

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board authorize public hearings for Board Order AM-24-12, proposed rules affecting chapters NR 400, 406, 407, and 445 related to simplifying and improving the Air Management permit program.

FOR: December 2014 Board meeting

PRESENTER'S NAME AND TITLE: Kristin Hart, Chief-Permits & Stationary Source Modeling Section, Air Management

SUMMARY:

Why is the rule needed? The primary objective of the proposed rule is to improve implementation efficiency of air permitting, and to streamline and simplify the permitting processes as they affect businesses. A portion of this rule is being proposed to fulfill a statutory rulemaking requirement. Other changes are proposed to align federal and state regulations.

What are the significant changes? The rule proposes many small changes that are cleanup and clarifying in nature including removal of outdated tables, correction of code citations and references, and the addition of notes. Also included are proposals to reduce the number of facilities needing to submit an operation permit renewal application, and for natural minor sources, an exemption from the need to obtain an operation permit. For those facilities that need an air construction permit, the proposed rule would allow some preconstruction activities to begin prior to permit issuance, ultimately leading to earlier project completion and an increased ability to respond to market demands.

What are the key issues/controversies? The Department involved stakeholders in discussions on how the rules could be streamlined and on specific changes being proposed. The main issue is to accomplish meaningful process improvements while assuring that the regulations maintain consistency with the federal Clean Air Act.

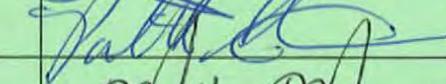
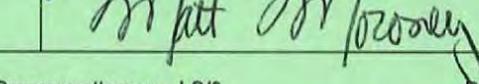
What was the last action of the Board? The last board action on this rule was in April of 2013 when the statement of scope was approved.

What are the impacts to small business? The department does not believe this project will have a negative economic impact on small business and may provide an economic benefit in some cases. Therefore, this rule would have a minimal impact on small business.

RECOMMENDATION: That the Board authorize public hearings for Board Order AM-24-12.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- background memo
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Environmental assessment or impact statement
- Board order/rule

Approved by	Signature	Date
Bart Sponseller, Bureau Director		11/20/14
Patrick Stevens, Division Administrator		11/20/14
Cathy Stepp, Secretary		11/24/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: November 19, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on request that the Board authorize public hearings for Board Order AM-24-12, proposed rules affecting chapters NR 400, 406, 407, and 445 related to simplifying and improving the Air Management permit program.

Why is the rule being proposed?

The primary objective of the proposed rule is to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, while maintaining consistency with the federal Clean Air Act. The need for streamlining the air permit rules was confirmed through discussions with Department staff and by externals who were invited to participate in a series of listening sessions across the state. Also, portions of this rule are being proposed in order to fulfill statutory rulemaking requirements.

The Department is also proposing a change to address an inconsistency between state and federal requirements related to the sulfur content of fuels used when testing compression ignition engines.

Summary of rule.

The proposed rule consists mostly of changes to chs. NR 406 and 407 related to minor source construction permitting and operation permitting. A provision of ch. NR 445 is also being proposed for change. Specific proposed rule changes are described below.

- Creation of an exemption fulfilling the statutory requirement in s. 285.60(6)(c), Wis. Stats., to exempt natural minor sources from the requirement to obtain an operation permit.
- An exclusion that allows specified pre-construction activities to proceed while minor source construction permit issuance is pending. The activities included are those most often requested and approved in construction permit waivers.
- Making minor source operation permits non-expiring, but including provisions to set an expiration date where justified.
- A provision to allow revocation of construction permits and minor source operation permits at closed facilities without first providing written notice of intent to revoke the permit and then waiting 21 days. The existing waiting period for revocation of a major source operation permit is changed from 21 to 30 days to assure consistency with Clean Air Act requirements.
- An exemption from construction and operation permit requirements for restricted use engines. This aligns the existing definitions and exemptions with federal regulations affecting emergency and other limited use engines of all sizes and at all types of facilities.
- An allowance in s. NR 445.09 to burn high sulfur diesel fuel as long as emissions are controlled by the best available control technology. This eliminates a conflict between state and federal rules

affecting marine compression ignition engine testing.

- Other changes that are cleanup and clarifying in nature including removal of outdated tables and requirements, removal of methyl ethyl ketone from the list of pollutants that are included in an operation permit, correction of code citations and references, addition of clarifying notes, and other changes for consistency with federal regulations.

How does this affect existing policy?

The portions of this rule that are cleanup in nature serve to clarify existing department policy. Other portions of this rule do not affect air program policy.

Has the Board dealt with these issues before?

The last board action was in April of 2013 when the statement of scope was approved.

Who will be impacted by the proposed rule? How?

