-permit documents can be regularly updated to remain current with work practices without the need for a permit revision.

Response

This is a complicated issue that was considered by DNR during the 2006 streamlining efforts. EPA weighed in with a White Paper and court decisions have prohibited at least some incorporation by reference. This topic was not an element of the approved scope statement. Any changes in rule to explicitly allow incorporation of conditions into permits by reference would need to be further examined.

Section NR 407.09 (and 40 CFR § 70.6) covers operation permit content and states that the permit must contain the emission limitations and standards as well as monitoring and related recordkeeping and reporting requirements.

No change based on this comment has been made.

17. The rule should more specifically define DNR's authority in ch. NR 439 to help permittees understand expectations of permit conditions.

Response

The scope statement for this proposed rule does not include changes to ch. NR 439, Wis. Adm. Code. DNR plans to undertake rulemaking concerning ch. NR 439 in the future. Further, stakeholders were notified and asked to comment on prioritization of permit streamlining or ch. NR 439 prior to starting work on AM-24-12b and requested work on permit streamlining.

18. WPC is concerned that opportunities to improve permitting efficiency have been missed and would urge DNR to reincorporate other streamlining opportunities into the proposal should it move forward.

Response

As discussed in the "Stakeholder Process" section of this memo, the development of the proposed revisions included extensive stakeholder involvement and DNR evaluated potential revisions proposed by stakeholders. An additional opportunity to streamline construction permitting rules was recently uncovered in conjunction with updates to a VOC RACT rule. Construction permitting under ch. NR 406, Wis. Adm. Code, would be required if a RACT rule is revised to become less restrictive. DNR proposes to revise the exclusion from modification for "VOC RACT compliance" in s. NR 406.04(4)(b), Wis. Adm. Code, to exclude a source from modification when it is required to meet a new or updated provision of a RACT rule as follows:

SECTION 14. NR 406.04 (4) (b) is amended to read:

VOC RACT compliance. A change to a permit condition needed to assure compliance with a new or revised RACT rule, 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.

Comments from representatives of TransCanada Pipeline Company

19. TransCanada considers gas generator changeouts to be Routine Maintenance, Repair and Replacement (RMRR) and as such, are not be subject to PSD permitting requirements provided that the gas generator being replaced is an identical unit to the one being installed.

Response

As stated in the response to comment 12., DNR has proposed revisions to the exemption for projects evaluated for significant net emissions increase under s. NR 406.04(1k) to clarify that this exemption covers "existing emission units" as defined in s. NR 405.02(12) or s. NR 408.02(13), Wis. Adm. Code. These definitions state that "replacement unit, as defined in sub. 405.02(25k) or 408.02(29s), is an existing emissions unit." Therefore, the proposed

changes to 406.04(1k) should assure that such replacement units, which are already exempt under federal PSD and NNSR permit rules, are also exempt from construction permit requirements.

No change based on this comment has been made.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapters NR 400, 406, and 407; AM-24-12b. CR 19-015

3. Subject

Proposed rules related to clarifying and improving efficiency of, and streamlining air program permitting processes.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

NA

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The primary objective of the proposed rule is to improve operational efficiency for, and to simplify the permitting processes administered by, the air program, while maintaining consistency with the federal Clean Air Act (CAA) and to address statutorily required rule making.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The proposed rule could affect any entity that needs an air pollution control construction or operation permit in the state. A request for information concerning potential economic impacts of the proposed rule was sent by email to all air permit holders in the state. The request was also sent to several organizations that represent business in the state including the Small Business Environmental Council, the Printing Council, the Wisconsin Transportation Builders Association, Wisconsin Manufacturers and Commerce, the Wisconsin Paper Council, Badger State Sheriffs' Association, Wisconsin Sheriffs and Deputy Sheriffs Association and the American Council of Engineering Companies of Wisconsin. The information request was sent to the Wisconsin Public Service Commission, to the League of Wisconsin Municipalities and to the Wisconsin Counties Association as representatives of local units of government. The request for information was sent to the Air Management Study Group and to the members of the Air Permit Streamlining Workgroup and other nongovernmental organizations. These groups include members representing Clean Wisconsin, Sierra Club, Midwest Environmental Advocates, environmental consultants, environmental law attorneys, utilities and representatives of large and small businesses.

11. Identify the local governmental units that participated in the development of this EIA.

The Department provided an opportunity for local governmental units to indicate whether they wish to coordinate with the Department in preparation of the EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Economic Impacts on Private Sector Businesses:

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The purpose of this proposed rule is to clarify, improve efficiency and streamline the air permit processes, so there should be no negative economic impacts for businesses. The proposed rule clarifies existing permit exemptions, expands eligibility of some exemptions, and creates an exemption for incineration of confiscated drugs by law enforcement. Sources that qualify for new or expanded permit exemptions will see an economic benefit. Facilities may find that they would save on the cost of preparing permit applications. An economic benefit is also expected based on the provisions to allow some preconstruction activities to occur prior to receiving a construction permit.

Economic Impacts on Local Governments and Public Entities:

The proposed rule changes are not expected to have a negative economic impact on local governments and public entities. An exemption from permit requirements is being created for incineration of confiscated drugs by law enforcement. It is expected that this exemption will have no negative economic impact to local law enforcement. The Barron County Waste to Energy Facility, which is permitted to incinerate confiscated drugs, commented that this exemption could have a negative affect on their competitiveness but felt that, for state citizens overall, the exemption would lower costs of disposal of confiscated drugs by lowering transportation costs.

