

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Response to Legislative Committees' requests for modifications to Board Order AM-09-06, related to exemptions for certain minor air pollution sources from construction and operation permit requirements.

FOR: February 2007 BOARD MEETING

TO BE PRESENTED BY: Caroline Garber, Bureau of Air Management

SUMMARY:

The Natural Resources Board adopted this rule in August, 2006. Legislative hearings were held on the rule on October 12, 2006 by the Senate Committee on Natural Resources and Transportation and on October 18, 2006 by the Assembly Natural Resources Committee. Both Committees returned the rule to the Department for unspecified modifications.

The Department proposes to amend NR 407.03(1m). This section creates an exemption from operation permits for facilities that meet certain criteria. The proposed modification clarifies that the requirement to notify the Department of the intent to operate the facility under the exemption also serves as a request for revocation of an existing permit or withdrawal of a pending permit application.

RECOMMENDATION: NRB approval of the modifications to AM-09-06

LIST OF ATTACHED MATERIALS:

No <input checked="" type="checkbox"/>	Fiscal Estimate Required	Yes <input type="checkbox"/>	Attached
No <input checked="" type="checkbox"/>	Environmental Assessment or Impact Statement Required	Yes <input type="checkbox"/>	Attached
No <input type="checkbox"/>	Background Memo	Yes <input checked="" type="checkbox"/>	Attached

APPROVED:

_____/s/_____
Acting Bureau Director, Kevin Kessler

_____2/7/07_____
Date

_____/s/_____
Administrator, Al Shea

_____2/7/07_____
Date

_____/s/_____
Secretary, Scott Hassett

_____2/8/07_____
Date

cc: Laurie Ross - AD/5
Carol Turner - LS/5

K. Kessler - AM/7
R. Eckdale - AM/7 (6)

Caroline Garber- AM/7
Marcia Penner- LS/5

DATE: February 6, 2007 FILE REF: [Click [here](#) and type file ref.]

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Legislative Request for Modifications to Board Order AM-09-06, Exempting Certain Minor Air Pollution Sources from Construction and Operation Permits

BACKGROUND

The Natural Resources Board adopted Board Order AM-09-06 in August, 2006. Legislative hearings were held on the rule on October 12, 2006 by the Senate Committee on Natural Resources and Transportation and on October 18, 2006 by the Assembly Natural Resources Committee. Both Committees returned the rule to the Department for unspecified modifications. The Department agreed to consider modifications to the rule in an October 30, 2006 letter to the Committee Chairs.

Testimony at the committee hearings centered on three items:

1. Raising the threshold level for the permit exemption
2. Streamlining the reporting requirements
3. Modifying the exemption claim requirement

The Department is proposing to modify the exemption claim requirement, but not to make modifications in the other two areas.

Raising the threshold level for the permit exemption

The proposed rule provides for sources that have less than 10 tons/year of actual emissions of criteria pollutants and which are not subject to federal hazardous air pollutant requirements or new source performance standards to be exempt from permit requirements. Industry testifiers at the hearings requested that the threshold be raised to at least 25 tons/year of actual emissions.

The Department believes that establishing the threshold at 10 tons/year balances regulatory relief to small businesses while protecting the health of the public. Over 1000 small businesses will be eligible for a permit exemption at this level. In addition, the recently issued registration permit provides a greatly streamlined permitting process for facilities whose actual emissions are less than 25 tons/year. It reduces permit transaction times from months to days, significantly reduces small business transaction costs and enables small business to react quickly to changing market opportunities.

Streamlining the reporting requirements

The Air Program intends to review its compliance monitoring and reporting requirements as it continues to streamline its regulatory program. Requirements for exempt sources will be addressed in this more comprehensive review. The focus of the Department's first phase of streamlining has been on process improvements to make applying for and issuing air permits more efficient and timely.

PROPOSED MODIFICATION

One of the operation permit exemption conditions was that the owner or operator had submitted an

exemption claim. Stakeholders expressed the concern that this condition created unnecessary bureaucratic hurdles with liability consequences for no purpose.

The claim serves a significant purpose. The exemption is an option for facilities that currently are required to obtain an operation permit, have the capability to emit at higher levels but elect to manage their emissions such that they remain below 10 ton/year. Facilities eligible for this exemption should either have already been issued an operation permit or have a permit application pending with the Department.

