

- *develop a procedure to track permits throughout the process, to ensure that permit engineers are held accountable for finalizing permits.*

### Renewing Operation Permits

**As of June 30, 2003,  
193 permit renewal  
applications were  
pending.**

Initial operation permits are typically valid for up to five years, and facilities must reapply to renew them. DNR began issuing operation permits in FY 1994-95, and the first permits expired five years later, beginning in FY 1999-2000. As shown in Table 16, DNR issued a total of 237 renewal permits from FY 1999-2000 through FY 2002-03 and had an additional 193 renewal applications pending as of June 30, 2003.

Table 16

#### Number of Renewal Permits and Applications Through June 30, 2003

Permit Type	Renewal Permits Issued	Renewal Applications Pending
Major	69	86
Synthetic Minor	154	94
Minor	14	13
<b>Total</b>	<b>237</b>	<b>193</b>

2003 Wisconsin Act 118 requires facilities to apply for renewal operation permits six months before their current permit's expiration. Previously, NR 407.04(2), Wis. Adm. Code, had required facilities to apply for renewal operation permits at least 12 but not more than 18 months before the initial operation permit expired. Permits issued before June 30, 1999, will expire no later than June 30, 2004, and these facilities should have submitted renewal applications by June 30, 2003.

As shown in Table 17, DNR has issued 237 of the 471 initial operation permits that will expire by June 30, 2004. As of June 30, 2003, 49 facilities (10.4 percent) had not submitted renewal applications as required, including 12 facilities whose initial operation permits expired before June 30, 2003, and which may be operating without a valid permit. Although some of these facilities may have closed or may no longer be emitting air pollution at a level

requiring a permit, DNR has not determined whether these 49 facilities are still required to obtain permits, and DNR staff could not explain why the facilities did not apply for renewal permits. DNR staff did not identify the need for renewal permits because DNR does not review its renewal permit backlog to ensure that all facilities have properly applied, but rather relies on facilities to apply for renewal permits and then adds them to the backlog.

Table 17

**Status of Permits Expiring by June 30, 2004**  
As of June 30, 2003

Status	Number	Percentage
Renewal Permits Issued	237	50.3%
Pending Applications <sup>1</sup>	185	39.3
No Renewal Application Submitted	49	10.4
<b>Total</b>	<b>471</b>	<b>100.0%</b>

<sup>1</sup> Excludes 8 renewal applications for permits that expire after June 30, 2004.

At the time of our audit, DNR had not renewed any of the general operation permits that it issued, although all expired by June 30, 2003. As of that date, DNR reported 221 active facilities held general operation permits. Only 131 facilities had applied to renew their general operation permits, while 90 facilities had not reapplied. DNR officials have negotiated permit conditions with facilities, and most new general permits were issued on January 30, 2004. Under the changes enacted by 2003 Wisconsin Act 118, general permits will typically have no expiration date.

**Recommendation**

*We recommend the Department of Natural Resources:*

- *review the facilities that have not applied for renewal permits to determine whether they are required to submit renewal applications; and*
- *implement a procedure to ensure permit engineers notify facilities whose permits are due to expire, so facilities can submit appropriate renewal permit applications in a timely manner.*

## Purpose of Construction Permits

Satisfaction with the Construction Permit Program

Permit Issuance Workload

Timeliness of Permit Issuance

Permit Streamlining

# Construction Permit Program ■

**Facilities planning new, modified, reconstructed, relocated, or replaced air pollution sources are required to obtain construction permits.**

Construction permits are designed to ensure that air quality is not significantly degraded by new or modified sources of air pollution and that facilities install required pollution controls. In Wisconsin, facilities planning new, modified, reconstructed, relocated, or replaced air pollution sources are required to obtain these permits before they begin either new construction or modification projects. Routine maintenance, repair, and replacement projects are exempted from construction permitting requirements.

Statutes and administrative rules require DNR to issue construction permits within specified time limits. Although DNR has generally met these standards, it has substantial control over when the time period for meeting the standard begins. Moreover, DNR does not adequately track the time taken to issue permits. In addition, we found 29.2 percent of applications pending as of June 30, 2003, had been backlogged for at least two years. Although the Legislature has recently made a number of changes to simplify and shorten the permitting process, options are available for further streamlining.