Fiscal Impacts on the Department's Air Management Program:

The air management program funds nearly all permitting and compliance activities through program revenue generated by annual fees charged to operation permit holders and construction permit fees for those applying for construction permits. The changes being made to the construction and operation permit exemptions are not expected to significantly impact the number of permits required. Fees charged for construction permit review and for review of exemption from construction permits are proportional to workload. Some reduction in annual revenue generated from sources becoming exempt from operation permitting annual fees may occur. Overall, the rule is not expected to pose a significant impact on the revenue of the construction or operation permit programs.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This proposed rule is to improve operational efficiency for, and to simplify the permitting processes administered by, the air program, while maintaining consistency with the federal Clean Air Act (CAA) and to address statutorily required rule making. Clarification of permit exemptions is expected to result in greater consistency in exemption determinations. This provides a more even playing field for competing businesses and may result in lower consulting fees due to simplification of requirements. The creation of an exemption for incineration of confiscated drugs by law enforcement is expected to result in an economic benefit for law enforcement agencies by reducing confiscated drug storage, transportation, and disposal costs for local law enforcement. If the rule is not implemented, facilities will not see the economic benefits provided by the proposed rule.

14. Long Range Implications of Implementing the Rule

The program does not anticipate long range fiscal or economic impacts from implementation of this rule.

15. Compare With Approaches Being Used by Federal Government

The exemptions being clarified, expanded or added apply only to minor source permitting and as such, do not conflict with federal rules. Federal permitting regulations allow states to exempt certain activities and levels of emissions from minor source permitting.

The department is proposing rule changes to the list of activities that do not constitute commencing construction to align with federal definition and guidance so that the provision is approvable by EPA into Wisconsin's State Implementation Plan.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Several revisions proposed under the scope statement of the rule package were examined but will not be pursued. Each decision considered approaches being used by the federal government and include:

- Not defining Cause or Exacerbate. The term is not defined in federal rules and defining the term is not expected to provide additional streamlining to the permit process.
- Not defining Shutdown. The term is not defined in federal rules and defining the term is not expected to provide additional streamlining to the permit process.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois and, until recently, Minnesota, are delegated states, so they are directly implementing the federal program and are not implementing their programs through a State Implementation Plan (SIP), as Wisconsin does. Iowa and Michigan, similar to Wisconsin, are SIP approved states, so they are also implementing a federal program, but through their own state rules. SIP-approved states must implement federal programs in accordance with the regulations set out in federal code. The portions of this rule that are being changed to align with federal regulations result in rules similar to those in neighboring states.

Other rule changes proposed are limited to minor source construction permits and minor source operation permits. Wisconsin's neighboring states also have minor source construction permit programs, but state programs vary widely from each other. Similar to Wisconsin, adjacent states provide some construction permit exemptions for certain operations and activities depending on type, size, capacity, hours of operation, emissions or other similar criteria.

All the adjacent states issue minor source operation permits. Generally, these are issued to facilities requesting federally enforceable conditions limiting emissions to less than major source thresholds. These "synthetic minor" operation permit programs are all similar to Wisconsin's. The adjacent states all offer different types of exemptions from operation permitting for minor sources.

17. Contact Name

Kristin Hart

18. Contact Phone Number

608/266-6876

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

-
1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is not expected to have a negative economic impact on small businesses.

-
2. Summary of the data sources used to measure the Rule's impact on Small Businesses

DNR's Small Business Environmental Assistance Program keeps records of assistance provided to small businesses. The program also has extensive records of the numbers of permits and permit exemptions processed each year.

-
3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 Less Stringent Schedules or Deadlines for Compliance or Reporting
 Consolidation or Simplification of Reporting Requirements
 Establishment of performance standards in lieu of Design or Operational Standards
 Exemption of Small Businesses from some or all requirements
 Other, describe:

-
4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule will allow sources seeking minor construction permits to begin certain preconstruction activities prior to permit issuance. Small businesses are more likely to qualify for this exclusion because they generally have lower air pollution emissions. The ability to begin certain preconstruction activities before receiving a permit can have substantial economic benefit, especially if the activities need to be completed before the Wisconsin winter precludes preconstruction activities. Such weather related delays can hold up the beginning of construction for months after permit issuance.

Clarification of permit exemptions is expected to assist small business by providing a more even playing field for competing businesses and may result in lower consulting fees due to simplification of requirements.

-
5. Describe the Rule's Enforcement Provisions

The rule does not contain any new enforcement provisions. The provisions proposed in this rule will be enforced using the existing compliance and enforcement statutory and regulatory authorities.

-
6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Jessica Karls-Ruplinger
Legislative Council Acting Director

Margit S. Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 19-015

AN ORDER to repeal NR 406.03 (1e) (a), (b), and (j), 406.04 (1f) (c) and (Note), 407.02 (6) (a) 3. (Note), 407.11 (1) (e) and (3) (c), and 407.12 (1) (b) (Note) and (e); to amend NR 400.02 (130), (136m) (intro.) and (b), 406.03 (1e) (intro.) and (c), (1m) (a) and (b) and (2) (b) 2. c., and (g), 406.04 (1) (i) (intro.), 2., 3., and 4., (m) (intro.) and (zg) 1., (1k) (intro.), (1q) (f) and (g), (2) (h), (4) (a) 5., (h) 2., and (j) 2. and (7), 406.17 (3) (d), 407.02 (9), 407.03 (1) (intro.), (1m) (a) 2., and (c) 1., and (2) (f) and (g), 407.05 (2) and (6), 407.105 (3) (b), 407.11 (1) (a), 407.14 (1m) (d), and 407.15 (5); and to create NR 400.02 (136m) (b) (Note), (136r), and (162) (a) 61., 406.03 (2) (gm), 406.04 (1) (a) 4m., and (bm), (1f) and (4) (e) 3., and 407.03 (1) (a) 4m., and (bm) and (2) (ba), relating to increasing the operational efficiency of and simplifying the air permit process, and affecting small business.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-05-2019 RECEIVED BY LEGISLATIVE COUNCIL.

03-26-2019 REPORT SENT TO AGENCY.

SG:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Clearinghouse Assistant Director

CLEARINGHOUSE RULE 19-015

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

The agency should remove the underscored space in proposed s. NR 400.02 (136r).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 406.03 (2) (gm), the rule would be clearer if “already” were deleted and “prior to requesting a waiver under this paragraph” were added after “modification”.

b. In s. NR 406.04 (1) (bm) (intro.), instead of “a government agency, such as police or sheriff’s department”, the department could create a definition of “government agency” in ch. NR 400. The same issue occurs in s. NR 407.03 (1) (bm) (intro.).