Under the proposed modification to the rule, notification of the intent to operate under the permit exemption (the exemption claim) will serve as the trigger for the Department to begin taking the necessary steps to revoke any existing permits that have been issued to the facility or to withdraw pending permit applications. The proposed modification also creates a new paragraph spelling out the notification requirements, rather than including prior notification as one of five eligibility conditions for the exemption.

RECOMMENDATION

It is recommended that the Natural Resources Board adopt the proposed modifications to Board Order AM-09-06, revisions to chs. NR 406, 407 and 410.

Proposed Amendment of Natural Resources Board Order AM-09-06
(Clearinghouse Rule CR 06-047)

Section NR 407.03(1m) is amended to read:

NR 407.03(1m) FACILITIES EXEMPT BASED ON ACTUAL EMISSIONS. (a) Any facility that is required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit following notification under par. (c), where all of the following criteria and requirements are met:

1. The actual emissions of each air contaminant from the facility do not exceed any of the following levels:

a. 10 tons in any calendar year for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM_{10} , carbon monoxide and volatile organic compounds.

b. 0.5 tons in any calendar year for lead.

c. Any stack-appropriate thresholds for emissions points in columns (c), (d), (e) and (f) of Table A, B or C of ch. NR 445. If the facility is a source of incidental emissions under s. NR 445.11, this subdivision only applies to emissions of air contaminants which are listed as substances of concern in Table E of ch. NR 445.

2. The facility is not subject to a standard under section 111 or 112 of the Act (42 USC 7411 or 7412).

~~3. The owner or operator has submitted to the department an operation permit exemption claim. The claim shall be submitted on department approved forms and to a location designated by the department. A claim under this subdivision is not required if the facility is exempt from the requirement to submit an air emission inventory report under s. NR 438.03(1)(a).~~

4. 3. The owner or operator conducts monitoring and ~~maintain~~ maintains records sufficient to demonstrate compliance with the requirements of this paragraph, including the calculation of annual facility-wide emissions. These records shall be maintained on site for at least 5 years, unless a longer period is required by statute or rule.

5. 4. If a control device is used to limit actual emissions, the owner or operator uses a compliance monitoring method which is identified in s. NR 439.055.

(b) Any facility that is not required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit where all of the criteria and requirements in par. (a)1. to 4. are met.

(c)1. The owner or operator of a facility required to submit an air emission inventory report under s. NR 438.03 shall notify the department of their intent to operate the facility under the exemption criteria in par. (a). A claim of exemption made under s. NR 406.04(1q) from construction permit requirements shall satisfy this notification requirement.

2. Any existing permit shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn. A notification under subd. 1. shall serve as a request for revocation of an individual permit or withdrawal from coverage under a general or registration permit.

3. A notification under subd. 1. shall serve as a request for withdrawal of any pending permit application.

Note: ~~The~~ An owner or operator exempt under this subsection is responsible for complying with all other applicable requirements in chs. NR 400 to 499.

October 26, 2006

Mr. Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street, 5th Floor
Madison, WI 53708

Dear Secretary Hassett,

This letter is to inform you that on October 26, 2006 the Senate Natural Resources and Transportation Committee voted (Ayes, 4 ; Noes, 1) pursuant to s. 227.19 (4) (b) 2., Stats., to request the Department of Natural Resources to consider modifications to the following Clearinghouse Rule:

- **Clearinghouse Rule 06-047:** relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business

Please inform me in writing no later than 12:00 p.m. on October 30, 2006 if the department agrees to consider modifications to this rule. Thank you for your consideration.

Sincerely,



Neal Kedzie
Chair, Senate Natural Resources and Transportation Committee
State Senator
11th Senate District

NJK: dj

October 19, 2006

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Inter-Departmental
GEF-2, AD/5

Dear Secretary Hassett,

On October 18, 2006 the Assembly Natural Resources Committee adopted the following motion with respect to Clearinghouse Rule 06-047, relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business:

MOVED: that the Assembly Committee on Natural Resources, pursuant to s. 227.19 (4) (b) 2., Stats., requests that the Department of Natural Resources consider modifications to Clearinghouse Rule 06-047 , relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

This motion was adopted on a vote of Ayes, 7; Noes, 5.

If the Department of Natural Resources does not agree to consider modifications to Clearinghouse Rule 06-047, in a letter addressed to the chair of the Assembly Committee on Natural Resources, or fails to respond in writing to this request for modification, by 5:00 p.m., November 8, 2006, the Assembly Committee on Natural resources objects to Clearinghouse Rule 06-047, pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious and imposes an undue hardship.