## Purpose of Construction Permits

Regulatory requirements associated with construction permits were established by the 1977 Clean Air Act Amendments and have been subsequently modified. Construction permits are issued as part of a pre-construction permitting program, known as new source review. Construction permits differ from operation permits in that they are

written specifically for the construction of a new facility or the modification of an existing facility and typically include only a portion of a facility's overall operations. In general, construction permits allow a facility to build, initially operate, and test the new pollution source for up to 18 months.

Construction permits vary widely in their scope and complexity, based on the type of project or modification being proposed. As with operation permits, construction permits are classified as major and minor. The type of construction permit required is based on emissions type, the amount of potential emissions, and whether a facility is located within an attainment or a non-attainment area.

Major construction permits are more complex, have more requirements, and have generally taken longer for DNR staff to complete than minor permits. 2003 Wisconsin Act 118, which took effect in February 2004, establishes new operation and construction permitting options, including:

- pre-construction permit waivers;
- mandatory exemption of minor sources that do not present a significant hazard to public health or the environment;
- more opportunities to qualify for general permits; and
- a new, simplified registration permit for some facilities with low emissions.

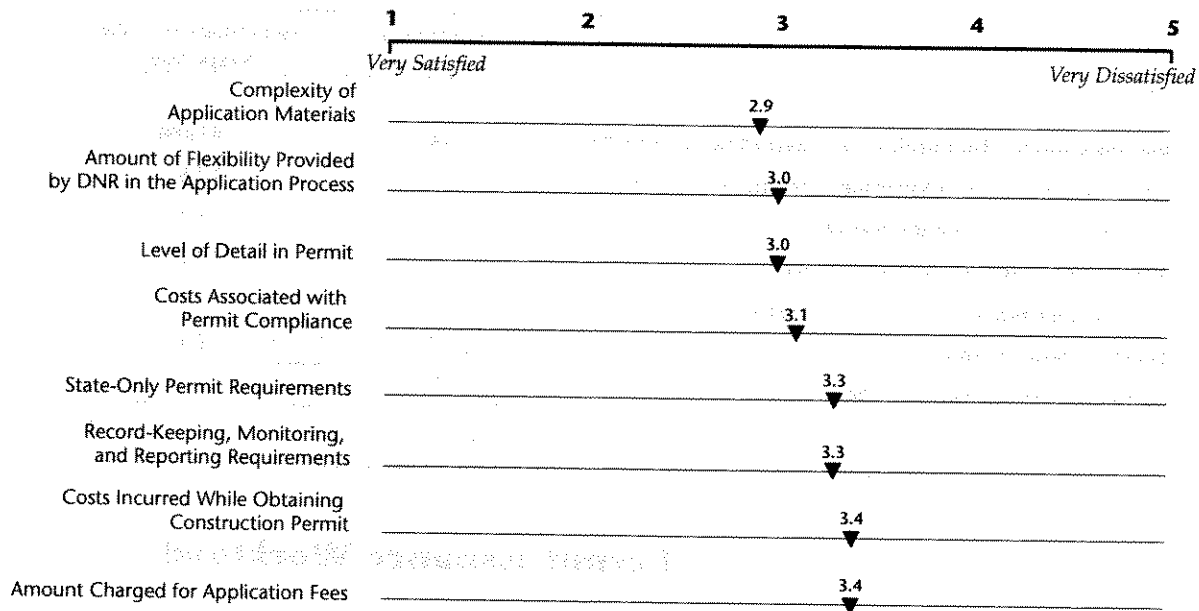
### Satisfaction with the Construction Permit Program

**Regulated facilities were slightly dissatisfied with DNR's construction permitting program.**

To assess regulated facilities' satisfaction with DNR's construction permit program, our survey of randomly selected facilities addressed the eight topics shown in Figure 9. Forty-one of 81 respondents indicated they had applied for a construction permit. Overall, the average level of satisfaction was 3.1, which indicates that responding regulated facilities were slightly more dissatisfied than satisfied with DNR's construction permitting process. The highest level of satisfaction was with the complexity of application materials. The regulated facilities were least satisfied with costs incurred while obtaining a construction permit and the amount charged for application fees.

