



## WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

*Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.*

### DOCUMENT ID

AM-19-0010

### DOCUMENT TITLE

Guidance for Handling Plans in Permits

### PROGRAM/BUREAU

Air Management

### STATUTORY AUTHORITY OR LEGAL CITATION

Section NR 407.05 and Section NR 407.09, Wisconsin Administrative Code

### DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

September 9, 2019

### DATE FINALIZED

October 14, 2019

No Comments were received during the comment period 09SEP2019 to 30SEP2019

### DNR CERTIFICATION

*I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.*

October 9, 2019

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Signature

Date

## DNR GUIDANCE DISCLAIMER

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

DATE: September 28, 2010

TO: Air Management Permit Team  
Air Management Compliance Team  
Marney Hoefler, LS/5  
Michael Scott, LS/5  
Tom Steidl, LS/5

FROM: Andrew Stewart, AM/7

SUBJECT: Guidance on Handling Plans in Permits

Attached is the finalized guidance for handling plans in permits. The guidance should be implemented immediately for all operating permits that have not gone to public comment, for all new construction permit applications received, and for construction permits already under review as is reasonable.

## BACKGROUND

EPA has granted petitions, and Wisconsin DNR has received public comments regarding Title V permits that reference various plans as part of compliance demonstration methods and emission limit exemptions<sup>1</sup>. Citing federal regulations, EPA and the public contend that:

1. Title V permits must include all applicable requirements and all requirements necessary to assure compliance with those applicable requirements including each plan used and/or relied upon to demonstrate compliance with any applicable requirement or compliance demonstration method included in the permit,
2. Title V permit applications must include all information including the plans that the department used to determine applicable requirements, and methods to demonstrate compliance with those applicable requirements, and
3. The public must have an opportunity to review the information in 2., so the public can determine whether that information is sufficient to ensure compliance with all applicable requirements.

Similar to the cited federal regulations, ss. NR 407.05(4) and 407.09, Wis. Adm. Code identify the information that must be in Title V permit applications and permits, respectively. Specifically, Title V permit applications must include all applicable requirements, and a description of all methods used or to be used to demonstrate compliance with those applicable requirements.

## PROPOSAL

To ensure that

- all permits<sup>2</sup> include all applicable limitations and requirements and compliance demonstration methods,
- all permit applications include all methods used or to be used to demonstrate compliance with those applicable emission limitations and requirements, and
- the need for permit revisions is minimized; and
- permits do not contain extraneous language not directly needed to demonstrate compliance with a specific emission limitation (e.g. - spare parts lists in MPAP, etc.).

we propose the following:

A given plan and/or other “off-permit” information (e.g. – manufacturers specifications, compliance demonstration methods based on department approvals, etc.) that is either relied upon in some way and/or referenced in Part I of a permit shall be handled according to one of three approaches. Please note that Approach 3. should be used only when necessary:

### Approach 1

- Include key elements of the plan and other “off-permit” information as applicable requirements, compliance demonstration, and/or monitoring requirements in the permit.

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<sup>1</sup> Examples include malfunction prevention and abatement plans (MPAP), startup and shutdown plans (SSP), and quality assurance/quality control plans (QA/QC).

<sup>2</sup> As proposed, the scope of this guidance will not be limited to Title V permits, but will affect all permits [including construction permits, federally-enforceable state operating permits (FESOPs), state operating permits (SOPs)].

- Ensure that the permit language does not reference any part of the plan and other “off-permit” information as applicable requirements, compliance demonstration methods, and/or monitoring requirements. Instead, pull out key elements of the plan and other “off-permit” information that can be used as applicable requirements, compliance demonstration methods, and/or monitoring requirements and include those in the permit. If necessary, the permit may include language that allows the Department to approve alternatives to specific compliance demonstration methods and monitoring requirements in the permit. When using Approach 1, requirements to have plan(s) should be handled as noted in Approach 2.
- Ensure that the permit language does not include references to any plan and/or other “off-permit” information that allow emissions that exceed the limits in the permit. Instead, such alternative emission limits should be evaluated as part of the permit review and included in the permit.

