

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Adoption of Order AM-12-07, Pertaining to the Revision of chs. NR 400, 406, 407, 410, Wis. Adm. Code Incorporating Changes in Federal Definitions, Permit Requirements and Portable Source Relocation Requirements

FOR: OCTOBER, 2007 BOARD MEETING

TO BE PRESENTED BY: Jeff Hanson, Chief-Permits & Stationary Source Modeling Section

SUMMARY: The Department is proposing to incorporate changes in federal regulations into Wisconsin Administrative Code. Changes include:

1. Updating definitions and other revisions within chs. NR 400 and 407 regarding fugitive emissions and permitting standards.
2. Revisions in chs. NR 406 and 407 clarify when a construction permit is needed for sources covered under general operation permits.
3. Portable source relocation requirements found in ch. NR 406 will be amended by changing the numerical thresholds to general language limiting the relocation exception to sources with emissions less than the thresholds contained in the major source definition in ch. NR 408.
4. Section NR 410.03 will be amended so construction permits can be issued concurrently with operation permits, streamlining the process for minor revisions to those permits. The revision is being made so that the collection of permit fees and the issuance of an operation permit are independent of each other. If fees are not paid, the Department has the ability to revoke a permit, or refer the source to the Department of Justice to collect the fees.

Chapter NR 439 was to have been revised to address conflicting stack test requirements for boilers that are subject to national emission standards for hazardous air pollutants, maximum achievable control technology (MACT) found in ch. NR 462. Since the implementation and enforcement of ch. NR 462 has been stayed at this time, this proposed rule amendment is being removed from the rule package and may be addressed at a later time.

No comments were received as part of the public notice or hearing process, except from the Legislative Council Rules Clearinghouse.

RECOMMENDATION: The Board adopt Order AM-12-07.

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

/S/ Kevin Kessler
Bureau Director, Kevin Kessler

9 / 27 / 07
Date

/S/ Al Shea
Administrator, Al Shea

9 / 27 / 07
Date

/S/ Matthew J Frank
Secretary, Matthew J. Frank

10 / 2 / 07
Date

- | | | |
|------------------------|-----------------------|----------------------|
| cc: Laurie Ross - AD/5 | K. Kessler - AM/7 | Joe Brehm- AM/7 |
| Carol Turner - LS/5 | R. Eckdale - AM/7 (5) | Marcia Penner - LS/5 |

DATE: September 24, 2007 FILE REF: 4533

TO: Natural Resources Board Members

FROM: Matthew J. Frank, Secretary

SUBJECT: Adoption of Order AM-12-07, Pertaining to the Revision of chs. NR 400, 406, 407 & 410, Wis. Adm. Code, Incorporating Changes in Federal Definitions, Permit Requirements and Portable Source Relocation Requirements

1. Why is this rule being proposed?

This rule is being proposed as a clean-up package to amend portions of our rules to make them the same as federal rules and to clarify and streamline portions of our rules regarding permitting.

The revisions are based on changes to federal regulations; the changes are needed so the Department can retain approval from EPA for our air permit programs. The other changes are needed clarifications to existing rule language.

For the most part, this proposed rule is a clean-up package. Department regulations are being updated because of changes in federal regulations. Other portions of this rule package are needed for clarification.

Changes in ch. NR 439 stack testing requirements were being proposed for combustion sources (boilers) that are regulated under the national emission standards for hazardous air pollutants (MACT) for industrial, commercial and institutional boilers and process heaters in ch. NR 462. However, a federal court has vacated this MACT standard so the implementation and enforcement of ch. NR 462 has been stayed at this time. For this reason those revisions are being removed from this rule package and may be addressed at a later date.

2. Summary of the Rules

On November 27, 2001, the U.S. Environmental Protection Agency (U.S. EPA) made changes to the definition of "major source" that is applied in air operation permit programs. Under s. 285.11(16), Stats., the Department must promulgate rules consistent with but no more restrictive than the federal clean air act, that specify which sources are classified as "major sources".

The U.S. EPA's new definition of "major source", for purposes of the operation permit program, changes which fugitive emissions are counted in determining whether a source is major or not. To ensure that Wisconsin's operation permit program is at least as stringent as the federal requirements, the Department must, in addition to amending the definition of "major source", create a definition of "fugitive emissions" specific to the operation permit program.

On December 19, 2005 U.S. EPA excluded several types of small hazardous air pollutant sources from federal permit requirements. Department rules are being amended to reflect this change.

The major source threshold for Nitrogen Oxides (NO_x) emissions in ozone nonattainment areas varies with the removal of NO_x waiver. Not all portable sources would be considered major if their NO_x emissions now exceed 25 tons per year. Since the threshold may be different for portable sources which are relocated into or within an ozone nonattainment area, the numerical threshold is being eliminated. The numerical value for VOC emissions is also being eliminated. Instead, the rule will refer to the major source definitions for VOCs and NO_x in ch. NR 408 (the chapter that regulates nonattainment area major sources).

Current regulations regarding the replacement of an air contaminant source that is covered under a general permit are being revised to clarify when a new permit is needed.

