

SUBJECT:

Request authorization for public hearing for Board Order AM-06-10, proposed rules affecting NR 410.05 pertaining to the increase of asbestos inspection fees and the addition of fees for review of revised notifications and inspection of fire training burns.

FOR: APRIL, 2010 BOARD MEETING

TO BE PRESENTED BY: Bill Baumann - Compliance, Enforcement, and Emission Inventory Section Chief

SUMMARY:

Revision of Chapter NR 410.05 increases asbestos inspection fees and adds new fees related to review of revised asbestos notifications and fees for notifications of residential fire training burns. In the past, Air Management asbestos regulatory activities have been funded in part by asbestos inspection and review fees, and in part by funds from the Air Management federal 105 grant (which also funds a variety of other Air Management program activities). The 105 grant is no longer able to support all these activities. The increase in asbestos fees will enable the asbestos program to be self-sufficient while maintaining the current level of activities and services.

The inspection fee increases and the new notification revision and fire training burn fees were part of Wisconsin 2009 Act 28 (the 2009-2011 biennial budget bill) and have been incorporated in s. 285.69(3), Stats. The proposed rule language is consistent with the State Statute.

Interested groups or parties include public health agencies, the WI Department of Health Services, the Wisconsin Occupational Health Laboratory, building owners, demolition and asbestos abatement contractors, environmental consultants, fire departments and the public.

The Natural Resources Board last addressed asbestos fee increases in 2004 and 2005 (hearing authorization in August 2004, rule adoption in February 2005) when asbestos fees were increased to their current levels.

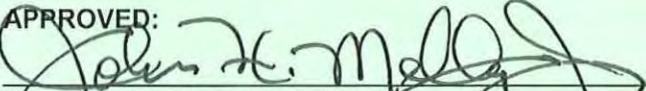
RECOMMENDATION: That the Board authorize the Department to hold hearings on Board Order AM-06-10.

LIST OF ATTACHED MATERIALS:

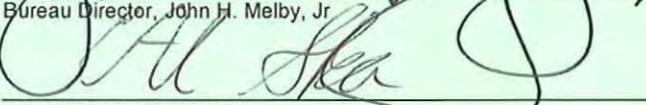
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

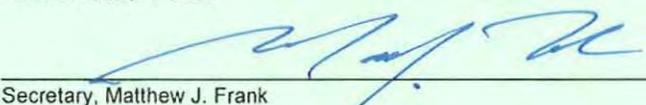
APPROVED:


Bureau Director, John H. Melby, Jr

3/10/2010
Date


Administrator, Al Shea

3/12/10
Date


Secretary, Matthew J. Frank

3-29-10
Date

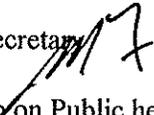
cc: Laurie Ross - AD/8
Mike Scott- LS/8

Linda Haddix - LS/8
R. Eckdale - AM/7

DATE: March 30, 2010

FILE REF: 4533

TO: Natural Resources Board Members

FROM: Matthew Frank, Secretary 

SUBJECT: Background Memo on Public hearing Authorization for Order AM-06-10, pertaining to the revision of ch. NR 410.05, Wis. Adm. Code for the increase of asbestos inspection fees and the addition of fees for review of revised notifications and inspection of fire training burns.

1. Why is this rule being proposed?

The revision of s. NR 410.05 is in response to Wisconsin 2009 Act 28 (the 2009-2010 biennial budget bill), enacted in July of 2009 and incorporated into s. 285.69(3), Stats. Wisconsin 2009 Act 28 increased the fee caps for asbestos inspection fees, and added two additional fee categories: 1) review of revisions to asbestos notifications, and 2) inspection fees related to residential fire training burns.

Asbestos program activities have in the past been funded by a combination of asbestos program fees and funding from the Air Management Program federal 105 grant (named for the specific section of the federal Clean Air Act). The federal 105 grant also funds a variety of other air management activities including development of State Implementation Plans (or SIP, as required for non-attainment areas), ambient air quality monitoring and other federally-required activities. Due to declining grant amounts, the 105 grant can no longer support all of the activities previously funded. The fee increases contained in the proposed NR 410.05 revisions will enable the Air Program to maintain the current levels of service and activities related to asbestos abatement, funded completely by asbestos program fees, while maintaining other critical activities required under the Clean Air Act to protect against harm from other air pollutants.

Vigorous action on asbestos is essential to avoid the known adverse health effects of asbestos exposure. No "safe" asbestos exposure level exists; any exposure may lead to diseases such as asbestosis, lung cancer, mesothelioma and other forms of cancer.