The proposed rule would potentially impact any business that needs an air pollution control construction or operation permit. The proposed rule would affect mostly minor sources of air pollution but some larger emitting facilities may also be able to benefit from portions of this rule. Because small businesses are usually minor air pollution sources, small businesses are more likely to be impacted by the improvements proposed in this rule.

This rule is being proposed to streamline and increase the efficiency of the air permitting processes and to make permitting easier to understand. Therefore, businesses are expected to experience positive impacts from this rule including a proposed reduction in the number of sources needing to submit an operation permit renewal application and a proposed exemption from the need to obtain an operation permit. For those facilities that need an air construction permit, the proposed rule would allow some preconstruction activities to begin prior to permit issuance, ultimately leading to earlier project completion and an increased ability to respond to market demands.

The portion of the rule concerning sulfur content of fuel used in compression ignition engines will potentially affect engine manufacturers in the state. Changes to allow these engines to use higher sulfur content fuels will provide business opportunities for facilities wishing to develop overseas markets where current fuel specifications exceed the sulfur content currently allowed in the state. These proposed changes also align federal and state requirements for manufacturers of large marine engines which are required by federal law to test engines at higher sulfur contents than currently allowed by state law.

Information on environmental analysis, if needed?

The promulgation of permanent administrative rules under ch. 227, Wis. Stats., is considered an equivalent analysis action under s. NR 150.20(2)(a)20., Wis. Adm. Code, and does not require additional environmental analysis under ch. NR 150, Wis. Adm. Code, because a detailed environmental analysis and public disclosure are conducted as part of Department rulemaking procedures.

Small Business Analysis.

This rule is expected to positively impact business, including small businesses. Portions of the rule clarify and clean up outdated rule language making the regulations easier to understand. Other portions of the rule expand exemptions or eliminate the need to submit renewal applications.

This rule does not change or impose new compliance or reporting requirements on small business or changes to any schedules or deadlines for compliance reporting. Small businesses that qualify for and decide to take advantage of the portion of the proposed rule that exempts natural minor sources from operation permitting will need records to show they are qualified for the exemption.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapters NR 400, 406, 407 and 445.

3. Subject

Proposed rules related to clarifying, improving efficiency of, and streamlining air program permit processes.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

NA

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The primary objective of the proposed rule is to improve operational efficiency for, and to simplify the permitting processes administered by, the air program, while maintaining consistency with the federal Clean Air Act (CAA) and to address statutorily required rule making.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The proposed rule could affect any entity that needs an air pollution control construction or operation permit in the state. A request for information concerning potential economic impacts of the proposed rule was sent by email to all air permit holders in the state. The request was also sent to several organizations that represent business in the state including the Small Business Environmental Council, the Printing Council, the Wisconsin Transportation Builders Association, Wisconsin Manufacturers and Commerce, the Wisconsin Paper Council, and the American Council of Engineering Companies of Wisconsin. The information request was sent to the Wisconsin Public Service Commission, to the League of Wisconsin Municipalities and to the Wisconsin Counties Association as representatives of local units of government. The request for information was sent to the Air Management Study Group and to the members of the Air Permit Streamlining Workgroup. These groups include members representing Clean Wisconsin, Sierra Club, Midwest Environmental Advocates, environmental consultants, environmental law attorneys, utilities, and representatives of large and small businesses.

11. Identify the local governmental units that participated in the development of this EIA.

The Department provided an opportunity for local governmental units to indicate whether they wished to coordinate with the Department in preparation of the EIA. Although representatives of a military base, two public water utilities, and a county commissioner submitted information on the economic impacts of the rule, none indicated that they wished to coordinate with the Department on the preparation of this EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Fiscal Impacts on the Department's Air Management Program

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The air management program funds nearly all operation permitting and compliance activities through program revenue generated by annual fees charged to operation permit holders. Funds generated from minor source operation permit holders may only be used for operation permit and compliance related activities at minor sources. This includes all inspections, complaint investigation, compliance and permitting assistance and permit application review. Sources that would choose to operate under the proposed natural minor exemption would no longer be required to pay the annual \$400 fee, potentially reducing the revenue that is available for minor source permit and compliance activities. The Department projects that as many as 650 facilities are those most likely to have interest in operating under the natural minor exemption however, it is anticipated that not all of these sources will opt to switch to the exemption. If all these facilities would take advantage of the exemption, the loss of revenue for minor source permit and compliance activities would be approximately \$260,000 per year. This is nearly a quarter of the total revenue currently collected for the minor source programs.