Figure 9

Regulated Facilities' Satisfaction with the Construction Permit Program



Scale: 1 = "Very Satisfied;" 2 = "Satisfied;" 3 = "Satisfied with Some Aspects but Dissatisfied with Others;" 4 = "Dissatisfied;" and 5 = "Very Dissatisfied."

In addition to asking regulated facilities about their level of satisfaction with topics related to the construction permit program, we also asked facilities to identify a single topic of greatest concern. Forty-one percent of respondents identified record-keeping, monitoring, and reporting requirements. One respondent whose company has facilities in seven other states believes Wisconsin's air permits have the most detailed record-keeping and monitoring requirements.

As shown in Table 18, respondents were least concerned about the level of detail in construction permits and about state-only permit requirements.

Table 18

## Regulated Facilities' Topic of Greatest Concern Related to the Construction Permit Program

Topic	Number of Responses	Percentage of Total Responses
Record-Keeping, Monitoring, and Reporting Requirements	16	41.0%
Costs Incurred While Obtaining Construction Permit	7	17.9
Complexity of Application Materials	6	15.4
Amount Charged for Application Fees	5	12.8
Costs Associated with Permit Compliance	3	7.7
Level of Detail in Permit	1	2.6
State-Only Permit Requirements	1	2.6

### Permit Issuance Workload

***DNR's construction permit workload varies from year to year.***

DNR's construction permit workload varies from year to year depending on the number of applications received. Economic factors play a role in workload, because as industry expands, DNR receives more applications. Conversely, fewer facilities apply for construction permits during economic downturns.

***As of June 30, 2003, 29.2 percent of pending permits had been backlogged for at least two years.***

As shown in Table 19, DNR issued 148 major and 1,713 minor construction permits from FY 1994-95 through FY 2002-03. On average, 16 major construction permits and 190 minor construction permits were issued each year.

As shown in Table 20, 137 construction permit applications were pending as of June 30, 2003, including 70 received in the prior 12 months and 13 received more than three years ago. Overall, 40 construction permits, or 29.2 percent of all construction permits pending, have been backlogged for at least two years.

Table 19

**Construction Permits Issued**

Fiscal Year	Major Permits	Minor Permits	Total
1994-95	10	161	171
1995-96	7	155	162
1996-97	10	184	194
1997-98	12	168	180
1998-99	23	191	214
1999-2000	18	257	275
2000-01	25	201	226
2001-02	15	219	234
2002-03	28	177	205
<b>Total</b>	<b>148</b>	<b>1,713</b>	<b>1,861</b>

Table 20

**Pending Construction Permits  
As of June 30, 2003**

Time Elapsed Since Application Receipt	Number of Applications	Percentage of Applications
180 days or less	50	36.5%
181 days to 1 year	20	14.6
1 to 2 years	27	19.7
2 to 3 years	27	19.7
More than 3 years	13	9.5
<b>Total</b>	<b>137</b>	<b>100.0%</b>

DNR officials indicate there are two primary reasons for construction permits to remain backlogged for several years:

- Some facilities submit applications covering projects that may be undertaken in the future, are not ready to begin construction at the time they submit an application, and may request that DNR postpone its review.
- Applicants seeking to construct new electricity generating facilities often submit preliminary applications so that they can begin the process of obtaining other necessary approvals, including review and approval by the Public Service Commission, but request a postponement to the construction permit process. We found that 31 of the 137 pending construction permits were for electricity generating facilities, including 20 that had been backlogged for over one year.

### Timeliness of Permit Issuance

***36.6 percent of survey respondents reported their projects were delayed as a result of DNR actions.***

One of the industry's primary complaints about Wisconsin's construction permit program is that DNR takes too long to process applications. As part of our survey of regulated facilities, we asked if the amount of time that DNR took to process a construction permit application delayed the project's completion. Of the 41 respondents who reported experience with the construction permitting process, 15, or 36.6 percent, indicated that completion of their projects had been delayed as a result of the time DNR took to process construction permit applications. In addition, 16 respondents, or 39.0 percent, believed DNR processing time increased their projects' costs. The most common costs cited by facilities were loss of sales or loss of market share, but few respondents attempted to quantify costs.