2. Summary of the Rule

Section NR 410.05 contains standards for charging fees in relation to the asbestos notification requirements of ch. NR 447. Inspection fees are based on the size of project and amount of asbestos involved. The revised asbestos inspection fees proposed in the rule range from \$135 (increase of \$60 over the current fee) for small projects defined as less than 160 square feet or 260 linear feet of asbestos containing material, to \$1200 (increase of \$575 over the current fee) for extra large projects defined as more than 5000 square and linear combined feet of asbestos containing material. The proposed rule also adds a new \$100 fee for review of updated asbestos notifications, and provides for charging an additional fee, equal to the inspection fee, for projects that are begun prior to submitting the required notification to the department. Historically, over 60% of projects fall into the small category, while just over 5% of projects fall into the extra large category.

3. How does this proposal affect existing policy?

This proposal does not affect existing policy.

4. Has the Board dealt with these issues before?

Yes. The Board last dealt with asbestos fees in August of 2004 (hearing authorization for rule changes to increase fees) and February of 2005 (adoption of rule changes raising asbestos fees to their current levels).

5. Who will be impacted by the proposed rule? How?

Building owners, asbestos abatement contractors, demolition contractors, environmental consultants, the public and others in the regulated community will be impacted by the proposed rule. Asbestos abatement contractors, demolition contractors, and environmental consultants, who have traditionally submitted the majority of asbestos notifications, will be directly affected by the increased fees. The building owners will be affected because these costs are often passed on to them. Fire departments may be impacted by the new inspection fee required for fire training burns. However, the owner of the structure is typically responsible for paying the fee.

6. Information on environmental analysis

Under ch. NR 150, Wis. Adm. Code, environmental analysis is not needed because this is considered a Type III action. Type III actions typically do not have the potential to cause significant environmental effects, do not significantly affect energy use, nor involve unresolved conflicts in the use of available resources.

7. Small business analysis

The proposed rule does not increase or change any reporting, record keeping, or other compliance requirements for small business. The statutes on which the proposed fees are based, as well as the proposed rules, make no exception for small business. The department does not believe that the fee increases (see Section 2, above) represent a significant cost for small business.

What You Need to Know About Asbestos

A Regulatory Summary for Contractors and Building Owners

Bureau of Air Management February 2006

This document contains general requirements for inspection and handling of asbestos during the demolition and renovation of buildings in Wisconsin. This document should be used only as an interpretation guide and not as a substitute for the rule itself. The Wisconsin DNR is delegated authority to enforce the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), which has been in place since 1973, by the U.S. Environmental Protection Agency. See Chapter NR 447 of the Wisconsin Administrative Code and Notification Form 4500-113 on the DNR Asbestos Program website; <http://www.dnr.state.wi.us/org/aw/air/reg/asbestos/> For additional information on hazards present in buildings see the Pre-Demolition Environmental Checklist at; <http://www.dnr.state.wi.us/org/aw/wm/publications/demolition/predemo.pdf>

General Requirements:

Note: All underlined terms are defined on the back of this document.

INSPECT

- All affected parts of a facility being *renovated* or *demolished* must be inspected for the presence of asbestos-containing materials (ACM) prior to beginning the renovation or demolition project.
- The inspector must be asbestos-inspector certified through the Wisconsin Department of Health and Family Services (DHFS). For more information on the Certification Program see: http://dhfs.wisconsin.gov/dph_boh/Asbestos/Cert/Index.htm

NOTIFY THE STATE

- A "Notification of Demolition and/or Renovation" form (Form 4500-113) must be submitted in accordance with the following:
 - In a facility being *demolished*, a "Notification of Demolition and/or Renovation" form must be submitted to the Department ten working days prior to beginning any demolition activity. A Notification is required regardless of whether or not asbestos is present.
 - In a facility being *renovated*, where more than 160 square feet of regulated asbestos-containing material (RACM) or more than 260 linear feet of RACM will be disturbed, a Notification must be submitted to the Department ten (10) working days prior to beginning the renovation.
 - A Notification must also be submitted to DHFS for all projects involving the removal of ACM, regardless of category and quantity.

The Notification of Demolition and/or Renovation" form (Form 4500-113) can be found at: <http://www.dnr.state.wi.us/org/aw/air/reg/asbestos/asbes&a.htm>

REMOVAL

- All RACM that would be disturbed as part of a *renovation* or *demolition* must be properly removed before beginning the project. RACM includes all friable ACM and nonfriable ACM that will be crumbled, pulverized or reduced to powder during the project.
- The individuals removing ACM must be certified through the Wisconsin DHFS.