Economic Impacts on Private Sector Businesses

The purpose of this proposed rule is to clarify, improve efficiency and streamline the air permitting regulations, so it has been assumed that there would be no negative economic impacts for businesses. The air program solicited information from permit holders throughout the state and received 24 responses to the request for information on the economic impacts of the proposed rule. Nineteen of the responses were from private sector businesses holding air permits or permit exemptions. WMC also responded on behalf of business. With the exception of one response, all respondents stated that there would either be no negative economic impacts on their business or that there might be an economic benefit to the rule. Several facilities noted that they would save on the cost of applying for renewal applications. Another stated that the creation of a restricted use engine exemption would benefit them. Many respondents mentioned an economic benefit to the provisions to allow some preconstruction activities to occur prior to receiving a construction permit and several also noted that they are natural minor sources and that their businesses would benefit from an exemption for natural minor sources.

The exception is a manufacturer of large marine engines. This respondent noted that the rule would require application of the best available control technology (BACT) in order to perform testing of engines using fuels with higher sulfur content than currently allowed by state law. The respondent estimated that this provision of the proposed rule would cost the company between \$750,000 and \$1,000,000.

BACT is a case by case determination. The respondent did not provide details on the cost estimates. When a facility is subject to BACT, they must provide an analysis that includes information on various control technologies, and costs to control. Technologic and economic feasibility are both part of a BACT determination. The Department may not impose a BACT that is determined to be economically infeasible.

Marine engine manufacturers are required by federal law to test engines using fuels with higher sulfur contents than allowed by state law. While the department concurs that application of best available control technology could entail a cost to any facility proposing to use high sulfur content diesel fuel, under current rules there is no allowance to test engines using diesel with higher sulfur contents under any circumstances. Aside from this marine engine manufacturer, only facilities wishing to use higher sulfur content fuels would need to apply BACT.

Economic Impacts on Local Governments and Public Entities

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Representatives of two public water utilities, a county commissioner, and a military base also submitted information. All four stated that the rule would have no negative economic impact on their operations.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule change was undertaken to provide benefits by simplification and streamlining of the permit process. If the rule is not implemented, facilities will not see any economic benefit the department believes would be provided by the proposed rule.

14. Long Range Implications of Implementing the Rule

There may be long term fiscal consequences to the reduced program funds that would result from exempting large numbers of facilities from operation permits. The air program also acknowledges that efficiencies gained by having fewer permitted sources may, at least in part, offset these fiscal impacts.

15. Compare With Approaches Being Used by Federal Government

Several of the proposed rule changes are being made to align existing state rules with federal regulations. These include:

- Changes to s. NR 445.09, Wis. Adm. Code, are necessary because the current state rule is in direct conflict with federal law requiring marine engines to be tested using diesel with a higher sulfur content than allowed by state rule.
- Two federal standards affecting reciprocating internal combustion engines defined several types of limited use engines that are exempt from these federal standards. This proposed rule replaces the state's definition and exemptions for "emergency electric generators" with a new definition and exemptions that includes emergency and other limited use engines as defined in the federal standards.
- Changes are also being proposed to the definition of major source in s. NR 407.02 (4) (b) 27., Wis. Adm. Code, so that wording exactly mirrors that in the federal definition.
- Finally, a change proposed for s. NR 407.15, Wis. Adm. Code, changes the notification waiting period for suspension, revocation, or withdrawal of coverage of a part 70 source from 21 to 30 days as required by 40 CFR Part 70.

All other proposed rule changes pertain to minor sources and minor source construction permitting and non-part 70 source operation permitting are not specifically regulated under the federal Clean Air Act.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois and Minnesota are delegated states, so they are directly implementing the federal program and are not implementing their programs through a State Implementation Plan (SIP), as Wisconsin does. Iowa and Michigan, similar to Wisconsin, are SIP approved states, so they are also implementing a federal program, but through their own state rules. It is the goal of SIP-approved states to implement federal programs in accordance with the regulations set out in federal code. The portions of this rule that are being changed to align with federal regulations result in rules similar to those in neighboring states.

Other rule changes proposed are limited to minor source construction permits and minor source operation permits. Wisconsin's neighboring states also have minor source construction permit programs, but state programs are very dissimilar. Similar to Wisconsin, adjacent states provide some construction permit exemptions for certain operations and activities depending on type, size, capacity, hours of operation, emissions or other similar criteria.

