

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT:

Request adoption of Board Order AM-09-10, proposed rules affecting NR 410 pertaining to fees for reviewing applications for construction of air pollution sources.

FOR: AUGUST 2010 BOARD MEETING

TO BE PRESENTED BY: Andrew Stewart, Permits and Stationary Source Modeling Section Chief.

SUMMARY:

The reason the proposed changes to NR 410 are needed are to ensure that the new source review program has adequate funding to perform it's duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats.

The Clean Air Act requires sources that emit air pollution to obtain a new source permit before beginning construction of a new source. The fees for any individual source vary depending on factors such as the location of the source, type and amount of pollutant, whether emission testing is required, and whether the applicant requests expedited review. Program activities are funded by collecting fees authorized in ch. NR 410. At the present time the agency is collecting significantly less than what is needed to administer the new source review program. This deficit spending has occurred for the last four years and has depleted what had been a surplus in the new source review account.

The effect of the new rule will be to increase the fee required to obtain a permit to construct an air pollution source and to authorize the Department to collect fees in situations where significant work is done on reviews for applications that the source later decides to withdraw or not pursue to issuance.

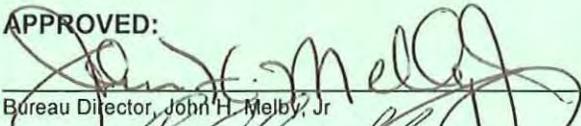
The Natural Resources Board authorized public hearings on the proposed rule at the April 2010 meeting. Three hearings were held during June 2010 in Madison, Milwaukee and Wausau. No comments were made at any of the hearings. Written comments have been received from the Wisconsin Paper Council and Wisconsin Manufacturers & Commerce concerning the amount of the increase and from the Aggregate Producers of Wisconsin and the Wisconsin Transportation Builders Association concerning the impact that the proposal may have on economic development. The Department's responses to the comments received on the proposed rule are attached to the Background Memo. Changes have been made to the proposed rule in response to comments received.

RECOMMENDATION: That the Board adopt Order AM-09-10.

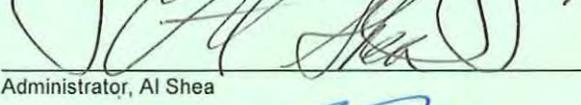
LIST OF ATTACHED MATERIALS:

- | | | | |
|--|---|---|----------|
| No <input type="checkbox"/> | Fiscal Estimate Required | Yes <input checked="" type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input type="checkbox"/> | Background Memo | Yes <input checked="" type="checkbox"/> | Attached |

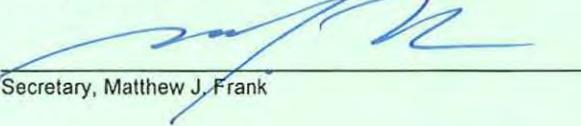
APPROVED:


Bureau Director, John H. Melby, Jr

Date 7/6/10


Administrator, Al Shea

Date 7/9/10


Secretary, Matthew J. Frank

Date 7-30-10

cc: Laurie Ross - AD/8 Linda Haddix - LS/8
Michael Scott - LS/8 R. Eckdale - AM/7

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- -Why is the rule needed?
- -What are the significant changes?
- -What are the key issues/controversies?
- -What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

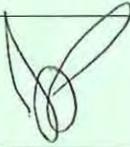
Hearing authorization:

Background memo (if needed)*
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

Final adoption:

Background Memo (if needed)*
 Response Summary
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

*If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review			
Management and Budget		07-06-10	
Legal Services Michael Scott	MS	7/6/10	
Linda Haddix	Linda Haddix	7-6-10	
Other (if applicable)			

DATE: June 28, 2010 FILE REF: 4530

TO: Natural Resources Board Members

FROM: Matthew J. Frank, Secretary *MJF*

SUBJECT: Adoption of Order AM-09-10, final rules affecting NR 410, pertaining to fees for reviewing applications for construction and/or modification of air pollution sources.

Why is this rule being proposed?

The Bureau of Air Management proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to change its present policy of not collecting fees for significant review work performed when an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats.

What event or action triggered the proposal?

Existing law provides for the collection of fees to fund review and issuance of construction permits for air pollution sources under the new source review program. These fees consist of a basic application fee and any applicable additional fees that apply. The additional fees are imposed when case-by-case determinations are needed, the source is subject to prescribed EPA programs, or in situations that require review of testing procedures or of alternative operation scenarios.

