

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

**SUBJECT:**

Request that the Board adopt AM-24-12, proposed rules affecting chapters NR 400, 406, 407, and 445 related to simplifying and improving the Air Management permit program.

**FOR: June 2015 Board meeting**

**PRESENTER'S NAME AND TITLE:** Kristin Hart, Chief-Permits and Stationary Source Modeling Section, Air Management Program

**SUMMARY:**

Why is the rule needed? The primary objective of the proposed rule is to improve implementation efficiency of air permitting, and to streamline and simplify the permitting processes as they affect businesses. A portion of this rule is being proposed to fulfill a statutory rulemaking requirement. Other changes are proposed to align federal and state regulations.

What are the significant changes? The rule proposes many small changes that are cleanup and clarifying in nature including removal of outdated tables, correction of code citations and references, and the addition of notes. Also included are proposals to reduce the number of facilities needing to submit an operation permit renewal application, and for natural minor sources, an exemption from the need to obtain an operation permit. 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.

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.

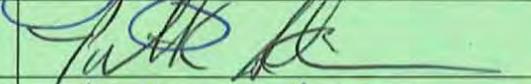
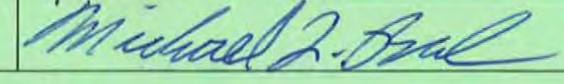
What was the last action of the Board? The last board action on this proposed rule was in December 2014 when the Board authorized hearings.

What are the impacts to small business? The Department does not believe this project will have a negative economic impact on small business and may provide an economic benefit in some cases. Therefore, this rule would have a minimal impact on small business.

**RECOMMENDATION:** That the Board adopt AM-24-12.

**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 type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response summary  | <input checked="" type="checkbox"/> Board order/rule                  |

Approved by	Signature	Date
Bart Sponseller, Bureau Director		5/21/15
Pat Stevens, Division Administrator		6/1/15
Cathy Stepp, Secretary		6/5/15

cc: Board Liaison - AD/8

Kendra Fisher - LS/8

Department rule officer - LS/8

DATE: May 26, 2015

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on request for Board adoption of Order AM-24-12, proposed rules affecting chapters N R400, 406, 407, and 445 relating to streamlining and improving the Air Management permit program.

### 1. Why is the rule being proposed?

The primary objective of the proposed rule is to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, while maintaining consistency with the federal Clean Air Act.

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 this statutory requirement. Additional ideas for streamlining the air permit process were obtained through a series of listening sessions with external stakeholders held throughout the state. The Department did an internal review of the air permit rules for needed corrections, clarifications, and other opportunities for streamlining of the permit process. The Department also became aware of an inconsistency between state and federal requirements related to the sulfur content of fuels used when manufacturers conduct testing of compression ignition engines and is proposing to address this issue.

### 2. Summary of the rule.

The proposed rule consists mostly of changes to chs. NR 406 and 407 related to minor source construction permitting and operation permitting. A provision of ch. NR 445 is also being proposed for change. Specific proposed rule changes are described below.

- Creation of an exemption fulfilling the statutory requirement in s. 285.60(6)(c), Wis. Stats., to exempt natural minor sources from the requirement to obtain an operation permit.
- An exclusion that allows specified pre-construction activities to proceed while minor source construction permit issuance is pending. The activities included are those most often requested and approved in construction permit waivers.
- Making minor source operation permits non-expiring, but including provisions to set an expiration date where justified.
- A provision to allow revocation of construction permits and minor source operation permits at closed facilities without first providing written notice of intent to revoke the permit and then waiting 21 days.
- The existing waiting period for revocation of a major source operation permit is changed from 21 to 30 days to assure consistency with Clean Air Act requirements.

- An exemption from construction and operation permit requirements for restricted use engines. This aligns the existing definitions and exemptions with federal regulations affecting emergency and other limited use engines of all sizes and at all types of facilities.
- An allowance in s. NR 445.09 to burn high sulfur diesel fuel as long as emissions are controlled by the best available control technology. This eliminates a conflict between state and federal rules affecting marine compression ignition engine testing.
- Other changes that are cleanup and clarifying in nature including removal of outdated tables and requirements, removal of methyl ethyl ketone from the list of pollutants that are included in an operation permit since it was previously removed from the federal list, correction of code citations and references, addition of clarifying notes, and other changes for consistency with federal regulations.

### **3. 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.

### **4. Hearing Synopsis and Public Comments.**

A notice of public hearings on the proposed rule, AM-24-12, was published on January 26, 2015. Hearings were held on March 5 and 11, 2015. No one attended the public hearings. The public comment period closed on March 16, 2015.

During the public comment period, written comments were received by mail from the United States Environmental Protection Agency; 3M Corporation, a manufacturing facility in western Wisconsin; and Clean Wisconsin, an environmental advocacy group. A summary of these comments and the Department's response is attached.

The Department also responded to other comments received, including one comment received during the economic impact solicitation and comments received from the Legislative Council Rules Clearinghouse.

### **5. Has Board dealt with these issues before?**

Yes, the board authorized hearings in December 2014.

### **6. 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 including a proposed reduction in the number of sources needing to submit an operation permit renewal application and a proposed exemption from the need to obtain an operation permit. 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 portion of the rule concerning sulfur content of fuel used in compression ignition engines will potentially affect engine manufacturers in the state. The proposed changes align federal and state requirements for manufacturers of large marine engines which are required by federal law to test engines at higher sulfur contents than currently allowed by state law. Changes to allow other engines to use higher sulfur content fuels will also provide business opportunities for facilities wishing to develop overseas markets where current fuel specifications exceed the sulfur content currently allowed in the state.

#### **7. Soliciting public input on economic impact analysis.**

An analysis of the economic impacts of this proposed rule was prepared after information was obtained through a request concerning potential economic impacts of the proposed rule. The request for information was sent to all air permit holders in the state, representatives of local units of government, representatives of business, and the Air Management Study Group which includes members from environmental advocacy groups, environmental consultants, environmental law attorneys, utilities, and representatives of large and small businesses.

#### **8. Environmental Analysis.**

The promulgation of permanent administrative rules under ch. 227, Wis. Stats., is considered an equivalent analysis action under s. NR 150.20(2)(a)20., Wis. Adm. Code, and does not require additional environmental analysis under ch. NR 150, Wis. Adm. Code, because a detailed environmental analysis and public disclosure are conducted as part of Department rulemaking procedures.

#### **9. Small Business Analysis.**

This rule is expected to positively impact business, including small businesses. Portions of the rule clarify and clean up outdated rule language making the regulations easier to understand. Other portions of the rule expand exemptions or eliminate the need to submit renewal applications.

This rule does not change or impose new compliance or reporting requirements on small business or changes to any schedules or deadlines for compliance reporting. Small businesses that qualify for, and decide to take advantage of, the portion of the proposed rule that exempts natural minor sources from operation permitting will need records to show they are qualified for the exemption.

## **Summary of Comments and Department Response**

### **AM-24-12**

A notice of public hearings on the proposed rule, AM-24-12, was published on January 26, 2015. Hearings were held on March 5 and 11, 2015. No one attended the public hearings. The public comment period closed on March 16, 2015.

During the public comment period, written comments were received by mail from the United States Environmental Protection Agency; 3M Corporation, a manufacturing facility in western Wisconsin; and Clean Wisconsin, an environmental advocacy group. A summary of these comments and the Department's response is attached.

Responses to Legislative Council Rules Clearinghouse comments are also included.