DISPOSAL

- All asbestos-containing waste material must be properly disposed of in leak-tight containers at a landfill approved to accept asbestos.
- All asbestos-containing waste containers must be labeled with the name of the waste generator and location at which the waste was generated, in addition to OSHA labeling standards.

What You Need to Know About Asbestos

A Regulatory Summary for Contractors and Building Owners

Bureau of Air Management February 2006

Several definitions from the National Emission Standards for Hazardous Air Pollutants (NESHAP) are provided to assist in determining applicability of the regulation.

Definitions:

Facility: Means any institutional, commercial, public, industrial, or residential structure, installation, or building, including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, *but excluding a single, isolated residential building having four or fewer dwelling units.* (All structures demolished by fire training are regulated.)

Demolition: Means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Renovation: Means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

Category I Nonfriable Asbestos-Containing Material: Means asbestos containing packings, gaskets, resilient floor covering and asphalt roofing products containing more than 1% asbestos...

Category II Nonfriable Asbestos-Containing Material: Means any material, excluding Category I nonfriable material, containing more than 1% asbestos ... that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure or by mechanical forces expected to act on the material.

Friable Asbestos Material: Means any material containing more than 1% asbestos... that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

Regulated Asbestos-Containing Material: Means (a) friable asbestos material, (b) Category I nonfriable asbestos-containing material that has become friable, or has been subjected to sanding, grinding, cutting or abrading, (c) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations...

The above identified requirements are contained in Chapter NR 447 of the Wisconsin Administrative Code. Failure to comply with these requirements may result in enforcement action up to and including fines and penalties.

For questions, please contact the DNR's Asbestos Coordinator at (608) 266-3658.

DISCLAIMER—This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



Wisconsin Department of Natural Resources
Bureau of Air Management
P.O. Box 7921—AM/7
Madison, WI 53707

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This publication is available in alternative format (large print, Braille, audio tape, etc.) upon request. Please call 608-266-7718, for more information.

Fiscal Estimate — 2009 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 410.05

Subject

Proposed rules affecting NR 410.05(3) and (4) pertaining to increased and new fees related to asbestos notifications and inspections.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
20.370 2 (bi)

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

The 2009 Wisconsin Act 28, the 2009-11 Budget Bill, increased the fees that support asbestos activities. This rule package increases the rules in NR 410.05 to be the same as found in the budget bill.

Fiscal Estimate:

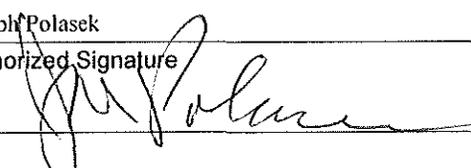
The 2009-11 Budget Bill increased asbestos inspection fees to: \$135 for small, defined as 160 square feet to 260 linear feet; \$350 for medium, defined as involving greater than 160 square feet or 260 linear feet but less than 1,000 combined feet; \$575 for large, defined as greater than or equal to 1,000 combined feet but less than 5,000 combined feet, and \$1,200 for extra large, defined as greater than 5,000 combined feet. These new fees are approximately a 60% increase from the current fees.

The bill also created a new \$100 fee for notification revisions and a new \$100 fee for community fire training burns. Finally, the bill provided supporting statutory language for the above-mentioned fees and for the Department to charge double inspection fees to a project for which a notice of an asbestos renovation or demolition activity was not provided, as required by the Department.

It is projected that the increased fees will generate \$246,400 annually.

Long-Range Fiscal Implications

The current economic downturn will likely result in less building and renovation activity in the short term. This will likely translate into decreased revenue from notification and inspection fees in the short-term.

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 03-10-10

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR410.05

Subject

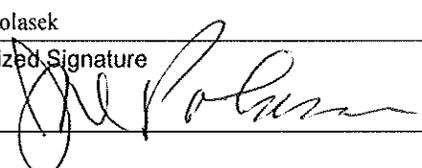
Proposed rules affecting NR 410.05(3) and (4) pertaining to increased and new fees related to asbestos notifications and inspections.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		246,400	-
SEG/SEG-S			-
Total State Revenues		\$ 246,400	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$	\$
Net Change in Revenues	\$ 246,400	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 03-10-10

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 410.05(3)(a) to (d); and to **create** NR 410.05(3)(e) and (f) and (4) relating to asbestos project inspection and notification revision fees and affecting small business.