It is recommended that this approach be used for Fugitive Dust Control Plans, continuous emissions monitor (CEM) QA/QC Plans, Malfunction Prevention and Abatement Plans (MPAP), Outdoor Fugitive Coal Dust Control Plans, other plans, and other “off-permit” information that may allow the use of key elements as applicable requirements, compliance demonstration methods, and/or monitoring requirements without using the entire plan.

Note that under this Approach the plan(s) or other “off-permit” documents used to determine applicable requirements, compliance demonstration methods, and/or monitoring requirements would need to be submitted with the permit application or exist in the file as previously submitted so that the permit reviewer and compliance engineer could identify key elements. The key elements placed in the permit will need to be reviewed and approved by the compliance inspector as part of the internal peer review process before the public comment period. It would not be necessary to do a full plan approval of every plan under Approach 1.

Here are a few examples of permit language that includes key elements of the plan and/or other “off-permit” information. (The examples are not meant to be taken as the way a condition must be written. Instead, each example is one potential way to write the condition while not relying on plan(s) or other off-permit” information as compliance demonstration methods. There may be multiple acceptable ways that a permit condition could be written while not relying on plan(s) or other ”off-permit” information to demonstrate compliance.) :

Example A: The normal operating pressure drop range for the baghouse and the frequency for internal inspection of the baghouse are the key elements taken out of the MPAP and placed in the Table for the emission unit the baghouse is controlling and are used as compliance demonstration methods. The MPAP is not included/referenced in the compliance demonstration section or monitoring requirement section of the Table. (The conditions in bold below are the key elements from the plan.)

Pollutant	a. Limitations	b. Compliance Demonstration	c. REFERENCE TEST METHODS, RECORDKEEPING AND MONITORING REQUIREMENTS
1. Particulate matter emissions	(1) 2.31 pounds per hour [ss. NR 415.05(1)(m),NR 404.08(2) and 285.65(3), Stats.]	(1) The baghouse shall be in operation at all times when P44 is operating. [s. NR 407.09(4)(a), Wis. Adm. Code]  <b>(2) The pressure drop across the baghouse shall be maintained between</b>	(1) <u>Reference Test Method for Particulate Matter Emissions</u> : Whenever compliance emission testing is required, US EPA Method 5, 5A, 5B, 5D, 5E,

		<p><b>0.5 - 14.0 inches of water gauge.</b> [ss. NR 407.09 (1)(a) and NR 439.11(4), Wis. Adm. Code.]</p> <p><b>(3) The permittee shall perform an internal inspection of the baghouse once every calendar year to ensure that the control equipment is operating properly. The time interval between inspections may not be closer than 6 months. These inspections shall include, but not be limited to inspections and maintenance/ repair (as necessary) of:</b></p> <p><b>(a) valves, hatches, dampers, and gaskets for signs of air infiltration; and</b></p> <p><b>(b) bag condition, tension, and signs of clean side dust deposits.</b></p> <p>[s. NR 407.09(4)(a)1., Wis. Adm. Code]</p>	<p>5F, 5G, 5H or 17 including backhalf (Method 202) shall be used to demonstrate compliance. [s. NR 439.06(1), Wis. Adm. Code]</p> <p>(2) The permittee shall record the pressure drop across the baghouse once every 8 hours of operation or once per day the source is operated whichever yields the greater number of measurements. [ss. NR 439.055(2) (b)1. and NR 407.09(4)(a), Wis. Adm. Code.]</p> <p><b>(3) The permittee shall keep records of:</b></p> <p><b>(a) the date, time, and initials of the person performing the inspections required by condition 1.b.(3);</b></p> <p><b>(b) a list of the items inspected; and</b></p> <p><b>(c) any maintenance or repairs performed as a result of these inspections.</b></p> <p>[ss. NR 439.04(1)(d) and NR 407.09(4)(a), Wis. Adm. Code]</p>
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Note that using language such as “Whenever the pressure drop across the baghouse is equal to or less than 0.5 inches of water column or equal to or greater than 14.0 inches of water column, the permittee shall take appropriate investigative and corrective actions in accordance with the *Malfunction Prevention and Abatement Plan* required for this process” or “The pressure drop across the baghouse shall be maintained within the normal operating range as specified in the *Malfunction and Abatement Plan*” as one of the compliance demonstration methods is not allowed in this approach. See Approach 3. for this type of situation.

