

## Chapter NR 411

### CONSTRUCTION AND OPERATION PERMITS FOR INDIRECT SOURCES

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**Note:** On April 27, 2011, the Joint Committee for the Review of Administrative Rules adopted a motion under s. 227.26 (2) (d), Stats., suspending ch. NR 411.

**Note:** Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1996, No. 492.

**NR 411.01 Applicability; purpose. (1) APPLICABILITY.** This chapter applies to all indirect sources which are required under s. 285.60, Stats., to obtain construction permits or operation permits. 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 of concern for purposes of this chapter is carbon monoxide. The primary purpose of this chapter is to control carbon monoxide emissions from indirect sources by specifying requirements for indirect source construction permits and operation permits.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.02 Definitions.** The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

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

**(2)** "Construction" means any building, paving, erecting or related site preparation activity, including any demolition, site clearance, grading, dredging or landfilling at any location on the property on which an indirect source would be located.

**(3)** "Highway project" means all or a portion of a proposed new or modified section of highway. If an environmental impact document is prepared, "highway project" means the portion of the highway to which that document applies.

**(4)** "Intersection boundary" means a line surrounding an intersection which is drawn to include the peak hour queue for each intersection approach and the area on either side of each such queue within a distance of one queue length, measured perpendicular to the queue.

**(5)** "Major source" means any indirect stationary source which causes the emission or has the potential to cause the emission of 25 tons or more per year on-site of carbon monoxide.

**(7)** "Modified intersection" means an intersection that will have at least part of its new roadway surface within the new intersection boundary on land that is currently used for roadway within the boundary of an existing intersection.

**(8)** "Modified road or highway segment" means a road or highway segment which will have at least part of its roadway surface located on land currently used for roadway. In addition, a proposed road, ramp or lane which will carry traffic in only one direction shall be considered a modified road or highway segment if it will be less than one half mile in length and will not create a new traffic movement.

**(9)** "New road or highway segment" means a road or highway segment which will have its roadway surface located entirely on

land not currently used for roadway and which is not a modified road or highway segment.

**(10)** "Parking capacity" means the maximum number of motor vehicles which a parking lot or structure is designed to hold, based on an allotment of not more than 350 square feet of stall and aisle area per vehicle.

**(11)** "Peak hour queue" means the line of waiting motor vehicles produced during the highest hour of traffic volume measured, estimated or projected for a given year, at a location where traffic flow is restricted by controlled or uncontrolled conditions.

**(12)** "Peak hour volume" means the highest one-hour traffic volume in a calendar year.

**(13)** "Potential receptor" means any doorway, window or other such opening associated with an existing structure. In the absence of an existing structure, potential receptors may be located at the building setback line or at the outer edge of roadway right of ways.

**(14)** "Queue" means a line of idling motor vehicles.

**(15)** "Road or highway segment" means a continuous length of road or highway outside of intersection boundaries. If the road or highway crosses the boundary between a metropolitan county and a non-metropolitan county, the portion in each county is a separate road or highway segment.

**(16)** "Traffic volume" means the number of motor vehicles that pass a particular point on a road or highway during a specific time period.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95; renum. (6) to be NR 400.02 (53p), Register, December, 1995, No. 480, eff. 1-1-96.

**NR 411.03 Construction permit requirements.** No person may commence construction, relocation or modification of an indirect source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under this chapter.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.04 Exemptions from indirect source permit requirements. (1) INDIRECT SOURCE EXEMPTIONS.** Pursuant to s. 285.63 (4) (a), Stats., indirect sources are exempt from s. 285.63 (2) (a) and (b) and (3) (a), Stats.

**(2) SOURCES EXEMPT FROM CONSTRUCTION PERMITS.** The following categories of indirect sources are exempt from the requirement to obtain a construction permit unless the source is required to obtain a permit because of incremental growth as determined under sub. (4):

(a) *Indirect sources with associated parking.* No permit is required if an indirect source with associated parking will be any of the following:

1. A new indirect source located in a metropolitan county with a parking capacity of less than 1000 motor vehicles in its associated parking areas.

2. A modified indirect source located in a metropolitan county with a parking capacity increase of less than 1000 motor vehicles in its associated parking areas.

3. A new indirect source located outside the metropolitan counties with a parking capacity of less than 1500 motor vehicles in its associated parking areas.

4. A modified indirect source located outside the metropolitan counties with a parking capacity increase of less than 1500 motor vehicles in its associated parking areas.

(b) *Road and highway projects.* For road and highway projects located outside the metropolitan counties, no permit is required for any new road or highway segment which will carry less than 4 lanes of traffic, for any new intersection each leg of which will carry less than 4 lanes of traffic, or for any modified road or highway segment or modified intersection which will have less than 2 additional lanes of traffic. In addition, no permit is required for any road or highway project which will meet all of the following criteria for location and anticipated traffic volumes within 10 years after construction or modification:

1. For any new road or highway segment or new intersection leg located in a metropolitan county, a peak hour volume of less than 1200 motor vehicles per hour.