#### **A. Comments from USEPA**

**Comment 1.** EPA does not believe it is appropriate to include the following activities in the list of exclusions when determining if construction, reconstruction, replacement, relocation, or modification has commenced in NR 406.03(1e): (a) Installation of building supports or foundations, (b) Laying underground piping or conduit, (c) Erecting storage structures, and (j) Paving. When determining which activities are allowed prior to issuance of a minor construction permit, EPA believes it is appropriate to allow facilities to begin activities that would be allowed to occur before a major New Source Review (NSR) permit was issued. If the allowed activities are inconsistent between the minor and major NSR program, it can lead to non-compliance issues in the instance in which a source mistakenly believes it only requires a minor NSR permit. For example, under the Wisconsin Department of Natural Resources' (WDNR) draft rules a source which requires a minor NSR permit may commence installation of building supports or foundations prior to issuance of a permit which is prohibited under major NSR guidance. A situation may arise in which a source believes that its project only requires a minor NSR permit, and begins constructing foundations. However, if upon WDNR's review of the source's application it becomes apparent that the source was in fact required to receive a synthetic minor or major NSR permit, and be in violation of major NSR EPA has previously discussed what activities are allowed and prohibited before a major NSR permit is issued in guidance documents. In EPA's guidance on what activities can commence prior to issuance of a prevention of significant deterioration permit, EPA explicitly prohibits the installation of building supports and foundations, paving, laying underground pipework, and construction of permanent storage structures. Thus EPA does not think activities (a), (b) and (j) are appropriate to include in the list of activities in NR 406.03(1e). EPA believes that for activity (c) the erecting of storage structures, it should be specified that only temporary storage structures are allowed in the exclusion.

#### **Department Response**

No changes are proposed in response to the above comment.

The following preconstruction activities are specifically identified as not constituting construction in the current federal definition of commence construction based on a 1978 interpretive memo from EPA: planning, ordering of equipment and materials, site-clearing, grading, and on-site storage of equipment and materials. In addition, based on the Department's experience reviewing construction waiver requests, facilities are able to demonstrate considerable economic hardship from weather-related delays in trenching for installation of pipe or conduit, paving, and pouring of footings.

The Department maintains it has more discretion when drafting rules to implement its minor source construction permit program under ch. NR 406 than for sources subject to major NSR permitting. EPA has expressed concerns about the potential violations of the major new source review program if a facility commences construction and later, when Department takes up the review of the permit application, discovers that the project is major under prevention of significant deterioration (PSD) or Nonattainment area new source review (NSR). The Department, however, believes that the hypothetical situation proposed by EPA is not a

sufficient reason to overly restrict legitimate preconstruction concerns, many of which are unique to northern states such as Wisconsin because of harsh winter weather.

The Air Management Program's compliance, inspection, and enforcement activities will assure that any violations of the PSD program are handled appropriately. A facility using the minor source commence construction exclusion would do so at its own risk. Generally, larger facilities with emissions at a level triggering major source status, are well informed about air pollution control rules and requirements. Air Management Program staff are always available to facilities, large and small, to answer questions and discuss program requirements.

The Department understands EPA's concerns, and believes that with proper communication, facilities will be able to understand and successfully utilize these exclusions with no adverse impacts. To this end, the Department will prepare outreach materials that clearly discuss considerations for and use of these exclusions including noting that commencing construction of a major source or a major modification prior to receiving a PSD permit would likely result in the loss of the opportunity to take synthetic minor limits and require application of BACT and may result in enforcement action.

**Comment 2.** As discussed in comment 1 above, EPA has concerns with some items included in the exclusion of 406.03(1e). Until the issues discussed in comment 1 above are resolved, EPA does not believe it is appropriate to revise NR 407.04(1)(b)3 to apply the exclusions provided in NR 406.03(1e) when determining the date the initial operation permit application shall be submitted.

**Department Response:**

See Department response to Comment 1. No changes are proposed in response to the above comment.

**Comment 3.** To ensure clarity, EPA suggests that WDNR consider revising the wording of NR 407.03(1)(s)(d)(4) to "Other emission information indicating that the source is not a natural minor source becomes available".

**Department Response:**

The Department assumes that EPA intended to refer to NR 407.03 (1s) (d) 4. in the above comment. The Department agrees to the clarification suggested by EPA and will revise the proposed rule language as recommended.

**Comment 4.** In the analysis section of the rule, it states that "SECTION 8 and 9 [of the rulemaking order] amend the process for revoking construction permits.....in cases where a facility has closed or was never constructed." However, there is nothing in NR 406.11(1) that provides for when facilities were never constructed.

**Department Response:**

The Department initially considered revising this portion of the regulation to allow revocation of construction permits when a project is never constructed, without requiring a 21-day notification. In further review, we determined that, generally, notification is only a problem when a facility has closed. In the final version of the proposed rule, we removed references to a project that was never constructed but neglected to change the analysis section of the rule. The analysis section will be corrected.

**B. Comment from 3M**

**Comment.** 3M requested that the Department reconsider the condition that a "restricted use internal combustion engine" operates no more than 200 hours per year if an emergency stationary [reciprocating internal combustion engines] RICE (NR 400.02(136m)(a)). 3M indicated that it understands that this operating limit is currently included in the definition of an "emergency electric generator." 3M acknowledges that there have not been any long-term emergency situations that required an exceedance of the 200 hour limit from existing emergency engines at 3M facilities in Wisconsin. 3M has experienced long-term emergency engine needs at other facilities in the US and is

concerned with the operating limit. 3M cited the following reasons to encourage the DNR to reconsider the 200 hour limit: 1) Emergency engines are required to operate for routine testing and are allowed under federal rules to operate for limited non-emergency purposes for a combined 100 hours annually. This results in significantly less than 200 hours of the annual allocation being available for a true emergency situation. 2) Inconsistency with the federal requirements for operating limits results in conflicting and confusing restrictions. 3) Continuation of the operating limit may result in an unintended increase in permit applications for sources wanting additional flexibility for emergency operation. 4) An operating limit of 500 hours for emergency stationary RICE would allow greater flexibility and be more consistent with USEPA guidance on emergency engine use emission calculations.

**Department Response:**

No changes are proposed in response to the above comment.

The Department, in crafting rule language to define “restricted use engines” and exempt them from permit requirements, intends to expand the existing emergency generator permit exemption to cover those engines that are exempt from needing to meet a standard under the federal reciprocating internal combustion engine (RICE) rules. For this reason, the proposed rule directly references the engine descriptions and operational requirements necessary to be considered an exempt RICE under the federal rules. In this way, the state and federal rules will be aligned. It is important to understand that the federal (RICE) rules were written to regulate emissions of criteria and toxic air pollutant emissions from different types of engines and do not directly address permitting or exemptions from permitting.

The proposed operational restrictions in the definition of “restricted use engine” are necessary because the Department is creating an exemption from permit requirements and needs to assure that emissions from the exempt units are low. The restrictions in the proposed exemption limit both engine output and hours of operation. If the Department were to increase the hours of operation from 200 to 500 hours per year, the size restriction would need to be lowered from the current 3000 kW in order to show that emissions from the exempt units stay low. While the Department is not aware of a facility that needed to exceed the 200 hour restriction in the more than 20 years of implementing the existing emergency generator exemption, many facilities have emergency generators with total outputs near 3000 kW. For this reason, the Department believes it is more important, and offers more flexibility, to retain the relatively high engine output threshold, and keep the hours of operation at 200. Also, if a facility were to experience an emergency that required operation in excess of 200 hours in a year, the Department has the authority, under s. NR 436.03, Wis. Adm. Code, to approve continued operation of emergency or reserve equipment under such circumstances.