All the adjacent states issue minor source operation permits. Generally, these are issued to facilities requesting federally enforceable conditions limiting emissions to less than major source thresholds. These "synthetic minor" operation permit programs are all similar to Wisconsin's. The adjacent states all offer different types of exemptions from operation permitting for natural minor sources. The majority of natural minor sources in neighboring states are not required to obtain an operation permit.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

17. Contact Name

Kristin Hart

18. Contact Phone Number

608/266-6876

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 400.02 (56), 406.16 (2) (d), 406.17 (3) (e), 407.05 Table 2, 407.10 (5) (d), and 407.105 (4) (f); to **renumber and amend** NR 406.04 (1) (w) and 407.03 (1) (u); to **amend** NR 406.08 (1), 406.10, 406.11 (1) (intro.), 407.02 (4) (b) 27., 407.04 (1) (intro.) and (b) 3., 407.05 (4) (c) 1., 9. a. and b., and 10, 407.05 Table 3, 407.09 (1) (b) 1. and (c) 1. b., 407.10 (5) (b) and (c), 407.105 (6) (b) and (c), 407.15 (intro.) and (7), and 445.09 (1) (c) and (2); and to **create** NR 400.02 (136m), 406.03 (1e), 406.04 (1) (w) 1. and 2., 406.11 (1) (h), 407.02 (4m) and (6) (Note), 407.03 (1) (u) 1. and 2. and (1s), 407.09 (1) (b) 3. and 4., 407.14 (1m) (f), and 445.09 (3) (d) relating to increasing the operational efficiency of and simplifying the air permit process and affecting small business.

AM-24-12

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Sections 285.11 (1) and (16), 285.27 (2), 285.60 (6), 285.66 (2), and 285.67, Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.
- 2. Statutory authority:** Sections 285.11 (1) and (16), 285.27 (2), 285.60 (6), 285.66 (2) and 285.67, Stats.
- 3. Explanation of agency authority:** Section 285.11 (1), Stats., requires the Department to promulgate rules consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires the Department 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 285.27 (2) gives the Department authority to promulgate emission standards for hazardous air contaminants. Section 285.60 (6) 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 285.66 (2) gives the Department the authority to specify that an operation permit for a minor source does not expire. Section 285.66 (2) (c) requires the Department to promulgate rules to exempt natural minor sources from operation permit requirements. Section 285.67, Stats., requires the Department to promulgate rules establishing criteria and procedures for revocation of air pollution control permits.
- 4. Related statute or rule:** There are no related statutes or rules not related above.
- 5. Plain language analysis:** The primary objective of the proposed rules is to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, while maintaining consistency with the federal Clean Air Act (CAA). Specific proposed rule changes are described below.

SECTIONS 1 and 2 replace the existing definition of “emergency electric generator” with a broader definition of “restricted use reciprocating internal combustion engine.” This change aligns the state and federal definitions of and requirements for emergency and other limited use generators.

SECTION 3 creates an exclusion for minor sources that allows specified pre-construction activities to proceed while construction permit issuance is pending. The activities included are those most often requested and approved in construction permit waivers.

SECTIONS 4 and 5 replace for construction permits, and SECTIONS 15 and 16 replace for operation permits, the existing exemptions for emergency electric generators with exemptions for restricted use reciprocating internal combustion engines. These changes align the existing exemptions with the federal regulations affecting emergency and other limited use engines of all sizes and at all types of facilities.

SECTION 8 and 9 amend the procedures for revoking construction permits and SECTION 29 amends the procedures for revoking non-part 70 source operation permits to allow the department to revoke such permits without providing written notice and without waiting 21 days in cases where a facility has closed or was never constructed.

SECTIONS 13 defines a natural minor source for purposes of the operation permit program and SECTION 16 creates an exemption fulfilling the statutory requirement in s. 285.60 (6) (c), Stats., to exempt natural minor sources from the requirement to obtain an operation permit.

SECTIONS 22 and 28 amend existing rules to specify that non-part 70 source operation permits do not expire. The department may reopen a non-part 70 source operation permit to set an expiring term for cause.

SECTIONS 30 and 31 amend the existing rules to allow a source to burn high sulfur diesel fuel as long as emissions are controlled by the best available control technology. This eliminates a conflict between state and federal rules affecting large marine engine testing and allows flexibility to test other engines that will be marketed in overseas locations where high sulfur fuel is still used.

All other SECTIONS involve changes to wording, removal of outdated tables and requirements, correction of code citations and references, addition of clarifying notes, and other changes for consistency with federal regulations.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations: Several of the proposed rule changes are being made to align existing state rules with federal regulations. These include:

- Changes to s. NR 445.09 are necessary because the current state rule is in direct conflict with federal law requiring marine engines to be tested using diesel with a higher sulfur content than allowed by state rule.
- Two federal standards affecting reciprocating internal combustion engines defined several types of limited use engines that are exempt from these federal standards. This proposed rule replaces the state's definition and exemptions for "emergency electric generators" with a new definition and exemptions that includes emergency and other limited use engines as defined in the federal standards.
- Changes are also being proposed to the definition of major source in s. NR 407.02 (4) (b) 27., so that wording exactly mirrors that in the federal definition.
- Finally, a change proposed for s. NR 407.15 changes the notification waiting period for suspension, revocation, or withdrawal of coverage of a part 70 source from 21 to 30 days as required by 40 CFR Part 70.