Increasing complexity of permit review work, as well as inflation, have increased costs of new source review. Beginning in FY 2005, the fees collected have not been adequate to fully support the staff needed to review and issue permits in a timely manner. This shortfall has been covered by spending a revenue surplus that had been built up in earlier years. This surplus has been shrinking and will be gone by the end of FY 2010. The Bureau of Air Management projects that the new source review program will have a growing deficit starting in FY 2011 even though numerous process changes and technology improvements have been implemented to improve efficiencies and reduce costs. No other viable alternatives to the proposed fee changes have been identified that will adequately address this projected funding deficit. Program staff performing new source review work are paid exclusively from this account. Without a fee increase, it is projected that available staff will be insufficient to review and issue permit applications in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats. in the upcoming fiscal year.

Other than the non-refundable initial application fee, fees cannot currently be collected from an applicant if the permit is not issued, regardless of the time spent on the review. Since the initial cost to the applicant to submit a permit application is not significant, it is not uncommon for companies to submit an application prior to obtaining adequate project financing, or to submit multiple applications for the same, or similar, project while still evaluating the pros and cons of the various project locations. In many of these cases, applications are either withdrawn or the Department is asked to stop working on it prior to the permit being issued. In 2008 and 2009 it is estimated that nearly \$300,000 in fees were not realized due to applications being withdrawn. Because the Department is required under current statutory and rule provisions to act timely on each individual application, these practices often result in unnecessary application processing and review.

Summary of the Rules

The Department used two guiding principles in establishing the new proposed fees:

1. To account for inflation, since the last fee increases were implemented in 1999. The cumulative rate of inflation since then (1999-2010) is 30%; and
2. Some fees are raised beyond the 30% to better reflect the amount of staff resources necessary to complete certain permit review actions. An example of increased review complexity is that in the last few years dozens of new industry source categories have become subject to federal regulation and permitting for hazardous air pollutants.

The final rule removes the new fees proposed for reviewing and issuing coverage for non Part 70 sources under general and registration operation permits.

Table 1 below summarizes changes from most commonly applied existing fees.

410.03	Fee description	Existing	Proposed	Increase	Last Raised
(1)(a)4.	Major source construction (PSD or nonattainment)	\$12,000	\$16,000	33%	1999
(1)(a)3.	Major modification	\$8,000	\$12,000	50%	1999
(1)(a)2.	Minor modification at major source	\$4,400	\$7,500	70%	1999
(2)(o)2.	Expedited review (PSD-under 60 days)	\$4,000	\$7,500	88%	1999
(2)(f)	Modeling analysis (detailed for a major source)	\$3,200	\$4,500	41%	1999
(2)(d)	MACT, BACT, LAER (case-by-case analysis)	\$2,700	\$4,500	67%	1999
(2)(o)3.	Expedited review (PSD-61 to 90 days)	\$2,650	\$4,000	51%	1999
(2)(o)1.	Expedited review (non PSD-under 50 days)	\$2,650	\$5,000	89%	1999
(1)(a)1.	Minor source construction	\$2,300	\$3,500	52%	1995
(2)(a)	Emission testing (initial unit)	\$1,350	\$2,500	85%	1999
(1)(ae)	Revision to a construction permit	\$1,100	\$1,500	36%	1999
(2)(j)	Public Hearing	\$950	\$1,500	58%	1999
(1)(b)2.	Actual based exemption	\$800	\$1,250	56%	2007
(1)(b)1.a.	Research & Testing exemption	\$800	\$1,250	56%	1999
(2)a.	Analysis of emission unit (per unit, 2 or more units)	\$400	\$800	100%	1999
(1)	Exemption determinations (not otherwise specified)	\$0	\$500	New fee	New fee

Finally, the final rule includes changes that will allow the Department to collect fees that otherwise will be lost when work on an application stops at the request of the applicant prior to a permit being issued.

How does this proposal affect existing policy?

This rule will increase the fees for reviewing applications to construct or modify sources of air pollution and to change the present policy of not collecting fees for significant review work performed when an application is withdrawn.

Hearing Synopsis

The Department conducted three hearings on the proposal on June 7, 2010 in Madison, on June 8, 2010 in Milwaukee and on June 9, 2010 in Wausau. The hearings were conducted by Michael D. Scott of DNR Legal Services. Andrew Stewart, Permit and Stationary Source Section Chief and Steve Dunn, Construction Permit Team Leader, provided an overview of the proposed rule in Madison and Wausau, respectively. No overview was presented in Milwaukee as there was no public in attendance.

Four people attended the hearing in Madison and one person attended the hearing in Wausau. No oral comments were made at either of the hearings.

Written Comments were received from Wisconsin Manufactures and Commerce (June 14), the Wisconsin Paper Council (June 11), jointly from the Aggregate Producers of Wisconsin and the Wisconsin Transportation Builders Association (June 11) and the Legislative Council Rules Clearinghouse (May 24).

The comments and the Department's response are included in Attachment 1. Changes have been made to the proposed rule in response to comments.

There were no public contacts after the hearings.

Information on environmental analysis.

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

Final Regulatory Flexibility Analysis.