The 200 hour per year limit in the definition of “restricted use engine” has another important consequence. A facility may rely on the 200 hour per year restriction in the definition as the “operational capacity” of the equipment. This is important when determining if a facility’s status is major, natural minor, or synthetic minor under both the Title V operation permit program and the major new source review (PSD) program. Emissions from all equipment, including emergency generators, must be considered when determining status under the Title V and PSD programs. With no hour restriction or with an increase from 200 to 500 hours in the definition, the maximum emissions calculated from emergency equipment would increase substantially and some facilities previously considered natural minor sources would now require synthetic minor operation permits. Some facilities anticipating using the natural minor exemption, also proposed in this rule, would find their facilities no longer meet the definition of “natural minor” if operational hours were not restricted to 200.

Finally, it is important to note that a facility has no obligation to limit the total hours of operation of their emergency equipment. The only reason to limit total hours of operation of a generator is to maintain an exemption from construction and/or operation permitting requirements. Many facilities routinely include emergency generators in construction permits and therefore, have to meet only the operational restrictions in the federal RICE rules.

### C. Comments from Clean Wisconsin

#### **Comment 1. Changing definition of “commence construction” for minor sources.**

Notwithstanding the definitions of “commence construction” and “commence modification” in Wis. Admin. Code s. NR 400.02, this proposed rule change excludes 10 activities when determining if a construction air permit will be required for minor sources under ch. NR 406.

It is not necessary or appropriate to define “Commence construction, reconstruction, replacement, relocation or modification” in Wis. Admin Code ch. NR 406. Wis. Admin. Code ch. NR 400 already provides definitions of “Commence construction” and “Commence modification” that are applicable to chapters NR 400-499.

Additionally, the proposed definition more narrowly defines what it means to “commence construction” compared to the current definition found in NR 400 by allowing certain pre-construction activities such as site clearing and grading that previously required a construction permit. As noted in EPA guidance, allowing such pre-construction activities will have the “undeniable disadvantage of allowing a good deal of activity at sites which may be highly susceptible to environmental impact.”

Furthermore, although the proposed definition purports to align the state definition with the federal definition, the proposed definition allows certain activities (installation of building supports or foundations, laying underground piping, and construction of permanent storage facilities) that have been explicitly excluded from the federal definition according to EPA guidance.

Finally, Clean Wisconsin is concerned that allowing all of this additional activity may result in additional pressure on DNR to ultimately approve permits for projects due to substantial prior investment in such activities. Similarly, allowing this additional activity that requires substantial investment before permitting decisions are required may undermine DNR’s efforts to require environmentally sound design or operational change.

#### **Department Response:**

As discussed in the response for Comment A.1., no changes are proposed in response to the above comment.

The following preconstruction activities are specifically identified as not constituting construction in the current federal definition of “commence construction” based on a 1978 interpretive memo from EPA: planning, ordering of equipment and materials, site-clearing, grading, and on-site storage of equipment and materials. Adding these activities explicitly to the proposed rule language makes the state interpretation of what constitutes “commencing construction” consistent with the federal definition.

As noted by Clean Wisconsin, the Department is also proposing to allow additional activities not included in the federal definition of “commence construction” including installation of building supports and foundations, laying of underground pipe or conduit, and paving. The Department now has several years of experience in evaluating preconstruction waiver requests under s. NR 406.03 (2). This section allows the Department to approve a waiver so that the source may commence construction, reconstruction, replacement, relocation or modification of an air pollution source prior to the Department issuing a construction permit to the source. Facilities have been able to demonstrate considerable economic hardship from weather-related delays in trenching for installation of pipe or conduit, paving, and pouring of footings. These weather-related delays are unique to northern climates and do not affect the more southerly states. In order to address the impacts long, cold winters have on construction in Wisconsin, these activities have been included in the proposed rule as well.

The Department has found that approvals of preconstruction waivers have no effect on the outcome of final permit decisions. Allowing the proposed activities by rule will not change the way the Department ultimately regulates a facility, but will increase efficiency for both the source and the Department by reducing the need for application and review under the waiver process. The waiver provision under s. NR 406.03 (2) will be retained to allow sources to request waiver for activities not addressed by the proposed rule.

Companies using the proposed exclusions do so at their own risk. If activities allowed by the proposed rule have been started, additional costs might be incurred if the application review shows that changes to equipment specifications or stack parameters are needed. This same outcome is also a possibility under the current waiver provisions. The Department will provide guidance for facilities that discusses the risks of proceeding with the proposed activities prior to issuance of a permit. The Department will use its compliance and enforcement authority as necessary to implement major source construction or major modification requirements consistent with USEPA regulations and policy.

### **Comment 2. Natural Minor Source Operating Permit Exemption**

This proposed rule defines a natural minor source for the purposes of exempting natural minor sources from requiring an operation air permit. A natural minor source is defined as meeting all of the following:

- 1) Is not a major source under Wis. Admin. Code chs. 405, 407, or 408;
- 2) Is not a synthetic minor source under Wis. Admin. Code ch. 407 or having a permit condition that allows the source to avoid being a major source under Wis. Admin. Code chs. 405 or 408; and
- 3) Is not a part 70 source.

Clean Wisconsin believes that the proposed definition language could be modified to better align with the federal definition of a “natural minor” source. A better alignment may prevent a loophole through which sources that should properly be classified as synthetic minor sources could be defined as natural minor sources under the proposed definition.

The definition of a synthetic minor in Wis. Admin. Code ch. 407 only refers to federally-enforceable permit conditions that prevent a source from being major source. However, EPA guidance and memorandums are clear that federally-enforceable limits on a source’s potential to emit can be established by mechanisms other than permits. For example, they can also be established by rules promulgated in EPA-approved SIPs that apply to entire classes of sources.

If such rules exist in Wisconsin’s SIP, or are created in the future, a source whose emissions would be above the major source threshold but for limitations established in the rule would be eligible for the natural minor exemption under the proposed rule under the following logic:

- It would not be a major source under Wis. Admin. Code chs. 405, 407, or 408 because its potential to emit is lower than the major source thresholds.
- It would not be a synthetic minor as defined in Wisconsin rule because its potential to emit is not limited by a federally-enforceable permit condition.
- It would not be a part 70 source because its potential to emit is lower than the major source thresholds.

This loophole could be avoided if the definition of a natural minor source followed the language in EPA guidance: a natural minor source is a source that does “not have the physical or operational capacity to emit major amounts (even if the source owner and regulatory agency disregard any enforceable limitations).”

Clean Wisconsin suggests the following definition be used to avoid this potential loophole:

NR 407.02 (4m) “Natural minor source” means a source that meets all of the following criteria:

- (a) Does not have the physical or operational capacity to be a major source under this chapter, ch. 405, or ch. 408 even if any federally enforceable limitations are disregarded.
- (b) Is not subject to a standard, limitation or other requirement under section 111 of the Act (42 USC 7411).
- (c) Is not subject to a standard or other requirement under section 112 of the Act (42 USC 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))
- (d) Is not an affected source.

Alternatively, the definition of a synthetic minor could be changed:

NR 407.02(9) “Synthetic minor source” means any stationary source that has its potential to emit by federally-enforceable conditions or limitations so that it is not a major source.

Then, the proposed natural minor definition could be changed to read in part:

NR 407.02 (4m) (b) is not a synthetic minor source under this chapter and does not have a federally-enforceable condition or limitation that allows the source to avoid being either a major stationary source under the definition in s. NR 405.02 (22) or a major source under the definition in s. NR 408.02 (21).

**Department Response:**

No changes are proposed in response to the above comment.