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 406.03 (1e) (a), (b), and (j), 406.04 (1f) (c) and (Note), 407.02 (6) (a) 3. (Note), 407.11 (1) (e) and (3) (c), and NR 407.12 (1) (b) (Note) and (e); to **amend** NR 400.02 (130), (136m) (intro.) and (b), 406.02 (6), 406.03 (1e) (intro.), (c), (1m) (a), (b), (2) (b) 2. c., and (g), 406.04 (1) (i) (intro.), 2., 3., 4., (m) (intro.), (zg) 1., (1k) (intro.), (1q) (f), (g), (2) (h), (4) (a) 5., (b) (title), (b), (h) 2., (j) 2., and (7), 406.17 (3) (d), 407.02 (9), 407.03 (1) (intro.), (1m) (a) 2., (c) 1., (2) (f) and (g), 407.05 (2) and (6), 407.105 (3) (b), 407.11 (1) (a), 407.14 (1m) (d), and 407.15 (5); and to **create** NR 400.02 (136m) (b) (Note), (136r), and (162) (a) 61. and 62., 406.03 (2) (gm), 406.04 (1) (a) 4m., (bm), (1f) (f) and (4) (e) 3., 407.03 (1) (a) 4m., (bm) and (2) (ba) relating to increasing the operational efficiency of and simplifying the air permit process, and affecting small business.

AM-24-12b

Analysis Prepared by the Department of Natural Resources

1. **Statute Interpreted:** Sections 285.11 (1) and (16), 285.27 (2), 285.60 (6), 285.66 (2), and 285.67, Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.
2. **Statutory Authority:** Sections 285.11 (1) and (16), 285.27 (2), 285.60 (6), 285.66 (2) and 285.67, Stats.
3. **Explanation of Agency Authority:** Section 285.11 (1), Stats., requires the department to promulgate rules consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires the department 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) Stats., allows the department to promulgate rules to exempt types of stationary sources from the requirement to obtain a construction or operation 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 revocation of air pollution control permits.
4. **Related Statutes or Rules:** There are no related statutes or rules not listed above.
5. **Plain Language Analysis:** The primary objectives of the proposed rules are to improve operational efficiency for and to simplify the permitting processes administered under chs. NR 406 and 407, Wis. Adm. Code, while remaining consistent with the federal Clean Air Act (CAA). Specific proposed rule changes are described below.

In the statement of scope for this rule, the department committed to examining several areas of the permit program to assure consistency with federal rules and for clarification and streamlining.

Revisions made under this scope statement in a previous rule package

- Exemption from operation permitting for natural minor sources
- Changes to s. NR 445.09 to align state and federal engine testing requirements

- Removal of outdated tables and other changes to correct or clean up existing rule language
- Changes to the permit exemptions for emergency generators to include emergency fire pumps
- Changes to exclude certain activities from the definition of “commence construction”
- Other changes to correct citations, clarify language and delete obsolete language

Areas under this scope statement that were examined but no rule revisions will be pursued

- Definition of “cause or exacerbate”: The 1977 Clean Air Act Amendments created the new source review permit program, the purpose of which was to assure that construction and modification of industrial air pollution sources would not “cause or contribute” to the deterioration of air quality in a region. Wisconsin passed laws in 1979 and 1980 to implement the Clean Air Act permit program and minor source construction permit program. These laws laid out the criteria for permit issuance, including the requirement that a permit can only be issued if the department finds that the source does not “cause or exacerbate” the violation of an ambient air quality standard or ambient air increment. The 1979 statute also required the department to promulgate rules to define the cause or exacerbation of an ambient air quality standard or ambient air increment.

In August 1980, the department finalized air permit rules for construction and modification of air pollution sources and it began issuing air pollution control construction permits. Working groups were set up to discuss how to define “cause or exacerbate,” however no rule was ever promulgated to define the term. In 2012, the legislature directed the department to revisit this definition as part of a rule package aimed at finding opportunities to streamline current air permit processes. Beginning in 2013, the department held a series of meetings with internal and external stakeholders to discuss “cause or exacerbate” and reviewed the historical record of the previous attempt to define the term.

After much discussion of potential ways to define “cause or exacerbate” with both internal and external stakeholders, the department will not be proposing a definition of “cause or exacerbate.” EPA does not define its analogous term, “cause or contribute,” and EPA has consistently approved Wisconsin’s State Implementation Plans (SIP) implementing the air permit programs since 1980 without requiring the term to be defined. In addition, the department has issued thousands of permits since 1980, each of which include a finding that the source, as permitted, will not cause or exacerbate a violation of any standards or increment. Air permits undergo extensive public review and are sometimes challenged, however, the lack of a definition of “cause or exacerbate” has never been the stated reason for a permit challenge.

The air program currently uses a variety of techniques when making a finding that a source does not cause or exacerbate a violation of air standards or increment. These techniques include air quality dispersion modeling and a weight of evidence analysis that considers types of air pollutants, de minimis thresholds, ambient monitoring data, and inventories of emissions. Defining “cause or exacerbate” is not expected to provide additional streamlining to the permit process. Stakeholders expressed concern that defining the term didn’t lead to any known benefit and could point to several ways proposed definitions would have unintended consequences that could actually complicate and slow the permitting process.

- Definition of shutdown: The scope statement for the rule package included examination of

the current definition of “shutdown.” The requirement to define the actions or events which constitute the shutdown of a facility is required by statute and the term is already defined in s. NR 400.02 (144). After consultation with internal and external stakeholders, the department will not be proposing any changes to the definition of shutdown because there are no permit processes that would benefit from a clarification of the term, and defining the term may complicate, rather than simplify permit processes by inadvertently changing the historical implementation of the term. Also, the term is not defined in federal rules.

