

Chapter NR 406 CONSTRUCTION PERMITS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1996, No. 492.

NR 406.01—Applicability; purpose. (1) APPLICABILITY. This chapter applies to all air contaminant sources, except indirect sources, which may be required under s. 285.60, Stats., to obtain construction permits. In accordance with s. 285.60 (6), Stats., this chapter exempts sources of certain sizes and types from the requirement to obtain a permit. For nonattainment area major sources the construction permit requirements of ch. NR 408 apply in addition to the requirements of this chapter.

Note: Construction permit application requirements for indirect sources are contained in ch. NR 411.

(2) PURPOSE. This chapter is adopted under ss. 285.11, 285.60 (6), 285.63, 285.65 and 285.66, Stats., to exempt types of stationary sources from the requirement to obtain a construction permit and to establish permit and permit review requirements and permit duration for construction permits.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; am. Register, April, 1988, No. 388, eff. 5-1-88; emerg. am. (1), eff. 11-15-92; am., Register, May, 1993, No. 449, eff. 6-1-93; am. (1), Register, June, 1995, No. 474, eff. 7-1-95.

NR 406.02—Definitions. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

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

(1m) “Facility” means all stationary sources emitting air contaminants which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control. Emissions resulting from loading, unloading or stockpiling materials to or from vessels or vehicles while at a facility shall be considered as part of the facility’s emissions. Air contaminant sources, other than transportation related activities, shall be considered as part of the same industrial grouping if they are classified under the same 2-digit major group as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in s. NR 484.05 (1).

(2) “Individual construction permit” means a construction permit which is not a general construction permit issued under s. NR 406.16 or a registration construction permit issued under s. NR 406.17.

(3) “Initial crusher” means, at a nonmetallic mineral processing plant, any crusher into which nonmetallic minerals can be fed without prior crushing in that plant.

(4) “Initial grinding mill” means, at a nonmetallic mineral processing plant, any grinding mill into which nonmetallic minerals can be fed without prior crushing in that plant.

(5) “Municipal garbage and refuse” means garbage and refuse, as those terms are defined in ch. NR 500, which are primar-

ily generated by residential activities but which may include minor amounts of commercial and industrial garbage and refuse that are in the total waste stream and are not hazardous. Municipal garbage and refuse does not include sludge which is generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility.

(6) “Permit revision” means any change to a construction permit to reflect a change at a source that is not a modification of the source.

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

History: Cr. (intro.), renum from NR 154.01, Register, September, 1986, No. 369, eff. 10-1-86; r. (1), r. and rec. (2), renum. (3) to (7) and (9) to be NR 400.02 (47m), (43m), NR 406.02 (1), NR 400.02 (46s), NR 406.02 (6) and (10), cr. (3) to (5), (7), (9) and (11), (12) renum. from NR 400.02 (98) and am., Register, April, 1988, No. 388, eff. 5-1-88; correction in (6) made under s. 13.93 (2m) (6) 7., Stats., Register, April, 1988, No. 388; (1) renum. from NR 400.02 (16), renum. (1) to be (1m), am. (3), Register, August, 1991, No. 428, eff. 9-1-91; emerg. cr. (2m) and (13), eff. 11-15-92; am. (intro.), Register, May, 1993, No. 449, eff. 6-1-93; cr. (10m), Register, December, 1993, No. 456, eff. 1-1-94; r. (1) to (5), (7) to (10), (11) and (12), Register, June, 1995, No. 474, eff. 7-1-95; renum. (6) and (10m) to be (1) and (2), Register, December, 1996, No. 492, eff. 1-1-97; renum. (1) and (2) to be (3) and (4), cr. (1) and (2), Register, December, 1997, No. 504, eff. 1-1-98; CR 04-107; renum. (1) to (4) to be (3) to (6), cr. (1) and (2) Register August 2005 No. 596, eff. 9-1-05; CR 06-047; renum. (1) to be (1m), cr. (1) Register May 2007 No. 617, eff. 6-1-07; CR 09-020; am. (1), cr. (7) Register January 2010 No. 649, eff. 2-1-10.

NR 406.03—Permit requirements and exemptions for construction permits. (1) PERMIT REQUIREMENT. Except as provided in sub. (2), no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 285.60 (5), Stats., or under this chapter.

(1m) APPLICATION AND FORMS. (a) Applications for construction permits shall be made on forms supplied by the department for these purposes and supplemented with other materials as indicated on the forms. The forms may be supplied by the department in an electronic format, such as on a computer disk, or on line, if so requested by the applicant.

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

(b) Application materials, including construction permit waiver requests, may be submitted on paper or in an electronic format. The applicant shall submit 2 copies of all forms and other required materials, as indicated on the forms, which are submitted on paper. The applicant shall submit one copy of all forms and other required materials, as indicated on the forms, which are submitted in an electronic format. These materials shall be submitted to the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: Construction permits.

