

Clearinghouse Rule 10-119

Report to
Legislative Council Rules Clearinghouse
NR 400, 410, 411, and 484, Wis. Adm. Code
Natural Resources Board Order No. AM-34-05

Wisconsin Statutory Authority

Sections 227.11 (2) (a), 285.11 (1), 285.60 (6) Stats., interpreting Section 285.60. (10), Stats.

Federal Authority

None

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The Air Management program has been permitting indirect sources of air pollution since the 1970s. The original program focus was to insure that emissions from automobile traffic at large developments, such as large businesses, shopping malls, and distribution centers, did not result in violations of the carbon monoxide ambient air quality standards. Technological advances in automobile pollution control equipment and cleaner burning gasoline have significantly reduced carbon monoxide emissions, although new health effects information for diesel emissions and fine-particles pollution suggest a different priority for the indirect source permit program.

Therefore, the focus of the proposed rule revisions will be to control diesel and particulate matter emissions resulting from indirect source construction activities. A general construction permit option for most indirect sources is proposed, providing industry and the Department with a streamlined approach to permitting. This permit option will eliminate carbon monoxide modeling as a requirement for most indirect source permit applications and will eliminate the screening level analysis for roadway capacity expansion projects. Indirect sources may still request a standard indirect source construction permit with carbon monoxide modeling. The requirement for indirect source operation permits would be eliminated. The basis for construction permit exemptions is proposed to change from total vehicle capacity to total impervious surface dedicated to parking and maneuvering. A revision to provide an exemption option for sources that agree to adopt superior environmental performance through the green tier program is also proposed. Green tier is based on a collaborative system of contracts and charters crafted jointly by participating businesses and the Department. These contracts and charters streamline environmental requirements while advancing new environmental technologies.

Commercial developers opting for the general construction permit process will be the primary beneficiaries of reduced permit fees and shorter permit approval times. City, county, state, and federal transportation agencies may benefit from the elimination of screening level analysis for certain roadway projects.

It is estimated that the proposed rule will save businesses and developers about \$270,000 annually in permit fees and project analysis related costs. The cost for an indirect source air permit with environmental assessment is \$8,250. In addition, the cost to develop an indirect source permit application, including consultant fees, traffic modeling, and documentation can total between \$30,000 and \$40,000. In an average year, the Bureau of Air Management processes 9 indirect source air permits, with an approximate total business cost of $9 \times \$30,000 = \$270,000$. Since legal fees are not factored into this estimate, the true savings are likely to be substantially greater.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

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Submitted on October 13, 2010

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 411.02(3) to (15), 411.04(1)(title) and (3), 411.07(2), 411.11(1)(title), 411.11(2), 411.12 and 484.05(3); **renumber and amend** NR 411.07(1)(a) to (c), 411.09, and 411.11(1); **amend** NR 400.02(96), 410.03(3)(a)1., 411(title), 411.01, 411.02(1), 411.04(title), 411.04(4), 411.05, 411.06(1), 411.10(title), (1)(intro.), and (2), and 484.06(1)(intro.), (Note) and Table 4A; **repeal and recreate** NR 411.04(2) and **create** NR 410.03(3)(a)1m., 411.02(2e), (2m) and (2s), 411.055, 411.06(2)(d), 411.09(2), 411.13 and 484.06(1)(b) in Table 4A, relating to the indirect source program and affecting developers that construct indirect emission sources.

