

Note: The following proposed rule language is draft and has not yet been reviewed by department legal staff. The attached proposed rule and any future versions of the proposed rule resulting from workgroup discussions are subject to modification and/or removal entirely as a result of subsequent department legal review.

Rule Analysis and Checklist

DRAFT

Working title: Consistency with ch. NR 150, Wis. Adm. Code (change to WEPA-related eligibility requirements for coverage under registration and general construction permits)

Code citation(s): ss. NR 406.16 and 406.17, Wis. Adm. Code

Other codes affected: None

Objective: to improve the operational efficiency of, and to simplify the permitting processes administered under, ch. NR 406, Wis. Adm. Code.

Group lead: Kristin Hart

Problem being solved or issue being resolved:

Language in ch. NR 406 is inconsistent with revisions to ch. NR 150 that became effective on April 1, 2014. Sections NR 406.16 and 406.17 include provisions affecting the eligibility for coverage under general and registration construction permits based on whether the project constitutes a Type 2 action under the previous ch. NR 150. However, the current ch. NR 150 no longer defines or sets requirements for Type 2 actions.

In addition, ch. NR 150 interprets department obligations to consider environmental impacts under s. 1.11, Stats., and Wisconsin law exempts coverage under general and registration permits from the requirements of this statute:

Section 285.60(2g)(b), Stats., exempts registration permits from the requirements of s. 1.11, Stats. This exempts both issuance of registration permits and coverage under registration permits.

Section 285.60(3)(b), Stats., exempts coverage under general permits from the requirements of s. 1.11, Stats.

Discuss how the proposed rule solves the problem or resolves the issue laid out above:

The department proposes to remove references to ch. NR 150 from the relevant sections of ch. NR 406 to correct the inconsistencies described above.

Describe facilities affected by the proposed rule (size, type, location, and approximate number):

All facilities that may apply for general and registration construction permits throughout the state of Wisconsin. The department has issued 17 different types of general construction permits. Between 25 and 35 facilities are granted coverage under a general construction permit in a typical year. The department has issued two registration construction permits. Between 50 and 75 facilities are granted coverage under a registration construction permit in a typical year.

Note: The following proposed rule language is draft and has not yet been reviewed by department legal staff. The attached proposed rule and any future versions of the proposed rule resulting from workgroup discussions are subject to modification and/or removal entirely as a result of subsequent department legal review.

Will emissions be affected by the proposed rule (increased or decreased)? Yes No

Discussion (list pollutants affected. If no change, say why):

Sources covered under registration and general construction permits are still subject to all emission caps and applicable requirements set out in those permits. Sections 285.60(2g)(b) and (3)(b), Stats. already exempt coverage under general and registration permits from the requirements of s. 1.11, Stats. The proposed rule will not affect emissions from sources covered under these permits.

Discuss how the proposed rule improves operational efficiency and/or simplifies the air permitting process:

The proposed rule makes the registration and general permit programs consistent with existing statutes and removes irrelevant and outdated language.

Discuss how the proposed rule assures the program remains consistent with the requirements of the Clean Air Act, 40 CFR Part 70, and the Wisconsin Statutes:

Removing this language from the code does not affect consistency with the Clean Air Act or 40 CFR Part 70, and corrects inconsistencies with ss. 285.60(2g)(b) and (3)(b), Stats.

Discuss estimated resources needed for implementation for both DNR and affected facilities:

None

General discussion of why the rule is crafted as proposed including any sticking points and how they were resolved and any other decision points and why the final decision was made:

Legal review completed: Yes No

Discussion: Preliminary legal review completed.

Statutory changes required: Yes No

Discussion: No statutory changes are being proposed in conjunction with the proposed rule change.

SIP revision required: Yes No

Discussion: The rule change would require SIP revision because the general and registration construction permit programs are SIP approved. Federal Register Volume 71, Issue 24 (February 6, 2006) approves revisions to Wisconsin's SIP, stating, "These revisions include General and Registration permit programs that provide for the issuance of general and registration permits as part of the State's construction permit and operation permit programs" (71 FR 5979).

Note: The following proposed rule language is draft and has not yet been reviewed by department legal staff. The attached proposed rule and any future versions of the proposed rule resulting from workgroup discussions are subject to modification and/or removal entirely as a result of subsequent department legal review.

Attachment: Proposed Rule Language

406.16(2) SOURCES INELIGIBLE FOR COVERAGE UNDER A GENERAL CONSTRUCTION PERMIT.

Notwithstanding the existence of a general construction permit for a stationary source category, the stationary source may not be covered by the general construction permit if any of the following criteria apply to the emissions unit or units for which coverage is sought:

(a) The emissions unit or units are an affected source under ch. NR 409, a municipal solid waste combustion source under s. NR 500.03 (86) or an infectious waste combustion source.

(b) The proposed project would result in one or more new or existing emissions units at the facility being required to obtain a permit under ch. NR 405 or 408.

Note: An example is the addition of an emissions unit at a PSD or nonattainment area major source that is considered a major modification to that source. Another example is a project that results in an emissions unit either upstream or downstream from the project increasing its emissions such that it would be required to obtain a permit under ch. NR 405 or 408.

(c) The emissions unit or units cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment, as determined by the department through an air quality assessment conducted in accordance with s. NR 406.11 (1) (g).

~~(d) The construction, reconstruction, replacement, relocation or modification of the emissions unit or units constitutes a type 2 action under s. NR 150.03 (8) (b) 1. a., unless the review process under s. NR 150.20 (1) (c) has been completed prior to granting coverage under the permit to the stationary source.~~

406.17(3) SOURCES INELIGIBLE FOR COVERAGE UNDER A REGISTRATION CONSTRUCTION PERMIT. Notwithstanding the existence of a registration construction permit, an individual stationary source may not be covered under a registration construction permit if any of the following criteria apply:

(a) The emissions unit or units are an affected source under ch. NR 409, a municipal solid waste combustion source under s. NR 500.03 (86) or an infectious waste combustion source.

(b) The proposed project would result in one or more new or existing emissions units at the facility being required to obtain a permit under ch. NR 405 or 408.

Note: An example is the addition of an emissions unit at a PSD or nonattainment area major source that is considered a major modification to that source. Another example is a project that results in an emissions unit either upstream or downstream from the project increasing its emissions such that it would be required to obtain a permit under ch. NR 405 or 408.

(c) The emissions unit or units cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment, as determined by the department through an air quality assessment conducted in accordance with s. NR 406.11 (1) (g).

(d) The construction, reconstruction, replacement, relocation or modification of the emissions unit or units would be subject to a standard or regulation 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 are determined by the department to not preclude eligibility for the registration construction permit.

~~(e) The construction, reconstruction, replacement, relocation or modification of the emissions unit or units constitutes a type 2 action under s. NR 150.03 (8) (b) 1. a., unless the review process under s. NR 150.20 (1) (c) has been completed prior to granting coverage under the permit to the stationary source.~~