Example B: The requirement to apply water borne chemical surfactant to the coal unloaded onto a conveyor is taken out of the Fugitive Dust Control Plan along with the requirement to inspect the application system for leaks and placed in the permit as the compliance demonstration requirements. The Fugitive Dust Control Plan is not included/referenced in the compliance demonstration section or monitoring requirement section of the Table. (The conditions in bold below are the key elements taken from the plan.)

# Guidance for Handling Plans in Permits

September 28, 2010

Pollutant	a. Limitations	b. Compliance Demonstration	c. REFERENCE TEST METHODS, RECORDKEEPING AND MONITORING REQUIREMENTS
1. Fugitive Dust Emissions	(1) No person may cause, allow or permit any material to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne. [ss. NR 407.09(2)(d), NR 415.03 and NR 415.04(1), Wis. Adm. Code]	<p>(1) <b>The permittee shall add water which contains chemical surfactant, humectant, and binder (Benetech BT-425 or equivalent) to the coal and petroleum coke as it is being unloaded onto Conveyor #1 at all times that P31 operates. The permittee shall add the chemical surfactant, humectant, and binder at the concentration and rate of application specified by the manufacturer.</b> <sup>1</sup> [s. 285.65(3), Wis. Stats.]</p> <p>(2) <b>The permittee shall inspect Control Device C02 weekly for leaks. Inspections are not required during weeks when P31 is not in operation.</b> [s. 285.65(3), Wis. Stats.]</p>	<p><b>The permittee shall keep and maintain the following on site:</b></p> <p>(a) <b>Records of all inspections, checks and any maintenance or repairs performed on the particulate matter control device, containing the date of the action, initials of inspector, and the results.</b></p> <p>(b) <b>The water application rate, via Control Device C02, in gallons per minute.</b></p> <p>(c) <b>The chemical surfactant, humectant, and binder (Benetech BT-425 or equivalent) application rate via Control Device C02, in gallons per minute.</b></p> <p>(f) <b>Manufacturer's specifications which include the manufacturer's recommended concentration and application rate for Benetech BT-425 and each chemical surfactant, humectant, and binder that is equivalent to Benetech BT-425</b></p>

			[s. NR 439.04(1)(d), Wis. Adm. Code]
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<sup>1</sup> **The chemical surfactant, humectant, and binder in use at the time of permit issuance is Benetech BT-425. The manufacturer’s recommended application rate is 0.0175 gal/ton coal for December through March and 0.01 gal/ton coal April through November of Benetech BT-425 having a density between 9.105 and 9.113 lb per gallon.**

Note that using language such as “The permittee shall add the chemical surfactant, humectant, and binder at the concentration and rate of application specified in the *Fugitive Dust Control Plan*” would then make the *Fugitive Dust Control Plan* the compliance demonstration method which is not allowed in this approach. See Approach 3. for this type of situation.

EXAMPLE C: The data capture/record frequency is taken from the QA/QC plan and included as a compliance demonstration method. (The conditions in bold below are the key elements taken from the plan.)