The proposed rule has the potential to have a significant impact on a substantial number of small sources.

- I. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.
 - A. Less stringent compliance or reporting requirements. Not applicable. Proposal does not impose any compliance or reporting requirements
 - B. Less stringent schedules or deadlines for compliance or reporting requirements. Not applicable. Proposal does not impose any compliance or reporting deadlines.
 - C. Consolidation or simplification of performance standards in lieu of design or operational standards. Not applicable. Proposal does not impose any performance, design or operational standards.
 - D. The establishment of performance standards in lieu of design or operational standards. Not applicable. Proposal does not impose any design or operational standards.
 - E. The exemption from any or all requirements of the rule: Proposal applies to sources that do not qualify for exemptions that currently exist in permitting rule. Proposal does provide relief for small business for additional fees that apply over and above the initial application fee when the small business withdraws the permit application prior to a final determination being made.
- II. No issues were raised by small business during the hearings or during the public comment period.
- III. No reports are required by the proposal.
- IV. No measures or investments need to be made by small business to comply with the proposal.

- V. Identify the additional cost, if any, to the state in administering or enforcing a rule which includes any of the methods listed in 1. A through E. Not applicable.
- VI. Describe the impact on public health, safety and welfare, if any, caused by including in the rule any of the methods listed in 1. A through E. Not applicable.

Attachment 1
Department of Natural Resources Response to Public Comments on
Proposed Revisions to ch. NR 410, Wis. Adm. Code
Board Order AM-09-10

Overview

The Natural Resources Board authorized public hearings on proposed changes to NR 410, Wis. Adm. Codes, to increase fees for reviewing applications for construction of air pollution sources at the April 2010 meeting. The public comment period ended on June 14, 2010.

Three hearings were held during June 2010 in Madison, Milwaukee and Wausau. No comments were made at any of the hearings.

Written comments were received from the Wisconsin Paper Council and Wisconsin Manufacturers & Commerce concerning the amount of the increase and from the Aggregate Producers of Wisconsin and the Wisconsin Transportation Builders Association concerning the impact that the proposal may have on economic development. Changes have been made to the proposed rule in response to comments received and are explained in more detail below.

Written comments were also received from the Legislative Council Rules Clearinghouse. Changes have been made to the proposed rule in response to comments received and are also explained in more detail below.

Comments from the Public and Responses

Included below are descriptions of the organizations that provided comments to the proposed rule revisions, the comments they provided, and the Department's responses.

The **Wisconsin Paper Council (WPC)** advocates for and represents its members in public affairs and public relations matters, serves as a center for the exchange of ideas, and disseminates news and information concerning the industry including proposed legislation and job opportunities.

Wisconsin Manufacturers & Commerce (WMC) is the state's largest business trade association, with nearly 4,000 members in the manufacturing, health care, retail, energy, banking, insurance and other service sectors.

The **Aggregate Producers of Wisconsin (APW)** is a statewide trade association of 125 producer and associate member companies engaged in aggregate production throughout Wisconsin. Their members conduct portable crushing and fixed-site nonmetallic mining activity.

The **Wisconsin Transportation Builders Association (WTBA)** is a statewide association of approximately 250 companies that plan, design, construct and maintain all types of transportation facilities.

Comment: Fee increases are too large. This sentiment was generally expressed by several commenters.

Response: Without the proposed fee increase, the level of effort devoted to review of air pollution construction permits would be cut by half. The Department will be unable to maintain the reduced permit review times it has achieved through streamlining. Because other revenue sources are not available (past fee account surpluses have been totally depleted), staffing cutbacks would begin to occur as soon as the current fiscal year and could ultimately result in a reduction of 10 FTE of permit review effort. Reducing the level of permit review effort will have a direct and immediate impact on the length of time it will take for a business to receive approval to start construction or expand an existing operation. Opportunities for business expansions, with financial benefits well beyond the level of the proposed fee increases, will be jeopardized.

The Department believes this to be an unacceptable situation that would be detrimental to Wisconsin's economic recovery. The cost of delay for a business waiting to obtain their air permit an additional 60 to 90 days (on average) will far outweigh the additional cost imposed by the proposed fee increase. A smaller fee increase may result in less reduction in permit review effort but will still result in delay. This is not a risk that should be taken with plant siting or expansion and local jobs at stake. The fee increases in the proposed rule have been

calculated using a detailed analysis of revenues and expenditures. Projected expenditures are in line with historical and projected program expenditures. An adequately staffed new source review program, along with streamlined permitting approaches, is critical to Wisconsin's economic recovery.

