

**SUBJECT:** Hearing authorization for Order AM-12-07, proposed rules affecting Chapters NR 400, 406, 407, 410 and 439 pertaining to the incorporation of changes of federal regulations, streamlining the permitting process for minor sources, clarification of construction permit requirements for certain sources, amending portable source relocation limitations and amending stack testing requirements for certain sources subject to MACT standards.

**FOR: MARCH, 2007 BOARD MEETING**

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

**SUMMARY:** The Department is proposing to incorporate changes in federal regulations. Some changes in chapters NR 400 and NR 407 are updating definitions and other revisions of the federal standards regarding fugitive emissions and permitting standards. Additional changes in chs. NR 406 and NR 407 clarify when a construction permit is needed for sources covered under general operation permits.

Portable source relocation limitations found in ch. NR 406 will be amended, by changing the numerical emission limitations to language limiting the relocation limitations to less than major source thresholds.

Section NR 410.03 will be amended so construction permits can be issued concurrently with operation permits, streamlining the process for minor revisions to those permits. The revision is being made so that the collection of permit fees and the issuance of an operation permit are independent of each other. If fees are not paid, the Department has the ability to revoke a permit or to refer the source to the Department of Justice to collect the fees.

Chapters NR 439 and NR 462 have different and conflicting stack test requirements for boilers that are subject to national emission standards for hazardous air pollutants, maximum achievable control technology (MACT). The proposed amendment to ch. NR 439 allow boilers subject to that MACT standard to use the testing schedule in ch. NR 462 rather than the current requirements in ch. NR 439.

**RECOMMENDATION:** The Board authorize Department hearings on Order AM-12-07.

**LIST OF ATTACHED MATERIALS:**

- No  Fiscal Estimate Required
- No  Environmental Assessment or Impact Statement Required
- No  Background Memo

- Yes  Attached
- Yes  Attached
- Yes  Attached

**APPROVED:**

\_\_\_\_\_  
/s/  
Acting Bureau Director, Kevin Kessler

\_\_\_\_\_  
2/22/07  
Date

\_\_\_\_\_  
/s/  
Administrator, Al Shea

\_\_\_\_\_  
2/26/07  
Date

\_\_\_\_\_  
/s/  
Secretary, Scott Hassett

\_\_\_\_\_  
2/26/07  
Date

- cc: Laurie Ross - AD/5
- Carol Turner - LS/5
- K. Kessler - AM/7
- R. Eckdale - AM/7 (6)
- Joe Brehm- AM/7
- Marcia Penner - LS/5

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- -Why is the rule needed?
- -What are the significant changes?
- -What are the key issues/controversies?
- -What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

Hearing authorization:

Final adoption:

Background memo (if needed)\*  
 Fiscal Estimate  
 Environmental Assessment (if needed)  
 Rule

Background Memo (if needed)\*  
 Response Summary  
 Fiscal Estimate  
 Environmental Assessment (if needed)  
 Rule

\*If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review			
Management and Budget			
Legal Services -Program Attorney -Carol Turner			
Other (if applicable)			

DATE: February 19, 2007 FILE REF: 4533

TO: Natural Resources Board Members

FROM: Scott Hassett, Secretary

SUBJECT: Background Memo on Public Hearing Authorization for Order AM-12-07, Pertaining to the Revision of chs. NR 400, 406, 407, 410 & 439, Wis. Adm. Code, Incorporation of Changes in Federal Definitions, Permit Streamlining and Stack Testing Requirements

**Why is this rule being proposed?**

This rule is being proposed as a clean-up package to amend portions of our rules to make them the same as Federal rules, to clarify and streamline portions of our rules regarding permitting, and to amend testing requirements to allow for more flexibility in testing for sources regulated by multiple requirements.

**What event or action triggered the proposal?**

The revisions are based on changes to federal regulations; the changes are needed so the Department can retain approval from EPA for our air permit programs and to update and clarify testing requirements for MACT category sources.

The other changes are needed clarifications to existing rule language as the current language is either vague or outdated.

**What issues are addressed by this rule?**

For the most part, this proposed rule is a clean-up package. Department regulations are being updated because of changes in federal regulations. Other portions of this rule package are needed for clarification because the current language is confusing. The stack test requirement is being amended based on new federal regulations recently adopted by the Department, to avoid redundancy in testing schedules that exist in the current rules.

**Summary of the Rules**

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

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

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

The major source threshold for Nitrogen Oxides (NO<sub>x</sub>) emissions in ozone nonattainment areas varies with the removal of NO<sub>x</sub> waiver. Not all portable sources would be considered major if their NO<sub>x</sub> emissions now exceed 25 tons per year. Since the threshold may be different for portable sources which are relocated into or within an ozone nonattainment area, the numerical limitation is being eliminated. The numerical value for VOC emissions is also being eliminated. Instead, the rule will refer to the major source thresholds for VOCs and NO<sub>x</sub> in ch. NR 408 (the chapter that regulates nonattainment area major sources).