Thank you for your consideration of this recommendation.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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Box 7921
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October 30, 2006

Senator Neal J. Kedzie,
Chair, Senate Natural Resources Committee
313, South, State Capitol
PO Box 7882
Madison, WI 53707

Representative Scott Gunderson
Chair, Assembly Natural Resources Committee
Wisconsin State Capitol
Room 7 West
PO Box 8952
Madison, WI 53507

Subject: Clearinghouse rule 06-047

Dear Senator Kedzie and Representative Gunderson:

Thank you for your letters dated October 26, 2006 and October 18, 2006, requesting unspecified modifications to Clearinghouse Rule 06-047 (hereinafter "the rule") pertaining to exemptions from air permits. While the Department agrees to consider modifications to the rule, I must tell you of my disappointment in the Senate Natural Resources and Transportation and the Assembly Natural Resources Committee's action to delay implementation.

2003 Act 118 was a delicately crafted compromise to provide regulatory reform in Wisconsin while still ensuring a base level of public health and environmental protections exist for the public. The Department's proposed rule, coupled with the recently enacted registration permit rule, are the centerpieces for the State's air regulatory streamlining efforts for small businesses that were agreed upon as part of 2003 Wisconsin Act 118. These two new air permitting tools will reduce permit transaction times from months to hours, significantly reduce small business transaction costs, and enable small businesses to react quickly to changing market opportunities.

This rule is necessary to provide regulatory relief to the state's small business community; an objective I know you support. I suggest you allow the rule to proceed. This will make over 1,000 small businesses eligible for exemption from minor source air permitting. These businesses will not have to needlessly wait for resolution of what may be a long negotiation process in what, if any, modifications can be agreed to. The Committees could allow the rule to move forward—in order to provide immediate relief to over 1,000 small businesses—and ask the Department to consider modifications to put forward in a future rule revision.

I make this suggestion because from the questions my staff heard at the October 18 hearing, I am led to believe that the Committees' action to return the rule was influenced by a misunderstanding of the purpose of the rule and its impact on overall state air pollution levels as it relates to ozone. This rule *is*

not about controlling regional air pollution. The federal Clean Air Interstate Rule (CAIR) addresses regional pollution issues and the Department is in the process of promulgating a rule to implement CAIR.

The exemption rule *is* about balancing regulatory relief for small business with protecting the health of citizens at a very *local*, neighborhood level.

As I understand it, one of the modifications being sought is to increase the 10 ton per year threshold to 25 tons, as advocated by Wisconsin Manufacturing and Commerce (WMC). The Department's modeling analysis has documented air quality standards being exceeded above the 10 ton per year threshold; standards set to protect public health regardless of where the air pollution comes from.

As my staff pointed out at the hearing, facilities that are below whatever exemption level is established will, for all practical purposes, not be inspected and will be subject to minimal department oversight. Raising the threshold from the 10 ton per year level in the rule to the 25 ton per year level proposed by WMC would more than double the amount of emissions a business would be allowed to emit without regulatory oversight. Furthermore, it would risk the potential of hundreds of tons of pollutants being emitted by a facility in residential neighborhoods that may have schools, health care, or assisted living facilities in close proximity.

The department's new registration permit offers these same businesses a stream-lined, flexible permit, that can be obtained in a matter of hours over the internet, but with at least some degree of departmental oversight that will help protect air quality.

Gentlemen, while I will agree to talk, I do disagree with the Committees' action to delay this extremely important regulatory streamlining tool to over 1000 of the state's small businesses. Again, I suggest that a better course of action would be to put this vital piece or reform in place and continue to work with the Department on additional regulatory streamlining measures. I hope that you can agree to allow these 1,000 or so small businesses the relief they deserve.

Sincerely,

Scott Hassett
Secretary

Assembly Natural Resources Committee members
Senate Natural Resources and Transportation Committee members
Secretary Mary Burke – Dept. of Commerce
Carl Komassa, Chair - Small Business Environmental Council
Richard Petershock, Chairman, Small Business Regulatory Review Board
Bill Smith, State Director, NFIB
Carla Klein, Chapter Director, Sierra Club
Dave Steffenson, Executive Director, Wis. Interfaith Climate & Energy Campaign
Scott Manley - WMC

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **renumber** NR 406.02(1) and 406.04(4)(h), to **amend** NR 410.03(1)(d) and to **create** NR 406.02(1), 406.04(1)(zh), (1q), (4)(h) and (i), 407.03(1m) and 410.03(1)(f) relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

AM-09-06

Analysis Prepared by the Department of Natural Resources

Statute interpreted: s. 285.60(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

Statutory authority: ss. 285.11(1) and (6) and 285.60(6), Stats.