The Department believes that the proposed language is sufficient to ensure that only a source which is truly a natural minor source will be eligible for the natural minor operation permit exemption.

The Department has defined the term “natural minor source” by stating that such sources are not major, not synthetic minor, and not Part 70. These terms have all been defined in Wisconsin Natural Resources Code for many years. Using these previously defined terms ensures that the “natural minor” definition proposed in this rule will be consistent with past implementation of the state’s air permitting programs.

**Comment 3. Non-expiring operation permits non-part 70 sources**

This proposed rule makes operation permits for non-part 70 sources non-expiring unless the Department specifies an expiring term on the basis of 1) ongoing or recurring non-compliance or enforcement action; 2) a request by the permittee; or 3) a determination by the Department.

Clean Wisconsin is strongly opposed to this rule change and believes that all pollution permits should have a specified expiration date. We are concerned that this exemption, along with the natural minor source operating permit exemption, unjustifiably removes period review of permits that is necessary to ensure that the State meeting its obligation to adequately monitor and control air pollution.

According to our review of the DNR’s air permit database as of February 2015, the vast majority (>75%) of air pollution sources that have been classified by the DNR are classified as non-part 70 sources that will no longer either require operating permits (in the case of natural minor sources) or permit renewals (in the case of synthetic minor sources). Thus, these rule changes are leaving only a small fraction of air pollution sources subject to scheduled permit reviews.

Furthermore, having non-expiring permits will limit opportunity for public involvement to only the initial permit issuance. Under the current rules, operation permit renewals follow the procedure outlined in Wis. Stat. 285.62, which provides opportunity for public comment.

The proposed rule change also lacks specificity and leaves unanswered critical questions including:

- 1) Under what circumstances (other than ongoing/recurring non-compliance, as provided for in the proposed rule) would the DNR make a determination to require an expiration term under the proposed rule?
- 2) How would the DNR identify non-compliance with respect to air pollution regulations lacking scheduled permit review, and in what way would violations of air pollution regulations be systematically identified and tracked?

**Department Response**

No substantive changes are proposed to this portion of the rule. Please see the response to comments from rule clearinghouse for clarifying changes being made.

It remains the responsibility of the permit holder to meet all applicable requirements including submitting emissions inventory, monitoring reports and certifying compliance each year. This rule does not affect the

Department's ability to track compliance at a non-Part 70 sources. Instead it will facilitate the ability to shift resources to compliance activities. Non-Part 70 sources with potential emissions of 80% or more of the major source threshold would continue to be inspected as required under EPA agreement.

The intention of the proposed rule is to give the Department more flexibility in focusing resources. Under the Clean Air Act, operation permit programs are funded through emission fees. Fees gathered from major sources may only be used on permit and compliance activities at major sources. Similarly, fees collected from non-Part 70 sources may only be used on permit and compliance activities at non-Part 70 sources. The resources available for non-Part 70 activities are limited. This proposal allows the Department to focus non-Part 70 resources on compliance and monitoring activities.

The Department is committed to processing revisions to non-Part 70 operation permits as necessary. Permit revisions are required under ss. NR 407.13 and 407.14, Wis. Adm. Code, to incorporate any new construction, significant changes to compliance demonstration methods, and to include new applicable requirements. The revision procedures will be used to provide the opportunity for public input prior to a final decision on the permit revision.

The Department acknowledges there are certain situations where setting an expiration date in a non-Part 70 permit may be appropriate. Ongoing or recurring non-compliance at a source or a request from the permittee as provided for in the proposed rule are two examples. Another reason may be to implement requirements in federal regulations. The language included in the rule allowing the Department to make a determination for when it is appropriate to establish an expiration date is intended to provide opportunity to address unforeseen situations as of the date of the rule making. Additionally, this gives the Department the ability to work with Clean Wisconsin, as well as other stakeholders, to establish protocols for certain situations through policy directives or other means.

#### **D. Comments from the Wisconsin Legislative Council Rules Clearinghouse**

The Legislative Council Rules Clearinghouse provided the following comments on the rule.

**Comment 1.** In s. NR 407.09(1)(b)3. (intro.), it appears that "all" or "any" should be inserted before "of the following".

##### **Department Response**

The Department concurs and will make the recommended change.

**Comment 2.** In s. NR 406.03(1e)(intro.), quotation marks should be added around "commence construction" and "commence modification" and "that" should replace "which" after "chapter". In addition, "will" should be changed to "shall".

##### **Department Response**

The Department concurs and will make the recommended change with the exception of replacing "will" with "shall".

A facility is not required to exclude the listed activities to determine whether or not construction has commenced. The current definition of commence construction is intended to remain valid in this chapter. The term "will" will be changed to "may" to clarify that the use of the exclusion is voluntary.

**Comment 3.** In s. NR 407.02(6)(Note), it appears that the material is substantive and should be placed in the text of the rule instead of in the Note. [s. 1.09(1), Manual.]

### **Department Response**

The language in the definition contained in s. NR 407.02(6) directly mirrors federal language so the Department would prefer not to move the note to rule language. Instead, the Department will change the note as follows to clarify that implementation of the definition is consistent with EPA Policy.

~~NR 407.02 (6) (Note) A source that is subject to a standard or other requirement under section 112 of the Act (42 USC 7412) that caused the source to be classified as a part 70 source remains a part 70 source regardless of a reduction in potential emissions which would otherwise make the source a non-part 70 source.~~

NR 407.02 (6) (Note) A United States Environmental Protection Agency memorandum dated May 16, 1995 from John S Seitz, Director Office of Air Quality Planning and Standards, addresses when a major source of hazardous air pollutants [a source subject to a standard under section 112 of the Act] can become an area source rather than comply with the major source requirements. Specifically, the memorandum clarifies that facilities may switch to area source status at any time until the "first compliance date" of the standard. The memorandum is available at <http://www.epa.gov/oaqps001/permits/memoranda/pteguid.pdf>.

**Comment 4.** In s. NR 407.03(1s)(title), "Source" should be inserted after "minor" and before "Exemption".

### **Department Response**

The Department concurs and will make the recommended change.

**Comment 5.** Does the content of the second note following s. NR 407.03 (1s) contradict the text of the rule in s. NR 407.03(1s)(c)3., relating to withdrawal of pending operation permit applications?

### **Department Response**

The intent of the note is to clarify that a facility is not required to operate under the natural minor source exemption even if it meets the definition of a natural minor source. The Department has made the following changes to s. NR 407.03(1s)(c)1. and the second note to fix the apparent contradiction.

(c) Notification to the department. 1. An owner or operator with claiming exemption under this subsection and who has an existing permit or who has submitted a permit application under this chapter or under ch. NR 406, shall notify the department of an intent to operate under this exemption.

(NOTE) ~~Nothing about this exemption is intended to preclude an owner or operator from requesting and receiving an operation permit from the department. The exemption in this subsection does not preclude the owner or operator of a natural minor source from requesting, and the department from issuing, an operation permit as allowed under s. 285.60(2)(b), Stats.~~

**Comment 6.** In s. NR 407.14(1m)(f), it is unclear how the requirement that an expiring term for a non-part 70 source operation permit must be at least 18 months from the date of the final revision interacts with the directive in s. NR 407.09(1)(b)4., that the Department may not specify an expiring term for a non-part 70 source of less than five years. Is s. 407.14(1m)(f) an exception to s. NR 407.09(1)(b)4.? It would be helpful if the Department would clarify its intent regarding these rules.