- Administrative revisions for construction permits: The department considered creating a procedure to administratively revise construction permits mirroring the procedures for administrative revisions of operation permits in ch. NR 407. The department will not be proposing a construction permit administrative revision because the underlying statutes do not allow revision of construction permits without notice, even for administrative purposes. Since most requests for administrative revision stem from a change of ownership or a new responsible official, the department will, outside of this rulemaking, examine whether changes to construction permit cover pages, approval letters or other template documents can minimize the need for revisions of construction permits.

Revisions proposed under the scope statement included in this rule package

- Definition of reconstruction.
 - SECTION 1 amends the definition of “reconstruction” to include minor sources. The current definition excludes minor sources. Minor sources should be included in the definition of “reconstruction” because the term is used throughout the minor source permitting regulations.
- Specific exemption for ultra-low sulfur diesel fuel for external combustions furnaces.
 - SECTION 10 creates an additional construction permit exemption for external combustion furnaces that burn ultra-low sulfur distillate fuel oil. The emission levels from equipment installed under the existing exemption for external combustion equipment burning natural gas were determined and those emission levels were used to select the appropriate heat input capacity for this exemption. Equipment installed under this proposed exemption will emit at the same rate or less than equipment burning other fuels at the maximum heat input rate already exempt from construction permitting.
 - SECTION 21 creates an additional operation permit exemption for external combustion furnaces that burn ultra-low sulfur distillate fuel oil. Equipment installed under this proposed exemption will emit at the same rate or less than equipment burning other fuels at the maximum heat input rate already exempt from operation permitting.
- Confiscated drug exemption.
 - SECTIONS 10 and 21 also create a construction and identical operation permit exemption for incineration of drugs confiscated by federal, state, or local law enforcement agencies. This exemption aligns state rules with the intent of federal rules to exclude incineration of confiscated drugs by law enforcement from federal standards covering incinerators.

The following rule language is proposed to improve operational efficiency for and to simplify the permitting processes administered under chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act (CAA).

Revisions proposed for consistency of wording of exclusion from exemptions due to regulation under certain federal standards

Many permit exemptions and simplified processes are available to sources unless those sources are regulated by federal standards listed in s. 111 or 112 of the Clean Air Act. Though the purpose of this exclusion appears to be identical in most cases, the wording differs slightly in many instances. The department is proposing to consistently use the term “emission limitation or emission standard” where this exclusion is listed. This term is defined in s. 285.01(16), Wis. Stats., and “means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.” This definition, by referring to the operation or maintenance of a source, includes work practices as long as they reduce emissions but the term would not include sources subject only to recordkeeping or reporting requirements. This maintains the historical interpretation of the language as it has been used in the specific exemptions in chs. NR 406 and 407. For consistent understanding of this exclusion, the department proposes to revise the rule to assure that the statement, wherever it appears, is always the same and will refer to a unit subject to “an emission limitation or emission standard” under section 111 or 112 of the Act. The exception is when the exclusion uses the term “triggers a regulation under.” This language is more stringent and the department proposes to leave this language unchanged.

Revisions proposed to implement electronic signature and promote electronic submittal and storage of documents

SECTIONS 8 and 25 remove the requirements to submit paper copies of application materials. This allows for streamlining through implementation of an electronic reporting system making reporting easier and encouraging timely and accurate reporting.

Revisions proposed to clarify rule applicability

SECTIONS 1 through 2 clarify that the definition of “restricted use reciprocating internal combustion engine” refers to stationary engines. Stakeholders noted that non-road engines are not covered by the stationary source permit programs in chs. NR 406 and 407. The word “stationary” was added to clarify that the rule applies to “stationary engines.”

SECTION 3 was added in response to comments to assure that construction permit revisions can be fully and consistently utilized where appropriate.

SECTIONS 4 through 7 revise the list of activities that do not constitute commencing construction for purposes of minor source construction permitting to align with the federal definition and guidance on activities that do not constitute commencing construction. These changes are proposed to address a determination of incompleteness by USEPA regarding the state’s submittal of the current rule to EPA for inclusion into the State Implementation Plan.

SECTION 8 removes from the construction permit waiver rule, language restricting economic or

financial hardship that could “preclude the project in its entirety,” thus clarifying the circumstances under which a facility can apply for the minor source construction waiver.

SECTION 9 creates a restriction for the construction permit waiver such that a source may not have already commenced construction, reconstruction, replacement, relocation, or modification before applying for the waiver. This change assures that a source does not violate the federal requirement to obtain a permit prior to commencing construction of a major source or major modification.

SECTION 11 clarifies the requirements for the research and testing exemption indicating that the change must be temporary. This allows a consistent understanding of the appropriate use of this exemption and assures that a source does not violate the federal requirement to obtain a permit prior to commencing construction of a major source or major modification.

SECTION 11 allows simultaneous operation of permanent and temporary steam generating equipment for a short period of time to allow for coverage during startup and shutdown of the steam generating equipment under the temporary steam generating equipment exemption.

SECTIONS 10 and 13 include changes to the exemption from minor source construction permitting for sources constructing or modifying under a plant-wide applicability limitation (PAL). These changes assure that the flexibility intended by the federal PAL rules is available while assuring that changes made under a PAL comply with all applicable state and federal regulations and are protective of ambient air quality standards.

SECTION 14 clarifies that the exemption for projects evaluated for significant net emissions increase can only be requested prior to commencing construction. It also clarifies how requirements of federal rules affect the exemption, including that this exemption is only available for the modification of an existing emission unit and not for the construction of a new emission unit. These clarifications result in consistent and fair application of this exemption. In response to public comments, revisions are proposed to exclude from modification changes to permit requirements needed to comply with reasonably available control technology (RACT) rules and to make the exclusion available to all RACT and not just VOC RACT.

SECTION 15 clarifies that an increase in hours of operation does not constitute an exclusion from modification if the change is subject to certain federal requirements.

SECTION 16 clarifies that the emission increase being referred to is the maximum theoretical emissions increase. This clarification ensures fair and consistent use of this exclusion from modification.