Pollutant	a. Limitations	b. Compliance Demonstration	c. REFERENCE TEST METHODS, RECORDKEEPING AND MONITORING REQUIREMENTS
Carbon Monoxide	(1) 500 ppmv (dry basis)	<p>(1) The permittee shall operate and maintain a continuous emission monitor (CEM) for carbon monoxide which complies with all the provisions and requirements in Performance Specification 3 in 40 CFR Part 60, Appendix B operate and maintain a continuous emission monitor (CEM) for carbon monoxide which complies with all the provisions and requirements in Performance Specification 4 in 40 CFR Part 60, Appendix B. [s. NR 439.09(3)&amp;(4), Wis. Adm. Code and s. 285.65(2), Stats.]</p> <p>(2) <b>The carbon monoxide CEM shall complete one cycle of sampling, analyzing and data recording for each successive 15-minute period. The values recorded shall be averaged hourly. Hourly averages shall be computed from 4 data points equally spaced over each one hour period, except during periods when calibration, quality assurance or maintenance activities are being performed.</b></p>	<p>(1) <u>Reference Test Method for Carbon Monoxide Emissions</u>: Whenever compliance emission testing is required, US EPA Method 10, 10A, 10B shall be used to demonstrate compliance. [s. NR 439.06(4), Wis. Adm. Code]</p> <p>(2) The owner or operator of a continuous emissions monitoring system shall submit quarterly excess emission reports to the Department within 30 days following the end of each calendar quarter in accordance with the requirements of s. NR 439.09(10). [s. NR 439.09(10), Wis. Adm. Code]</p> <p>(3) The permittee shall submit a full excess emission report, as defined below, unless the Department approves, in writing, the submittal of a summary of excess emission report on a Department approved form. Full excess emission reports shall consist, at a minimum, of the following elements:</p> <p>(a) The date and starting and ending times or duration of</p>

		<p><b>During these periods, a valid hour shall consist of at least 2 data points separated by a minimum of 15 minutes.</b> [ss. 285.65(7), Stats. and NR 439.09(9)(b), Wis. Adm. Code]</p> <p>(3) An excess emission is defined as any hour in which the carbon monoxide emission rate is above that established in this permit. [ss. 285.65(2)&amp;(7), Stats. and s. NR 439.09(10)(b), Wis. Adm. Code]</p>	<p>each period of excess emissions and the magnitude of the emissions</p> <p>(b) The periods of excess emissions that occur during startups, shutdowns, control equipment malfunction, process malfunction, fuel problems, other known causes or for unknown causes. The report shall identify the cause of any malfunction and the measures taken to reduce excess emissions.</p> <p>(c) The date and starting and ending time of any period during which the monitoring system was inoperative for any reason or causes, including monitor malfunction or calibration, except for zero and span checks. The report shall identify the repairs and adjustments made to the system.</p> <p>(d) The date and starting and ending time of any period during which the process being monitored was inoperative.</p> <p>(e) When no period of excess emissions occurred during the quarter and the monitoring system had no period of downtime, an excess emissions report shall be filed stating such information.</p> <p>[ss. NR 439.09(10)(a) &amp; (d), Wis. Adm. Code]</p>
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Note that using language such as “The permittee shall comply with the quality control and quality assurance plan for the CO CEM submitted to and approved, in writing, by the Department” as one of the compliance demonstration methods is not allowed in this approach. See Approach 3. for this type of situation.

Example D: The boiler startup procedure used to ensure that the 20% opacity limitation is met during startup conditions is taken out of the Startup Shutdown Plan (SSP). The SSP is not included/referenced in the compliance demonstration section or monitoring requirement section of the Table. (The conditions in bold below are the key elements taken from the plan.)

Pollutant	a. Limitations	b. Compliance Demonstration	c. REFERENCE TEST METHODS, RECORDKEEPING AND MONITORING REQUIREMENTS
2. Visible Emissions	(1) Opacity may not exceed 40% or number 2 on the Ringlemann chart. [s. NR 431.04(1), Wis. Adm. Code]	<p>(1) The permittee shall post a copy of the coal fire startup sequence outlined in condition I.A.2.b.(3) on the wall in the boiler operator's room so that it is clearly visible to the boiler operator(s). [s. NR 407.09(4)(a)3.b., Wis. Adm. Code]</p> <p>(2) The permittee shall install, calibrate, maintain, and operate a continuous emission monitoring system for the measurement of opacity in accordance with the performance specifications in Performance Specification 1 in 40 C.F.R. Part 60, Appendix B. [ss. 285.65(2), Wis. Stats. and NR 407.09(4)(a)1., &amp; 439.09(1), Wis. Adm. Code]</p> <p><b>(3) The coal fire startup sequence shall include the following steps to minimize visible emissions:</b></p> <p><b>(a) Coal ash, fire brick or other non-combustible material shall be placed on the boiler grate surface to prevent overfeeding of coal during the initial introduction of coal to the boiler.</b></p> <p><b>(b) The coal boiler to be brought on line shall have been operated on natural gas fuel so that the combustion chamber is heated to its operating condition and the boiler is operating at normal</b></p>	<p>(1) <u>Reference Test Method for Visible Emissions:</u> Whenever visible emission testing is required by the Department, the permittee shall use U.S. EPA Method 9. [s. NR 439.06(9)(a)1., Wis. Adm. Code]</p> <p>(2) The continuous monitoring system required by condition I.A.2.b.(2) shall complete one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period. [s. NR 439.09(9)(a), Wis. Adm. Code]</p> <p>(3) Unless otherwise specified by the Department, periods of excess visible emissions shall be any 6-minute period during which the average opacity exceeds the limitation in condition I.A.2.a.(1). [s. NR 439.09(10)(b)1., Wis. Adm. Code]</p> <p>(4) The permittee shall submit quarterly excess emission reports to the Department within 30 days following the end of each calendar quarter in accordance with pars. s. NR 439.09(1)(a) to (d). [ss. 285.65(2), Wis. Stats. and NR 439.09(10), Wis. Adm. Code]</p>