Minor source construction permitting and non-part 70 source operation permitting are not specifically regulated under the federal Clean Air Act. The natural minor operation permit exemption, changes allowing preconstruction activities prior to minor source construction permit issuance, elimination of an expiring term

for non-part 70 operation permits, and changes to revocation procedures are limited to minor sources. Other changes to chs. NR 400, 406, 407, and 445 provide consistency within the rules by removing outdated language, correcting citations, and providing clarification where appropriate.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Illinois and Minnesota are delegated states, so they are directly implementing the federal program and are not implementing their programs through a State Implementation Plan (SIP), as Wisconsin does. Iowa and Michigan, similar to Wisconsin, are SIP approved states, so they are also implementing a federal program, but through their own state rules. It is the goal of SIP-approved states to implement federal programs in accordance with the regulations set out in federal code. The portions of this rule that are being changed to align with federal regulations result in rules similar to those in neighboring states.

Other rule changes proposed are limited to minor source construction permits and minor source operation permits. Wisconsin's neighboring states also have minor source construction permit programs, but state programs are very dissimilar. All adjacent states provide for exemption from construction permits for certain operations and activities depending on type, size, capacity, hours of operation, emissions or other similar criteria.

All the adjacent states issue minor source operation permits. Generally, these are issued to facilities requesting federally enforceable conditions limiting emissions to less than major source thresholds. These "synthetic minor" operation permit programs are all similar to Wisconsin's. The adjacent states all offer different types of exemptions from operation permitting for natural minor sources. The majority of natural minor sources in neighboring states are not required to obtain an operation permit.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: Since the Department is proposing rules consistent with federal regulations, making consistency and clarification changes, and developing rules as directed by the state legislature, the department did not make use of any factual data or analytical methodologies in the rule development.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: The economic impact of the proposed rules is expected to be minimal. In most cases, the changes proposed will result in cost savings for business, especially for small business.

10. Effect on small business (initial regulatory flexibility analysis): Small businesses with air pollution emissions will be affected by the proposed rules.

The proposed rules will allow sources seeking minor construction permits to begin certain preconstruction activities prior to permit issuance. Small businesses are more likely to qualify for this exclusion because they generally have lower air pollution emissions. The ability to begin certain preconstruction activities before receiving a permit can have substantial economic benefit, especially if the activities need to be completed before the Wisconsin winter precludes preconstruction activities. Such weather related delays can hold up the beginning of construction for months after permit issuance.

The proposed rules will make non-part 70 source operation permits non-expiring reducing the need for small businesses to submit operation permit renewal applications.

Small businesses are more likely to be considered natural minor sources for purposes of the operation permit program. The natural minor exemption from permitting will reduce the regulatory requirements for those businesses since they will not have to apply for, and receive, or maintain an air operation permit. The

exemption does not affect the need to comply with applicable requirements including those in any existing construction permits. Some small businesses may need assistance in understanding what rules apply if those applicable requirements are not included in a permit. The Air Program's Small Business Environmental Assistance Program is available to help facilities understand what permits and requirements apply and what options are available to demonstrate compliance.

11. Agency contact person: Kristin L. Hart, Chief-Permits and Stationary Source Modeling Section, Phone: (608)266-6876, Fax: (608)267-0560, E-mail: Kristin.Hart@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission:

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

Kristin L. Hart
Department of Natural Resources
Bureau of Air Management
PO Box 7921
Madison WI 53707

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=14543>.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 400.02 (56) is repealed.

SECTION 2. NR 400.02 (136m) is created to read:

NR 400.02 (136m) "Restricted use reciprocating internal combustion engine" or "restricted use RICE" means a reciprocating internal combustion engine that is one of the following:

(a) Operated no more than 200 hours per year and that meets the definition of emergency stationary RICE or black start engine in 40 CFR 63.6675.

(b) Operated in accordance with the definition of limited use RICE in 40 CFR 63.6675.

SECTION 3. NR 406.03 (1e) is created to read:

NR 406.03 (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 which, 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, all of the following activities will 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 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.

SECTION 4. NR 406.04 (1) (w) is renumbered NR 406.04 (1) (w) (intro.) and amended to read:

NR 406.04 (1) (w) (intro.) ~~Emergency electric generators powered by~~ Restricted use reciprocating internal combustion engines which are fueled by gaseous fuels, gasoline, or ~~distillate a clean fuel oil with~~ an and which have a combined total electrical output of less than 3,000 kilowatts, or the equivalent in brake horsepower. An owner or operator claiming exemption under this paragraph shall maintain records of all of the following:

SECTION 5. NR 406.04 (1) (w) 1. and 2. are created to read:

NR 406.04 (1) (w) 1. Each time an engine is operated, the date, duration in hours, and purpose of operation.