SECTION 19 amends the definition of “synthetic minor source” to match the federal policy and guidance on the types of actions and permit conditions necessary to establish a facility as a synthetic minor source. The department considered adding language to state that synthetic minor permit conditions must be federally enforceable or legally and practicably enforceable by a State or local air pollution control agency. However, in *Clean Air Implementation Project v. EPA*, No. 96-1224 (D.C. Cir. June 28, 1996), the court vacated and remanded the requirement for federal enforceability for PTE limits under 40 C.F.R. Part 70. In a July 10, 1998 memorandum titled “Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy,” EPA stated that the term “federally enforceable” in section 70.2 should now be read to mean “federally enforceable or legally and practicably enforceable by a State or local air pollution control agency” pending any additional rulemaking by the EPA. As stated in the August 1996 memorandum, EPA

interprets the court order vacating the part 70 definition as not affecting any requirement for federal enforceability in existing State rules and programs. Therefore, the department will not add the additional language to the definition at this time and will continue to follow EPA's policy.

SECTION 20 clarifies that the emissions from facilities using the exemption for sources with a combination of emission units in specified categories must not exceed Title V or Part 70 permit thresholds and clarifies that a combination of categories is allowed under section (1) (t) of the rule. This clarification assures consistent and fair application of this operation permit exemption.

SECTIONS 27 and 30 clarify that only typographical errors that have no material effect on the permit may be corrected by administrative revision. This assures consistent application of the administrative revision process for changes that are administrative in nature and assures that substantive changes undergo appropriate public notice and public comment.

SECTION 34 adds references to state statutes for clarification.

Other proposed revisions to clean up outdated language, correct rule language, and to maintain consistency with federal rules

SECTION 2 adds 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2) and cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) to the list of substances excluded from the definition of volatile organic compounds. This change aligns the state and federal definitions of volatile organic compounds.

SECTION 16 includes the specific exemptions listed in s. NR 406.04(1) (a) 5. and (1) (w) in the list of specific exemptions requiring maintenance of records. This demonstrates that the exempt source's operational design is limited in a way that is federally and practicably enforceable and clarifies that if records are not kept the source is no longer eligible for the exemption. The qualification date ranges are being removed since they have all passed and records need only be maintained for a minimum of five years. These changes assure consistency among all exemptions that rely on limiting operational design elements that require records in order to be considered practically enforceable, such as limits on the type or amount of fuel or material throughput or hours of operation.

SECTION 18 removes the note referencing previous EPA guidance on determining when a source can become an area source for the purposes of determining applicability with Federal Hazardous Air Pollution Standards, referred to as "once in always in" policy. On January 25, 2018, EPA issued a guidance memorandum withdrawing the "once in always in" policy.

SECTION 23 corrects an error by creating an exemption threshold for PM₁₀ which was previously not included for the general category of exempt sources. Inclusion of the exemption threshold for PM₁₀ makes the general categories of exempt sources in s. NR 407.03(2) consistent with those in s. NR 406.04(2).

SECTIONS 28 and 29 remove eligibility criteria that was overly limiting or otherwise not able to be used based on other statutory requirements.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Several of the proposed rule changes are being made to align existing state rules with federal regulations. These include:

- Amending the list of activities excluded from commencing construction in NR 406.03 (1e) to match federal guidelines.

- Clarifying when being subject to regulations from sections 111 (New Source Performance Standards - NSPS) or 112 (National Emission Standards for Hazardous Air Pollutants – NESHAPs) of the Act (42 USC 7411 or 7412) disqualify activities or emissions units from being exempt.
- Aligning the definition of synthetic minor source in s. NR 407.02(9) with federal policy and guidance on the types of actions and permit conditions necessary to establish a synthetic minor source.

- 7. Comparison with Similar Rules in Adjacent States (Illinois, Iowa, Michigan and Minnesota):** Adjacent states implement federal regulations using one of two methods. Illinois is a delegated state directly implementing the federal program. Iowa, Minnesota, and Michigan, like Wisconsin, implement the federal program through approved State Implementation Plans (SIP) and their own state rules. SIP-approved states must implement federal programs in accordance with the regulations set out in federal code. The portions of this rule that are being changed to align with federal regulations result in rules similar to those in neighboring states.

Other proposed rule changes are limited to minor source construction permits and minor source operation permits. Wisconsin's neighboring states also have minor source construction permit programs. Each state's program varies, but all adjacent states provide for exemptions from construction permits for certain types of sources, operations and activities depending on type, size, capacity, hours of operation, emissions or other similar criteria.

Each adjacent state also issues minor source operation permits. Generally, these are issued to facilities requesting federally enforceable conditions limiting emissions to less than major source thresholds. These "synthetic minor" operation permit programs are similar to Wisconsin's. Each adjacent state offers different types of exemptions from operation permitting for natural minor sources. The majority of natural minor sources in neighboring states are not required to obtain an operation permit.

- 8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** The department is proposing rules consistent with federal regulations, making consistency and clarification changes, and developing rules as directed by the state legislature, which did not require use of any factual data or analytical methodologies.
- 9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:** The economic impact of the proposed rules is expected to be minimal. In most cases, the changes proposed will result in clarity and cost savings for business, especially for small business.
- 10. Effect on Small Business (initial regulatory flexibility analysis):** Small businesses with air pollution emissions will be affected by the proposed rules. In general, the revisions in this rule package provide clarification for applicability of permit exemptions. Small businesses that may not have dedicated environmental staff will be able to understand and take advantage of clarified permit exemptions and other exclusions in the rules. Other changes streamline processes or allow for implementation of online reporting and application submittals, which also provide a cost savings for small businesses.

The proposed rules will allow all Wisconsin businesses, including small businesses, seeking minor construction permits to begin certain preconstruction activities prior to permit issuance. The ability to begin certain preconstruction activities before receiving a permit can be economically beneficial to some businesses.

Some small businesses may need assistance in understanding what rules apply and which exemptions they qualify for. The Air Program's Small Business Environmental Assistance Program is available to help small businesses understand what permits and requirements apply and what options are available to demonstrate compliance.