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

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

The frequency of compliance stack testing under ch. NR 439 conflicts with the requirements under ch. NR 462 (MACT Standard for certain boilers). The proposed amendment would exempt sources required to test under the MACT standards from the testing frequency requirements currently in place in ch. NR 439.

**How does this proposal affect existing policy?**

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

**Has the Board dealt with these issues before? If so, when and why?**

The chapters that are being revised have had numerous changes in the past. Some changes are done to stay current and consistent with federal changes and to add clarity to existing regulations.

**Who will be impacted by the proposed rule? How will they be impacted?**

Some sources may become a major source as a result of the proposed rule. The permit requirements for these sources may be more comprehensive than the permit requirements for minor sources.

Most portable sources will be able to relocate within or into the ozone nonattainment counties without needing more restrictive limitations on emissions.

Facilities required to perform stack testing under the Boiler MACT standard could see the frequency and number of stack tests reduced.

**Information on environmental analysis.**

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

**Small business analysis.**

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

**Initial regulatory flexibility analysis**

***Describe the compliance and or reporting requirements imposed on small business.***

Facilities that become major sources as a result of the change in the definition of fugitive emissions will be required to report their compliance status to the Department semi-annually instead of annually as a result of this proposed rule.

**Can these compliance and/or reporting requirements be made less stringent for small business? Explain.**

The reporting requirement can not be made less stringent because it is a federal requirement for major sources.

**Describe the schedules or deadlines for compliance or reporting imposed on small business.**

All facilities that are major sources under federal operation permit requirements are required to report their compliance status every six months.

**Can these schedules or deadlines be made less stringent for small business?**

The reporting requirement can not be made less stringent because it is a federal requirement for major sources.

**Can the compliance or reporting requirements for small business be consolidated or simplified? Explain.**

The Department has created simplified reporting forms for all business subject to semi-annual compliance reporting, which may also be utilized by small business.

**Can performance standards be established for small businesses in lieu of design or operational standards?**

The proposed rule change does not create additional design or operational standards.

**Can small business be exempted from any or all requirements of the rule? Explain.**

The only change associated with this rule package that may effect small business is a result of the changes in federal requirements regarding fugitive emissions. No source subject to federal operation permit requirements may be exempted from the semi-annual reporting requirement. There are portions of the proposed rule that do exempt some sources from major source requirements.

**Describe the type of small business that will be affected by the rule.**

Sources of fugitive emissions may become subject to the federal operation permit program as a result of this rule change. Low emitting dry cleaners, metal cleaners and chrome electroplaters may be excluded from major source permitting requirements as a result of this rule.

**Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.**

Facilities subject to federal operation permit requirements must report their compliance status to the Department every six months. Facilities that are not subject to federal operation permit requirements must report their compliance status annually.

**Describe the type of professional skills necessary for compliance with the rule.**

The proposed rule change does not create any additional need for professional skills than those that are required under current regulations.

### Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated  <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number  Bill Number	Amendment Number if Applicable  Administrative Rule Number NR 400, 406, 407, 410 & 439
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**Subject**

Proposed clean up package on Air items to make them consistent with federal regulations. Additionally, clarification of language for construction permits, streamlining of minor permit revisions, portable source relocation limitation changes and stack test changes for some hazardous air pollutant sources.

**Fiscal Effect**

State:  No State Fiscal Effect  
 Indeterminate

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

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

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

Yes     No

Decrease Costs

**Local:  No Local Government Costs**

Indeterminate

1.  Increase Costs  
 Permissive     Mandatory
2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory
4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

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

The proposed permit changes are intended to clarify and streamline the permit process.

The proposed stack test requirements changes will both clarify the test requirements and ease the test burden on facilities that are subject to several different requirements. Air quality standards will not be compromised with these changes.

**Long-Range Fiscal Implications**

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

## Fiscal Estimate — 2007 Session

### Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 400, 406, 407, 410 & 439

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Assumptions Used in Arriving at Fiscal Estimate – Continued

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## Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 400, 406, 407, 410 & 439

**Subject**

Proposed clean up package on Air items to make them consistent with federal regulations. Additionally, clarification of language for construction permits, streamlining of minor permit revisions, portable source relocation limitation changes and stack test changes for some hazardous air pollutant sources.

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

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE )	( FTE )
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$	\$ -

**Net Annualized Fiscal Impact**

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

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

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 407.02(6)(b)4. to 7.; to **renumber** NR 400.02(162)(a)49.; to **amend** NR 406.04(2m)(b), 406.15(3)(a), 407.02(4)(b)27., 407.10(4)(a) 2., 410.03(4) and 439.075(3)(b) and (c) and to **create** NR 400.02(162)(a)49., 406.04(2m)(b) Note, 407.02(3e), 407.10(4)(a)2. Note and 439.075(3)(d), relating to construction permits, stack test requirements and affecting small business.