AM-34-05

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** Section 285.60. (10), Stats.
2. **Statutory authority:** Section 227.11 (2) (a), 285.11 (1), 285.60 (6) Stats.
3. **Explanation of agency authority:** Section 285.11, Stats. gives the Department the authority to promulgate air pollution rules. Section 285.60, Stats., gives the Department the authority to regulate indirect sources by requiring construction and operation permits. Section 285.60 (6) Stats. gives the Department the authority to exempt types of sources from any requirement, if the potential emissions from the sources do not present a significant hazard to public health, safety, or welfare or to the environment.
4. **Related statute or rule:** Chapter NR 406 describes a general permit process and criteria for the construction, reconstruction, replacement, relocation or modification of stationary sources in accordance with s. 285.60(3), Stats.
5. **Plain language analysis:** The proposed rule revision will allow a general construction permit option for most indirect sources, providing industry and the Department with a streamlined approach to permitting. The proposed general construction permit option will eliminate carbon monoxide modeling as a requirement for most indirect source permit applications and will eliminate the screening level analysis for roadway capacity expansion projects. Indirect sources may still request a standard indirect source permit with carbon monoxide modeling. The proposed rule revision will eliminate the requirement for indirect source operational permits and focus control measures toward diesel and particulate matter emissions. The basis for permit exemptions is proposed to change from total vehicle capacity to total impervious surface dedicated to parking and maneuver. The proposed rule revision includes an exemption option for sources that agree to adopt superior environmental performance through the Green Tier program. Green Tier is based on a collaborative system of contracts and charters crafted jointly by participating businesses and the DNR. These contracts and charters streamline environmental requirements while advancing new environmental technologies.
6. **Summary of, and comparison with, existing or proposed federal regulation:** There is no existing or proposed federal regulation for permitting indirect sources.
7. **Comparison with similar rules in adjacent states:** Illinois, Iowa, Michigan, and Minnesota do not have similar rules. Minnesota had an indirect source permit program, but the program was discontinued on July 1, 2001 in response to budget cuts.
8. **Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** Technological advances in automobile pollution control equipment and cleaner burning gasoline have significantly reduced carbon monoxide emissions. New health effects information for diesel emissions and fine-particles pollution suggest a different priority for the indirect source permit program.

Indirect source permit applicants were surveyed to determine the average permit processing time and total cost. The survey results were used as a means to define the time and cost savings associated with a streamlined permit process. Indirect source permit holders report the current permit process, from preparing to receiving final permit, requires nearly 8 months and costs between \$30,000 - \$40,000, excluding legal fees.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: No analysis or supporting documentation was developed as most indirect source permit applicants are large scale developers, not small businesses.

10. Effect on small business: Indirect source permit applicants tend to be large scale developers, therefore the impact on small business is considered non applicable.

11. Agency contact person: Mike Friedlander, (608) 267-0806, (608) 267-0560 (fax), Michael.friedlander@wisconsin.gov

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

A public hearing has been scheduled for Thursday, November 18, 2010 at 1:00 PM. Comments on the proposed rule must be submitted on or before Monday, November 29, 2010. Written comments may be submitted at the public hearing, by regular mail, fax, E-mail, or through the Internet, and will have the same weight and effect as oral statements presented at the public hearing. The hearing will be held at:

Natural Resources State Office Building
Room 713
101 S. Webster Street
Madison, WI

Live interactive satellite connections to the hearing will also be provided in the following locations:

DNR Southeast Region Headquarters
Rooms 140-141
2300 North Dr. Maartin Luther King Jr. Drive
Milwaukee, WI

DNR Northeast Region Headquarters
Lake Michigan Room
2984 Shawano Avenue
Green Bay, WI

DNR West Central Region Headquarters
Paddlefish Conference Room
1300 W Clairemont Avenue
Eau Claire, WI

Written comments and any questions on the proposed rules should be submitted to:

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Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

SECTION 1. NR 400.02(96) including the Note is amended to read:

NR 400.02 (96) "Metropolitan county" means a county which has been designated as ~~either a metropolitan statistical area or a primary metropolitan statistical area~~ by the federal office of management and budget in ~~Metropolitan Areas, 1993~~ Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 FR 82228, December 27, 2000, incorporated by reference in ~~s. NR 484.05 (3)~~ s. NR 484.06 (1) (b).

Note: The ~~20~~ 25 Wisconsin counties which have been so designated are the counties of Brown, Calumet, Chippewa, Columbia, Dane, Douglas, Eau Claire, Fond du Lac, Iowa, Kenosha, Kewaunee, La Crosse, Marathon, Milwaukee, Oconto, Outagamie, Ozaukee, Pierce, Racine, Rock, Sheboygan, St. Croix, Washington, Waukesha and Winnebago.

SECTION 2. NR 410.03 (3) (a) 1. is amended to read:

NR 410.03(3) (a) 1. \$5,750 if the permit application is for ~~an~~ a standard indirect source permit.

SECTION 3. NR 410.03 (3) (a) 1m. is created to read:

NR 410.03 (3) (a) 1m. \$1,500 if the permit application is for a general indirect source construction permit.