11. Agency Contact Person: Kristin L. Hart, Chief – Permits and Stationary Source Modeling Section, Phone: (608) 266-6876, Fax: (608) 267-0560, E-mail: Kristin.Hart@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission: A public hearing was held on April 17, 2019. The department accepted comments by regular mail, email and at the public hearing. The comment period ended on April 24, 2019.

SECTION 1. NR 400.02 (130), (136m) (intro.), and (b) are amended to read:

NR 400.02 (130) "Reconstruction" means the removal of components of a stationary source and the substitution of those components with similar new components to such an extent that the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new stationary source. ~~The term "reconstruction" does not apply to minor or indirect sources.~~

(136m) (intro.) "~~Restricted use reciprocating internal combustion engine~~" or "~~restricted use RICE~~" means a ~~reciprocating internal combustion engine~~ stationary RICE that is one of the following:

(b) Operated in accordance with the definition of limited use stationary RICE in 40 CFR 63.6675.

SECTION 2. NR 400.02 (136m) (b) (Note), (136r), and (162) (a) 61. and 62. are created to read:

NR 400.02 (136m) (b) Note: An internal combustion engine that meets the definition of non-road engine in 40 CFR 63.6675 is not a stationary RICE.

(136r) "RICE" means a reciprocating internal combustion engine.

07/31/19

- (162) (a) 61. 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2).
62. *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z)

SECTION 3. NR 406.02 (6) is amended to read:

NR 406.02 (6) "Permit revision" means any change to a construction permit to reflect a change at a source that is not a modification of the source or that is an exempt modification of the source.

SECTION 4. NR 406.03 (1e) (intro.) is amended to read:

NR 406.03 (1e) (intro.) EXCLUSIONS. Notwithstanding the definitions of "commence construction" and "commence modification" in s. NR 400.02 (44) and (45) respectively, for projects reviewed under this chapter ~~that, prior to issuance of a permit, would not be considered a major modification or construction of a major source under ch. NR 405 or 408,~~ all of the following activities may be excluded when determining if construction, reconstruction, replacement, relocation, or modification has commenced:

SECTION 5. NR 406.03 (1e) (a) and (b) are repealed.

SECTION 6. NR 406.03 (1e) (c) is amended to read:

NR 406.03 (1e) (c) Erecting temporary storage structures.

SECTION 7. NR 406.03 (1e) (j) is repealed.

SECTION 8. NR 406.03 (1m) (a) and (b), (2) (b) 2.c., and (g) are amended to read:

NR 406.03 (1m) (a) Applications for construction permits shall be made on forms supplied by the department for these purposes and supplemented with other materials as indicated on the forms. The forms may be supplied by the department in an electronic format, such as on a computer disk or on line, ~~if so requested by the applicant.~~

(b) Application materials, including construction permit waiver requests, may be submitted on paper or in an electronic format. The applicant shall submit ~~2 copies of all forms and other required materials, as indicated on the forms, which are submitted on paper.~~ The

~~applicant shall submit one copy of all forms and other required materials, as indicated on the forms, which are submitted in an electronic format. These materials~~ When electing to submit materials on paper, the applicant shall be submitted submit the materials to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Construction permits.

(2) (b) 2. c. A substantial economic or financial hardship ~~that may preclude the project in its entirety.~~

(g) The department may not grant a waiver ~~to~~ for a source located or to be located within 10 kilometers of a Class I area under this subsection.

SECTION 9. NR 406.03 (2) (gm) is created to read:

NR 406.03 (2) (gm) The department may not grant a waiver for a source that commenced construction, reconstruction, replacement, relocation, or modification without a permit prior to requesting a waiver under this paragraph.

SECTION 10. NR 406.04 (1) (a) 4m. and (bm) are created to read:

NR 406.04 (1) (a) 4m. Distillate oil meeting the on-road sulfur content for diesel fuel specified in 40 CFR 80.510(b) at a heat input rate of not more than 25 million Btu per hour.

(bm) Equipment owned or operated by a government agency, such as police or sheriff's department, that is used to incinerate only drugs confiscated by federal, state, or local law enforcement agencies, provided the equipment meets all of the following requirements:

1. The equipment is a dual-chamber incinerator that complies with all of the following:
 - a. The equipment is designed to incinerate not more than 500 pounds of material per hour.
 - b. The equipment has a secondary chamber that operates at all times during drug incineration with a minimum temperature of 1,400 degrees Fahrenheit, and a minimum gas retention time of 0.5 seconds.
2. Stacks shall comply with all of the following:
 - a. Each stack shall have a height at least 1.5 times higher than the peak of the highest structure within 150 feet of the equipment.
 - b. Each stack shall be located at least 500 feet from nearest property line.

c. Each stack shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstructions.

3. The equipment shall be operated within all of the following limits:

a. The unit shall reach a minimum operating temperature of 1,400 degrees Fahrenheit prior to introducing the materials to be incinerated.

b. The quantity of material incinerated, including packaging, is limited to no more than 25 pounds in any 24 hour period, with the exception of marijuana. Marijuana may be incinerated in quantities up to the design capacity of the incinerator.

c. Fuel for the equipment shall be limited to natural gas, liquid petroleum gas, number 2 fuel oil with less than 0.0015% sulfur by weight, or the equipment shall use electric power.

d. The manufacturer's recommended operating instructions shall be posted at the incinerator, and the unit shall be operated in accordance with these instructions. The incinerator shall be operated in accordance with the manufacturer's specifications and maintained in good working order.

4. The owner or operator shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the temperature of the secondary chamber of the incinerator.

5. The owner or operator shall maintain records sufficient to demonstrate that each of the requirements listed in this paragraph are met. The records shall be retained for a minimum of 5 years and shall include all of the following:

a. The time and date materials are charged.

b. The amount of material charged or burned in each 24 hour period.

c. The type and amount of fuel usage, including sulfur content for fuel oil.

d. The monitoring results.

e. The hours of operation.

f. Routine maintenance of abatement systems.

