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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 all operation permits is five years. Because of resource limitations, the non-part 70 operation permit renewal applications are, in general, only reviewed when they can be integrated with construction permit projects.

The goal of the rule change is to allow DNR to focus non-part 70 resources on permit renewal reviews 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 would eliminate expiration dates for non-part 70 operation permits. Instead, the proposal lays out considerations that would allow DNR to set an expiration date for a non-part 70 permit for cause. This would allow the department to concentrate non-part 70 resources on permits that would offer the most public health benefit, such as facilities with recurring noncompliance. The department may also accommodate the small number of facilities asking for work on the renewal of their permits.

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

The proposed rule would potentially affect 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 would eliminate expiration dates for all these permits and create provisions to set an expiration date for cause. It is expected that most renewals for “cause” would be performed at facilities with FESOPs. The state currently has approximately 450 facilities covered by FESOPs.

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**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 would reduce 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 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. Many states have longer terms for their non-part 70 permits, though it is not known whether any have non-expiring terms. Many states do not require non-part 70 sources to obtain operation permits, including states in EPA's Region 5 (i.e., the upper Midwest).

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.
2. The operation permit is not a registration permit or a general permit.

**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 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, the non-part 70 operation permit renewal backlog. A 10-year term would require the department to renew 40 to 50 non-part 70 operation permit renewals annually, which is still more renewals than can be reviewed with current resources.

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

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**Legal review completed:**  Yes  No

**Discussion:**

Ongoing – The department has asked EPA to weigh in on whether a Federally Enforceable State Operation Permit (FESOP) is considered a “permit required under the federal clean air act.” Section 285.66 (2) (c), Wis. Stats., gives DNR authority to specify that operation permits do not expire as long as the permits are not required by the Clean Air Act:

(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.

2. The operation permit is not a registration permit or a general permit.

EPA confirmed that FESOP programs are not required under the Clean Air Act. They are optional programs and some states do not have them. Based on this interpretation, DNR believes that it has statutory authority to make FESOPs non-expiring.

**Statutory changes required:**  Yes  No

**Discussion:** See discussion above. DNR has statutory authority to make non-expiring permits if the permits are not required under the Clean Air Act.

**SIP revision required:**  Yes  No

**Discussion:** Ongoing discussion.

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### **Attachment: Proposed Rule Language**

#### **NR 407.04 Permit application requirements.**

(2) PERMIT RENEWAL. Pursuant to s. 285.66 (3), Stats., a permittee shall apply for renewal of an operation permit at least 6 months before the [end of the term specified in the permit](#) ~~expires~~. No permittee may continue operation of a source after the operation permit expires, unless the permittee submits a timely and complete application for renewal of the permit. [The permit term for a non-part 70 source set under 407.09 \(b\) \(3\) shall provide at least 12 months to prepare and submit a timely permit renewal application.](#)

**Note:** Under [40 CFR 70.5\(a\)\(1\)\(iii\)](#), the renewal application must be submitted at least 6 months, but not more than 18 months before the permit expires.

**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. [Ongoing or recurring citizen complaints or concerns regarding air pollution emissions or requirements;](#)
  - c. [A request by the permittee;](#)
  - d. [A determination by the department.](#)
- (c) [The term specified by the department under par. \(b\) 3. for a non-part 70 source may not be less than 5 years.](#)