### **Department Response**

The intent of the rules is to provide a facility time to prepare a renewal application when the Department determines that its operation permit will be revised to include an expiration date. Separately, the Department is stating that it may not revise an operation permit to set an expiration date that would result in a permit term of less than 5 years, which is the term for major source operation permits. To clarify, the Department has made the following changes to ss. NR 407.09 (1) (b) 3. and 4. and NR 407.14 (1m) (f):

NR 407.09 (1) (b) 3. The term of a non-part 70 source operation permit does not expire unless the department specifies an expiring term in the permit upon considering any of the following:

a. Ongoing or recurring non-compliance or enforcement action taken by the department or the administrator.

b. A request by the permittee.

c. A determination by the department.

4. The term specified by the department under subd. 3. for a non-part 70 source ~~may not be less than 5 years.~~ shall be at least 5 years from the date of the last issued initial or renewed operation permit. When establishing an expiration date, the department shall provide adequate time for the permit holder to prepare and submit a renewal application consistent with the timelines in s. NR 407.04 (2).

NR 407.14 (1m) (f) A decision by the department to establish an expiring term in a non-part 70 source operation permit as allowed in s. NR 407.09 (1) (b) 3. ~~An expiring term established in a non-part 70 source operation permit shall be at least 18 months from the date of final revision approval.~~

**Comment 7.** In s. NR 445.09 (3) (d), in the first sentence, “who” should be changed to “that”.

#### **Department Response**

The Department concurs and will make the recommended change.

#### **E. Other Comments**

**Comment 1.** The Department received comments with responses to the solicitation for information on economic impacts regarding the recordkeeping requirements created for the restricted use engine exemption. The commenter had installed resettable hour meters on each emergency generator as required by federal rule but did not have the ability to read and record the meters after each use of the generator. Despite this limitation, he did have the means to demonstrate that the engines did not operate more than 200 hour per year. The commenter’s contention was that requiring records to be kept after each use of the generator added a burden and a cost to operation not intended by the federal RICE rule.

#### **Department Response**

Since the intent of the exemption is to better align state and federal requirements regarding emergency generators and other limited use engines, the Department has reconsidered the requirements in s. NR 407.03 (1) (w) 1., based on possible conflicts with recordkeeping requirements of the federal rules. Since this proposed rule was undertaken, in part to align state and federal regulations, the department has made the following change:

NR 406.04 (1) (w) 1. ~~Each time an engine is operated, the date, duration in hours, and purpose of operation~~ The electrical output in kilowatts, or the equivalent in brake horsepower, of each engine.



## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

The air management program funds nearly all operation permitting and compliance activities through program revenue generated by annual fees charged to operation permit holders. Funds generated from minor source operation permit holders may only be used for operation permit and compliance related activities at minor sources. This includes all inspections, complaint investigation, compliance and permitting assistance and permit application review. Sources that would choose to operate under the proposed natural minor exemption would no longer be required to pay the annual \$400 fee, potentially reducing the revenue that is available for minor source permit and compliance activities. The Department projects that as many as 650 facilities are those most likely to have interest in operating under the natural minor exemption however, it is anticipated that not all of these sources will opt to switch to the exemption. If all these facilities would take advantage of the exemption, the loss of revenue for minor source permit and compliance activities would be approximately \$260,000 per year. This is nearly a quarter of the total revenue currently collected for the minor source programs.

#### **Economic Impacts on Private Sector Businesses**

The purpose of this proposed rule is to clarify, improve efficiency and streamline the air permitting regulations, so it has been assumed that there would be no negative economic impacts for businesses. The air program solicited information from permit holders throughout the state and received 24 responses to the request for information on the economic impacts of the proposed rule. Nineteen of the responses were from private sector businesses holding air permits or permit exemptions. WMC also responded on behalf of business. With the exception of one response, all respondents stated that there would either be no negative economic impacts on their business or that there might be an economic benefit to the rule. Several facilities noted that they would save on the cost of applying for renewal applications. Another stated that the creation of a restricted use engine exemption would benefit them. Many respondents mentioned an economic benefit to the provisions to allow some preconstruction activities to occur prior to receiving a construction permit and several also noted that they are natural minor sources and that their businesses would benefit from an exemption for natural minor sources.

The exception is a manufacturer of large marine engines. This respondent noted that the rule would require application of the best available control technology (BACT) in order to perform testing of engines using fuels with higher sulfur content than currently allowed by state law. The respondent estimated that this provision of the proposed rule would cost the company between \$750,000 and \$1,000,000.

BACT is a case by case determination. The respondent did not provide details on the cost estimates. When a facility is subject to BACT, they must provide an analysis that includes information on various control technologies, and costs to control. Technologic and economic feasibility are both part of a BACT determination. The Department may not impose a BACT that is determined to be economically infeasible.

Marine engine manufacturers are required by federal law to test engines using fuels with higher sulfur contents than allowed by state law. While the department concurs that application of best available control technology could entail a cost to any facility proposing to use high sulfur content diesel fuel, under current rules there is no allowance to test engines using diesel with higher sulfur contents under any circumstances. Aside from this marine engine manufacturer, only facilities wishing to use higher sulfur content fuels would need to apply BACT.

#### **Economic Impacts on Local Governments and Public Entities**

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Representatives of two public water utilities, a county commissioner, and a military base also submitted information. All four stated that the rule would have no negative economic impact on their operations.

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

This rule change was undertaken to provide benefits by simplification and streamlining of the permit process. If the rule is not implemented, facilities will not see any economic benefit the department believes would be provided by the proposed rule.

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### 14. Long Range Implications of Implementing the Rule

There may be long term fiscal consequences to the reduced program funds that would result from exempting large numbers of facilities from operation permits. The air program also acknowledges that efficiencies gained by having fewer permitted sources may, at least in part, offset these fiscal impacts.

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### 15. Compare With Approaches Being Used by Federal Government

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

- Changes to s. NR 445.09, Wis. Adm. Code, are necessary because the current state rule is in direct conflict with federal law requiring marine engines to be tested using diesel with a higher sulfur content than allowed by state rule.
- Two federal standards affecting reciprocating internal combustion engines defined several types of limited use engines that are exempt from these federal standards. This proposed rule replaces the state's definition and exemptions for "emergency electric generators" with a new definition and exemptions that includes emergency and other limited use engines as defined in the federal standards.
- Changes are also being proposed to the definition of major source in s. NR 407.02 (4) (b) 27., Wis. Adm. Code, so that wording exactly mirrors that in the federal definition.
- Finally, a change proposed for s. NR 407.15, Wis. Adm. Code, changes the notification waiting period for suspension, revocation, or withdrawal of coverage of a part 70 source from 21 to 30 days as required by 40 CFR Part 70.

All other proposed rule changes pertain to minor sources and minor source construction permitting and non-part 70 source operation permitting are not specifically regulated under the federal Clean Air Act.

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

Illinois and 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. It is the goal of SIP-approved states to 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 are very dissimilar. 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 natural minor sources. The majority of natural minor sources in neighboring states are not required to obtain an operation permit.

