

## **Report From Agency**

### REPORT TO LEGISLATURE

NR 400, 406, 407 and 410 , Wis. Adm. Code  
Construction permits, portable source relocation  
and affecting small business

Board Order No. AM-12-07  
Clearinghouse Rule No. 07-040

#### Basis and Purpose of the Proposed Rule

This rule is being proposed as a clean-up package to amend portions of our rules to make them the same as federal rules and to clarify and streamline portions of our rules regarding permitting. The revisions are based on changes to federal regulations; the changes are needed so the Department can retain approval from EPA for our air permit program. The other changes are needed clarifications to existing rule language.

On November 27, 2001, the U.S. Environmental Protection Agency (U.S. EPA) made changes to the definition of "major source" that is applied in air operation permit programs. Under s. 285.11(16), Stats., the Department must promulgate rules consistent with but no more restrictive than the federal clean air act, that specify which sources are classified as "major sources".

The U.S. EPA's new definition of "major source", for purposes of the operation permit program, changes which fugitive emissions are counted in determining whether a source is major or not. To ensure that Wisconsin's operation permit program is at least as stringent as the federal requirements, the Department must, in addition to amending the definition of "major source", create a definition of "fugitive emissions" specific to the operation permit program.

On December 19, 2005 U.S. EPA excluded several types of small hazardous air pollutant sources from federal permit requirements. Department rules are being amended to reflect this change. The major source threshold for Nitrogen Oxides (NO<sub>x</sub>) emissions in ozone nonattainment areas varies with the removal of NO<sub>x</sub> waiver. Not all portable sources would be considered major if their NO<sub>x</sub> emissions now exceed 25 tons per year. Since the threshold may be different for portable sources which are relocated into or within an ozone nonattainment area, the numerical threshold is being eliminated. The numerical value for VOC emissions is also being eliminated. Instead, the rule will refer to the major source definitions for VOCs and NO<sub>x</sub> in ch. NR 408 (the chapter that regulates nonattainment area major sources).

Current regulations regarding the replacement of an air contaminant source that is covered under a general permit are being revised to clarify when a new permit is needed.

In a streamlining effort to allow some operation permits to be issued at the same time as construction permits, s. NR 410.03 is being revised to allow the operation permit to be issued before the construction permit fees are collected. The Department still retains the ability to revoke a permit should a source not pay the permit fees. The Department can also refer a source to the Department of Justice to collect the fee.

#### Summary of Public Comments

No public comments were received.

### Modifications Made

Changes in ch. NR 439 stack testing requirements were being proposed for combustion sources (boilers) that are regulated under the national emission standards for hazardous air pollutants (MACT) for industrial, commercial and institutional boilers and process heaters in ch. NR 462. However, a federal court has vacated this MACT standard so the implementation and enforcement of ch. NR 462 has been stayed at this time. For this reason those revisions are being removed from this rule package and may be addressed at a later date.

### Appearances at the Public Hearing

No one appeared at the public hearing.

### Changes to Rule Analysis and Fiscal Estimate

None were required, except to eliminate the references to the originally proposed revisions to ch. NR 439.

### Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

### Final Regulatory Flexibility Analysis

Based on the context of the rule changes, which are already in place at the federal level, there should not be a significant economic impact on a substantial number of small businesses. The only change associated with this rule package that may affect small business is a result of the changes in federal requirements regarding fugitive emissions.

The proposed rule revisions may affect any air pollution sources that have an air permit or are required to obtain an operation permit, and portable sources.