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Rule Analysis and Checklist

DRAFT

Working title: Natural Minor Exemption

Code citation(s): ss. NR 407.02(4m) and 407.03(1s), Wis. Adm. Code

Other codes affected: None

Objective: to respond to new statutory language under s. 285.60(6)(c), Wis. Stats., effective in 2013 (underlined below):

(6) EXEMPTION.

- (a) Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.*
- (b) Subject to sub. (8), the department shall, by rule, exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.*
- (c) 1. Subject to sub. (8), the department shall exempt natural minor sources from the requirement to obtain an operation permit.*
2. The department may define "natural minor source" by rule for the purposes of this paragraph.
3. The department shall seek approval from the federal environmental protection agency of any changes to the state implementation plan under the federal clean air act that are necessary to implement subd. 1.

(8) COMPLIANCE WITH FEDERAL LAW. *The department may not promulgate a rule or take any other action under this section that conflicts with the federal clean air act.*

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Problem being solved or issue being resolved:

A new Wisconsin statute created in 2013 [s. 285.60(6)(c), Wis. Stats.] requires that the department exempt natural minor sources from the requirement to obtain an operation permit. The changes to chapter NR 407 of the Wisconsin Administrative Code proposed in this rule package address that obligation.

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

The proposed rule changes meet the requirement of s. 285.60(6)(c), Wis. Stats.

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

The database maintained by the WDNR Bureau of Air Management currently identifies 2,285 sources across the entire state that potentially qualify as natural minors.

Continual quality assurance efforts by the bureau indicate that around 757 of these sources show “no activity” with our permit program, and would not likely be impacted by the proposed natural minor exemption.

The bureau has already determined that almost 490 of these 757 “no activity” sources are already exempt from our permit program. Most of these sources would not benefit from switching to the natural minor exemption. For example, sources that currently operate under a 10 ton per year actual emissions based exemption are also exempt from construction permitting, which would not apply under the natural minor exemption.

Sources that have been approved for a Registration Operation Permit (ROP) or General Operation Permit (GOP) may choose to retain these permits for various reasons, such as the exemption from construction permit requirements that a ROP or GOP also provides.

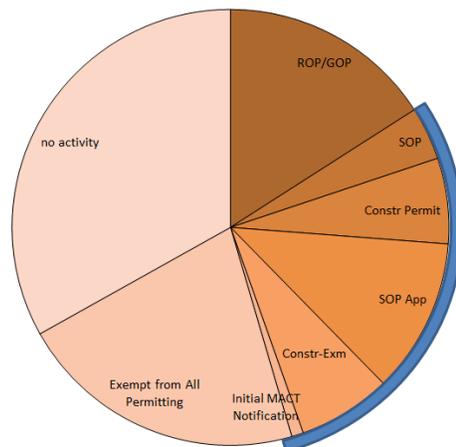
The remaining estimated 650 potential natural minor sources have either been issued a State Operation Permit (SOP), or have yet to resolve their operation permit situation and are currently operating under a construction permit or various permit shield provisions. The bureau believes that these **650 sources** represent the group most likely to benefit from the natural minor exemption.

**Universe of all 2285
B a.k.a. Natural Minor
Sources in WARP**

The primary/only permit activity they have:	
ROP/GOP	364
SOP	90
Constr Permit	146
SOP App	262
Constr Permit- Exm	158
Initial MACT Notification	20
Exempt from All Permitting	489
no activity	757
TOTAL:	2285

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Most likely to have interest in Nat Min Exm ~650



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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 exemption for natural minor sources would allow facilities to operate without being required to obtain an operation permit, but would have no effect on what other rules, emissions limitations, or emission controls the source is required to comply with.

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

The proposed rule could eliminate a backlog of State Operation Permits for natural minor sources. Sources that are natural minors may operate without having to obtain an operation permit.

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 and 40 CFR Part 70 do not specifically require states to issue operation permits to minor sources.

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

The air program would need to develop procedures to handle facilities currently operating under an operation permit or with a pending operation permit application. Facilities with existing permits or a pending application would have to alert the department of their intent to operate under the exemption. Once notification is given for these sources, any existing operation permits could be revoked and work on pending permit applications stopped. The department intends to create a form to streamline the process.

Once a notice of intent to operate under the proposed exemption is received, the air program would need to initiate and complete the permit revocation process and track the facility as exempt from operation permitting.

It should be noted that use of this natural minor exemption from an operation permit would not relieve the permittee from any construction permit requirements, or from the requirement to remain in compliance with all applicable regulations contained in chs. NR 400 through 499, Wis. Adm. Code. The air program would need to develop guidance for natural minor sources that clearly lays out how to determine whether a source is truly a natural minor, procedures for obtaining the exemption, the obligations of the facility to meet applicable requirements, and where to find technical resources to understand how to meet the code requirements and any existing construction permit requirements.

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

The definition of “natural minor source” is based on how the term has been historically used, i.e., to describe facilities that are not major and not synthetic minor. Rather than complicate the definition by referring to emission thresholds and maximum theoretical or potential emissions, the department is attempting to keep the definition as simple and straightforward as possible.

The proposed exemption language is similar to language used by the department in other exemptions. The proposed language requires the facility to maintain records demonstrating both compliance with all applicable requirements and eligibility with the exemption. The facility must produce these records if asked by the department, no requirement to submit records is included in the exemption because no other air permit exemptions in the Wis. Adm. Code require submittal of such records to DNR.

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Legal review completed: Yes No

Discussion: Preliminary legal review completed.

Statutory changes required: Yes No

Discussion: No statutory changes are needed to implement the proposed rule.

SIP revision required: Yes No

Discussion: Discussions with EPA confirm that Natural Minor Operation Permits are not currently in the SIP. DNR does not anticipate needing to submit the proposed rule language for inclusion in the SIP.

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Attachment: Proposed Rule Language

The Department proposes to create NR 407.02(4m) to read as follows:

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.

The Department proposes to create NR 407.03(1s) to read as follows:

407.03(1s) NATURAL MINOR SOURCE 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. Calculations of the potential to emit for each emissions unit and for the entire facility 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 issued under ch. NR 406 or 407, or with a pending permit application with the department submitted under ch. NR 406 or 407 shall notify the department of its intent to operate under this subsection.

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 requirements applicable to the source change;
2. Changes occur at the source; or,
3. Other emissions 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.

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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.