

Report From Agency

REPORT TO LEGISLATURE

NR 406, 407, 409, 419, 439, and 484, Wis. Adm. Code
Air pollution control rule changes relating to federal hazardous air pollutant regulations, biodiesel fuel, statutory changes, and permit applications and affecting small business.

Board Order Number: AM-05-09
Clearinghouse Rule Number: CR09-020

BASIS AND PURPOSE OF THE PROPOSED RULE

The main objective of the proposed rule is to update state air permitting rules to reflect federal language for small air pollution sources subject to federal hazardous air pollutant standards. This update would exempt sources subject only to Generally Available Control Technology (GACT) standards from requirements to obtain new source review and federal operation permits. Under the Clean Air Act, US EPA has discretion to exempt these sources from permit requirements when they promulgated a GACT standard. Wisconsin's permitting language is currently written in a manner that does not recognize this discretion, resulting in these sources being subjected to air permitting requirements. The proposed rule revises permit language in chs. NR 406 and 407 that would allow these sources to be exempt. Examples of sources affected include gasoline storage and dispensing facilities, auto body refinishing, and wood preserving operations.

Additional proposed amendments would change the current 12 to 18 month window for submittal of an operation permit renewal application to "at least 6 months" prior to the expiration of the current operation permit, making it consistent with current statutory language.

The proposed rule also includes a provision to allow bio-diesel to be used in small boilers without triggering the need to obtain a construction permit.

Clarifications are included that two copies of permit applications are needed when submitted only on paper. However, an option is provided to use electronic application submittal together with a single paper copy.

Other minor proposed changes of a cleanup nature include amendments related to the term friable asbestos, elimination of a notification requirement related to soil or water remediation projects, and an update to monitoring requirements for electrostatic precipitators.

SUMMARY OF PUBLIC COMMENTS

Written comments were received from Alliant Energy suggesting changes regarding the time frame for submittal of operation permit renewal applications. The proposed changes in the operation permit renewal time frame were made based on, and consistent with, the current statute (s. 285.66(3), Stats.). A note was added explaining that under federal regulations, sources have a 6 to 18 month period in which to submit an operation permit renewal application. While this wasn't put into the regulation, it indicates to applicants that the Department would prefer that they don't submit their applications too far in advance of their current permit expiring. The Department may pursue amendments to the statutory language to mirror that of the federal regulations.

Edward Wilusz, representing the Wisconsin Paper Council, submitted written comments directed at the proposed definition of asbestos and its location in the administrative code, and the proposed addition of secondary voltage as a monitoring requirement for electrostatic precipitators

(ESP), which control emissions of particulate matter. The location of the definition of asbestos has been moved to both chs. NR 406 and 407, Wis. Adm. Code, where the term is first used in the code. The addition of secondary voltage as a required monitoring parameter for ESP was proposed to bring ESP monitoring requirements up-to-date. The current rule was written in about 1995 and additional knowledge has been gained in how to properly assess the operation of an ESP so as to better correlate the monitoring results with the compliance status of the process being controlled. No changes were made to this provision.

MODIFICATIONS MADE

Modifications made by the Department are detailed above in the Summary of Public Comments section of this report.

APPEARANCES AT THE PUBLIC HEARING

The Department conducted a public hearing on April 16, 2009 in Madison. The following appeared as indicated below:

In support: Steven B. Smith, 1509 S. Macedonia Ave, Muncie, IN 47307,
representing Saint-Gobain Containers

In opposition: None

As interest may appear: None

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

Modifications were made to the plain language analysis section of the order to reflect the rule changes detailed in the Summary of Public Comments section of this report, and to reflect recommendations made by the Legislative Council Rules Clearinghouse.

No changes were made to the fiscal estimate.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

All Legislative Council Rules Clearinghouse comments have been accepted and the analysis section of the order and the proposed rules revised accordingly, except for the recommendation made in the second paragraph of comment 4.a., which reads:

“In addition, the department could assist a reader who wants to correlate specific statutes interpreted and statutes providing authority for the rule to specific provisions in the rule by indicating in the plain language analysis accompanying the rules which statute is being interpreted and which statute provides authority for a particular provision summarized in that analysis.”

It was felt that the recommended change may unnecessarily complicate what is intended to be a plain language explanation of the rule. In addition, it was felt that the explanation of agency authority in section 3. of the analysis provided enough information for a reader to correlate cited statutes, either being interpreted or providing authority, to specific provisions in the rule being summarized in the plain language analysis.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule is not expected to have a significant impact on small businesses. However, it will allow some small businesses to become exempt from hazardous air pollutant permitting regulations, as is the case with the federal requirements. This could be a relief of time and monetary investment.