(2) WAIVER OF CONSTRUCTION PERMIT REQUIREMENTS. (a) A person who is required to obtain a construction permit under s.

under any of the federal regulations implementing the Act or under the state implementation plan.

History: CR 04-106; cr. Register November 2005 No. 599, eff. 12-1-05.

NR 406.08 Action on permit applications. (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 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.

(2) (a) The department shall make a determination under s. 285.61 (8), Stats., on a permit application within 205 business days of receipt of a complete application for construction or modification of a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21), unless compliance with s. 1.11, Stats., requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11, Stats., within one year.

(b) The department shall make a determination under s. 285.61 (8), Stats., on a permit application within 145 business days of receipt of a complete application for construction or modification of any stationary source not described in par. (a), unless compliance with s. 1.11, Stats., requires a longer time.

(3) If the department does not make a determination within the applicable time period specified in sub. (2), the department may not impose an application fee for the permit under s. NR 410.03, and shall refund any application fee submitted with the application.

(4) (a) The Forest County Potawatomi Community shall have the opportunity to review best available control technology (BACT) or maximum achievable control technology (MACT) determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m).

2. Wholly or partially locating or located within 62 miles of the FCPC Class I area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the Forest County Potawatomi Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act on a permit application according to time period requirements under ss. 285.61 and 285.62, Stats.

Note: The geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area.

The Department has determined that any source wholly located outside of a circle with a radius of 74.25 miles from the geographic center of the FCPC Class I area is not within 62 miles of the FCPC Class I area. The 74.25-mile radius was determined by adding 62 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. It is the Department's intent that this circle be used as a screening tool for determining applicability of this subsection, and evidence that a source is wholly outside of this circle will be accepted as proof that the source is not within 62 miles of the FCPC Class I area.

The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. Dispute resolution follows a process agreed to by the Department and the Forest County Potawatomi Community pursuant to the Final Agreement.

The Final Agreement and a map showing the approximate 22.25-mile and 74.25-mile radii are available from the Department upon request, or may be found on the Department's web site.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. from NR 408.025, eff. 11-15-92; renum. from NR 408.025, Register, May, 1993, No. 449, eff. 6-1-93; r. and recr., Register, August, 2000, No. 536, eff. 9-1-00; CR 10-048; cr. (4) Register November 2010 No. 659, eff. 12-1-10.

NR 406.09 Air quality analysis. The air quality impact of a proposed stationary source will be determined at such locations where members of the public might reasonably be exposed for time periods consistent with the ambient air quality standards for the pollutants for which analysis is carried out.

History: Renum. from NR 154.05 (8) and am. Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. from NR 408.03, eff. 11-15-92; renum. from NR 408.03, Register, May, 1993, No. 449, eff. 6-1-93.

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 or modification of a stationary source without applying for and receiving a permit as required under this chapter or ch. NR 408 shall be considered in violation of s. 285.60, Stats.

History: Renum. from s. NR 154.05 (1) and am. Register, September, 1986, No. 369, eff. 10-1-86; emerg. renum. from NR 408.04 and am., eff. 11-15-92; renum. from NR 408.04 and am., Register, May, 1993, No. 449, eff. 6-1-93.

NR 406.11 Construction permit revision, suspension and revocation. (1) 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., 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:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or ambient air increment or which causes air pollution.

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation or a deliberate failure to disclose fully all relevant, significant facts when obtaining the permit.

(c) *Department determination.* A determination by the department that the permit must be revised or coverage withdrawn to assure compliance with the applicable requirements.

(d) *Request.* A request by the permit holder to revise, suspend or revoke the permit.

(e) *Failure to pay fees.* An intentional failure by the permit holder to pay in full the fees required under ch. NR 410, except the department may not suspend or revoke the permit for failure to pay fees while those fees are being disputed under s. NR 410.04 (6).

(f) *Failure to file annual emission inventory reports.* An intentional failure by the permit holder to file annual emission inventory reports required under ch. NR 438.

(g) *Cause or exacerbate.* 1. A determination by the department that the emissions unit or units covered under a general or registration construction permit cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment. The determination shall be made through an air quality assessment using the following procedures, as appropriate, which may be conducted after the determination that the source was covered under the general or registration construction permit.

a. For general construction permits, the department shall use criteria, methodologies or modeling consistent with criteria, methodologies or modeling used for any air quality analysis conducted under s. NR 406.16 (1) (e).

b. For registration construction permits, the department shall use either an air dispersion model using maximum actual emissions on an annual or hourly basis or criteria, methodologies or modeling consistent with criteria, methodologies or modeling