



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-047

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. Section NR 410.03 (1) (am) 2. establishes a fee of \$1,500 for an application for coverage under a general construction permit issued for a source under s. NR 406.16 that is a “non-part 70 source.” Based on the definition of “non-part 70 source” in s. NR 407.02 (5), such a source includes the type of entire facility described in s. 285.69 (1) (a) 2., Stats. Thus, if a “construction permit” under s. 285.69 (1) (a) (intro.), Stats., is interpreted to include a general construction permit, s. 285.69 (1) (a) 2., Stats., prohibits the department from imposing a fee for a general construction permit for the types of non-part 70 sources described in s. 285.69 (1) (a) 2., Stats. Under this reading of the statutes, the department’s authority to promulgate s. NR 410.03 (1) (am) 2. in the rule and apply it to sources described in s. 285.69 (1) (a) 2., Stats., is not apparent. The department should either explain its authority to promulgate s. NR 410.03 (1) (am) 2. or revise s. NR 410.03 (1) (am) 2. so that this provision conforms to its authority. A similar concern exists regarding the application of the fee exemption in s. 285.69 (1) (a) 1., Stats., to the fee in the rule for the application for a registration operation permit for a non-part 70 source under s. NR 410.03 (1) (as) 2.

b. The treatment of s. NR 410.03 (1) (bm) by the rule raises the fee from \$300 to \$500 for a person to request a waiver of specified construction permit requirements. Section 285.69 (1d), Stats., sets the fee for requesting this waiver at \$300. Since s. 285.69, Stats., does not authorize the department to modify the fee in s. 285.69 (1d), Stats., the authority for the department to raise this fee in s. NR 410.03 (1) (bm) is not apparent.

2. Form, Style and Placement in Administrative Code

In SECTION 4, the notation “(1)” should be inserted before each occurrence of the notation “(am).”

4. Adequacy of References to Related Statutes, Rules and Forms

The department should review the lists of statutes interpreted and statutes providing authority for the rule in the analysis accompanying the rule and revise the lists, as appropriate, to ensure that the lists are accurate, unambiguous, and complete. Examples of concerns with these lists include the following:

- a. The list of statutes that provide statutory authority for the rule should identify statutes that specifically permit or direct the department to promulgate rules on the subject matter contained in the rule. [See s. 1.01 (2) (b) Manual.] Thus, s. 285.69 (1d), Stats., should not be listed under statutory authority, as this subsection does not explicitly authorize or require rule-making. Section 227.11 (2), Stats., should be listed under statutory authority, as it authorizes rule-making.
- b. The reference to s. 285.11 in the statutory authority is vague. Which subsection in s. 285.11 provides statutory authority for the rule?
- c. The analysis accompanying the rule provides information on the costs upon which the fees proposed in the rule are based. As such, the department is complying with s. 285.69 (4), Stats., and that statute should be listed in the statutes being interpreted by the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

“Part 70 source” and “non-part 70 source” in s. NR 410.03 (am) 1. and 2. and (as) 1. and 2. are not defined in s. NR 400.02 or 410.02. The department should review the use of these terms in the rule and, as appropriate, define them to ensure that the rule is unambiguous.