2. The total hours each engine is operated during a year.

SECTION 6. NR 406.08 (1) is amended to read:

NR 406.08 (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, reconstruction, replacement, relocation, or modification 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.

SECTION 7. NR 406.10 is amended to read:

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, reconstruction, replacement, relocation, or modification of a stationary source without applying for and receiving a permit as required under this chapter or ch. NR 405 or 408 shall be considered in violation of s. 285.60, Stats.

SECTION 8. NR 406.11 (1) (intro.) is amended to read:

NR 406.11 (1) (intro.) 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., except as provided in par. (h), 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 . Permit revision, suspension, withdrawal from coverage, or revocation may occur for any of the following reasons:

SECTION 9. NR 406.11 (1) (h) is created to read:

NR 406.11 (1) (h) *Source Shutdowns.* A permanent shutdown of operations of a stationary source so that it no longer requires a permit. Upon confirmation obtained by the department that a source has been permanently shut down or at the request of the source permit holder, the department may revoke a permit or withdraw a source from coverage under a permit without providing a 21 day written notice as otherwise required under this subsection.

SECTION 10. NR 406.16 (2) (d) is repealed.

SECTION 11. NR 406.17 (3) (e) is repealed.

SECTION 12. NR 407.02 (4) (b) 27. is amended to read:

NR 407.02 (4) (b) 27. All Any other stationary source categories regulated on or after category not included in this paragraph which as of August 7, 1980, by a standard promulgated is being regulated under section 111 or 112 of the Act (42 USC 7411 or 7412).

SECTION 13. NR 407.02 (4m) is created to read:

NR 407.02 (4m) "Natural minor source" means a source that meets all of the following criteria:

(a) Is not a major stationary source under ch. NR 405, and is not a major source under this chapter or under ch. NR 408.

(b) Is not a synthetic minor source under this chapter and does not have a permit containing conditions that allow the source to avoid being either a major stationary source under the definition in s. NR 405.02 (22) or a major source under the definition in s. NR 408.02 (21).

(c) Is not a part 70 source.

SECTION 14. NR 407.02 (6) (Note) is created to read:

NR 407.02 (6) (Note) A source that is subject to a standard or other requirement under section 112 of the Act (42 USC 7412) that caused the source to be classified as a part 70 source remains a part 70 source regardless of a reduction in potential emissions which would otherwise make the source a non-part 70 source.

SECTION 15. NR 407.03 (1) (u) is renumbered NR 407.03 (1) (u) (intro.) and amended to read:

NR 407.03 (1) (u) (intro.) ~~Emergency electric generators powered by~~ Restricted use reciprocating internal combustion engines which are fueled by gaseous fuels, gasoline, or distillate a clean fuel oil with an electric as defined in s. NR 406.02 (1) and which have a combined total electrical output of less than 3,000 kilowatts, or the equivalent in brake horsepower. An owner or operator claiming exemption under this paragraph shall maintain records of all of the following:

SECTION 16. NR 407.03 (1) (u) 1. and 2. and (1s) are created to read:

NR 407.03 (1) (u) 1. Each time an engine is operated, the date, duration in hours, and purpose of operation.

2. The total hours each engine is operated during a year.

(1s) NATURAL MINOR EXEMPTION. (a) *Eligibility.* A facility that is a natural minor source is exempt from the requirement to obtain an operation permit.

(b) *Recordkeeping.* 1. An owner or operator claiming to be exempt under this subsection shall maintain records adequate to show it meets all criteria under the definition of a natural minor source. Emission calculations adequate to determine eligibility with this exemption shall be maintained and made available to a department representative if requested.

2. In addition to monitoring and recordkeeping requirements contained in any construction permit issued to the source under ch. NR 406, the owner or operator shall maintain records sufficient to demonstrate compliance with all other applicable requirements in chs. NR 400 to 499.

(c) Notification to the department. 1. An owner or operator with an existing permit or who has submitted a permit application under this chapter or under ch. NR 406, shall notify the department of an intent to operate under this exemption.

2. Any existing permit issued under this chapter shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn at the request of the owner or operator.

3. A notification under subd. 1. shall serve as a request for revocation of any permits issued under this chapter and for withdrawal of any pending operation permit application submitted under this chapter.

(d) Schedule. The owner or operator shall apply for an operation permit in accordance with the requirements of this chapter if any of the following affects the source's ability to remain a natural minor source:

1. Any existing requirements change.
2. Any new requirements become applicable to the source.
3. Changes occur at the source.
4. Other emission information becomes available.

NOTE: An owner or operator exempt under this subsection is responsible for complying with all applicable requirements in chs. NR 400 to 499, including construction permit requirements identified in ch. NR 406 and all conditions contained in a permit issued under ch. NR 406.

NOTE: Nothing about this exemption is intended to preclude an owner or operator from requesting and receiving an operation permit from the department.