AM-12-07

Summary Prepared by the Department of Natural Resources

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

**Statutes interpreted:** Sections 227.11(2)(a) and 285.11(1) and (6), Stats.

**Explanation of Agency Authority**

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(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)(a), Stats., allows the Department to promulgate rules to exempt types of stationary sources from the requirement to get a construction permit, if the potential emissions from the sources do not present a significant hazard to public health, safety, welfare or to the environment. Section 285.67, Stats., requires the Department to promulgate rules establishing criteria and procedures for revising air pollution control permits. Section 285.96(1)(5), Stats., allows the Department to promulgate rules for the payment and collection of construction permit fees.

**Related Statute or Rule**

There are related statutes in ch. 285 of the Statutes. Requirements in chs. NR 400 to 499 may relate to the implementation of rules affected by this order.

**Plain Language Analysis**

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

As published in the federal register, and effective on January 18, 2007, EPA added 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane, also known as HFE-7300, to the list of compounds

excluded from its definition of volatile organic compound (VOC) in 40 CFR 51.100(s)(1), on the basis that this compound makes a negligible contribution to ozone formation. This compound can be used as an alternative to some ozone depleting substances such as chlorofluorocarbons. The Department is proposing to include this compound on the list of compounds that have negligible photochemical reactivity under the definition of VOC in s. NR 400.02(162), thereby excluding it from the definition.

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

Chapter NR 406 is being revised to clarify the construction permit requirements for new sources that are covered under a general operation permit. Also, changes in the limitations for relocation within or into ozone nonattainment areas are being proposed. Under current regulations, the limitations are a numerical value which corresponded to a major source threshold. Under the proposed change, the numerical values will be removed in favor of generic language which states that the facility's potential to emit must be less than the major source thresholds in ch. NR 408 (which regulates nonattainment area major sources). The major source threshold for nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) emissions in ozone nonattainment areas is dependant on the severity of the nonattainment classification. Portable sources that have potential emissions of NO<sub>x</sub> and VOC that are greater than 25 tons per year currently must obtain a construction permit prior to relocation into a ozone nonattainment area. This threshold was established at a time when the nonattainment classification in Southeast Wisconsin was severe. The rule is being amended to clarify that portable sources that would be considered major sources are required to obtain a construction permit prior to relocation in a nonattainment area. This change makes the rule consistent with the nonattainment classification that is in effect at the time relocation occurs.

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

Changes in ch. NR 439 stack testing requirements are being proposed for combustion sources (boilers) that are regulated under the national emission standards for hazardous air pollutants (MACT) for industrial, commercial and institutional boilers and process heaters in ch. NR 462. Currently these sources are required to test every two years. The MACT standard requires testing that demonstrates compliance once a year for three years, and then once every three years after that. The proposed change adopts the federal requirements for when testing is required for these types of sources.

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

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

### **Comparison with Rules in Adjacent States**

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

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

### **Summary of Factual Data and Analytical Methodologies**

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

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

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

### **Effect on Small Business**

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

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

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

### **Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings or by regular mail, fax or email to:

Joseph G. Brehm  
Department of Natural Resources  
Bureau of Air Management  
PO Box 7921  
Madison WI 53707  
Fax: (608) 267-0560  
Joseph.Brehm@wisconsin.gov

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

A hearing date and comment submission deadline are yet to be determined.

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

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

NR 400.02(162)(a)49. 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (C<sub>2</sub>F<sub>5</sub>CF(OCH<sub>3</sub>)CF(CF<sub>3</sub>)<sub>2</sub> or HFE-7300).

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

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

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

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

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

NR 406.15(3)(a) ~~The source~~ source's ~~has the potential to emit is less than 25 tons per year of VOC and less than 25 tons per year of NO<sub>x</sub>~~ the major source thresholds for both VOCs and NO<sub>x</sub> contained in s. NR 408.02(21).

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. NR 439.075(3)(b) and (c) are amended to read:

(b) ~~Unless~~ Except as provided under par. (d), and unless otherwise required by statute, rule or permit condition, the owner or operator of a direct stationary source which has received an operation permit shall perform the compliance emission tests required under sub. (2) every 24 months as long as the permit remains valid. Each biennial test shall be performed within 90 days of the anniversary date of the issuance of the permit or within 90 days of an alternate date specified by the department.

(c) ~~The~~ Except as provided under par. (d), the owner or operator of a direct stationary source which has received an elective operation permit under s. 285.60(2)(b), Stats., shall perform the compliance emission tests required under sub. (2) every 24 months as long as the permit remains valid. Each biennial test shall be performed within 90 days of the anniversary date of the issuance of the permit or within 90 days of an alternate date specified by the department.

SECTION 13. NR 439.075(3)(d) is created to read:

NR 439.075(3)(d) Any owner or operator that performs nonfugitive particulate matter compliance testing under s. NR 462.05(2), is exempt from the testing schedules in pars. (b) and (c).

SECTION 14. 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 15. 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 \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)