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Rule Analysis and Checklist

DRAFT

Working title: Non-expiring term for non-part 70 operation permits

Code citation(s): ss. 407.04 (2) and 407.09 (1) (b), Wis. Adm. Code

Other codes affected: none

Objective: to improve the operational efficiency of, and to simplify the permitting processes administered under, chs. NR 406 and NR 407, Wis. Adm. Code.

Group lead: Kristin Hart, DNR Air Management Program

Subgroup members and affiliations: Patti Stickney – SCS Engineers, Jeff Hanson – Alliant Energy, John Flickinger – Tri Media Environmental & Engineering Services.

Problem being solved or issue being resolved:

The Air Program has limited resources that can be spent on permit and compliance activities for non-part 70 sources, including both synthetic minor and natural minor sources. Therefore, resources need to be used as efficiently as possible.

The current term of operation permits is five years, with the exception of Registration Operation Permits (ROPs) and General Operation Permits (GOPs) which do not expire. Currently, non-part 70 operation permit renewal applications are, in general, only reviewed when they can be integrated with construction permit projects.

For facilities, especially small businesses, preparing a renewal application can be time consuming and expensive. It is an inefficient use of business resources to require the preparation and submittal of an application that is unlikely to be reviewed.

The goal of the rule change is to allow DNR to eliminate a backlog of renewal applications for non-part 70 sources, and to focus resources on reviewing those permit renewals that offer the most public health benefit.

Discuss how the proposed rule solves the problem or resolves the issue laid out above:

The proposed rule eliminates expiration dates for non-part 70 operation permits. Instead, the proposal lays out considerations that allow DNR to revise a permit in order to set an expiration date for a non-part 70 permit for cause. This allows the department to concentrate non-part 70 resources on permits that offer the most public health benefit, such as facilities with recurring noncompliance. The department may also accommodate the small number of facilities asking for review of their renewal applications.

Describe facilities affected by the proposed rule (size, type, location, and approximate number):

The proposed rule potentially affects the entire universe of non-part 70 operation permits, which includes State Operation Permits (SOPs) and Federally Enforceable State Operation Permits (FESOPs). The proposed rule eliminates expiration dates for SOP and FESOP permits and create provisions to revise permits in order to set an

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expiration date for cause. It is expected that most renewals for "cause" would be at facilities with FESOPs. The state currently has approximately 450 facilities covered by FESOPs.

Will emissions be affected by the proposed rule (increased or decreased)? □ Yes ☑No

Discussion (list pollutants affected. If no change, say why):

The proposed rule change is not expected to have an effect on either actual or potential emissions.

Discuss how the proposed rule improves operational efficiency and/or simplifies the air permitting process:

The proposed rule reduces the number of non-part 70 operation permit renewals that the DNR would have to review each year with available resources. The department would focus on renewals under situations described in the proposed rule.

DNR intends to continue to process revisions at non-part 70 facilities to incorporate construction permits, exempt construction projects or modifications, and to address new applicable requirements.

Discuss how the proposed rule assures the program remains consistent with the requirements of the Clean Air Act, 40 CFR Part 70, and the Wisconsin Statutes:

The Clean Air Act does not require non-part 70 sources to renew their operation permits every five years. Three states in EPA's Region 5 have 10 year terms for their non-part 70 permits (Indiana, Ohio and Illinois). Other Region 5 states (including Michigan and Minnesota) do not require most non-part 70 sources to obtain individual operation permits. Minnesota's registration permits do not expire.

Section 285.66(2)(c), Wis. Stats. specifies the following:

> **(c)** … the department may specify a term of longer than 5 years for an operation permit or specify that an operation permit does not expire if all of the following apply:
>
> > **1.** The operation permit is for a stationary source for which an operation permit is required under s. 285.60 but not under the federal clean air act.

Wisconsin already issues non-expiring general permits that cover non-Part 70 sources including the Type A and Type C registration permits, and the general permits for crushers and for asphalt plants.

Discuss estimated resources needed for implementation for both DNR and affected facilities:

Procedures and guidance would be developed regarding when an expiration date for a non-part 70 operation permit would be set. DNR work planning would be done annually to determine the number of non-part 70 renewals that could be reviewed each year. The department would need to create a decision tree addressing how many and which facility permit renewals would be triggered each year.

