

Clearinghouse Rule 09-020

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 406.04(1)(m)9.(Note) and 407.03(1)(sm)9.(Note); to **amend** NR 406.02(1), 406.03(1), 406.04(1f)(b), (1k)(b), (1q)(intro.) and (g), (2)(h) and (4)(a)5., (h)2., (i)3. and (j)3., 407.02(6)(a)3., 407.03(1)(sq), (1m)(a)2., (2)(g) and (4)(intro.), 407.04(1)(intro.)(Note) and (2), 407.05(1) and (Note), (2) and (5) Tables 2 and 3 and (Note), 409.08(1)(c)1., 419.07(3)(intro), 439.055(2)(b)2., 439.07(8)(b)7. and 439.075(3)(a); to **repeal and recreate** NR 419.07(2); and to **create** NR 406.02(7), 406.03(1m), 407.02(6m), 407.04(2)(Note) and 484.10(55v) relating to federal hazardous air pollutant regulations, biodiesel fuel, incorporation of statutory changes, and air permit applications and affecting small business.

AM-05-09

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: **Sections 227.11(2)(a), 285.11(1), Stats. The State Implementation Plan developed under s. 285.11(6), 285.60(6), and 285.67 Stats., is revised.**

2. Statutory authority: **Sections 227.11(2)(a), 285.11(1) and (16), 285.60(6), and 285.67, Stats.**

3. 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(6), 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) 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.

4. Related statute or rule: Chapters NR 406, 407 and 409 relate directly to the permitting of activities that result in air emissions from stationary sources. Chapter NR 447 regulates asbestos emissions, but since permitting authority also regulates asbestos emissions the definition of asbestos is being added to Chapters NR 406 and 407. Chapter NR 439 relates directly to compliance demonstration for stationary sources.

5. Plain language analysis: The main objective of the proposed rule is to update permit language in chs. NR 406 and 407 regarding federal Generally Available Control Technology (GACT) rules for hazardous air pollutants. The current state rules do not exempt certain source

categories from the need to obtain a construction or operation permit as is done on the federal level. Sources in Wisconsin potentially affected by this rule are bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities (gas stations), pipeline facilities and wood preserving facilities.

Rules are also proposed that add biodiesel fuel, by definition, as an alternative clean fuel. Currently a permit modification for existing sources, or a construction permit for new sources, is required in order to burn it.

This proposal would also amend the time frame for submittal of operation permit renewal applications. Current rules require the application be submitted 12-18 months prior to the expiration of the operation permit. The Department proposes to change this deadline to no later than six months prior to the expiration of the operation permit to reflect updated statutory requirements in s. 285.66(3)(a), Stats. The only exception to this is that 40 CFR 70.5(a)(1)(iii) requires submittal to be in a 6-18 month window. Since the statutory change is different than this, a note will be added that refers to the Federal time frame.

Currently only selected portions of our rules require submittal of two copies of permit applications and related materials. The proposed rule would correct this inconsistency so that two copies are required in all cases. Additionally, language will be added to allow for electronic copies. Two copies are required as one is retained by the central office and one copy is sent to the appropriate regional office.

Other non-substantive changes are being proposed for consistency, to update outdated rule language and to provide clarification where needed.

6. Summary of, and comparison with, existing or proposed federal regulation: The changes to chs. NR 406 and 407, Wis. Adm. Code, are consistent with updates to federal rules, as referenced in Section 5. Chapters NR 407 and 409 are being changed as a result of a statutory change on the time frame for the submittal of an operation permit renewal application. The federal time frame for operation permit renewal applications requires that the application be submitted no later than six months prior to the expiration of the current operation permit for those permits that would be issued under 40 CFR part 70.5(a)(1)(iii) which is akin to Chapter NR 407. Other changes, to chs. 406, 407, 419 and 439 provide consistency within the rules by updating outdated language and providing clarification where appropriate. Chapter 484 is being amended to add an American Society of Testing and Materials (ASTM) method for the testing of bio-diesel fuels

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): All of the adjacent states manage an air construction and operation permit program.