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

17. Contact Name Kristin Hart	18. Contact Phone Number 608/266-6876
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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING AND AMENDING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 400.02 (56), 406.16 (2) (d), 406.17 (3) (e), 407.05 Table 2, 407.10 (5) (d), and 407.105 (4) (f); to **renumber and amend** NR 406.04 (1) (w) and 407.03 (1) (u); to **amend** NR 406.08 (1), 406.10, 406.11 (1) (intro.), 407.02 (4) (b) 27., 407.04 (1) (intro.) and (b) 3., 407.05 (4) (c) 1., 9. a. and b., and 10, 407.05 Table 3, 407.09 (1) (b) 1. and (c) 1. b., 407.10 (5) (b) and (c), 407.105 (6) (b) and (c), 407.15 (intro.) and (7), and 445.09 (1) (c) and (2); and to **create** NR 400.02 (136m), 406.03 (1e) and (Note), 406.04 (1) (w) 1. and 2., 406.11 (1) (h), 407.02 (4m) and (6) (a) 3. (Note), 407.03 (1) (u) 1. and 2. and (1s) and (Notes), 407.09 (1) (b) 3. and 4., 407.14 (1m) (f), and 445.09 (3) (d) relating to increasing the operational efficiency of and simplifying the air permit process and affecting small business.

**AM-24-12**

**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 285.27 (2) gives the Department authority to promulgate emission standards for hazardous air contaminants. 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 285.66 (2) gives the Department the authority to specify that an operation permit for a minor source does not expire. Section 285.66 (2) (c) requires the Department to promulgate rules to exempt natural minor sources from operation permit requirements. Section 285.67, Stats., requires the Department to promulgate rules establishing criteria and procedures for revocation of air pollution control permits.

**4. Related statute or rule:** There are no related statutes or rules not included above.

**5. Plain language analysis:** The primary objective of the proposed rules is to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, while maintaining consistency with the federal Clean Air Act (CAA). Specific proposed rule changes are described below.

SECTIONS 1 and 2 replace the existing definition of “emergency electric generator” with a broader definition of “restricted use reciprocating internal combustion engine.” This change aligns the state and federal definitions of and requirements for emergency and other limited use generators.

SECTION 3 creates an exclusion for minor sources that allows specified pre-construction activities to proceed while construction permit issuance is pending. The activities included are those most often requested and approved in construction permit waivers.

SECTIONS 4 and 5 replace for construction permits, and SECTIONS 15 and 16 replace for operation permits, the existing exemptions for emergency electric generators with exemptions for restricted use reciprocating internal combustion engines. These changes align the existing exemptions with the federal regulations affecting emergency and other limited use engines of all sizes and at all types of facilities.

SECTION 8 and 9 amend the procedures for revoking construction permits and SECTION 29 amends the procedures for revoking non-part 70 source operation permits to allow the department to revoke such permits without providing written notice and without waiting 21 days in cases where a facility has closed.

SECTIONS 13 defines a natural minor source for purposes of the operation permit program and SECTION 16 creates an exemption fulfilling the statutory requirement in s. 285.60 (6) (c), Stats., to exempt natural minor sources from the requirement to obtain an operation permit.

SECTIONS 22 and 28 amend existing rules to specify that non-part 70 source operation permits do not expire. The department may reopen a non-part 70 source operation permit to set an expiring term for cause.

SECTIONS 30 and 31 amend the existing rules to allow a source to burn high sulfur diesel fuel as long as emissions are controlled by the best available control technology. This eliminates a conflict between state and federal rules affecting large marine engine testing and allows flexibility to test other engines that will be marketed in overseas locations where high sulfur fuel is still used.

All other SECTIONS involve changes to wording, removal of outdated tables and requirements, correction of code citations and references, addition of clarifying notes, and other changes for consistency with federal regulations.

**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:

- Changes to s. NR 445.09 are necessary because the current state rule is in direct conflict with federal law requiring marine engines to be tested using diesel with a higher sulfur content than allowed by state rule.
- Two federal standards affecting reciprocating internal combustion engines defined several types of limited use engines that are exempt from these federal standards. This proposed rule replaces the state's definition and exemptions for "emergency electric generators" with a new definition and exemptions that includes emergency and other limited use engines as defined in the federal standards.
- Changes are also being proposed to the definition of major source in s. NR 407.02 (4) (b) 27., so that wording exactly mirrors that in the federal definition.
- Finally, a change proposed for s. NR 407.15 changes the notification waiting period for suspension, revocation, or withdrawal of coverage of a part 70 source from 21 to 30 days as required by 40 CFR Part 70.

Minor source construction permitting and non-part 70 source operation permitting are not specifically regulated under the federal Clean Air Act. The natural minor operation permit exemption, changes allowing preconstruction activities prior to minor source construction permit issuance, elimination of an expiring term for non-part 70 operation permits, and changes to revocation procedures are limited to minor sources. Other changes to chs. NR 400, 406, 407, and 445 provide consistency within the rules by removing outdated

language, correcting citations, and providing clarification where appropriate.

**7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** Illinois and 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. It is the goal of SIP-approved states to 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 are very dissimilar. All adjacent states provide for exemption from construction permits 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 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:** Since the Department is proposing rules consistent with federal regulations, making consistency and clarification changes, and developing rules as directed by the state legislature, the department did not make use of any factual data or analytical methodologies in the rule development.

**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 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.

The proposed rules 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.

The proposed rules will make non-part 70 source operation permits non-expiring reducing the need for small businesses to submit operation permit renewal applications.

Small businesses are more likely to be considered natural minor sources for purposes of the operation permit program. The natural minor exemption from permitting will reduce the regulatory requirements for those businesses since they will not have to apply for, and receive, or maintain an air operation permit. The exemption does not affect the need to comply with applicable requirements including those in any existing construction permits. Some small businesses may need assistance in understanding what rules apply if those applicable requirements are not included in a permit. The Air Program's Small Business Environmental

Assistance Program is available to help facilities 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,  
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SECTION 1. NR 400.02 (56) is repealed.

SECTION 2. NR 400.02 (136m) is created to read:

NR 400.02 (136m) “Restricted use reciprocating internal combustion engine” or “restricted use RICE” means a reciprocating internal combustion engine that is one of the following:

- (a) Operated no more than 200 hours per year and that meets the definition of emergency stationary RICE or black start engine in 40 CFR 63.6675.
- (b) Operated in accordance with the definition of limited use RICE in 40 CFR 63.6675.

SECTION 3. NR 406.03 (1e) and (Note) are created to read:

NR 406.03 (1e) 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 chs. NR 405 or 408, all of the following activities may be excluded when determining if construction, reconstruction, replacement, relocation, or modification has commenced:

- (a) Installation of building supports or foundations.
- (b) Laying underground piping or conduit.
- (c) Erecting storage structures.
- (d) Dismantling existing equipment or structures.
- (e) Ordering equipment or control devices.
- (f) Temporary storage of equipment on site.
- (g) Site clearing.
- (h) Programs undertaken to locate underground utilities.
- (i) Installation of erosion control measures.
- (j) Paving.

(NOTE) Undertaking any of the activities listed under NR 406.03 (1e) does not relieve the applicant from the obligation to comply with any other applicable regulations or requirements. If the applicant proceeds with any of the activities prior to receiving a construction permit, the applicant does so at their own risk and the department is not obligated to issue the air permit.

SECTION 4. NR 406.04 (1) (w) is renumbered NR 406.04 (1) (w) (intro.) and amended to read:

NR 406.04 (1) (w) (intro.) ~~Emergency electric generators powered by~~ Restricted use reciprocating internal combustion engines which are fueled by gaseous fuels, gasoline, or distillate a clean fuel oil with an and which have a combined total electrical output of less than 3,000 kilowatts, or the equivalent in brake horsepower. An owner or operator claiming exemption under this paragraph shall maintain records of all of the following:

SECTION 5. NR 406.04 (1) (w) 1. and 2. are created to read:

- NR 406.04 (1) (w) 1. The electrical output or equivalent in brake horsepower of each engine.
2. The total hours each engine is operated during a year.