General discussion of why the rule is crafted as proposed, including any sticking points and how they were resolved, any other decision points, and why the final decision was made:

DNR considered lengthening the term of the permit to 10 years instead of making it non-expiring. However, a 10-year term would not resolve the main problem, which is the non-part 70 operation permit renewal backlog. A 10-year term would require the department to review 40 to 50 non-part 70 operation permit renewal applications annually, which is still more renewals than can be reviewed with current resources.

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The proposal to make non-part 70 operation permits non-expiring with the ability to revise the permit in order to set an expiration date for cause allows DNR the flexibility to review a number of targeted, priority renewal applications each year to address on-going noncompliance, or a facility's need for updated permit language.

Legal review completed: ☑Yes □ No

Discussion: Preliminary legal review completed.

Statutory changes required: □ Yes ☑No

Discussion:

EPA confirmed that a federally enforceable state operation permit (FESOP) is not considered a "permit required under the federal clean air act." Current statutory language therefore allows the department to make FESOPs non-expiring.

> **s. 285.66(2)(c)** … the department may specify a term of longer than 5 years for an operation permit or specify that an operation permit does not expire if all of the following apply:
>
> > **1.** The operation permit is for a stationary source for which an operation permit is required under s. 285.60 but not under the federal clean air act.

SIP revision or Submittal as part of Authorized Operation Permit Program required: ☑Yes □ No

Discussion:

The current language in s. 407.04 relating to permit renewal, s. NR 407.14 relating to revisions to operation permits, and s. NR 407.09 relating to operation permit content was initially promulgated on January 14, 1994 and submitted to EPA as part of Wisconsin's Operation Permit program. The rules were approved by EPA on January 18, 1995 at 60 Fed. Reg. 3538 as satisfying the requirements of a federally enforceable state operation permit program.

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Attachment: Proposed Rule Language

The department proposes to amend s. NR 407.09(1)(b) to read as follows

NR 407.09 Permit content. (1) STANDARD PERMIT REQUIREMENTS. Each permit issued under this chapter shall include, at a minimum, the following elements:
(a) Emission limitations and standards, including those operational requirements and limitations that are applied to assure compliance with all applicable requirements at the time of permit issuance, as follows:
1. The origin of and authority for each limitation, standard or requirement shall be specified and referenced and any difference in form as compared to the applicable requirement upon which the limitation, standard or requirement is based shall be identified.
2. Where an applicable requirement of the Act is more stringent than an applicable requirement of the acid rain program, both provisions shall be incorporated into the permit and shall be enforceable by the department and by EPA.
(b) The duration of the permit as follows:
1. The term of a part 70 source operation permit may not exceed 5 years.
2. The term of an operation permit issued to an affected source shall be fixed at 5 years.
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 DNR or EPA;
b. A request by the permittee;
c. A determination by the department.
4. The term specified by the department under subpar. 3 for a non-part 70 source may not be less than 5 years.

The department proposes to create s. NR 407.14(1m)(f) to read as follows:

NR 407.14 Permit revision by the department. (1) MANDATORY REVISIONS. Except for a change in an applicable requirement that is due to an addition of, or revision to, a hazardous air contaminant standard or control requirement in subch. II of ch. NR 445, the department shall revise an operation permit for any of the following reasons:

(a) The permit needs to be revised to assure compliance with applicable requirements.

(b) There is a change in any applicable requirement, a new applicable requirement, or an additional applicable requirement, and there are 3 or more years remaining in the permit term.

(c) There is a change in any applicable emission limitation, ambient air quality standard or ambient air quality increment that requires either a temporary or permanent reduction or elimination of the permitted emission, and there are 3 or more years remaining in the permit term.

(d) The permit contains a material mistake or inaccurate or unclear statements.

(1m) DISCRETIONARY REVISIONS. The department may revise an operation permit for any of the reasons listed in sub. (1), regardless of the years remaining in the permit term, or for any of the following reasons:

(a) There is or has been a significant or recurring violation of any condition of the permit.

(b) The permittee has misrepresented or failed to disclose fully all relevant facts when obtaining an operation permit.

(c) There was a reconstruction, replacement or modification of the stationary source that did not require a construction permit under ch. NR 405, 406, or 408.

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(d) The permit contains a typographical error.

(e) A change in the applicable requirement is due to an addition of, or revision to, a hazardous air contaminant standard or control requirement in subch. II of ch. NR 445.

(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. When a non-part 70 permit is revised to set an expiring term under this section, the term that is set shall be 18 months from date of the final revision approval to provide the permit holder at least 12 months to submit a timely permit renewal application.