In a streamlining effort to allow some operation permits to be issued at the same time as construction permits, s. NR 410.03 is being revised to allow the operation permit to be issued before the construction permit fees are collected. The Department still retains the ability to revoke a permit should a source not pay the permit fees. The Department can also refer a source to the Department of Justice to collect the fee.

3. How does this proposal affect existing policy?

The proposed rule changes do change existing policy, in the manner described in the paragraphs above.

4. Summary of Comments

On June 12, 2007 the Department conducted a public hearing, in Madison, on the proposed rule changes. No one appeared at the hearing.

The Department did receive comments from the Legislative Council Rules Clearinghouse and appropriate changes were made.

5. Information on environmental analysis.

Under s. NR 150.03(3) an environmental analysis is not needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

6. Final regulatory flexibility analysis

Based on the context of the rule changes, which are already in place at the federal level, there should not be a significant economic impact on a substantial number of small businesses. The only change associated with this rule package that may affect small business is a result of the changes in federal requirements regarding fugitive emissions.

The proposed rule revisions may affect any air pollution sources that have an air permit or are required to obtain an operation permit, and portable sources.

Facilities that become major sources as a result of the rule change, where fugitive emissions are counted to determine major source status, will be required to report their compliance status to the Department semi-annually instead of annually.

Fiscal Estimate — 2007 Session

<input type="checkbox"/> Original <input type="checkbox"/> Corrected	<input checked="" type="checkbox"/> Updated <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number NR 400, 406, 407 & 410
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Subject

Proposed clean up package on Air items to make them consistent with federal regulations. Additionally, clarification of language for construction permits, streamlining of minor permit revisions and portable source relocation requirements.

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

Indeterminate

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

The proposed changes are being done so that the Department's regulations are updated to reflect the current federal regulations. These are definition changes and changes in permit coverage.

Changes in chs. NR 400 and 407: updating definitions and other revisions which have been made to the federal regulations regarding fugitive emissions and permitting standards.

Changes in chs. NR 406 and 407: clarify when a construction permit is needed for sources covered under general operation permits.

Changes in ch. NR 406: portable source relocation requirements will be amended by changing the numerical thresholds to general language limiting the relocation exception to sources with emissions less than the thresholds contained in the definition of major source.

Changes in section NR 410.03: updated so construction permits can be issued concurrently with operation permits, streamlining the process for minor revisions to those permits. With this revision, the collection of permit fees and the issuance of an operation permit are independent of each other.

Changed from the first iteration of this rule revisions: ch. NR 439 was to have been revised to address conflicting stack test requirements for boilers that are subject to national emission standards for hazardous air pollutants, maximum achievable control technology found in ch. NR 462. Since the implementation and enforcement of ch. NR 462 has been stayed at this time, this proposed rule amendment is being removed from the rule package and may be addressed at a later time.

Fiscal Estimate:

It is assumed there will be no fiscal effect on these rule changes. The proposed permit changes are intended to clarify and streamline the permit process, which will result in process clarifications and time savings but not in substantial dollar savings.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
/S/ Joe Polasek	266-2794	09-24-07

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 400, 406, 407 & 410

Subject

Proposed clean up package on Air items to make them consistent with federal regulations. Additionally, clarification of language for construction permits, streamlining of minor permit revisions and portable source relocation requirements.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ -	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ -	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$ -	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ -	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$ -	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature /S/ Joe Polasek	Telephone No. 266-2794	Date (mm/dd/ccyy) 09-24-07

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

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

AM-12-07

Summary Prepared by the Department of Natural Resources

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

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

Explanation of Agency Authority

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

Related Statute or Rule

There are no related statutes not identified above.

Plain Language Analysis

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

As published in the federal register, and effective on January 18, 2007, EPA added 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane, also known as HFE-7300, to the list of compounds excluded from its definition of volatile organic compound (VOC) in 40 CFR 51.100(s)(1), on the basis that

this compound makes a negligible contribution to ozone formation. This compound can be used as an alternative to some ozone depleting substances such as chlorofluorocarbons. The Department is proposing to include this compound on the list of compounds that have negligible photochemical reactivity under the definition of VOC in s. NR 400.02(162), thereby excluding it from the definition.

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

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

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

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

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

Comparison with Rules in Adjacent States

All the states within EPA Region 5 manage an air construction and operation permit program. Some of these programs appear to be more "stringent" than Wisconsin's program, while others appear to be less stringent. Comparisons between programs are difficult due to the varying ways sources may be exempt and how programs are funded.

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

Summary of Factual Data and Analytical Methodologies

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

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

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

Effect on Small Business

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

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

Agency contact person: (including email and telephone): Joseph Brehm, telephone 608/267-7541, e-mail; Joseph.Brehm@wisconsin.gov

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NR 407.10(4)(a)2. ~~Except for any provisions contained in any general operation permit issued prior to September 1, 2005 specifying when a construction permit is needed, the~~ The construction, reconstruction, replacement, relocation or modification does not require a permit under ch. NR 405 or 408.

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

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

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

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

SECTION 12. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 13. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)