		<p><b>plant steam pressure of 125 PSIG.</b></p> <p><b>(c) The boiler operator shall check that good quality coal<sup>1</sup> is transferred to the coal hopper for introduction into the boiler.</b></p> <p><b>(d) Prior to introducing coal into the combustion chamber, the boiler operator shall manually control the gas burner to a decreased firing rate and allow the boiler steam pressure to decrease to approximately 70 to 75% of the normal operating pressure. At this time, coal shall be introduced into the boiler. As the coal begins to ignite, the gas burner shall be operated over the coal to aid in the combustion of carbon given off by the coal fire.</b></p> <p><b>(e) As the coal fire stabilizes and boiler pressure approaches operating pressure, the use of the gas burner shall be reduced and the burner taken off line.</b></p> <p><b>[ss. 285.65(2), Wis. Stats. and NR 407.09(1)(a), Wis. Adm. Code]</b></p>	<p>(5) The excess emission reports required by condition I.A.2.c.(5) shall contain the information identified by condition I.F.8.b.(1)(c). [ss. 285.65(2), Wis. Stats. and NR 439.09(10)(a), Wis. Adm. Code]</p>
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<sup>1</sup>Good quality coal for this purpose means coal not heavily mixed with snow or other moisture, dirt, or other impurities that would affect combustion.

Note that using language such as “The permittee shall implement the procedures in their startup shutdown plan to minimize visible emissions during boiler startup and shutdown periods” as one of the compliance demonstration methods is not allowed in this approach. See Approach 3. for this type of situation.

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## Approach 2:

Requirement to have a plan and other “off-permit” information included in table ZZZ. This approach is used in combination with Approach 1 when the need for a plan to be submitted is a requirement by itself and not specifically a compliance demonstration requirement for an emission limitation in the permit. One of the following methods should be used for plan submittal requirements: (a) plan to be submitted within 10 days of request by Department; or (b) plan to be submitted within 30 days of permit issuance. If plan approval is required by code (for example, the QA/QC plan is required to be approved by the Department) or desired by permit writer/compliance engineer, then that is noted as “submitted for Department approval within” in the permit language. The plan is not included as a part of the permit. Examples below only show the requirement for the submittal and not all the requirements/conditions that may go with the plan.