SECTION 6. NR 406.08 (1) is amended to read:

NR 406.08 (1) This section applies to actions on permits for which applications are received on or after September 1, 2000. This section does not apply to actions on applications for permits where the source commences construction, reconstruction, replacement, relocation, or modification prior to issuance of a construction permit. This section does not apply to construction permits which are subject to the notice, comment, and hearing provisions of s. 293.43, Stats.

SECTION 7. NR 406.10 is amended to read:

NR 406.10 **Violations.** Any owner or operator who fails to construct a stationary source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate a stationary source in accordance with conditions imposed by the department under s. 285.65, Stats.; any owner or operator who modifies a stationary source in violation of conditions imposed by the department under s. 285.65, Stats.; or any owner or operator who commences construction, reconstruction, replacement, relocation, or modification of a stationary source without applying for and receiving a permit as required under this chapter or ch. NR 405 or 408 shall be considered in violation of s. 285.60, Stats.

SECTION 8. NR 406.11 (1) (intro.) is amended to read:

NR 406.11 (1) (intro.) After providing 21 days written notice to the permit holder and to the persons listed under s. 285.61 (5) (a) 2. to 5., Stats., except as provided in par. (h), the department may revise, suspend, revoke, or withdraw a source from coverage under a construction permit, part of that

permit, or the conditions of that permit ~~if there is or was any of the following~~ . Permit revision, suspension, withdrawal from coverage, or revocation may occur for any of the following reasons:

SECTION 9. NR 406.11 (1) (h) is created to read:

NR 406.11 (1) (h) *Source Shutdowns*. A permanent shutdown of operations of a stationary source so that it no longer requires a permit. Upon confirmation obtained by the department that a source has been permanently shut down or at the request of the source permit holder, the department may revoke a permit or withdraw a source from coverage under a permit without providing a 21 day written notice as otherwise required under this subsection.

SECTION 10. NR 406.16 (2) (d) is repealed.

SECTION 11. NR 406.17 (3) (e) is repealed.

SECTION 12. NR 407.02 (4) (b) 27. is amended to read:

NR 407.02 (4) (b) 27. ~~All~~ Any other stationary source categories regulated on or after category not included in this paragraph which as of August 7, 1980, by a standard promulgated is being regulated under section 111 or 112 of the Act (42 USC 7411 or 7412).

SECTION 13. NR 407.02 (4m) is created to read:

NR 407.02 (4m) “Natural minor source” means a source that meets all of the following criteria:

(a) Is not a major stationary source under ch. NR 405, and is not a major source under this chapter or under ch. NR 408.

(b) Is not a synthetic minor source under this chapter and does not have a permit containing conditions that allow the source to avoid being either a major stationary source under the definition in s. NR 405.02 (22) or a major source under the definition in s. NR 408.02 (21).

(c) Is not a part 70 source.

SECTION 14. NR 407.02 (6) (a) 3. (Note) is created to read:

NR 407.02 (6) (a) 3. (Note) A United States Environmental Protection Agency memorandum dated May 16, 1995, from John S. Seitz, Director Office of Air Quality Planning and Standards, addresses when a major source of hazardous air pollutants [a source subject to a standard under section 112 of the Act] can become an area source rather than comply with the major source requirements. Specifically, the

memorandum clarifies that facilities may switch to area source status at any time until the "first compliance date" of the standard. The memorandum is available at <http://www.epa.gov/oaqps001/permits/memoranda/pteguid.pdf>.

SECTION 15. NR 407.03 (1) (u) is renumbered NR 407.03 (1) (u) (intro.) and amended to read:

NR 407.03 (1) (u) (intro.) ~~Emergency electric generators powered by~~ Restricted use reciprocating internal combustion engines which are fueled by gaseous fuels, gasoline, or distillate a clean fuel oil with an electric as defined in s. NR 406.02 (1) and which have a combined total electrical output of less than 3,000 kilowatts, or the equivalent in brake horsepower. An owner or operator claiming exemption under this paragraph shall maintain records of all of the following:

SECTION 16. NR 407.03 (1) (u) 1. and 2. and (1s) are created to read:

NR 407.03 (1) (u) 1. The electrical output in kilowatts, or the equivalent in brake horsepower, of each engine.

2. The total hours each engine is operated during a year.

(1s) NATURAL MINOR SOURCE EXEMPTION. (a) *Eligibility*. A facility that is a natural minor source is exempt from the requirement to obtain an operation permit.

(b) *Recordkeeping*. 1. An owner or operator claiming to be exempt under this subsection shall maintain records adequate to show it meets all criteria under the definition of a natural minor source. Emission calculations adequate to determine eligibility with this exemption shall be maintained and made available to a department representative if requested.

2. In addition to monitoring and recordkeeping requirements contained in any construction permit issued to the source under ch. NR 406, the owner or operator shall maintain records sufficient to demonstrate compliance with all other applicable requirements in chs. NR 400 to 499.

(c) *Notification to the department*. 1. An owner or operator claiming exemption under this subsection and who has an existing permit or who has submitted a permit application under this chapter or under ch. NR 406, shall notify the department of an intent to operate under this exemption.

2. Any existing permit issued under this chapter shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn at the request of the owner or operator.

3. A notification under subd. 1. shall serve as a request for revocation of any permits issued under this chapter and for withdrawal of any pending operation permit application submitted under this chapter.

(d) *Schedule*. The owner or operator shall apply for an operation permit in accordance with the requirements of this chapter if any of the following affects the source's ability to remain a natural minor source:

1. Any existing requirements change.
2. Any new requirements become applicable to the source.
3. Changes occur at the source.
4. Other emission information indicating that the source is not a natural minor source becomes available.

(NOTE) An owner or operator exempt under this subsection is responsible for complying with all applicable requirements in chs. NR 400 to 499, including construction permit requirements identified in ch. NR 406 and all conditions contained in a permit issued under ch. NR 406.

(NOTE) The exemption in this subsection does not preclude the owner or operator of a natural minor source from requesting, and the Department from issuing, an operation permit as allowed under s. 285.60(2)(b), Stats.

(NOTE) The Small Business Environmental Assistance Program at [dnr.wi.gov](http://dnr.wi.gov) may be contacted for more information on applicability and compliance determinations related to the requirements in chs. NR 400 to 499.

SECTION 17. NR 407.04 (1) (intro.) and (b) 3. are amended to read:

NR 407.04 (1) INITIAL FILING DATES. (intro.) Except as provided under subs. (3) to ~~(6)~~ (7), the initial operation permit application shall be submitted by one of the following dates:

(b) 3. For new or modified sources for which no construction permit is required, a date before the source commences construction or modification. For purposes of determining the date of commencement of construction or modification, the exclusions provided in NR 406.03 (1e) shall apply.

SECTION 18. NR 407.05 (4) (c) 1., 9. a. and b., and 10. are amended to read:

NR 407.05 (4) (c) 1. The maximum theoretical emissions of all air contaminants from all emissions units, operations, and activities except for those exempted under subd. 9. or 10. Fugitive emissions from emissions units, operations, and activities shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. Maximum theoretical fugitive emissions shall be calculated using average operating conditions and average weather conditions. Only sources that manufacture or treat pesticides, rodenticides, insecticides, herbicides, fungicides, or pharmaceuticals shall

include emissions of air contaminants identified as falling within ~~these~~ the categories in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 and later,~~ in ~~their~~ permit applications. When preparing its an application, the owner or operator of a facility may rely on information in an approved material safety data sheet. Trace contaminants need not be reported if they constitute less than 1% (10,000 parts per million) of the material, or 0.1% (1,000 parts per million) of the material if the air contaminant is listed with a control requirement in column (i) of Table A, B or C of s. NR 445.07, unless a hazardous air contaminant is formed in processing the material.

