Exclusion from Commence Construction  
s. NR 406.04(1e)

Goal of proposed rule revisions:
- Streamline process for receiving approval for undertaking site preparation activities prior to receiving a construction permit
- Obtain SIP approval for rule revision so that the exclusion is federally enforceable
- Align state and federal definitions of commence construction

List of activities currently excluded from the definition of commence construction:
(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.

Please review the two options for revising rule language below and be prepared to provide your feedback. Here are some questions to consider.

1. What are the environmental concerns with undertaking each of the activities prior to receiving a permit?

2. What are the business costs of undertaking each of the activities?

3. What are the potential business costs of delaying each of the activities until permit issuance?

4. Which activities pose the greatest financial risk to the business should the project not be approvable or require significant change in order to receive permit approval?

5. How would a change in the scope of a project be handled under the options? e.g. amendments to the project that make the application major?

6. What are your experiences with the construction waiver in s. NR 406.03(2)?
OPTION 1 – Because undertaking any of the activities listed in (a), (b), (c), or (j) constitute commencing construction under the Federal PSD Program, the proposed changes would assure that only projects that are minor prior to receiving the permit use the exclusion from commence construction.

(1e) EXCLUSIONS. Notwithstanding the definitions of “commence construction” and “commence modification” in s. NR 400.02 (44) and (45) respectively, sources that have submitted a complete construction permit application 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, may, upon written notification that the application is complete and qualifies for the exclusion, exclude 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 s. 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.
OPTION 2 – Proposed changes align state and federal definition of commence construction. There is no need to assure that only projects reviewed under ch. NR 406 use the exclusion because the listed activities do not constitute commencing construction under current PSD rules.

(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 ch. 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 temporary 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 s. 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.