Comment: WPC specifically commented as follows: "It appears that, based on historical data, the proposed fee increases are more than necessary to operate the program. The fiscal estimate indicates that annual revenue will increase by \$1,334,307 from a base of \$1,647,293 (four year actual average for FY2006-2009). This would bring the expected annual revenue to \$2,981,600. However, the four year actual average expenditure level for FY2006-2009 was \$2,518,992. It appears that the proposed fee increases would raise \$462,608 more than necessary, based on historical data. Further, the comparison with similar rules in adjacent states, included in the background materials, shows that the new Wisconsin permitting fees would be the first or second highest of the four states compared. It appears that the proposed fee increase could be pared back by well over \$400,000 annually, while still meeting the needs of the Department."

Response: While the WPC revenue calculation is correct for the period it covers, it does not accurately reflect current revenues. Permit fee revenue dropped significantly in FY2008, making FY08-10 a more accurate period to represent revenues. In addition, the downturn in the economy exacerbated the decrease, with revenue for FY10 slightly under \$1,000,000. Using a 3 year average for FY2008-10 suggests a more realistic base revenue of \$1,350,000 for the foreseeable future.

While staff time was clearly saved through implementation of registration and general permits, the review time required for regular construction permits has increased due to new federal requirements (including but not limited to new ambient standards for fine particulate, nitrogen dioxide and sulfur dioxide and proposed federal hazardous pollutant standards for combustion sources).

The following table shows projected applications and the level of effort required to complete the required reviews using streamlined procedures and modern technology.

Type of Review	NAA New Source Review (LAER)	Major New Source Review (PSD)	Minor New Source Review	Const Permit Revisions	Const Permit Exemptions	General Const Permits	Registration Const Permits	Const Permit Waivers
Number	5	20	100	20	50	25	10	5
Effort (hrs/review)	448	298	128	24	24	32	22	12

The Department used the levels of effort in the table to project the necessary expenditure level beginning FY2011 to be at least \$2,650,000. Subtracting a FY2008-2010 anticipated base (\$1,350,000) from this projection indicates the need to raise approximately \$1,300,000 through increased fees to adequately fund the new source review work. Total expenditures are projected to be approximately \$2,600,000 which is in line with a historical 5 year average of \$2,412,213.

Comment: The proposed fees are more expensive than surrounding states. For example, the "initial application" fee is proposed to increase from \$1,350 to \$7,500 -- an increase of 455 percent. Minnesota, Michigan and Indiana do not even charge this fee, and Illinois's fee is 50 percent less than what is being proposed.

Response: Raising the initial application fee does not raise the final fee assessed for an applicant that receives an air pollution permit as the entire amount is credited against the final fees assessed for the application review. In other words, the initial application fee serves as a "down payment" on the final cost of the permit. It is not an additional fee that is charged to the applicant. However, while the initial application fee increase is retained, the final rule expands the Department's ability to provide refunds in situations where the cost of the final permit action is less than the initial application fee.

Comparing fees between state is difficult due to the different ways state agencies fund new source review programs, but the Department's survey of midwestern states indicate that the increased fees in this proposal will be comparable to the fees that exist today in those states. Minnesota, Illinois, Michigan and Indiana indicate that

they either are, or will soon be, increasing their permitting fees to address funding shortfalls in their permitting programs.

Comment: Fee increases should not be approved unless and until the Department has fully availed itself of all of the permit streamlining tools afforded by the Legislature in Act 118, including the statutory presumption that minor sources should be exempt (as they are in many other states, and under the Clean Air Act).

Response: The Department has availed itself of all permit streamlining tools authorized by Act 118 and will continue to implement significant streamlining in order to reduce the regulatory cost of obtaining construction permits. Over 800 companies have taken advantage of the new types of permits (registration and general) and exemptions that have come out of Act 118 and additional Department streamlining efforts that have been implemented over the last 4 years. We have eliminated the need for more than 300 construction permits for these companies during that period of time. Implementing other efficiencies has allowed the Department to reduce by 60% the time it takes to obtain a construction permit today compared to 2007 (from 157 days on average in 2007 to 67 days in 2009) helping to address a critical concern raised by Wisconsin business.

The Department understand its obligation to continuously and diligently improve efficiency to build on these achievements for the future.

WMC specifically commented that that the Department should completely exempt minor sources from construction permits. The legislative intent of Act 118 was to implement streamlining while maintaining the same level of environmental protection. Allowing sources that are capable of emitting just under 100 tons of pollutants such as PM_{2.5}, sulfur dioxide and nitrogen oxide to build and expand without review of air quality impacts does not meet this intent.

The following comments relate to statutory authority for specific aspects of the fee increases.

Comment from WMC: The proposed rule would establish new fees for exemption determinations (\$500), general construction permits (\$1,500) and registration construction permits (\$1,000). However, WMC does not believe the Department has the statutory authority to impose these fees. Specifically, §285.69(1)(a) prohibits the Department from charging a fee for construction permits associated with a general permit or a registration permit. Moreover, §285.69(1)(c) prohibits the Department from charging a fee for "reviewing and acting upon any request for an exemption from the requirement to obtain an air pollution control permit." Accordingly, the proposed fees for exemption determinations, general construction permits and registration construction permits should be removed from the rule.