NOTE: The Small Business Environmental Assistance Program at dnr.wi.gov may be contacted for more information on applicability and compliance determinations related to the requirements in chs. NR 400 to 499.

SECTION 17. NR 407.04 (1) (intro.) and (b) 3. are amended to read:

NR 407.04 (1) INITIAL FILING DATES. (intro.) Except as provided under subs. (3) to ~~(6)~~ (7), the initial operation permit application shall be submitted by one of the following dates:

(b) 3. For new or modified sources for which no construction permit is required, a date before the source commences construction or modification. For purposes of determining the date of commencement of construction or modification, the exclusions provided in NR 406.03 (1e) shall apply.

SECTION 18. NR 407.05 (4) (c) 1., 9. a. and b., and 10. are amended to read:

NR 407.05 (4) (c) 1. The maximum theoretical emissions of all air contaminants from all emissions units, operations, and activities except for those exempted under subd. 9. or 10. Fugitive emissions from emissions units, operations, and activities shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. Maximum theoretical fugitive emissions shall be calculated using average operating conditions and average weather conditions. Only sources that manufacture or treat pesticides, rodenticides, insecticides, herbicides, fungicides, or pharmaceuticals shall include emissions of air contaminants identified as falling within ~~these~~ the categories in ~~Table 2, or Table 3 for calendar years 2004 and later,~~ in their permit applications. When preparing its an application, the owner or operator of a facility may rely on information in an approved material safety data sheet. Trace contaminants need not be reported if they constitute less than 1% (10,000 parts per million) of the material, or 0.1% (1,000 parts per million) of the material if the air contaminant is listed with a control requirement in column (i) of Table A, B or C of s. NR 445.07, unless a hazardous air contaminant is formed in processing the material.

9. a. Any emissions unit, operation, or activity that has, for each air contaminant, maximum theoretical emissions that are less than the level specified in ~~Table 2, or Table 3 for calendar years 2004 and later.~~ Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of the exemption under this ~~subparagraph~~ subd. 9. a.

b. If the maximum theoretical emissions of any air contaminants listed in ~~Table 2, or Table 3 for calendar years 2004 and later~~ from all emission units, operations, or activities at a facility are less than 5 times the level specified in ~~Table 2, or Table 3 for calendar years 2004 or later,~~ for those air contaminants, any emissions unit, operation, or activity that emits only those air contaminants.

10. For any emissions unit, operation, or activity that is included in the application, the applicant does not need to include information on any air contaminant if the maximum theoretical emissions of the air contaminant are less than the level for that air contaminant listed in ~~Table 2, or Table 3 for calendar years 2004 and later,~~ or if the maximum theoretical emissions of any air contaminant listed in ~~Table 2, or Table 3 for calendar years 2004 and later,~~ from all emission units, operations, or activities at a facility are less than 5 times the level specified in ~~Table 2, or Table 3 for calendar years 2004 and later,~~ for that air contaminant. Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of this exemption.

SECTION 19. NR 407.05 Table 2 is repealed.

SECTION 20. NR 407.05 Table 3 is amended by striking the information entered in each column for the air contaminant Methyl ethyl ketone (2-Butanone: MEK)

SECTION 21. NR 407.09 (1) (b) 1. is amended to read:

NR 407.09 (1) (b) 1. The term of ~~an~~ a part 70 source operation permit may not exceed 5 years.

SECTION 22. NR 407.09 (1) (b) 3. and 4. are created to read:

NR 407.09 (1) (b) 3. The term of a non-part 70 source operation permit does not expire unless the department specifies an expiring term in the permit upon consideration of the following:

a. Ongoing or recurring non-compliance or enforcement action taken by the department or the administrator.

b. A request by the permittee.

c. A determination by the department.

4. The term specified by the department under subd. 3. for a non-part 70 source may not be less than 5 years.

SECTION 23. NR 407.09 (1) (c) 1. b. is amended to read:

NR 407.09 (1) (c) 1. b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, periodic monitoring or testing sufficient to yield reliable data from the relevant time period that are representative of the stationary source's compliance with the permit. Monitoring or testing requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Monitoring may consist of recordkeeping sufficient to meet the requirements of this subd. 1. b. Permits for non-part 70 sources shall contain the requirements in this subd. 1. b. only for those air contaminants emitted from an emissions unit, operation, or activity where the actual emissions exceed the levels in ~~Table 2 or~~ Table 3 for calendar years 2004 and later, in s. NR 407.05. Actual emissions used for this determination shall be those reported under ch. NR 438 for the most recent year prior to when the permit or renewal is issued.

SECTION 24. NR 407.10 (5) (b) and (c) are amended to read:

NR 407.10 (5) (b) An owner or operator of a stationary source that has an individual operation permit may submit a request to the department to revise or revoke the individual operation permit pursuant to s. NR 407.12, 407.13, or 407.15 (4) and allow the source be covered under a general operation permit.