Explanation of agency authority: The Department has had the authority under s. 285.60(6)(a), Stats., to exempt stationary sources from permitting requirements if potential emissions do not present a significant hazard to public health, safety or welfare or to the environment. In 2003, s. 285.60(6)(b), Stats., was created and requires the Department to exempt minor sources from the requirement to obtain air permits if emissions from the source do not present a significant hazard to public health, safety or welfare or to the environment.

Related statute or rule: Chapters NR 406 and 407, Wis. Adm. Code.

Plain language analysis: The rule proposal provides for sources that have less than 10 tons/year of actual emissions of criteria pollutants (particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds), and which are not subject to Federal air pollution requirements for hazardous air pollutants or new source performance standards, to be exempt from all permitting requirements.

For sources with emissions above these thresholds, projects undertaken at the facility that will meet the aforementioned criteria would be exempt from obtaining a construction permit prior to undertaking the project. The facility owner/operator would still need to apply for an operation permit for the project, but construction of the sources included in the project would be allowed. The proposal includes an \$800 fee for each construction permit exemption to defray engineering review costs incurred by the Department when evaluating whether a source qualifies for the exemption.

The Rule also includes provisions to exclude certain fuel changes at smaller boilers from being considered a modification of the boiler. The effect of this change is that boilers which switch to a clean fuel or convert from one clean fuel to another will not be subject to more stringent new source requirements such as more restrictive opacity limitations. Lastly, the rule also excludes sources which are subject to ch. NR 424 emission control requirements from construction permit review when they seek to change the control requirements required under ch. NR 424 without increasing potential VOC emissions from the affected source.

Summary of, and comparison with, existing or proposed federal regulation: A comparable federal regulation does not exist. The Federal Clean Air Act requires States to have a minor source construction permit program which allows for preconstruction review of new and modified sources of air pollution. The purpose of this program is to ensure that ambient air quality standards are protected.

The Clean Air Act also requires that each state manage an operation permit program for major sources of air pollution. The criteria for being a major source of air pollution is 100 tons/year of criteria pollutant emissions or being defined as a major Federal hazardous air pollution source.

Comparison with rules in adjacent states: All the states within EPA Region 5 manage a minor source construction and operation permit program. Some of these programs appear to be more “stringent” than Wisconsin’s program, while others appear to be less stringent. Comparisons between programs are difficult due to the varying ways sources may be exempt and how programs are funded. Based on a review done by the Air Management program, it appears that Wisconsin’s program offers more exemptions than most Region V States.

Wisconsin: Chapters NR 406 and 407 establish two types of exemptions from construction and operation permitting requirements. The first of these, specific exemptions, apply to specific processes such as small boilers, crematoriums and small coating operations. The second type, general exemptions, are based on the maximum source emissions and whether the source is subject to any Federal emission control requirements.

Minnesota: Exemptions from operation permits are based solely on the facility’s potential to emit. The term “potential to emit” for determining permit applicability is identical to the term “maximum theoretical emissions” used by the Department in its general permit exemptions. The Minnesota exemption thresholds are somewhat higher than those in Wisconsin for all pollutants. However, Minnesota does not provide for any specific exemptions from permitting requirements such as those available in Wisconsin for grain processing, storage facilities and other categories of sources. Additionally, Minnesota does not provide for the actual emissions based exemptions currently available in Wisconsin for coating and graphic arts operations nor does it provide any exemptions similar to the exemption proposed in this rule package for facilities using control equipment to limit actual emissions. Thus, for some smaller uncontrolled facilities (especially facilities not in coating or graphic arts industries) Minnesota may provide more extensive permit exemptions. But, for other types of facilities, it appears that Wisconsin has more extensive permit exemptions.

For construction permits, the Minnesota program appears to be based on changes in potential to emit, which may be limited by control devices in certain cases. The reviews may vary and are identified as insignificant, minor, moderate or major. For major (PSD) sources, any change requiring synthetic minor conditions must go through the most detailed level of review (major). Again, the emission increase thresholds are generally above those in Wisconsin, but no exemptions exist for specific source categories or for sources on an actual emission basis.