Comment from APW and WTBA: In particular, we are concerned about the proposed new construction permit fee of \$1,500 for a general construction permit and \$1,000 for a registration permit. As noted in the Legislative Council Rules Clearinghouse comments on the rule, we believe that the Department lacks statutory authority to impose the new fee as proposed.

Comment from the Legislative Council Rules Clearinghouse: 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.

Response: The Department assumes that the general construction permit and registration construction permit fees, referred to by WMC, APW and WTBA, were only those proposed for non-part 70 sources. The Department agrees with the comment that s. 285.69(1)(a)1. and 2., Stats., prohibits the Department from charging a fee for construction permits associated with a general permit or a registration permit for a non-part 70 source *if the entire facility is covered by the general or registration permit.*

Depending on the way a general permit is written it can either cover an entire facility or a part(s) of an entire facility. All registration permits written to date cover the entire facility.

Based upon the comments received and further analysis, the Department has determined that while the proposed fee could apply to a limited number of permit applications, it may be problematic to implement in a consistent fashion. Based on this concern and the statutory restriction, the fee has been removed from the final rule.

The Department is not prohibited from charging review fees for part 70 sources applying for coverage under either a general or registration permit and the Department has not made any changes to the proposed fee increase for those sources.

The Department believes that WMC has misinterpreted s. 285.69(1)(c), Stats., in commenting that the Department lacks the authority to impose fees for permit exemption determination. Specifically, s. 285.69(1), clearly reads that the Department may promulgate rules for payment and collection of reasonable fees for reviewing and acting upon any request for an exemption from the requirement to obtain an air pollution control permit.

No change have been made to the final rule in response to this comment.

Comment from WMC: In addition, the proposed rule seeks to increase the fee for a construction permit waiver from \$300 to \$500. However, this fee is statutorily set at \$300 under §285.69(1d). As such, the Department does not have the authority to increase the fee to \$500, and this portion of the rule should be deleted.

Comment from the Legislative Council Rules Clearinghouse: 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.

Response: The Department agrees with the comments being made. The proposed increase in the fee for a construction permit waiver is not allowed by statute and has been removed from the final rule.

Comment from the Legislative Council Rules Clearinghouse: In addition to those comments responded to above the Clearinghouse made comments related to *Form, Style and Placement in Administrative Code, Adequacy of References to Related Statutes, Rules and Forms, and Clarity, Grammar, Punctuation and Use of Plain Language.*

Response: Changes made in final rule to address comments made.

Fiscal Estimate — 2009 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-09-10

Subject

Order AM-09-10, proposed rules affecting NR 410, pertaining to fees for reviewing applications for construction of air pollution sources

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

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

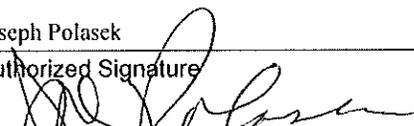
The Bureau of Air Management proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to change its present policy of not collecting fees for significant review work performed when an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats. The Board last authorized a fee increase in 1999.

Fiscal Summary:

Revenue increase of \$1,260,800 is projected based on a three year actual average for revenue generated through new source review fees for FY2008-2010 of \$1,350,000.

This proposal does not seek to authorize an increase to Chapter 20 spending authority.

Long-Range Fiscal Implications

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-06-10

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 AM-09-10

Subject

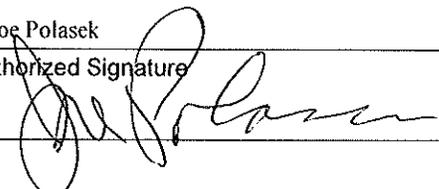
Proposed rule package to increase fees associated with applying for and receiving an air permit for new and modified sources of air pollution.

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:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 0	\$ - 0
(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			
GPR		\$ 0	\$ - 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
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		\$ 0	\$ - 0
GPR Earned		0	- 0
FED		0	- 0
PRO/PRS		1,260,800	- 0
SEG/SEG-S		0	- 0
Total State Revenues		\$ 1,260,800	\$ - 0

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 1,260,800	\$ 0

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-06-10

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 410.03 (intro.) and (1) (d); to **renumber and amend** NR 410.03 (1) (a) 5. to 7., and (f), and (4); to **amend** NR 410.03 (title), (1) (a) (intro.) and 1. to 4. and 8. to 10., (b) (intro.) and 1. to 4., and (e), (2), and (4) (title); and to **create** NR 410.02 (7) and (8), and 410.03 (4) (b), relating to fees for reviewing applications for construction of air pollution sources and affecting small business.