The federal rules are effective nation-wide and the rules being proposed by the Department are similar to the federal rules except as mentioned in 6., above. Therefore, the portions of the proposed rules dealing with the GACT standard should be similar or identical to rules in effect in adjacent states that have similar programs.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: Since the Department is proposing rules consistent with federal regulations, except for 6. above, and making consistency and clarification changes, the Department did not, with one exception, make use of any factual data or analytical

methodologies in the rule development. That exception is the proposed amendment to ch. NR 484.

The only exception is the adding of biodiesel as a clean fuel. Based on emission information developed by EPA in “A Comprehensive Analysis of Biodiesel Impacts on Exhaust Emissions” (October 2002, <http://www.epa.gov/OMS/models/biodsl.htm>), emissions from the burning of biodiesel are less than those of distillate fuels, except for Nitrogen Oxides (NO_x). NO_x emissions are approximately 10% higher for a 20% blend of biodiesel and distillate fuels. Normally, biodiesel is not burned independently from other fuel types. By blending the fuels, existing burner design and fuel feed systems do not need to be altered. Emissions of hydrocarbons were reduced by 21.1%, particulate matter 10.1% and carbon monoxide 11.0%. Carbon dioxide emissions remained approximately the same. Biodiesel blended with distillate oil will be considered a clean fuel.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an 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, and the Department is required by statute to adopt federal regulations or to develop similar standards. Preparation of an economic impact report has not been requested. Those proposed changes not based on federal regulations, were clarifying in nature or updates to old or outdated language in the rules.

10. Effect on small business: Because the proposed GACT rule changes for permitting sources of hazardous air pollutants may result in a limited number of sources becoming subject to federal operation permit requirements, some small businesses may be required to report their compliance status semi-annually instead of annually.

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

11. Agency contact person: Joseph Brehm, telephone 608/267-7541, e-mail; Joseph.Brehm@wisconsin.gov

The consent of the Attorney General will be requested for the incorporation by reference of a new test method in ch. NR 484.

SECTION 1. NR 406.02(1) is amended to read:

NR 406.02(1) “Clean fuel” means distillate oil, as defined in s. NR 440.205(2)(h), with a sulfur content less than 0.05% by weight, natural gas or propane, biodiesel fuel, as determined using the procedures in ASTM D6751-09, incorporated by reference in s. NR 484.10(55v), or any blend of distillate oil and biodiesel fuel.

SECTION 2. NR 406.02(7) is created to read:

NR 406.02(7) “Regulated asbestos-containing material” has the meaning given in s. NR 447.02(33).

SECTION 3. NR 406.03(1) is amended to read:

NR 406.03(1) PERMIT REQUIREMENT. Except as provided in sub. (2), no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 285.60(5), Stats., or under this chapter. ~~Applications for the construction permit shall be submitted on forms which are available from the department at its Madison headquarters and regional offices.~~

SECTION 4. NR 406.03(1m) is created to read:

NR 406.03(1m) APPLICATION AND FORMS. (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.

Note: Application forms may be obtained from Department Regional Headquarters or Service Center offices, or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Construction permits. The internet web address is: <http://dnr.wi.gov/air/permits.html>.

(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 shall be submitted to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Construction permits.

SECTION 5. NR 406.04(1)(m)9.(Note) is repealed.

SECTION 6. NR 406.04(1f)(b), (1k)(b), (1q)(intro.) and (g), (2)(h) and (4)(a)5., (h)2., (i)3. and (j)3. are amended to read:

NR 406.04(1f)(b) The modification 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).

(1k)(b). The modification 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).

(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS. (intro.) ~~Any~~ No construction permit is required for any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:

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

(2)(h) The source is not subject to any standard or regulation 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)). ~~If a source is subject to regulations or requirements under section 112 only because of section 112(r) of the Act (42 USC 7412(r)), the source is not for that reason required to obtain a construction permit under this paragraph.~~

(4)(a)5. The use will not subject the source to any standard or regulation under section 112 of the Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(h)2. The change 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)).

(i)3. The change 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)3. The change 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)).

SECTION 7. NR 407.02(6)(a)3. is amended to read:

NR 407.02(6)(a)3. Any source subject to a standard or other requirement under section 112 of the act Act (42 USC 7412), except for a source subject solely to regulations or requirements under section 112(d)(5) or (r) of the act Act (42 USC 7412 (d)(5)or (r)).