Michigan: Exemptions are mainly based on specific exemptions for certain processes/emissions sources. Examples include small boilers and small printing and coating operations. There is also an exemption for facilities with low emissions with a threshold significantly lower than that being proposed in this Rule package. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Illinois: Exemptions are based on specific exemptions for certain processes/emission sources. Examples include small boilers and small printing and coating operations. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Iowa: Exemptions are based on a limited number of identified processes and operations that have very low emission rates (lower than in this rule proposal).

Summary of factual data and analytical methodologies: Rule revisions to chs. NR 406, 407 and 410 are in response to s. 285.60(6)(b), Stats., which was part of 2003 Wisconsin Act 118. The law requires that small sources of emissions that do not present a significant hazard to public health, safety or welfare or to the environment be exempted from permit requirements.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rule revisions will require Department resources to implement. The Department is proposing an addition to its construction permit fee schedule contained within chapter NR 410 to fund this work effort. A proposed fee of \$800 is included and is based upon the existing fee structure for Department review of another existing construction permit exemption. Businesses that choose to take advantage of the regulatory flexibility will have reduced permit fees in the long run because many projects that had previously required a construction permit will not be reviewed under that program under the proposed rule revisions.

Anticipated costs incurred by private sector: Although the proposed rule revision requires a fee of \$800 for one type of construction permit exemption evaluated under these rules, this cost is less than that which would be incurred if the source were required to obtain a construction permit.

Effect on small business: These proposed rule revisions should lower compliance costs for many small businesses.

Agency contact person: (including email and telephone):

Steven Dunn: (608) 267-0566 steven.dunn@dnr.state.wi.us

Jeffrey Hanson: (608) 266-6876 jeffrey.hanson@dnr.state.wi.us

SECTION 1. NR 406.02(1) is renumbered NR 406.02(1m).

SECTION 2. NR 406.02(1) is created to read:

NR 406.02(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 or propane.

SECTION 3. NR 406.04(1)(zh) is created to read:

NR 406.04(1)(zh)1. Any construction, modification, replacement, relocation or reconstruction of an emissions unit at a stationary source which is exempt from the requirement to obtain an operation permit under s. NR 407.03(1m), provided the stationary source still qualifies for the exemption under s. NR 407.03(1m) after completion of the proposed construction, modification, replacement, relocation or reconstruction.

2. Construction of a new facility if the facility will be exempt from the requirement to obtain an operation permit under s. NR 407.03(1m) after completion of the proposed construction.

SECTION 4. NR 406.04(1q) is created to read:

NR 406.04(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS. Any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:

1. The owner or operator of the stationary source has a facility-wide operation permit under ch. NR 407 or has submitted a timely and complete application for a facility-wide operation permit.

2. Actual emissions from all of the constructed, modified, replaced, relocated and reconstructed emissions units do not exceed any of the following levels:

a. 1,666 pounds in any month averaged over any consecutive 12-month period for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM₁₀, carbon monoxide and volatile organic compounds.

b. 10 pounds in any month averaged over any consecutive 12-month period for lead.

3. None of the emission units constructed, modified, replaced, relocated or reconstructed requires a new BACT or LAER determination under ch. NR 445 as a result of the new project.

4. None of the emission units constructed, modified, replaced, relocated or reconstructed are subject to new permitting requirements under ch. NR 405 or 408 as a result of the new project.

5. The owner or operator of the stationary source submits to the department a complete application for an operation permit revision, or an updated application for an operation permit, which includes each new, modified, replaced, relocated or reconstructed emissions unit, prior to commencing construction, modification, replacement, relocation or reconstruction and does all of the following:

a. In the operation permit revision application, or updated operation permit application, proposes monitoring of any control equipment used to limit actual emissions from any emissions unit being constructed, modified, replaced, relocated or reconstructed in accordance with the monitoring requirements in s. NR 439.055.

b. Commences monitoring of any control equipment as proposed in subd. 5.a., and maintains any records necessary to demonstrate compliance with any applicable emission limitation, upon startup of any newly constructed, modified, replaced, relocated or reconstructed emissions unit.

6. The owner or operator of the source submits to the department a claim of exemption from construction permitting requirements. The exemption claim shall identify the emission units which are being constructed, modified, replaced, relocated or reconstructed. The department shall respond to the claim of exemption submittal within 20 business days after receipt of the claim.