AM-09-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: Sections 227.11(2), 285.11(1) and (6), 285.14(1), and 285.69(4), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: Sections 227.11(2), 285.11(1), and 285.69(1), Stats.

3. Explanation of agency authority: Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11, Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.14(1) gives the Department general authority to implement rules consistent with Chapter 285, Stats. Section 285.69 gives the department the authority to promulgate rules for the payment and collection of reasonable fees for construction permit related activities.

4. Related statute or rule: None.

5. Plain language analysis: The proposal is to increase fees for construction permit related actions to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Stats.

6. Summary of, and comparison with, existing or proposed federal regulation: Existing federal regulations require, but do not set, fees for review of construction permit applications. Section 110(a)(2)(E)(i) of the Clean Air Act requires that any government who wishes to carry out a State Implementation Plan have "adequate personnel, funding, and authority under State law to do so." Wisconsin's new source review program is an approved part of the State Implementation Plan and therefore requires adequate funding. US EPA last approved a revision to Wisconsin's State Implementation Plan for a fee related provision on March 11, 2008. [73 FR 12893].

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): Other state agencies were contacted to obtain information regarding their air permit programs. While an attempt was made to do a direct comparison, it proves to be difficult since the funding sources and fee structures differ from state to state. No state was able to provide accurate, average costs of different types of construction permit reviews. Based on the review conducted, it appears that fees proposed in this order are similar to those being charged for similar activities in adjacent states having a fee based construction permit program.

Illinois and Indiana have similar programs to Wisconsin where their new source review program is funded mainly by construction permit fees. Illinois last raised their fees in 2004, Indiana in 2007.

Michigan relies on general funding for their new source review program. Communications with Michigan indicate there have been internal proposals in Michigan to establish permit fees to help fund the new source review program, but none have moved forward at this time.

Minnesota currently has a proposal to raise construction permit fees and to structure the fees much like Wisconsin, Illinois, and Indiana. Their proposal would have core activities paid through permit fees. Major reasons given for their proposal to raise fees are that the cost and complexity associated with new source review has increased significantly over the years. Minnesota's current fee structure attempts to base the

amount on the level of effort needed to review and issue the air permit.

Iowa funds its new source review program through grants and general funds. There are two local Iowa air pollution control agencies that do charge construction permit fees to fund new source review.

Comparisons for fees common to adjacent states:

	Illinois	Indiana	Minnesota	Wisconsin (current)	Wisconsin (proposed)
Initial Application Fee	\$5,000	No fee	No fee	\$1,350	\$7,500
BACT/LAER Determination	\$5,000	\$4,375	\$4,275	\$2,700	\$4,500
Case by case MACT Determination	\$5,000	No fee	No fee	\$2,700	\$4,500
Detailed Modeling Analysis	No fee	\$4,375	\$4,275	\$3,200	\$4,500
Public Hearing	\$10,000	\$625	No fee	\$150	\$950
Application for Major Modification	\$8,000/\$12,000	\$10,000	No fee	\$8,000	\$12,000

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: Data related to revenues generated by new source fees for FY05-FY09, along with projected work load and costs to administer the new source review program, were used to develop and support this order.

Annual new source review program cost. Estimates were made as to the type and number of construction permit reviews to be conducted in the upcoming fiscal year. For each of these, the level of program effort required to complete each type of review was determined. These levels of efforts then were used to estimate the annual cost to administer the construction permit program, taking into account estimated costs for program staff.

Individual fee increases. A 30% increase was applied to fees last revised in 1999 to account for inflation over the last 11 years. An additional increase was also applied to each fee category to better reflect the level of effort associated with the fee related action. Estimates were made as to the number of fee related actions associated with each type of permit review. These estimate were used in conjunction with the proposed fee to determine that the projected future revenue is sufficient to cover the annual program cost.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: The same information described under number 8. was used to determine the effect on small business. No economic impact report has been requested.

10. Effect on small business: The cost to small business to obtain a minor construction permit is proposed to increase in the range of 30 to 75 percent depending on the air regulations applicable to the project. The current cost of a minor construction permit sometimes associated with small business, ranges from \$6,000 to \$8,000.

Many small businesses are able to qualify for coverage under general or registration permits in lieu of needing to obtain a minor construction permit. Currently there is no charge for review and issuance for this type of coverage. No changes are proposed that would either affect small business eligibility for coverage under these permits or that would impose a fee for issuance of coverage.

11. Agency contact person: Andrew Stewart, andrew.stewart@wisconsin.com, 608-266-6876.

SECTION 1. NR 410.02 (7) and (8) are created to read:

NR 410.02 (7) "Non-part 70 source" has the meaning given in s. NR 407.02 (5).

(8) "Part 70 source" has the meaning given in s. NR 407.02 (6).