ZZZ. CONDITIONS APPLICABLE TO THE ENTIRE FACILITY		
Condition Type	a. Conditions	b. Compliance Demonstration
Malfunction Prevention and Abatement Plan		(1) The permittee shall submit the XXXX plan to the Wisconsin Department of Natural Resources, XXXX Region Air Program, XXXX Area Office, XXXX, WI XXXXX, for review within 10 days of Department request. The Department may amend the plan if deemed necessary for XXXX. [ss. NR 407.09(2)(d), and NR 439.11(2), Wis. Adm. Code]
OR		
QA/QC Plan		
OR		OR
Fugitive Dust Control Plan		(1) The permittee shall submit the XXXX plan to the Wisconsin Department of Natural Resources, XXXX Region Air Program, XXXX Area Office, XXXX, XXXX, WI XXXXX, for review within 30 days of permit issuance. The Department may amend the plan if deemed necessary for XXXX. [ss. NR 407.09(2)(d), and NR 439.11(2), Wis. Adm. Code]
OR		
Fugitive Coal Dust Control Plan		
OR		OR
Other plans required for the specific facility		(1) The permittee shall submit the XXXX plan to the Wisconsin Department of Natural Resources, XXXX Region Air Program, XXXX Area Office, XXXX, Superior, WI 54880, for review and approval within 30 days of permit issuance. The Department may amend the plan if deemed necessary for malfunction prevention or for reduction of excess emission during malfunctions. [ss. NR 407.09(2)(d), and NR 439.11(2), Wis. Adm. Code]

## **Approach 3:**

Include the entire plan and/or other “off-permit” information (for example, boiler manufacturer start-up procedures, etc.) as part of the permit, and make that plan and/or other “off-permit” information available during the public comment period for the draft permit.

The overall question that should be asked when drafting a permit is whether all information is contained in the permit for determining applicable requirements, compliance demonstration methods, and/or monitoring requirements; or would someone have to look for an additional piece of paper. If someone has to look for an additional piece of paper to determine compliance, then the additional information from that piece of paper should be specifically added to the permit. Therefore, if the permit language relies on a plan and/or other “off-permit” information to define applicable requirements and/or demonstrate compliance with emission limitations or requirements, and/or determine the monitoring requirements, then that plan must be included in the application and made available during the public comment period for review as part of the draft permit. The plan and/or other “off-permit” information will need to be reviewed by the compliance inspector as part of the internal peer review process before the public comment period. The proposed plan and/or other “off-permit” information, like any other part of the draft permit, is open for public comment and subject to revision as appropriate to respond to comments received. The plan itself will be included in the final permit as a separate part (e.g. – Part III or Part IV, etc.) The final action of issuing the permit also serves as department approval of the proposed plan.

For a given plan or other “off-permit” information, this approach is recommended only when necessary. Situations where this approach may be appropriate include:

- (a) the plan or other “off-permit” information is required within a previous construction permit, and removing that requirement requires a new construction permit or construction permit revision that the permittee does not wish to pursue;
- (b) requested by the permittee; or,
- (c) other compliance demonstration methods are inadequate without the full plan or other “off-permit” information being in the permit.

Here are examples of permit language that relies on a plan to demonstrate compliance.

Example A: “The permittee shall perform inspections of the electrostatic precipitator in accordance with an approved malfunction prevention and abatement plan to ensure that the control equipment is operating properly.”

Example B: “The permittee shall maintain the pressure drop across Control Device C01 within the normal range specified in the malfunction prevention and abatement plan.”

Please note that permits may not include conditions that allow a source to exceed permit limits by virtue of following a plan. Instead, startups, shutdowns, and other alternative operating scenarios are required to be part of the permit review to ensure that all permitted scenarios will:

- Meet all applicable emission limits and requirements, and
- Not circumvent construction permit requirements.

Here are some examples of permit conditions that could allow a facility to exceed permit limits and therefore may not be used as applicable requirements in a permit.

Example A: “Emissions in excess of the emission limitations set forth in this permit may be allowed if the emissions are temporary and due to startup or shutdown of operations carried out in accord with a plan and schedule approved by the Department.”

Example B: “Opacity may not exceed 20% except during periods of startup or shutdown as defined in the startup and shutdown plan.”

Note, exceptions under NR 436.03, Wis. Adm. Code are case-by-case determinations that cannot be made in advance as part of permit review and issuance. Therefore s. NR 436.03, Wis. Adm. Code may not be used in the permit as a code citation to allow exceedances of applicable emission limitations. Section NR 436.03, Wis. Adm. Code is already in Part II of any given air permit. Not including s. NR 436 language in Part I of the permit does not preclude the Air Management Program from granting that exception on a case-by-case basis as covered in Air Management Guidance documents for approving NR 436.03 exceptions.