

## 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 406.03 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. Applications for the construction permit shall be submitted on forms which are available from the department at its Madison headquarters and regional offices.

**(2) WAIVER OF CONSTRUCTION PERMIT REQUIREMENTS.** (a) A person who is required to obtain a construction permit under s. 285.60, Stats., may request a waiver from the department in order to commence construction, reconstruction, replacement, relocation or modification of an air pollution source prior to the department issuing a construction permit to the source under this chapter. A waiver request shall be made in writing and shall include an explanation of the circumstances that justify the request and when those circumstances arose or may be anticipated to arise. The waiver request shall be signed by a responsible official for the facility.

(b) The department may grant a waiver provided that all of the following conditions are satisfied:

1. The person has submitted a complete construction permit application for the source to the department.

2. The person has submitted a complete waiver request to the department which demonstrates that undue hardship will be caused if a waiver is not granted. Undue hardship may result from any of the following:

a. Adverse weather conditions.

b. Catastrophic damage of existing equipment.

c. A substantial economic or financial hardship that may preclude the project in its entirety.

d. Other unique conditions.

3. The person has paid the waiver review fee required under s. NR 410.03 (1) (bm).

(c) The department shall act on the waiver request within 15 days of receipt of a complete request and respond to the applicant either approving or denying that request.

(d) The source may commence construction, reconstruction, replacement, relocation or modification when a waiver is granted.

**Note:** A waiver does not relieve the applicant from the obligation to comply with any other applicable regulations or requirements. If the applicant proceeds with construction after a waiver is granted, they do so at the applicant's own risk. Granting the waiver does not obligate the department to approve the air permit application for the source.

(e) The source referenced in par. (b) 1. may not be initially operated until a construction permit is issued.

(f) The department may not grant a waiver for a source that requires a permit under ch. NR 405 or 408 or requires a permit to establish enforceable limitations on potential to emit to avoid permit requirements of ch. NR 405 or 408.

(g) The department may not grant a waiver to a source located or to be located within 10 kilometers of a Class I area under this subsection.

(h) The department may rescind a waiver granted under this subsection if the owner or operator does not diligently respond to department inquiries on the construction permit application or if the department preliminarily determines that the source will not meet the criteria for permit approval under s. 285.63 (1), Stats.

**Note:** The address of the Madison headquarters is: Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707, Attention: Permit Application Forms

**History:** Renum. from NR 154.04 (1), Register, September, 1986, No. 369, eff. 10-1-86; emerg. am. eff. 11-15-92; am. Register, May, 1993, No. 449, eff. 6-1-93; **CR 06-079: renum. to be (1) and am., cr. (2) Register May 2007 No. 617, eff. 6-1-07.**