

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. AM-37-98

Legislative Council Rules Clearinghouse Number 98-162

Subject of Rules Increase in construction permit fees

Date of Transmittal to Presiding Officers February 9, 1999

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 410, Wis. Adm. Code
Air pollution construction permit fee increase

Board Order No. AM-37-98
Clearinghouse Rule No. 98-162

Statement of Need

Section 285.69(1), Stats., authorizes the collection of a reasonable fee for reviewing and acting upon any application for a construction permit or permit exemption. The Federal Clean Air Act mandates collection of a fee sufficient to cover the reasonable cost of reviewing and acting upon any application for a permit for a major source and the reasonable costs of implementing and enforcing the terms and conditions of the permit. The current fee structure for construction permits in ch. NR 410 went into effect July 1, 1995. These application fees to date now generate the amount of revenue needed to cover the cost of reviewing and acting upon construction permit applications. Based upon our analysis of staff time requirements for processing construction permits, these activities now require the full time efforts of 15 air management engineers, 2 air quality modelers, one program assistant and one supervisor who process approximately 173 permit applications per year.

In FY 96 through 98, the fees generated for an average permit review were \$7,053. The associated costs, which include salary, benefits, indirect costs and related supplies and service costs, are now \$9,500. This places a demand of \$1,637,000 on a current revenue base of only \$1,210,000. Because the air program places a priority on promptly processing construction permits, extraordinary measures have been taken to maintain output in spite of the funding shortfall. Other funding sources have been used to subsidize the new source review work as an interim measure. In addition, caseloads for individual engineers have increased and the amount of overtime expended has increased markedly in the past year. Expedited reviews now account for 75% of all permits processed. In view of the above, the air program proposes to revise ch. NR 410 by raising fees 35% across the board in order to generate sufficient revenue to recover permit processing costs.

Modifications as a Result of Public Hearings

No modifications were made.

Appearances at the Public Hearings and Their Position

November 3, 1998 – Milwaukee – no appearances

November 4, 1998 – Madison

In support – none

In opposition – none

As interest may appear:

Pat Osborne, Aggregate Producers of Wisconsin, 44 E. Mifflin St., Madison, WI

November 5, 1998 – Wausau – no appearances

Response to Legislative Council Rules Clearinghouse Report

There were no comments or recommendations.

Final Regulatory Flexibility Analysis

Any organization constructing new facilities or modifying existing facilities that are below the exemption levels of ch. NR 406 are exempt from paying the fees. Although small businesses could be made exempt from construction permit application fees, these fees would need to be made up by charging higher permit fees to those sources that would not be considered small businesses. The Bureau of Air Management has taken several actions which benefit small businesses with respect to air pollution construction permits and associated fees. Exemptions were developed in ch. NR 406 to exempt small emitting sources from the requirements to obtain a permit. Secondly, a tiered fee rule was developed for small emitting sources. Sources which emit pollutants at a minor source level are charged less than sources which emit pollutants at a major source level. Finally, the fees are divided between basic fees and additional fees. Small businesses typically will pay a basic fee with very few additional fees.

No additional compliance or reporting requirements are imposed. Chapter NR 410 requires payment of a fee for those sources obtaining construction permits. These fees are calculated by the Department as part of the permit review and are billed when the permit is issued.

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to **amend** NR 410.03(intro.) and (1)(a), (b), (d), (2) and (4) relating to an increase in construction permit fees.

AM-37-98

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2)(a), 285.11(1), and 285.69(1), Stats.

Statutes interpreted: s. 285.11(1) and (6), Stats. The State Implementation Plan developed under that provision is revised.

Section 110(a)(2)(L) of the 1990 Clean Air Act and s. 285.69(1), Wis. Stats., authorize the collection of reasonable fees for the (direct and indirect) costs of reviewing and acting on applications for construction permits and permit exemptions. The revisions proposed in this rule package increase fees for construction permit applications.

SECTION 1. NR 410.03(intro.) and (1)(a), (b), and (d), (2) and (4) are amended to read:

NR 410.03 APPLICATION FEE. (intro.) Any person required under s. 285.60, Stats., to obtain a construction permit for a direct source shall pay an application fee, ~~consisting of which is~~ the sum of the basic fee under sub. (1) and any additional fees under sub. (2). Any person requesting revision of a direct source construction permit shall pay the basic fee in sub. (1)(a)5. Any person required under s. NR 406.04(1)(i) to obtain a determination of exemption from the department shall pay the basic fee under sub. (1)(b). Any person required under s. 285.60, Stats., to obtain a construction permit for an indirect source or a determination of an exemption under s. NR 411.04 for an indirect source shall pay the appropriate fee under sub. (3).

(1)(a)(intro.) Each person ~~who applies for and~~ is issued a construction permit for a direct source shall pay a the following basic fee ~~according to the following amounts:~~

1. ~~\$2,300~~ \$3,100, if the ~~permit~~ application is not reviewed under ch. NR 405 or 408, and the ~~permit~~ application is for a new facility or for an emissions unit to be located at a minor source.

2. ~~\$3,300 if the permit application is not~~ \$4,400, for a major modification as not defined as major in s. NR 405.02(21) or 408.02(20) ~~and~~ , when the ~~permit~~ application is for an emissions unit to be located at a major source as defined in s. NR 407.02(4).

3. ~~\$6,000 if the permit application is~~ \$8,000, for a major modification as defined in s. NR 405.02(21) or 408.02(20) ~~and the permit is for an~~ , unless the emissions unit ~~which does not constitute~~ is a major stationary source as defined in s. NR 405.02(22) or a major source as defined in s. NR 408.02(21).

