

AIR MANAGEMENT PROGRAM FACT SHEET



Actual Emissions-Based Exemption from Construction Permits Under s. NR 406.04(1q), Wis. Adm. Code

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What is the actual emissions-based construction permit exemption?

Facilities constructing new or modifying existing equipment that emits air pollution need to obtain an air pollution control construction permit unless they are exempt. The actual emissions-based construction permit exemption is available for projects at any facility that meet certain emissions limits.

This exemption is available to all facilities that have been issued a facility-wide operation permit or have submitted a timely and complete application for a facility-wide operation permit. Note, facilities with a registration permit, general operation permit or facilities operating under s. NR 407.03(1m), the 10-ton actual emissions-based exemption from operation permits, do not need to use this exemption if the facility remains eligible for the same permit or operation permit exemption after completion of the project.

Who qualifies for this exemption?

A facility may qualify for the exemption if the actual emissions from all the equipment (also known as emissions units) constructed, modified, replaced, relocated and/or reconstructed as part of a project do not exceed the following levels, averaged over any 12-consecutive-month period:

Pollutant	Eligibility threshold
Particulate matter (PM), and PM less than 10 microns	1,666 pounds per month
Sulfur dioxide (SO ₂)	1,666 pounds per month
Carbon monoxide (CO)	1,666 pounds per month
Nitrogen oxides (NO _x)	1,666 pounds per month
Volatile organic compounds (VOCs)	1,666 pounds per month
Lead	10 pounds per month

In addition to emitting at or below these thresholds, the project, which consists of all constructed, modified, replaced, relocated or reconstructed emissions units, must also meet the following requirements:

- The project does not trigger New Source Review requirements under chs. NR 405 or NR 408, Wis. Adm. Code.

- None of the emissions units in the project can trigger a new Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) determination under the state toxics rule in ch. NR 445, Wis. Adm. Code. BACT or LAER may be triggered if the emissions of a hazardous air contaminant are over the applicable thresholds in Table A, B, or C of [ch. NR 445](#), and column (i) in the tables says BACT or LAER is required. Visit the DNR website for more information on the [state toxics rule](#).
- Emissions units (or processes) newly constructed as part of the project cannot be subject to an emissions limitation under section 111 (New Source Performance Standards, or NSPS), or 112 (National Emissions Standards for Hazardous Air Pollutants, or NESHAPs) excluding 112(d)(5) of the federal Clean Air Act. In addition, units that are modified, reconstructed, replaced or relocated as part of the project cannot trigger any new requirements under section 111 or 112 of the Clean Air Act due to the project.
 - One exception to this is emergency engines certified to meet the NSPS in 40 CFR part 60, subpart IIII or JJJJ for each fuel used.

Visit the U.S. Environmental Protection Agency (EPA) for a list of [NSPS](#) and information on [NESHAPs](#).

How can a facility obtain an exemption from construction permit requirements?

Before starting on any projects, take the following steps:

- Make a claim of exemption by completing the [Facility Details and Permit Actions](#) form (Form 4530-100). Along with the form, submit a thorough description of the project, emission estimates, calculation methods, and any other information needed to confirm the facility's eligibility for the exemption. A list of items that should be included in the submittal to allow the most efficient review by the DNR is included in the exemption checklist [AM-593](#).
- In addition, all requests must include a complete application for a revision to the facility-wide operation permit or, if the DNR has not yet acted upon the application for an operation permit, an amendment to the application must be submitted. One of these options should be identified on Form 4530-100. Additional [permit application forms](#) are available online.
- If control equipment is used to limit actual emissions from any unit in the project, the operation permit revision application or amendment must propose methods that will be used to monitor operation of the control equipment.
- Submit the application based on instructions on the [How to Apply](#) webpage.

What happens after the DNR receives the claim of exemption?

Review: The DNR is required to respond to any claim of exemption made under s. 406.04(1q) within 20 business days of receipt. If the application for an operation permit revision is incomplete, or if not enough information is submitted to make an exemption determination, the DNR will ask for additional information. The DNR will have 20 business days from the date the additional information is received to make a decision. The DNR will send a written response within that time.

- If the DNR determines that the project **is** exempt, construction may begin immediately.
- If DNR finds the project **is not** exempt, the facility will be instructed on how to apply for a traditional construction permit.

Fees: There is a one-time fee of \$1,250 for the review of an exemption under s. NR 406.04(1q). This fee must be included with the claim of exemption. A claim is not considered complete unless this fee is included. Indicate on form 4530-100 how the fee will be paid. Instructions for how to pay electronically will be provided when the form is submitted.

Revision: After determining that the project is exempt, the application for operation permit revision will be processed. This will include preparation of a draft permit, publication of a public notice and a 30-day public comment period. Permits for facilities that are federal Part 70 sources will undergo an additional 45-day U.S. Environmental Protection Agency review. The DNR is generally able to make a final decision on permit revisions within 180 days of receiving a complete application.

What should a facility do after the exemption is approved?

Once any new or modified emissions unit starts operating, the facility must begin monitoring any pollution control equipment as proposed in the operation permit revision application. The facility is also required to maintain records adequate to demonstrate compliance with the applicable emissions limitations.

For more information:

For more information on the Actual Emissions Construction Permit Exemption:

- Visit the [Air Permit Exemptions](#) webpage and click on the Actual Emissions NS tab.
- Contact the Small Business Environmental Assistance Program at DNRsmallbusiness@wisconsin.gov or call toll-free at 1-855-889-3021.
- Contact the permit exemption coordinator listed on the [Air Contacts](#) page.

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Wisconsin Department of Natural Resources
Air Management Program
Box 7921- AM/7
Madison, WI 53707
PHONE 608-266-7718 • FAX 608-267-0560