AM-06-10

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** s. 285.69(3), Stats.
- 2. Statutory authority:** ss. 227.11(2a), 285.11(1), and 285.69(3), Stats.
- 3. Explanation of agency authority:** Sections 227.11(2)(a) and 227.14(1), Stats., expressly convey rulemaking authority. Section 285.69(3), Stats., conveys authority to establish fees for specified department activities, and sets maximum levels for those fees.
- 4. Related statute or rule:** Chapter NR 447 contains regulations related to asbestos abatement activities.
- 5. Plain language analysis:** The rules amended and created by this proposed order increase fees for certain Department of Natural Resources (Department) asbestos regulatory activities, and create new fees for asbestos regulatory activities related to fire training burns and revised asbestos notifications. These additional fees will offset decreases in federal United States Environmental Protection Agency (EPA) Air Pollution Control grant funds that had previously been used to fund (in part) Department asbestos regulatory activities.
- 6. Summary of, and comparison with, existing or proposed federal regulation:** Chapter NR 447 contains asbestos regulatory requirements, which parallel corresponding federal regulations. The rule changes and additions proposed in this order change the fees used to fund Department asbestos regulatory activities, but do not affect the underlying regulatory requirements themselves. There is no federal counterpart to the ch. NR 410 fee rule.
- 7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** Illinois, Iowa, Michigan, and Minnesota each operate federally delegated asbestos programs. Iowa, Michigan, and Minnesota each fund their respective asbestos programs with federal grant funds. Illinois, similar to Wisconsin, funds their asbestos program activities through fees charged for asbestos notifications. Illinois fees are \$150 per notification, regardless of other factors (size of project, etc.). If a notification is received late, an additional \$300 is charged to the contractor. Lab analysis costs may be charged to the owner or operator in large enforcement cases, along with employee overtime costs that result from enforcement cases.
- 8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** The Asbestos Program is funded by asbestos inspection and permit exemption review fees paid by persons who perform asbestos abatement as part of nonresidential demolition and certain renovation projects. In addition, asbestos program funding has been supplemented by the equivalent of 2.0 full time employees (FTE) from the EPA federal Air Pollution Control grant (105 grant). Asbestos program fees currently fund 2.0 permanent FTE, two half-time limited term employee (LTE) field inspection positions, and four contracts with the following government agencies to perform inspections on behalf of the Department's Air Management Asbestos Program: City of Menasha; City of Milwaukee, Sauk County, and Waushara County. Due to declining levels of 105 grant funds, that funding source can no longer be used to fund asbestos program activities. Consequently, additional asbestos fee revenue is needed to replace 2.0 FTE of funding from the 105 grant, and thus maintain present levels of asbestos program staffing and public health protection activities.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: Asbestos related regulatory requirements are not changed by the proposed rules. The proposed rules do increase notification fees for asbestos related projects. See "Effect on small business" section below.

10. Effect on small business: Asbestos related regulatory and reporting requirements will not be changed by the proposed rules. The proposed rules will increase notification fees for asbestos related renovation and demolition activities. The fees increases vary according to the quantity of asbestos involved in a renovation or demolition project, and the increases range from \$60 per project for small projects (less than 160 square feet or less than 260 linear feet of asbestos containing material) to \$575 per project for very large projects (more than 5000 combined linear and square footage of asbestos containing materials). On the order of 1600 project notifications are received annually. It is not possible to predict the number of these projects that will be undertaken by small businesses.

11. Agency contact person: William Baumann – (608)267-7542, William.Baumann@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

William Baumann
Department of Natural Resources
Bureau of Air Management
PO Box 7921
Madison WI 53707
Fax: (608) 267-0560
E-mail: William.Baumann@wisconsin.gov

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 410.05(3)(a) to (d) are amended to read:

NR 410.05(3)(a) \$75 135 if, in a facility being demolished, the amount of regulated asbestos containing material is less than 260 linear feet on pipes and less than 160 square feet on other facility components.

(b) \$475 350 if the asbestos renovation or demolition operation involves at least 260 linear feet or at least 160 square feet of regulated asbestos containing material and a combined square and linear footage of less than 1000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

(c) \$275 575 if the asbestos renovation or demolition operation involves regulated asbestos containing material with a combined square and linear footage of equal to or greater than 1000 and less than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

(d) ~~\$625~~ 1200 if the asbestos renovation or demolition operation involves regulated asbestos containing material with a combined square and linear footage of equal to or greater than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

SECTION 2. NR 410.05(3)(e) and (f) and (4) are created to read:

NR 410.05(3)(e) \$100 if the property is to be demolished by intentional burning as a community fire safety training project.

(f) An amount equal to and in addition to the inspection fee specified in par. (a) to (d) to inspect property for a project for which a notice of an asbestos renovation or demolition activity was not provided, as required by the department, before the project was initiated.

(4) NOTICE UPDATE FEE. Any person submitting an updated notice, as required by s. NR 447.07(2), for an asbestos renovation or demolition activity shall pay a fee of \$100.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)