~~The owner or operator shall submit to the department a written request for revision or revocation of the individual operation permit and a A complete application for a general operation permit submitted under this section shall be considered a request for revocation of the existing individual operation permit.~~

(c) An owner or operator of a stationary source that is covered under a registration operation permit may submit a request to the department to withdraw the source from coverage under the registration operation permit and allow the source to be covered under a general operation permit. ~~The owner or operator shall submit to the department a written request for withdrawal of the registration operation permit and a A complete application for a general operation permit submitted under this section shall be considered a request for withdrawal of coverage under the registration permit.~~

SECTION 25. NR 407.10 (5) (d) is repealed.

SECTION 26. NR 407.105 (4) (f) is repealed.

SECTION 27. NR 407.105 (6) (b) and (c) are amended to read:

NR 407.105 (6) (b) An owner or operator of a facility that has an individual operation permit may submit a request to the department to revoke the individual operation permit pursuant to s. NR 407.15 and allow the facility to be covered under a registration operation permit. ~~The owner or operator shall submit to the department a written request for revocation of the operation permit and a A complete application for a registration operation permit submitted under this section shall be considered a request for revocation of the existing individual operation permit.~~

(c) An owner or operator of a facility that is covered under a general operation permit may submit a request to the department to withdraw coverage under the general operation permit and allow the facility to be covered under a registration operation permit. ~~The owner or operator shall submit to the department a written request for withdrawal of the operation permit and a A complete application for a registration operation permit submitted under this section shall be considered a request for withdrawal of coverage under the general permit.~~

SECTION 28. NR 407.14 (1m) (f) is created to read:

NR 407.14 (1m) (f) A decision by the department to establish an expiring term in a non-part 70 source operation permit as allowed in s. NR 407.09 (1) (b) 3. An expiring term established in a non-part 70 source operation permit shall be at least 18 months from the date of final revision approval.

SECTION 29. NR 407.15 (intro.) and (7) are amended to read:

NR 407.15 Permit suspension, revocation and withdrawal from coverage. (intro.) After providing 21 days written notice to the ~~permittee~~ owner or operator of a non-part 70 source and to the persons listed in s. 285.62 (3) (b) 2. to 7., Stats., ~~except as provided in sub. (7), or after providing 30 days written notice to the owner or operator of a part 70 source and to the persons listed in s. 285.62 (3) (b) 2. to 7., Stats.,~~ the department may suspend, revoke, or withdraw a source from coverage under an operation permit, part of that permit, or the conditions of that permit ~~if there is or was any of the following~~. Permit suspension, revocation, or withdrawal from coverage may occur for any of the following reasons:

(7) SOURCE SHUTDOWNS. A permanent shutdown of operations of a stationary source so that it no longer needs a permit. For shutdown of a non-part 70 source, upon confirmation obtained by the department that a non-part 70 source has been permanently shut down or at the request of the source permit holder, the department may revoke a non-part 70 source operation permit without providing 21 days written notice as otherwise required under this section.

SECTION 30. NR 445.09 (1) (c) and (2) are amended to read:

NR 445.09 (1) (c) ~~An~~ A restricted use reciprocating internal combustion engine used to power an emergency electric generator exempt under s. NR 406.04 (1) (w) or 407.03 (1) (u).

(2) FUEL REQUIREMENTS. ~~Beginning no later than July 15, 2006, the~~ The owner or operator of a ~~CI~~ compression ignition engine ~~shall only~~ may not combust ~~fuel-oil~~ fuels with a sulfur content ~~no~~ greater than the sulfur content that is allowed for on-road use at the time the fuel was purchased, ~~when firing the engine with fuel-oil 15 ppm unless particulate matter emissions are controlled as required under sub. (3) (d).~~

Note: Federal Diesel Fuel Programs and Regulations can be found at: <http://www.epa.gov/otaq/regs/fuels/diesel/diesel.htm#regs>. As of July 1, 2004, federal requirements state that beginning July 15, 2006, the sulfur content of diesel fuel at the terminal level will be 15 ppm or less.

SECTION 31. NR 445.09 (3) (d) is created to read:

NR 445.09 (3) (d) Notwithstanding par. (a), the owner or operator of a facility who combusts fuels with a sulfur content greater than 15 ppm as allowed under sub. (2) shall control particulate matter emissions to a level that is best available control technology, as determined by the department. The owner or operator shall submit a construction permit application including information describing how the best available control technology requirements will be met. Compliance with the best available control technology shall be achieved and demonstrated in accordance with the permit.

SECTION 32. 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 33. 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 _____
Cathy Stepp, Secretary

(SEAL)