SECTION 4. NR 411 (title) is amended to read:

NR 411 (title) ~~CONSTRUCTION AND OPERATION PERMITS FOR INDIRECT SOURCES~~

SECTION 5. NR 411.01 is amended to read:

NR 411.01 **Applicability; purpose.** (1) APPLICABILITY. This chapter applies to all indirect sources which are required under s. 285.60, Stats., to obtain a construction permit ~~or operation permits~~ permit. In accordance with s. 285.60 (6), Stats., this chapter exempts indirect sources of certain sizes and types from the requirement to obtain a permit.

(2) PURPOSE. This chapter is adopted under s. 285.11, Stats. The primary ~~pollutant~~ pollutants of concern for purposes of this chapter ~~is~~ are carbon monoxide, volatile organic compounds, nitrogen dioxides, PM_{2.5}, and diesel exhaust. The primary purpose of this chapter is to control emissions of carbon

monoxide emissions from volatile organic compounds, nitrogen dioxides, PM_{2.5}, and diesel exhaust associated with indirect sources by specifying requirements for indirect source construction permits ~~and operation permits~~.

SECTION 6. NR 411.02 (1) is amended to read:

NR 411.02 (1) "Associated parking ~~area~~ facility" means a parking facility owned or operated in conjunction with an indirect source.

SECTION 7. NR 411.02 (3) to (15) are repealed.

SECTION 8. NR 411.02 (2e), (2m), and (2s) are created to read:

NR 411.02 (2e) "Non-road engine" means an internal combustion engine, including the fuel system, that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under Section 111 or 202 of the Act (42 USC 7411 or 7421), except that this term shall apply to internal combustion engines used to power generators, compressors, earth moving equipment or similar equipment used in any construction program or project.

(2m) "Parking facility" means the area designed to accommodate the parking and maneuvering of vehicles.

(2s) "Standard indirect source permit" means an indirect source permit based on a carbon monoxide analysis for peak one-hour and peak 8-hour standards, including traffic volumes for the first year of operation following construction and for the construction year plus 10 years, and an environmental assessment, and which is not a general permit issued under s. NR 411.055.

SECTION 9. NR 411.04 (title) is amended to read:

NR 411.04 (title) **Exemptions from indirect source construction permit requirements.**

SECTION 10. NR 411.04 (1) (title) is repealed.

SECTION 11. NR 411.04 (2) is repealed and recreated to read:

NR 411.04 (2) Unless a source is required to obtain a permit because of incremental growth as determined under sub. (4), no construction permit is required if the source will be a new or modified indirect source with an associated parking facility and meets any of the following:

1. Has a total impervious surface area of less than 350,000 square feet and is located in a metropolitan county.

2. Has a total impervious surface area of less than 525,000 square feet and located outside the metropolitan counties.

3. Voluntarily performs activities that constitute superior environmental performance as defined in s. 299.83 (1) (g), Stats., for participation in Tier I of the environmental results program under ss. 299.83, Stats.

SECTION 12. NR 411.04 (3) is repealed.

SECTION 13. NR 411.04 (4) is amended to read:

NR 411.04 (4) INCREMENTAL GROWTH. If a person constructs or modifies an indirect source in increments which individually are exempt from the requirement for a permit under this section, the person is required to obtain a construction permit for the source prior to commencing construction or modification of that increment which, in combination with the other increments occurring since ~~July 1, 1975, or since the date of the last indirect source permit or plan approval issued to the source, whichever is later, 5 years~~ prior to the effective date of this subsection...[LRB insert date] will cause the applicable permit exemption criterion specified in sub. (2) to be exceeded.

SECTION 14. NR 411.05 is amended to read:

NR 411.05 **Scope of permit exemption for associated direct sources.** Exemption or the granting of an exemption under this chapter from the requirement to obtain an indirect source construction permit does not exempt any person from meeting, for any direct stationary source associated with the indirect source, the emission limitation requirements of chs. NR 400 to 499, the ambient air quality requirements of ch. NR 404, the reporting requirements of ch. NR 438, the requirement to obtain a

construction permit under ch. NR 406 or an operation permit under ch. NR 407, or the requirements of any other provision of law.

SECTION 15. NR 411.055 is created to read:

NR 411.055. **General indirect source construction permits.** (1) ISSUANCE OF GENERAL INDIRECT SOURCE CONSTRUCTION PERMITS. (a) The department may issue general indirect source construction permits for the construction or modification of an indirect source with a parking facility larger than 350,000 square feet, but less than 525,000 square feet and that is located in a metropolitan county.