4. ~~\$9,000 if the permit is~~ \$12,000, for a major stationary source as defined in s. NR 405.02(22) or a major source as defined in s. NR 408.02(21).

5. ~~\$800~~ \$1,100, for revision of a construction permit when requested by the permit holder or the permit holder's agent.

(b) Any person requiring a determination of exemption under s. NR 406.04 (1)(i) shall pay a fee of ~~\$600~~ \$800.

(d) Any person who applies for a construction permit for ~~an air contaminant~~ a direct source shall submit ~~\$1,000~~ a \$1,350 fee with the application. This ~~\$1000~~ fee may not be refunded unless the department determines that a permit is not required. When a fee is required under par. (b), only the amount not required to cover the fee will be refunded.

(2) ADDITIONAL DIRECT SOURCE FEES. ~~In addition to the basic direct source fees prescribed in sub. (1)(a) and (e), each~~ Each person who applies for and is issued a construction permit for a direct source ~~for which an application fee is authorized shall pay all~~ the following additional fees in the amounts indicated which apply:

(a) ~~\$300~~ \$400 per basic emissions unit ~~requiring review and analysis if the permit application requires the review and analysis of 2 or more basic emissions units~~ is required.

(b) ~~\$1,000~~ \$1,350, if the ~~permit application is for a source requiring an analysis of alternatives under s. NR 408.08(2)~~ is required.

(c) ~~\$2,500~~ \$3,350, if the ~~permit application is for a source which requires an emission offset under ch. NR 408 or the determination of a net emissions increase under ch. NR 405~~ is required.

(d) ~~\$2,000 per~~ \$2,700, for each case-by-case determination of maximum achievable control technology (MACT), best available control technology (BACT) or lowest achievable emission rate (LAER). ~~determination if the permit application is for a source which requires a case by case MACT, BACT or LAER determination. This excludes~~ does not apply to BACT or LAER determinations made under ch. NR 445.

(e) ~~\$500 if the permit application is~~ \$700, for a minor source or minor modification to a major source whose projected air quality impact requires a detailed air quality modeling analysis.

(f) ~~\$2,400 if the permit application is~~ \$3,200, for any source ~~which is not~~ , other than a minor source or minor modification to a major source ~~and,~~ whose projected air quality impact requires a detailed air quality modeling analysis.

(g) ~~\$500~~ \$650, if the permit application is for a direct source which may emit a hazardous air contaminant listed in s. NR 406.04(2)(f) and which receives a permit which establishes a specific emission limitation for one or more of such hazardous air contaminants, or the source is subject to an emission limitation under chs. NR 446 to 483, or if the permit establishes an emission limit for a hazardous air contaminant listed in Table 1, 2, 4 or 5 of ch. NR 445.

(h) ~~\$1000 if the permit application is for a source for which~~ If the construction permit requires emission testing for a single air contaminant. The fee under this paragraph shall be increased by an additional \$500 , \$1,350 for the first air contaminant tested and \$950 for each additional air contaminant for which emission testing is required by the construction permit tested up to a maximum of \$4200. The total fee under this paragraph may not exceed \$3000. ~~In the event that the~~ If the department determines later finds that some or all of the tests are not required and, therefore, are not performed, the corresponding fees under this paragraph shall be refunded for those air contaminants not tested.

(i) ~~\$800~~ \$1,050, if the permit application is for a source which requires an environmental assessment under ch. NR 150 is required.

(j) ~~\$700~~ \$950, if a public hearing is held at the request of the applicant or the applicant's agent.

(k) ~~\$300 per~~ \$400 for each basic emissions unit ~~for each emissions unit~~ at a source which requires an emission limit determination under s. NR 424.03(2)(c).

(L) ~~\$1,000~~ \$1,350, for each ch. ~~NR-445~~ case-by-case determination of best available control technology (BACT) or lowest achievable emission rate (LAER) ~~determination if the~~

~~permit application is for a source which requires a case by case BACT or LAER determination~~
required under ch. NR 445. If the department makes a single BACT or LAER determination addressing the control of multiple air contaminants, the source shall be billed for only one BACT or LAER determination under this paragraph.

(m) ~~\$1,000~~ \$1,350, if the ~~permit application is for a source which requires specific permit conditions to limit~~ limiting the potential to emit ~~in order~~ are required to make the source ~~or modification a minor source or minor~~ to make the modification a minor modification.

(n) ~~\$2,000~~ if the ~~permit application is~~ \$2,650, for a medical waste incinerator which ~~requires~~ requiring review of a needs and siting analysis under s. 285.63(10), Stats.

(o) ~~When~~ If the permit applicant requests, in writing, that the permit be issued in a shorter time interval than the ~~total~~ time interval allowed under s. 285.61, Stats., and the department is able to comply with the request:

1. ~~\$2,000~~ \$2,650, for an application ~~for a source which is not subject to review~~ under ch. NR 405 or 408 if the permit is issued within 50 days of receipt of a complete application.

2. ~~\$3,000~~ \$4,000, for an application ~~for a source which is subject to review~~ reviewed under ch. NR 405 or 408 if the permit is issued within 60 days of receipt of a complete application.

3. ~~\$2,000~~ \$2,650, for an application ~~for a source which is subject to review~~ reviewed under ch. NR 405 or 408 if the permit is issued within 61 to 90 days of receipt of a complete application.

(4) PAYMENT. The department shall ~~mail a billing statement~~ bill the applicant for the ~~required~~ construction permit application fee ~~to the person applying for the permit at the time~~

when the permit is issued. The application fee shall be paid within 30 days of the date of the billing statement. The department may not issue the operation permit to the facility until the ~~department receives full payment of the~~ application fee is paid in full.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 27, 1999.

The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)