SECTION 11. NR 406.04 (1) (i) (intro.), 2., 3. and 4., (m) (intro.), and (zg) 1. are amended to read:

NR 406.04 (1) (i) Equipment-A temporary change in the method of operation or temporary equipment used or to be used for testing or research, provided that all of the following

requirements are met:

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 temporary change in the method of operation or temporary equipment will be in operation for less than 12 months. Upon completion of the testing, the temporary change in the method of operation or operation of temporary equipment shall cease. Operation beyond the testing period is prohibited unless approved by a different construction permit exemption or by a construction permit.

4. The department approves the application for exemption submitted under subd. 1. in accordance with the following procedure:

a. The department shall approve or deny the application in writing within 45 days of receiving a complete application.

b. 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.

c. The department shall make all nonconfidential information available to the public upon request.

(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 A to Table C of s. NR 445.07 is not greater than the emission rate listed in Table A to Table C of s. NR 445.07 for the air contaminant at the respective stack height, and the procedure is not subject to ~~any standard or regulation~~ an emission limitation or emission standard under section 111 or 112 of the Act (42 USC 7411 or 7412):

(zg) 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, except that the temporary equipment and the permanent steam generating equipment being taken out of service for maintenance, repair, or an emergency may operate simultaneously for up to 24 hours during startup or shutdown of the permanent steam generating equipment.

SECTION 12. NR 406.04 (1f) (c) and (Note) are repealed.

SECTION 13. NR 406.04 (1f) (f) is created to read:

NR 406.04 (1f) (f) For new or modified sources for which no construction permit is required, an operation permit application shall be submitted as required under s. NR 407.04 (1) (b) 3. prior to commencing construction or modification.

SECTION 14. NR 406.04 (1k) (intro.), (1q) (f) and (g), (2) (h), (4) (a) 5., (b) (title) and (b) are amended to read:

NR 406.04 (1k) PROJECTS EVALUATED FOR SIGNIFICANT NET EMISSIONS INCREASE. Notwithstanding the provisions of s. NR 406.04 (1) and (2), no construction permit is required for a modification to an existing emissions unit, as defined in s. NR 405.02 (12) or s. NR 408.02 (13), at an existing major stationary source, as defined in s. NR 405.02 (22), or an existing major source, as defined in s. NR 408.02 (21), which does not result in a significant emissions increase, as defined in s. NR 405.02 (27m) or 408.02 (32m), provided all of the following criteria are met:

(1q) (f) ~~The~~ Prior to commencing construction, 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 emissions units ~~which~~ that 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.

(g) Any newly constructed emissions unit is not subject to an emission limitation or emission standard under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used. Any modified, replaced, relocated, or reconstructed emissions unit ~~does not trigger any new~~ is not subject to any new emission limitation or emission standard or other requirement for the emissions unit under section 111 or 112 of the Act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used.

(2) (h) The source is not subject to ~~any standard or regulation~~ an emission limitation or emission standard under section 111 or 112 ~~of~~ of the Act (42 USC 7411 or 7412), excluding

section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used.

(4) (a) 5. The use will not subject the source to ~~any standard or regulation an emission limitation or emission standard~~ under section 112 of the Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)) and excluding engines certified to meet the emission standards in 40 CFR part 60, subpart IIII or JJJJ for each fuel used.

(b) ~~VOC-RACT compliance.~~ A change to a permit condition needed to assure compliance with a new or revised RACT rule, 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.

SECTION 15. NR 406.04 (4) (e) 3. is created to read:

NR 406.04 (4) (e) 3. The change is not subject to an emission limitation or emission standard under section 111 or 112 of the act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

SECTION 16. NR 406.04 (4) (h) 2., (j) 2. and (7) are amended to read:

NR 406.04 (4) (h) 2. The change for the process line does not trigger a requirement under section 111 or 112 of the act (42 USC 7411 or 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(j) 2. ~~The change is exempt under sub. (1), or increased increase in maximum theoretical emissions due to the change~~ does not exceed the maximum theoretical emission levels specified in sub. (2) (b), (c), (cm), (cs), (d) and (f).

(7) CONDITIONS FOR SPECIFIC EXEMPTIONS. ~~In order to~~ To be eligible for a specific exemption under sub. (1) ~~(a) 5., (ce), (cm), (d), (e), (g), (gm), (h), (j), (m), (o), (w), (y) or (z),~~ the owner or operator of a direct stationary source shall keep and maintain records, for a minimum of 5 years, indicating 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 to qualify for~~

07/31/19

~~exemption under sub. (1) (d), (g), (h), (j), (m), (o), (y) or (z), January 1, 1998, 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 fails to keep and maintain records as required above or that ever exceeds any level listed in sub. (1) (a)5., (ce), (cm), (d), (e), (g), (gm), (h), (j), (m), (o), (w), (y) or (z) is not thereafter eligible for the exemption under that subsection.~~

SECTION 17. NR 406.17 (3) (d) is amended to read:

NR 406.17 (3) (d) The construction, reconstruction, replacement, relocation, or modification of the emissions unit or units would be subject to ~~a standard or regulation an~~ emission limitation or emission standard under section 111 of the Act (42 USC 7411) or under section 112 of the Act (42 USC 7412), other than those contained in the registration construction permit, or ~~which that~~ are determined by the department to not preclude eligibility for the registration construction permit.

SECTION 18. NR 407.02 (6) (a) 3. (Note) is repealed.

SECTION 19. NR 407.02 (9) is amended to read:

NR 407.02 (9) "Synthetic minor source" means any stationary source that has its potential to emit limited by ~~federally enforceable~~ permit conditions that are federally enforceable so that it is not a major source.

SECTION 20. NR 407.03 (1) (intro.) is amended to read:

NR 407.03 (1) SPECIFIC CATEGORIES OF EXEMPT SOURCES. Any direct stationary source ~~which that~~ is not an affected source and is not required to obtain a permit under 40 CFR part 70 and that consists solely of one of the following categories of stationary sources or consists of a combination of the categories of stationary sources listed under sub. (1) (t) is exempt from the requirement to obtain an operation permit provided the requirements of under sub. (4) are met:

SECTION 21. NR 407.03 (1) (a) 4m. and (bm) are created to read:

NR 407.03 (1) (a) 4m. Distillate oil with a maximum sulfur content of 15 ppm at a heat

input rate of not more than 25 million Btu per hour.