SECTION 8. NR 407.02(6m) is created to read:

NR 407.02(6m) “Regulated asbestos-containing material” has the meaning given in s. NR 447.02(33).

SECTION 9. NR 407.03(1)(sm)9.(Note) is repealed.

SECTION 10. NR 407.03(1)(sq), (1m)(a)2., (2)(g) and (4)(intro.) are amended to read:

NR 407.03(1)(sq) Renovation or demolition operations involving ~~friable asbestos-containing~~ regulated asbestos-containing material.

(1m)(a)2. The facility is not subject to a standard under section 111 or 112 or 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)).

(2)(g) The source is not subject to any standard or regulation under section 112 of the ~~act~~ Act (42 USC 7412), excluding section 112(d)(5) or (r) (42 USC 7412(d)(5) or (r)).

(4) **CONDITIONS FOR SPECIFIC EXEMPTIONS. (intro.)** In order to be eligible for a specific exemption under sub. (1) (ce), (cm), (d), (g), (gm), (h), (o), (s), (w) or (x), the owner or operator of a direct stationary source shall keep and maintain the records required under pars. (a) to (f), as applicable. The records shall be kept in a manner that allows the source to accurately calculate the required information on a monthly basis. The owner or operator of a direct stationary source shall begin keeping the records required under pars. (b) to (f) no later than January 1, 1994, and the records required under par. (a) no later than January 1, 1998, or the date that the source commences operation, whichever is later, and maintain them for a minimum of 5 years. After January 1, 1994, any direct stationary source that ever exceeds any level listed in sub. (1) (d), (g), (h), (o), (s), (sm), (w) or (x) is not eligible for the exemption under that subsection. After January 1, 1998, any direct stationary source that ever exceeds any level listed in sub. (1) (ce) or (cm) is not eligible for the exemption under that subsection. After ~~January 1, 2001~~ February 1, 2001, any direct stationary source that ever exceeds any level listed in sub. (1)(gm) is not eligible for the exemption under that subsection. The records required are as follows:

SECTION 11. NR 407.04(1)(intro.)(Note) and (2) are amended to read:

NR 407.04(1)(intro.)(Note) Application forms may be obtained from the ~~regional and area~~ Department Regional Headquarter or Service Center offices of ~~the department~~ or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits.

(2) PERMIT RENEWAL. Pursuant to s. 285.66(3), Stats., a permittee shall apply for renewal of an operation permit at least ~~12 months, but not more than 18 months,~~ 6 months before the permit expires. No permittee may continue operation of a source after the operation permit expires, unless the permittee submits a timely and complete application for renewal of the permit.

SECTION 12. NR 407.04(2)(Note) is created to read:

NR 407.04(2)(Note) Note: Under 40 CFR 70.5(a)(1)(iii), the renewal application must be submitted at least 6 months, but not more than 18 months before the permit expires.

SECTION 13. NR 407.05(1) including the (Note) and (2) are amended to read:

NR 407.05(1) Applications for operation permits and renewals of operation permits shall be made on forms supplied by the department for these purposes and supplemented with other materials as ~~required~~ 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.

(Note) Application forms may be obtained from the ~~regional and area~~ Department Regional Headquarters or Service Center offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits. The internet web address is: <http://dnr.wi.gov/air/permits.html>.

(2) Application materials may be submitted on paper or in an electronic format. The applicant shall file 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 shall be submitted to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Operation permits.

SECTION 14. In Table 2 of NR 407.05(5), the Air Contaminant Name shown as 3,3-Dichlorobenzidine is amended to read 3,3'-Dichlorobenzidine

SECTION 15. NR 407.05(5) Table 2, Footnote 8 and Table 3, Footnote 8 are amended to read:

NR 407.05(5) Table 2, Footnote 8

Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol, $R-(OCH_2CH_2)_n-OR'$

where: $n = 1, 2$ or 3

$R =$ alkyl C7 or less

or $R =$ phenyl or alkyl substituted phenyl

R' = H, or alkyl C7 or less, or OR' consists of carboxylic acid ester, sulfate, phosphate, nitrate or sulfonate.