9. a. Any emissions unit, operation, or activity that has, for each air contaminant, maximum theoretical emissions that are less than the level specified in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 and later.~~ Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of the exemption under this ~~subparagraph~~ subd. 9. a.

b. If the maximum theoretical emissions of any air contaminants listed in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 and later~~ from all emission units, operations, or activities at a facility are less than 5 times the level specified in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 or later,~~ for those air contaminants, any emissions unit, operation, or activity that emits only those air contaminants.

10. For any emissions unit, operation, or activity that is included in the application, the applicant does not need to include information on any air contaminant if the maximum theoretical emissions of the air contaminant are less than the level for that air contaminant listed in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 and later,~~ or if the maximum theoretical emissions of any air contaminant listed in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 and later,~~ from all emission units, operations, or activities at a facility are less than 5 times the level specified in ~~Table 2, or~~ Table 3 ~~for calendar years 2004 and later,~~ for that air contaminant. Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of this exemption.

SECTION 19. NR 407.05 Table 2 is repealed.

SECTION 20. NR 407.05 Table 3 is amended by striking the information entered in each column for the air contaminant Methyl ethyl ketone (2-Butanone: MEK)

SECTION 21. NR 407.09 (1) (b) 1. is amended to read:

NR 407.09 (1) (b) 1. The term of ~~an~~ a part 70 source operation permit may not exceed 5 years.

SECTION 22. NR 407.09 (1) (b) 3. and 4. are created to read:

NR 407.09 (1) (b) 3. The term of a non-part 70 source operation permit does not expire unless the department specifies an expiring term in the permit upon considering any of the following:

a. Ongoing or recurring non-compliance or enforcement action taken by the department or the administrator.

b. A request by the permittee.

c. A determination by the department.

4. The term specified by the department under subd. 3. for a non-part 70 source shall be at least 5 years from the date of the last issued initial or renewed operation permit. When establishing an expiration date, the department shall provide adequate time for the permit holder to prepare and submit a renewal application consistent with the timelines in s. NR 407.04 (2).

SECTION 23. NR 407.09 (1) (c) 1. b. is amended to read:

NR 407.09 (1) (c) 1. b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, periodic monitoring or testing sufficient to yield reliable data from the relevant time period that are representative of the stationary source's compliance with the permit. Monitoring or testing requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Monitoring may consist of recordkeeping sufficient to meet the requirements of this subd. 1. b. Permits for non-part 70 sources shall contain the requirements in this subd. 1. b. only for those air contaminants emitted from an emissions unit, operation, or activity where the actual emissions exceed the levels in Table 2 or Table 3 for calendar years 2004 and later, in s. NR 407.05. Actual emissions used for this determination shall be those reported under ch. NR 438 for the most recent year prior to when the permit or renewal is issued.

SECTION 24. NR 407.10 (5) (b) and (c) are amended to read:

NR 407.10 (5) (b) An owner or operator of a stationary source that has an individual operation permit may submit a request to the department to revise or revoke the individual operation permit pursuant to s. NR 407.12, 407.13, or 407.15 (4) and allow the source be covered under a general operation permit. ~~The owner or operator shall submit to the department a written request for revision or revocation of the individual operation permit and a~~ A complete application for a general operation permit submitted under this section shall be considered a request for revocation of the existing individual operation permit.

(c) An owner or operator of a stationary source that is covered under a registration operation permit may submit a request to the department to withdraw the source from coverage under the registration operation permit and allow the source to be covered under a general operation permit. ~~The owner or~~

~~operator shall submit to the department a written request for withdrawal of the registration operation permit and a A complete application for a general operation permit submitted under this section shall be considered a request for withdrawal of coverage under the registration permit.~~

SECTION 25. NR 407.10 (5) (d) is repealed.

SECTION 26. NR 407.105 (4) (f) is repealed.

SECTION 27. NR 407.105 (6) (b) and (c) are amended to read:

NR 407.105 (6) (b) An owner or operator of a facility that has an individual operation permit may submit a request to the department to revoke the individual operation permit pursuant to s. NR 407.15 and allow the facility to be covered under a registration operation permit. ~~The owner or operator shall submit to the department a written request for revocation of the operation permit and a A complete application for a registration operation permit submitted under this section shall be considered a request for revocation of the existing individual operation permit.~~

(c) An owner or operator of a facility that is covered under a general operation permit may submit a request to the department to withdraw coverage under the general operation permit and allow the facility to be covered under a registration operation permit. ~~The owner or operator shall submit to the department a written request for withdrawal of the operation permit and a A complete application for a registration operation permit submitted under this section shall be considered a request for withdrawal of coverage under the general permit.~~

SECTION 28. NR 407.14 (1m) (f) is created to read:

NR 407.14 (1m) (f) A decision by the department to establish an expiring term in a non-part 70 source operation permit as allowed in s. NR 407.09 (1) (b) 3.

SECTION 29. NR 407.15 (intro.) and (7) are amended to read:

**NR 407.15 Permit suspension, revocation and withdrawal from coverage.** (intro.) After providing 21 days written notice to the ~~permittee~~ owner or operator of a non-part 70 source and to the persons listed in s. 285.62 (3) (b) 2. to 7., Stats., except as provided in sub. (7), or after providing 30 days written notice to the owner or operator of a part 70 source and to the persons listed in s. 285.62 (3) (b) 2. to 7., Stats., the department may suspend, revoke, or withdraw a source from coverage under an operation

permit, part of that permit, or the conditions of that permit ~~if there is or was any of the following~~ . Permit suspension, revocation, or withdrawal from coverage may occur for any of the following reasons:

(7) SOURCE SHUTDOWNS. A permanent shutdown of operations of a stationary source so that it no longer needs a permit. For shutdown of a non-part 70 source, upon confirmation obtained by the department that a non-part 70 source has been permanently shut down or at the request of the source permit holder, the department may revoke a non-part 70 source operation permit without providing 21 days written notice as otherwise required under this section.

SECTION 30. NR 445.09 (1) (c) and (2) are amended to read:

NR 445.09 (1) (c) ~~An~~ A restricted use reciprocating internal combustion engine used to power an emergency electric generator exempt under s. NR 406.04 (1) (w) or 407.03 (1) (u).

(2) FUEL REQUIREMENTS. ~~Beginning no later than July 15, 2006, the~~ The owner or operator of a ~~CI~~ compression ignition engine ~~shall only~~ may not combust ~~fuel oil fuels~~ with a sulfur content ~~no~~ greater than ~~the sulfur content that is allowed for on-road use at the time the fuel was purchased, when firing the engine with fuel oil~~ 15 ppm unless particulate matter emissions are controlled as required under sub. (3) (d).

**Note:** Federal Diesel Fuel Programs and Regulations can be found at: <http://www.epa.gov/otaq/regs/fuels/diesel/diesel.htm#regs>. As of July 1, 2004, federal requirements state that beginning July 15, 2006, the sulfur content of diesel fuel at the terminal level will be 15 ppm or less.

SECTION 31. NR 445.09 (3) (d) is created to read:

NR 445.09 (3) (d) Notwithstanding par. (a), the owner or operator of a facility that combusts fuels with a sulfur content greater than 15 ppm as allowed under sub. (2) shall control particulate matter emissions to a level that is best available control technology, as determined by the department. The owner or operator shall submit a construction permit application including information describing how the best available control technology requirements will be met. Compliance with the best available control technology shall be achieved and demonstrated in accordance with the permit.

SECTION 32. 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 33. 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 \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)