2. For any modified road or highway segment located in a metropolitan county, an increase in the peak hour volume of less than 1200 motor vehicles per hour.

3. For any new road or highway segment or new intersection leg located outside the metropolitan counties, a peak hour volume of less than 1800 motor vehicles per hour.

4. For any modified road or highway segment located outside the metropolitan counties, an increase in the peak hour volume of less than 1800 motor vehicles per hour.

5. Where there is a shift in one or more of the intersection approach legs, one of the following:

a. A maximum shift in the nearest roadway edge of less than 12 feet toward any potential receptor location within the new intersection boundary for any modified intersection.

b. Where the maximum shift in the nearest roadway edge toward any potential receptor location is 12 or more feet, and each new road or highway segment has no more than 2 approach lanes, not including exclusive turning lanes, and any potential receptor is located at more than 25 feet from the nearest proposed roadway edge, a peak hour traffic volume on each approach of less than 1800 motor vehicles per hour.

(c) *Application of screening technique.* If a road or highway project is not exempt from permit requirements under par. (b), a person may apply for a permit exemption by submitting the results of an approved screening analysis based on a line source dispersion model. The screening technique used shall be reviewed and approved by the department and the analysis shall use receptor locations which have been approved by the department for each project as adequate to show the maximum potential ambient concentrations of carbon monoxide to which the public may be exposed. If the screening analysis results indicate that no receptor location will be exposed to more than 75% of any ambient air quality standard for carbon monoxide, no permit is required.

(3) **SOURCES EXEMPT FROM OPERATION PERMITS.** The following categories of indirect sources are exempt from the requirement to obtain an operation permit:

(a) *Existing sources.* All indirect sources on which construction or modification commenced on or prior to November 15, 1992, unless the department deems an operation permit is necessary to ensure that air quality standards are maintained in accordance with ch. 285, Stats., and chs. NR 400 to 499.

(b) *Road and highway projects.* All indirect sources which are road or highway projects.

(c) *Indirect sources with associated parking.* Any indirect source that is exempt from the requirement to obtain a construction permit in accordance with sub. (2).

(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, will cause the applicable permit exemption criterion specified in sub. (2) to be exceeded.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**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 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.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.06 Application requirements. (1)** Applications for the 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.

(2) In addition to the application form, the following information is required in order for the application to be complete:

(a) A to-scale map detailing the project site and receptor locations.

(b) Traffic volume counts for peak one-hour and peak 8-hour periods. These traffic counts shall include 2 estimates, one for the first year of operation following construction and one for the construction year plus 10 years.

(c) A computer disk containing the input files used in the appropriate emissions and air dispersion models.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.07 Action on permit applications. (1)** (a) This subsection applies to actions on construction permits for which applications are received on or after September 1, 2000. 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.

(b) The department shall make a determination under s. 285.61(8), Stats., on a 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.

(c) If the department does not make a determination within the time period specified in par. (b), 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.

(2) Upon completion of construction and verification by the department that the indirect source was completed according to plans submitted in the construction permit application and meets

s. NR 411.01(1), an operation permit shall be issued by the department to the indirect source.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr., Register, August, 2000, No. 536, eff. 9-1-00.

**NR 411.08 Applicable air standards.** Pursuant to s. 285.63 (1) (b), Stats., the department shall determine if the indirect source will violate the ambient air quality standards for carbon monoxide given in s. NR 404.04 (4).

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.09 Violations.** 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.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.10 Construction permit or operation permit revision, suspension and revocation. (1) GROUNDS FOR ACTION.** 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 if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or which causes air pollution.

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation by the permit holder or a deliberate failure to disclose fully all relevant, significant facts when obtaining the permit.

(c) *Department determination.* A determination by the department that the permit be revised to assure compliance with the applicable requirements.

(d) *Request.* A request by the permit holder to revise, suspend or revoke the permit.

(e) *Failure to pay fees.* An intentional failure by the permit holder to pay in full the fees required under ch. NR 410, except the department may not suspend or revoke the permit for failure to pay fees while those fees are being disputed under s. NR 410.04 (6).

(f) *Change in requirements.* A change in any applicable requirement or a new applicable requirement.

(g) *Change in air quality standard.* A change in an applicable ambient air quality standard that requires either a temporary or permanent reduction or elimination of the permitted emission.

(h) *Inaccurate permit content.* A material mistake or an inaccurate or unclear statement in the permit.

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

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.11 Permit duration periods. (1) CONSTRUCTION PERMIT.** Approval to construct or modify an indirect source shall become invalid 18 months after the date when a 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.

**(2) OPERATION PERMIT.** The term of the indirect source operation permit is 5 years unless the department deems a shorter time limit necessary to ensure that air quality standards are maintained in accordance with chs. NR 400 to 499 and ch. 285, Stats.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.

**NR 411.12 Operation permit renewal.** Renewal of an indirect source operation permit shall be in accordance with s. 285.66 (3), Stats.

**History:** Cr. Register, June, 1995, No. 474, eff. 7-1-95.