Table 3, Footnote 8

Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol, R-(OCH₂CH₂)_n-OR'

where: n = 1, 2 or 3

R = alkyl C7 or less

or R = phenyl or alkyl substituted phenyl

R' = H, or alkyl C7 or less, or OR' consists of carboxylic acid ester, sulfate, phosphate, nitrate or sulfonate.

SECTION 16. NR 407.05(5)(Note) is amended to read:

NR 407.05(5)(Note) These forms may be obtained from the ~~regional and area~~ Department Regional Headquarter or Service Center offices ~~of the department~~ or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits, or U.S. EPA, Region 5, 77 W Jackson Blvd, Chicago IL 60604.

SECTION 17. NR 409.08(1)(c)1. is amended to read:

NR 409.08(1)(c) *Duty to reapply*. 1. The designated representative shall submit a complete acid rain portion of an operation permit application for each source with an affected unit at least ~~12~~ 6 months, ~~but not more than 18 months,~~ before the permit expires.

SECTION 18. NR 419.07(2) is repealed and recreated to read:

NR 419.07(2) GENERAL REQUIREMENTS. Except as provided in sub. (3), no person may use any procedure to remediate or dispose of soil or water contaminated with organic compounds unless the remediation project meets all of the following conditions:

(a) The project meets the emission limits in sub. (4) and the requirements of sub. (5).

(b) The project will not cause emissions in such quantity, concentration, or duration as to be injurious to human health.

(c) The project will not cause emissions in quantities which will substantially contribute to the exceedance of an ambient air quality standard or ambient air increment or cause air pollution.

SECTION 19. NR 419.07(3)(intro.) is amended to read:

NR 419.07(3)(intro.) EXEMPTIONS. Any procedure or activity listed in this subsection is exempt from the ~~requirement for submittal of a remediation notification form under sub. (2) and is exempt from the~~ emission limits specified in sub. (4),₂ except those contained in ch. NR 445:

SECTION 20. NR 439.055(2)(b)2. is amended to read:

NR 439.055(2)(b)2. Current and secondary current in electrostatic precipitators.

SECTION 21. NR 439.07(8)(b)7. is amended to read:

NR 439.07(8)(b)7. ~~The Except for sources subject to emission testing requirements in ch. NR 440, the department may require the owner or operator of a source, with the exception of sources subject to the requirements of ch. NR 440,~~ capable of emitting condensible particulate matter, to include an analysis of the back half of the stack sampling train catch in the total particulate catch for any emission test using Method 5, 5A, 5B, 5D, 5E, 5F, 5G, 5H, 5I, or 17, in 40 CFR part 60, Appendix A, incorporated by reference in s. NR 484.04(13). This procedure and analysis shall be performed using Method 202 in 40 CFR part 51, Appendix M, incorporated by reference in s. NR 484.04(9).

SECTION 22. NR 439.075(3)(a) is amended to read:

NR 439.075(3)(a) The owner or operator of a direct stationary source which has received a construction permit shall perform the compliance emission tests required under sub. (2)(a) during the initial operating period authorized by the permit.

SECTION 23. NR 484.10(55v) is created to read:

NR 484.10

Standard Number	Standard Title	Incorporated by Reference For
(55v) ASTM D6751-09	Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels	NR 406.02(1)

SECTION 24. CAPITALIZATION CHANGES. Wherever the term "act" appears in the following sections to mean the federal Clean Air Act, the term "Act" is substituted:

NR 407.02(4)(a), (b)27., (c)(intro.), 1. and 2. and (6)(a)2. and (b)3.

NR 407.03(1)(g), (gm), (h), (o), (sm)(intro.) and (2)(e) and (f)

NR 407.05(4)(e), (h)5. and (i)4.

NR 407.07(3)(c)3.

NR 407.09(1)(a)2., (2)(d)1., (3), (4)(a)3.e. and (5)(b)1. and 4.

NR 407.12(1)(d)2.

SECTION 25. 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 26. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 23, 2009.

Dated at Madison, Wisconsin November 18, 2009.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By /S/
Matthew J. Frank, Secretary

(SEAL)