(b) A general indirect source construction permit may be issued for an indirect source category if the sources in the category meet all of the following criteria:

1. Have the same traffic generation impacts and construction emission impacts.
2. Emit the same class of air contaminants.
3. Employ the same or similar capture and control systems, if applicable.
4. Are subject to similar emission limitations and other state and federal requirements that are

applicable to the sources in the category.

Note: An example of “similar emission limitations” is emission limitations for the same air contaminant but that differ based on the size of the source, its location, or its date of construction.

(c) When proposing to issue a general indirect source construction permit, the department shall prepare an air quality analysis and a preliminary determination on the approvability of the proposed general indirect source permit. The department shall use the applicable procedures in s. 285.61, Stats., to issue a general indirect source permit. The department may issue the general indirect source permit if the applicable criteria in s. 285.63, Stats., are met. The procedural requirements in s. 285.61 (2) to (8), Stats., do not apply to the determination of whether an individual source is covered by a general indirect construction permit for a source category.

Note: The statutes cited above require that when issuing a general indirect source permit, the department distribute a notice of the availability of the proposed general indirect source permit and of the department’s analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing. There will be a 30-day public comment period and the department may hold a public hearing within 60 days after the deadline for requesting one.

(d) The general indirect source construction permit shall contain applicability criteria, appropriate control technology, monitoring and recordkeeping requirements, reporting requirements, compliance demonstration methods and general conditions appropriate for the source category.

(2) APPLICATION FOR COVERAGE UNDER A GENERAL INDIRECT SOURCE

CONSTRUCTION PERMIT. (a) A developer or owner of an indirect source who applies for coverage under a general indirect source construction permit shall submit an application using department approved permit application forms.

Note: Contact the regional offices or service centers of the department or the Regional Pollutants and Mobile Sources Section of the Bureau of Air Management, 608-267-0806, for information on how to obtain and submit the department approved general indirect source construction permit application forms.

(b) A developer or owner of an indirect source who requests or requires emission limits, terms, or conditions other than, or in addition to, those contained in the general indirect source construction permit shall apply for a standard indirect source construction permit under s. NR 411.06. The developer or owner may voluntarily perform activities that constitute superior environmental performance as defined under s. 299.83 (1) (g), Stats., in lieu of submitting an application for a standard indirect source construction permit.

(c) Within 15 days after receipt of an application for coverage under a general indirect source construction permit, the department shall provide one of the following to an applicant:

1. Written notice of the department's determination that the source is covered under the general indirect source construction permit.

2. A written description of any information that is missing from the application for coverage under the general indirect source construction permit.

3. Written notice of the department's determination that the source does not qualify for coverage under the general indirect source construction permit, specifically describing the reasons for the determination.

(d) The department shall grant coverage under a general indirect source construction permit if the owner or operator of the source meets the eligibility requirements of the general indirect source construction permit, unless the source is ineligible under par. (b) or has applied for a standard indirect source construction permit.

SECTION 16. NR 411.06 (1) include Note is amended to read:

NR 411.06 **Application requirements.** (1) Applications for ~~the~~ standard indirect source construction permits ~~or operation permits~~ shall be submitted on forms which are available from the department ~~at its Madison headquarters.~~

Note: ~~The address of the Madison headquarters is Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707, Attention: Modeling Team.~~ Application forms may be obtained from the regional offices and service centers of the department or the Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison WI 53707-7921, Attention: Indirect Source Permit, or by calling 608-267-0806.

SECTION 17. NR 411.06 (2) (d) is created to read:

NR 411.06 (2) (d) An environmental assessment.

SECTION 18. NR 411.07 (1) (a) to (c) are renumbered NR 411.07 (intro.), (1) and (2) and as renumbered are amended to read:

NR 411.07 (intro.) This ~~subsection~~ section applies to actions on standard indirect source construction permits for which applications are received on or after ~~September 1, 2000, the effective date of this section...~~[LRB insert date]. This section does not apply to actions on applications for construction permits where the source commences construction 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.

(1) The department shall make a determination under s. 285.61 (8), Stats., on a standard indirect source construction permit application within 145 business days of receipt of a complete application, unless compliance with s. 1.11, Stats., requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11, Stats., within one year.

(2) If the department does not make a determination within the time period specified in ~~par. (b)~~ sub. (1), the department may not impose an application fee for the construction permit under s. NR 410.03, and shall refund any application fee submitted with the application.