7. Any newly constructed emission unit is not subject to an emission limitation under section 111 or 112 of the Act (42 USC 7411 or 7412). Any modified, replaced, relocated or reconstructed emissions unit does not trigger any new emission limitation or other requirement for the emission unit under section 111 or 112 of the Act (42 USC 7411 or 7412).

Note: The application for an operation permit or operation permit revision required under this section will be evaluated by the department pursuant to the permit approval criteria in ss. 285.63 and 285.64, Stats. Application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits.

SECTION 5. NR 406.04(4)(h) is renumbered NR 406.04(4)(j)

SECTION 6. NR 406.04(4)(h) and (i) are created to read:

NR 406.04(4)(h) *Change to process lines emitting VOCs.* A change in a method of operation of a process line subject to s. NR 424.03(2)(c) that meets all of the following criteria:

1. The change does not result in annual potential VOC emissions from the process line which exceed the currently allowed annual potential VOC emissions based on conditions established under s. NR 424.03(2)(c).

2. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412).

Note: The permittee shall continue to comply with the conditions established under s. NR 424.03(2)(c) in its construction or operation permit until the permit is revised.

(i) *Change to use a clean fuel.* A change to an external combustion furnace to allow for the combustion of a clean fuel that meets all of the following requirements:

1. The external combustion furnace has a maximum heat input capacity of no greater than 10 mmBtu/hour if the ability to combust distillate oil is being added and 25 mmBtu/hour if the ability to combust natural gas or propane is being added.

2. The use of the new fuel does not cause or exacerbate the exceedance of any ambient air quality standard or increment in ch. NR 404.

3. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412).

SECTION 7. NR 407.03(1m) is created to read:

NR 407.03(1m) FACILITIES EXEMPT BASED ON ACTUAL EMISSIONS. (a) Any facility that is required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit following notification under par. (c), where all of the following criteria and requirements are met:

1. The actual emissions of each air contaminant from the facility do not exceed any of the following levels:

a. 10 tons in any calendar year for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM_{10} , carbon monoxide and volatile organic compounds.

b. 0.5 tons in any calendar year for lead.

c. Any stack-appropriate thresholds for emissions points in columns (c), (d), (e) and (f) of Table A, B or C of ch. NR 445. If the facility is a source of incidental emissions under s. NR 445.11, this subdivision only applies to emissions of air contaminants which are listed as substances of concern in Table E of ch. NR 445.

2. The facility is not subject to a standard under section 111 or 112 of the Act (42 USC 7411 or 7412).

3. The owner or operator conducts monitoring and maintains records sufficient to demonstrate compliance with the requirements of this paragraph, including the calculation of annual facility-wide

emissions. These records shall be maintained on site for at least 5 years, unless a longer period is required by statute or rule.

4. If a control device is used to limit actual emissions, the owner or operator uses a compliance monitoring method which is identified in s. NR 439.055.

(b) Any facility that is not required to submit an annual emission inventory report under s. NR 438.03 is exempt from the requirement to obtain an operation permit where all of the criteria and requirements in par. (a)1. to 4. are met.

(c)1. The owner or operator of a facility required to submit an air emission inventory report under s. NR 438.03 shall notify the department of their intent to operate the facility under the exemption criteria in par. (a). A claim of exemption made under s. NR 406.04(1q) from construction permit requirements shall satisfy this notification requirement.

2. Any existing permit shall remain in effect until the permit is revoked or coverage under a general or registration permit is withdrawn. A notification under subd. 1. shall serve as a request for revocation of an individual permit or withdrawal from coverage under a general or registration permit.

3. A notification under subd. 1. shall serve as a request for withdrawal of any pending permit application.

Note: An owner or operator exempt under this subsection is responsible for complying with all other applicable requirements in chs. NR 400 to 499.

SECTION 8. NR 410.03(1)(d) is amended to read:

NR 410.03(1)(d) Any person who applies for a construction permit for a direct source shall submit a \$1,350 fee with the application. This fee may not be refunded unless the department determines that a permit is not required. When a fee is required under par. (b) or (f), only the amount not required to cover the fee will be refunded.

SECTION 9. NR 410.03(1)(f) is created to read:

NR 410.03(1)(f) Any person submitting a claim for a construction permit exemption under s. NR 406.04(1q) shall pay a fee of \$800.

SECTION 10. 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 11. 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 _____
Scott Hassett, Secretary

(SEAL)