(bm) Equipment owned or operated by a government agency, such as police or sheriff's department, that is used to incinerate only drugs confiscated by federal, state, or local law enforcement agencies, provided the equipment meets all of the following design requirements:

1. The equipment shall be a dual-chamber incinerator that complies with all of the following:
 - a. The equipment is designed to incinerate not more than 500 pounds of material per hour.
 - b. The equipment has a secondary chamber that operates at all times with a minimum temperature of 1,400 degrees Fahrenheit and a minimum gas retention time of 0.5 seconds.
 - c. The secondary chamber has a continuous temperature monitor.
2. Stacks shall comply with all of the following:
 - a. Each stack shall have a height at least 1.5 times higher than the peak of the highest structure within 150 feet.
 - b. Each stack shall be located at least 500 feet from nearest property line.
 - c. Each stack shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstructions.
3. The incinerator shall be operated with the following limits:
 - a. The unit shall reach a minimum operating temperature of 1,400 degrees Fahrenheit prior to introducing the materials to be incinerated.
 - b. The quantity of material incinerated, including packaging, is limited to no more than 25 pounds in any 24 hour period, with the exception of marijuana. Marijuana may be incinerated in quantities up to the design capacity of the incinerator.
 - c. Fuel for the incinerator shall be limited to natural gas, liquid petroleum gas, Number 2 fuel oil with less than 0.0015% sulfur by weight, or the equipment shall use electric power.
 - d. The manufacturer's recommended operating instructions shall be posted at the incinerator and the unit shall be operated in accordance with these instructions. The incinerator shall be operated in accordance with the manufacturer's specifications and maintained in good working order.
4. The owner or operator shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the temperature of the secondary chamber of the

incinerator.

5. The owner or operator shall maintain records sufficient to demonstrate that each of the requirements listed in this paragraph are met. The records shall be retained for a minimum of 5 years, and shall include all of the following:

- a. The time and date materials are charged.
- b. The amount of material charged or burned in each 24 hour period.
- c. The type and amount of fuel usage, including sulfur content for fuel oil.
- d. The monitoring results.
- e. The hours of operation.
- f. Routine maintenance of abatement systems.

SECTION 22. NR 407.03 (1m) (a) 2. and (c) 1. are amended to read:

NR 407.03 (1m) (a) 2. The facility is not subject to ~~a standard~~ an emission limitation or emission standard under section 111 or 112 of the Act (42 USC 7411 or 7412) except for a source subject solely to regulations or requirements under section 112(d)(5) or (r) of the Act (42 USC 7412 (d)(5) or (r)) or engine certified to meet the emission standards in 40 CFR part 60, subpart III or JJJJ for each fuel used.

(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.~~

SECTION 23. NR 407.03 (2) (ba) is created to read:

NR 407.03 (2) (ba) The maximum theoretical emissions from the source for PM₁₀ do not exceed 3.4 pounds per hour.

SECTION 24. NR 407.03 (2) (f) and (g) are amended to read:

NR 407.03 (2) (f) The source is not subject to ~~any standard or regulation~~ an emission limitation or emission standard under section 111 of the Act (42 USC 7411) excluding engines certified to meet the emission standards in 40 CFR part 60, subpart III or JJJJ for each fuel used.

(g) The source is not subject to ~~any standard or regulation~~ an emission limitation or

emission standard under section 112 of the Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

SECTION 25. NR 407.05 (2) and (6) are amended to read:

NR 407.05 (2) Application materials may be submitted on paper or in an electronic format. The applicant shall submit ~~2 copies of all forms and other required materials, as indicated on the forms, which are submitted on paper.~~ The applicant shall submit one copy of all forms and other required materials, as indicated on the forms, which are submitted in an electronic format. ~~These materials~~ When electing to submit materials on paper, the applicant shall be submitted submit the materials to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Operation permits.

(6) The applicant shall specifically identify all information in the permit application for which confidential status is sought and shall follow procedures in s. 285.70, Stats., and s. NR 2.19 to request confidential status for that information. In addition to the ~~copies-submission~~ of the complete application required under sub. (2), an applicant requesting confidentiality shall also supply to the department ~~3 copies of the application with all confidential material deleted for redacted from~~ forms and other materials ~~which that~~ are submitted on paper. The applicant shall file one copy of all forms and other materials with all confidential material ~~deleted-redacted~~ if submitted in electronic format.

SECTION 26. NR 407.105 (3) (b) is amended to read:

NR 407.105 (3) (b) One or more emissions units at the facility would be subject to a ~~standard or regulation~~ an emission limitation or emission standard under section 111 of the Act (42 USC 7411) or under section 112 of the Act (42 USC 7412), other than those contained in the registration operation permit or determined by the department to not preclude eligibility for the registration operation permit.

SECTION 27. NR 407.11 (1) (a) is amended to read:

NR 407.11 (1) (a) Correction of a typographical error that does not substantively change the meaning of a permit condition.

07/31/19

SECTION 28. NR 407.11 (1) (e) and (3) (c) are repealed.

SECTION 29. NR 407.12 (1) (b) (Note) and (e) are repealed.

SECTION 30. NR 407.14 (1m) (d) is amended to read:

NR 407.14 (1m) (d) The permit contains a typographical error that does not substantively change the meaning of a permit condition.

SECTION 31. NR 407.15 (5) is amended to read:

NR 407.15 (5) FAILURE TO PAY FEES. An intentional failure by the permittee to pay in full the fees required under ch. NR 410 or s. 285.69, Stats., 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) or s. 285.81, Stats.

SECTION 32. EFFECTIVE DATE. This rule takes 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 33. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Preston D. Cole, Secretary

07/31/19

(SEAL)