SECTION 19. NR 411.07 (2) is repealed.

SECTION 20. NR 411.09 is renumbered NR 411.09 (1) and as renumbered is amended to read:

NR 411.09 **Violations.** (1) ~~Any~~ With the exception of sub. (2), any owner or operator who fails to construct ~~and operate~~ an indirect source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate an indirect source in accordance with conditions imposed by the department under s. 285.65 (1) to (4), (8) to (10), and (13), Stats.; any owner or operator who modifies an indirect source in violation of conditions imposed by the department under s. 285.65(1) to (4), (8) to (10), and (13), Stats.; or any owner or operator who commences construction or modification of an indirect source without applying for and receiving a permit as required under this chapter shall be considered in violation of s. 285.60, Stats.

SECTION 21. NR 411.09 (2) is created to read:

NR 411.09 (2) Any owner or operator of an indirect source that voluntarily performs activities that constitute superior environmental performance as defined in s. 299.83 (1) (g), Stats., for participation in Tier I of the environmental results program under s. 299.83, Stats., will not be considered in violation of s. 285.60, Stats., so long as the superior environmental performance activities included in the submittal to the department under s. NR 411.13 are followed during construction and, if applicable, operation of the indirect source.

SECTION 22. NR 411.10 (title), (1) (intro.), and (2) are amended to read:

NR 411.10(title) **Construction permit ~~or operation permit~~ revision, suspension and , or revocation.**

(1) GROUND FOR ACTION. (intro) After providing 21 days written notice to the permit holder, the department may revise, suspend, or revoke a ~~construction permit or operation permit, part of that permit or the conditions of that permit~~ standard indirect source permit, or withdraw coverage under a general indirect source permit if there is or was any of the following:

(2) PROCEDURES AND TIMETABLE FOR ISSUANCE. The department shall use the procedures and timetable listed in ~~ss. s. 285.61 and 285.62(2) to (9)~~, Stats., to revise permits covered under this

section.

SECTION 23. NR 411.11 (1) (title) is repealed.

SECTION 24. NR 411.11 (1) is renumbered NR 411.11 and as renumbered is amended to read:

NR 411.11 **Permit duration periods.** Approval to construct or modify an indirect source shall become invalid ~~48~~ 36 months after the date when a an indirect source construction permit was issued by the department unless the permit specifies otherwise. The department may only extend this duration period for up to 18 additional months upon written request showing that an extension is justified unless the permit specifies otherwise.

SECTION 25. NR 411.11(2) is repealed.

SECTION 26. NR 411.12 is repealed.

SECTION 27. NR 411.13 is created to read:

NR 411.13 **Superior Environmental Performance** The owner or operator of an indirect claiming to be exempt under s. NR 411.04 (2) 3., shall perform activities that constitute superior environmental performance as defined in s. 299.83 (1) (g), Stats., for participation in Tier I of the environmental results program under ss. 299.80 and 299.83, Stats. Any superior environmental performance program shall be submitted to the department in writing and shall address implementation of all of the following measures:

- (1) The use of diesel idle restriction.
- (2) The use of best management techniques to mitigate environmental impacts during construction and operation of the source.
- (3) The use of EPA verified control technology to further mitigate emissions from mobile and off-road sources.

SECTION 28. NR 484.05 (3) is repealed.

SECTION 29. NR 484.06(1) (intro.), (Note) and Table 4A are amended to read:

NR 484.06(1) (intro.) The following ~~is a document~~ are documents published in the federal register.

:

Note: Copies ~~can be made~~ of the document listed in par. (b) may be downloaded from the internet for personal use from ~~the federal register or microfiche, which is available at the department of natural resource library~~ <http://www.epa.gov/fedrgstr/>.

Table 4A

Citation	Title	Incorporated by Reference For
(a) 51 FR 43814, Dec. 4, 1986	Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits	NR 408.06(1)(d)Note NR 425.05(1) (b) 2.

SECTION 30. NR 484.06(1) (b) in Table 4A is created to read:

NR 484.06(1) Table 4A

Citation	Title	Incorporated by Reference For
(b) 65 FR 82228, Dec. 27, 2000	Standards for Defining Metropolitan and Micropolitan Statistical Areas	NR 400.02(96)

SECTION 31. 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 32. 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 _____
Matthew J. Frank, Secretary

(SEAL)