SECTION 2. NR 410.03 (title) is amended to read:

NR 410.03 (title) **Application fee and review fees.**

SECTION 3. NR 410.03 (intro.) is repealed.

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

NR 410.03 (1) (a) (intro.) Each person ~~issued a~~ submitting an application for an individual construction permit for a direct source shall pay the following applicable basic fee in this paragraph and shall submit a \$7,500 initial fee with the application. The initial fee shall be subtracted from the final fee required under this section and may not be refunded, except as provided in sub. (4). If the department determines that a permit is not required, the individual permit application shall be treated as an application or request under par. (b), and the appropriate fee under par. (b) shall be charged. In the event that an applicant chooses to apply for coverage under either a general or registration construction permit, the individual permit application shall be treated as an application or request under par. (am) or (as) and the appropriate fee under par. (am) or (as) shall be charged. The basic fees are as follows:

1. ~~\$2,300~~ \$3,000 if the application is not reviewed under ch. NR 405 or 408, and the application is for a new facility or for an emissions unit to be located at a minor source.

2. ~~\$4,400~~ \$7,500, for a modification not defined as major in s. NR 405.02 (21) or 408.02 (20), when the application is for an emissions unit to be located at a major source as defined in s. NR 407.02 (4).

3. ~~\$8,000~~ \$12,000, for a major modification as defined in s. NR 405.02 (21) or 408.02 (20), unless and the emissions unit 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. ~~\$12,000~~ \$16,000, 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).

SECTION 5. NR 410.03 (1) (a) 5. including the Note, 6., and 7. are renumbered NR 410.03 (1) (ae), (am), and (as) respectively, and as renumbered are amended to read:

NR 410.03 (1) (ae) ~~\$1,100~~, for Each person requesting a revision of a construction permit when requested by the permit holder or the permit holder's agent shall pay a fee of \$1,500 which shall be submitted with the request, unless the only reason for the revision is to make the source eligible for a registration operation permit.

(am) ~~\$2,300~~ Each person applying for coverage under a general construction permit issued to for a part 70 source under s. NR 406.16 shall pay a fee of \$3,000 which shall be submitted with the application for coverage.

(as) ~~\$1,400~~ Each person applying for coverage under a registration construction permit issued to for a part 70 source under s. NR 406.17 shall pay a fee of \$1,500 which shall be submitted with the application for coverage.

SECTION 6. NR 410.03 (1) (a) 8. to 10. are amended to read:

NR 410.03 (1) (a) 8. ~~\$40,150~~ \$12,000, per air contaminant regulated under a plant-wide applicability limitation, when establishing a plant-wide applicability limitation under s. NR 406.035 (1).

9. ~~\$4,850~~ \$6,000 for the increase of a plant-wide applicability limitation under s. NR 405.18 (11) or 408.11 (11).

10. ~~\$4,850~~ \$6,000 for the distribution of allowable limits upon expiration of a plant-wide applicability limitation under s. NR 406.035 (2).

SECTION 7. NR 410.03 (1) (b) (intro.) and 1. to 4. are amended to read:

NR 410.03 (1) (b) (intro.) Each person submitting a claim of, or an application for exemption, or otherwise requesting a determination of exemption under ch. NR 406 shall pay the following applicable fee which shall be submitted with the claim, application, or request:

1. ~~\$800~~ \$1,250, for a determination of exemption under s. NR 406.04 (1) (i).

2. ~~\$1,400~~ \$1,500 for a determination of exemption under s. NR 406.04 (1f) for a modification to a

stationary source which is regulated by a plant-wide applicability limitation, except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$2,400.

3. ~~\$4,400~~ \$5,500 for a determination of exemption under s. NR 406.04 (1k), except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$6,500.

4. ~~\$700, for a detailed air quality modeling analysis of the projected air quality impact of a determination of exemption under s. NR 406.04 (1f) or (1k)~~ \$500 for a determination of exemption under s. NR 406.04 not included in subd. 1. to 3m.

SECTION 8. NR 410.03 (1) (d) is repealed.

SECTION 9. NR 410.03 (1) (e) is amended to read:

NR 410.03 (1) (e) When a construction permit application is received for a source where the basic emissions unit, which is not a portable source, is to be installed at one specified facility and, in the same application, a request is also made to issue construction permits to allow installation of the same basic emissions unit at other facilities at different locations and all the facilities for which construction permits are requested are under common ownership or control, the permit applicant shall pay the basic fee specified in par. (a) plus the additional fees in sub. (2). The fee for each additional construction permit at different locations shall be ~~\$400~~ \$1,000 each, plus the fees in sub. (2) except when the action specified in sub. (2) has been completed for one location and a separate action as set forth in sub. (2) is not required for each additional permit at each different location. When an action covered under sub. (2) must be completed for applications at more than one location, the fee in sub. (2) shall be charged for each time the action is completed.

SECTION 10. NR 410.03 (1) (f) is renumbered to be NR 410.03 (1) (b) 3m., and as renumbered is amended to read:

NR 410.03 (1) (b) 3m. Any person submitting a claim for a construction permit exemption under s. NR 406.04 (1q) shall pay a fee of ~~\$800~~ \$1,250 which shall be submitted with the claim.

SECTION 11. NR 410.03 (2) is amended to read:

NR 410.03 (2) ADDITIONAL DIRECT SOURCE FEES. Each person issued a submitting an application for an individual construction permit for a direct source shall pay all the following additional fees which apply:

(a) ~~\$400~~ \$800 per basic emissions unit if review and analysis of 2 or more basic emissions units is required.

(b) ~~\$1,350~~ \$2,500, if an analysis of alternatives under s. NR 408.08 (2) is required.

(c) ~~\$3,350~~ \$5,000, if an emission offset under ch. NR 408 or the determination of a net emissions increase under ch. NR 405 is required.

(d) ~~\$2,700~~ \$4,500, for each case-by-case determination of maximum achievable control technology (MACT), best available control technology (BACT) or lowest achievable emission rate (LAER). This does not apply to BACT or LAER determinations made under ch. NR 445.

(e) ~~\$700~~ \$1,000, for a minor source or minor modification to a major source whose projected air quality impact requires a detailed air quality modeling analysis.

(f) ~~\$3,200~~ \$4,500, for any source, other than a minor source or minor modification to a major source, whose projected air quality impact requires a detailed air quality modeling analysis.

(g) ~~\$650~~ \$1,000, if the source is subject to an emission limitation under chs. NR 446 to 469, or if the permit establishes an emission limit for a hazardous air contaminant listed in Table A, B or C of s. NR 445.07.

(h) If the construction permit requires emission testing, ~~\$1,350~~ \$2,500 for the first air contaminant tested and ~~\$950~~ \$1,250 for each additional air contaminant tested up to a maximum of ~~\$4,200~~ \$6,000. If the department later finds that some or all of the tests are not required, the corresponding fees shall be refunded.

(i) ~~\$1,050~~ \$1,500, if an environmental assessment under ch. NR 150 is required.

(j) ~~\$950~~ \$1,500, if a public hearing is held at the request of the applicant or the applicant's agent.

(k) ~~\$400~~ \$600 for each basic emissions unit at a source which requires an emission limit determination under s. NR 424.03 (2) (c).

(L) ~~\$1,350~~, \$2,000 for each case-by-case determination of best available control technology

(BACT) or lowest achievable emission rate (LAER) 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) ~~\$2,450~~ \$3,500, if specific permit conditions limiting the potential to emit are required to make the source a minor source or to make the modification a minor modification.

(n) ~~\$2,650~~ \$3,500, for a medical waste incinerator requiring review of a needs and siting analysis under s. 285.63 (10), Stats.

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

1. ~~\$2,650~~ \$5,000, for an application 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. ~~\$4,000~~ \$7,500, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 60 days of receipt of a complete application.

3. ~~\$2,650~~ \$4,000, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 61 to 90 days of receipt of a complete application.

SECTION 12. NR 410.03 (4) (title) is amended to read:

NR 410.03 (4) (title) PAYMENT AND REFUNDS.

SECTION 13. NR 410.03 (4) is renumbered NR 410.03 (4) (a) and as renumbered is amended to read:

NR 410.03 (4) (a) The ~~When the amount due with an application or request is less than the final fee, the department shall bill the applicant for the construction permit application fee balance due when the permit a final decision is issued or upon a determination that no further action will be taken on the application. For a determination of no further action, the final fee shall include an amount for work completed under subs. (1) to (2), except that the final fee for a small business, as defined in s. 277.114, Stats., shall only be the initial amount due with the application or request. The application-fee balance due shall be paid within 30 days of the date of the billing statement.~~

SECTION 14. NR 410.03 (4) (b) is created to read:

NR 410.03 (4) (b) The department may refund all of, or a portion of, the fee submitted with an application or request for a direct source, in the following situations and amounts:

1. If, upon review of an individual permit application for a direct source, the department determines that the source is exempt from the need to obtain the permit, the difference between the initial application fee and the appropriate amount in sub. (1) (b).

2. If an applicant for an individual permit for a direct source that is a part 70 source requests that the application be processed as an application for coverage under either a general or registration construction permit, the difference between the initial fee submitted with the individual permit application and the appropriate amount in sub. (1) (am) or (as).

3. If the initial application fee is greater than the final fee, the difference between the application and final fees.

4. If an applicant for an individual permit for a direct source that is a non-part 70 source requests that the application be processed as an application for coverage under either a general or registration construction permit, the full initial fee submitted with the individual permit application.

SECTION 15. 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 16. 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)