**Statutory Timeliness Requirements**

Chapter 285, Wis. Stats., requires DNR to complete the construction permit review process within specific time frames. Recognizing differences in permit complexity, statutes allow for longer periods of time to process major construction permits. They also allow more time to complete permits for which public hearings are held. As shown in Table 21, until the February 2004 enactment of 2003 Wisconsin Act 118, statutes allowed up to 210 days to process a major construction permit without a public hearing, and 270 days to process a major construction permit when a public hearing is held. For minor construction permits, DNR is required to complete work within 120 days if no public hearing is held and within 180 days if a hearing is held.

**2003 Wisconsin Act 118 shortened major construction permit processing deadlines by 30 days.**

2003 Wisconsin Act 118 reduced by 30 days the amount of time permitted for processing major construction permits. DNR now has 240 days for processing a major permit when a hearing is held, and 180 days if no hearing is held.

Table 21

**Statutory Time Limits for Issuing Construction Permits  
(Number of Calendar Days from Previous Milestone)**

Requirement	Previous Major Permit	Current Major Permit <sup>1</sup>	Minor Permit
Days for DNR to Issue Preliminary Determination	120 days	90 days	30 days
Public Comment Period:			
If No Hearing Is Held	30 days	30 days	30 days
If a Hearing Is Held	90 days	90 days	90 days
DNR Approves or Denies Permit	60 days	60 days	60 days
<b>Total Time to Process Permit (No Hearing)</b>	<b>210 days</b>	<b>180 days</b>	<b>120 days</b>
<b>Total Time to Process Permit (Hearing)</b>	<b>270 days</b>	<b>240 days</b>	<b>180 days</b>

<sup>1</sup> Represents time changes made by 2003 Wisconsin Act 118, which took effect in February 2004.

The statutory clock does not begin until DNR deems the application to be complete. Some industry groups have questioned whether this date should be used as the starting point in establishing the time to issuance, because DNR has substantial flexibility in determining when an application is deemed complete. DNR has 20 days from the date an application is received to notify the applicant whether its application is complete or to request additional information. However, we found DNR often did not request additional information in writing, making it difficult to verify compliance with this deadline. Furthermore, DNR lacks clear guidelines for determining when an application was complete.

2003 Wisconsin Act 118 now requires DNR to request additional information in writing within 20 days after receiving an application. After receiving additional information, DNR must notify a facility within 15 days of receiving that additional information whether the response satisfies DNR's request. If DNR does not request specific additional information, the application is automatically deemed complete.

***Wisconsin's timeliness standards are generally consistent with other midwestern states.'***

Although unique permitting requirements in each state make direct comparisons difficult, we found that Wisconsin's timeliness standards are generally consistent with those in other Region 5 states. There is, however, significant variation in the number of days states allow for issuing permits.

***The amount of time allowed for processing construction permits varies among states.'***

Table 22 presents timeliness standards as a range because they differ depending on whether a public hearing or public comment period is required. For example, Michigan law requires both minor and major permits to be issued the most quickly, but it is important to note that its 60- to 120-day clock does not start until the permitting authority deems the application complete, and the clock is stopped while the permitting authority waits for additional information requested of the applicant.

Generally, Ohio allows the most days to issue minor or similar permits: 180 to 240 days from the time an application is deemed complete by the permitting authority. For permits similar to Wisconsin's major permits, Minnesota allows the most time: 425 to 545 days from the time the application is deemed complete from the permitting authority. In addition, the Minnesota permitting authority may stop the clock until requested information is provided if the applicant does not provide it within 30 days.

Table 22

## EPA Region 5 States' Construction Permit Timeliness Standards

State	Days Allowed for Permits Similar to Wisconsin's Minor Construction Permit	Days Allowed for Permits Similar to Wisconsin's Major Construction Permit
Illinois <sup>1</sup>	90 to 180	90 to 180
Indiana <sup>2</sup>	120 to 165	270 to 315
Michigan <sup>3</sup>	60 to 120	60 to 120
Minnesota <sup>4</sup>	90 to 120; 240 to 270	425 to 545
Ohio <sup>5</sup>	180 to 240	180 to 240
<b>Wisconsin</b>	<b>120 to 180</b>	<b>180 to 240</b>

<sup>1</sup> Illinois may request additional information from an applicant within the first 30 days, and the clock starts over when the requested information is received.

<sup>2</sup> Indiana may ask for additional information from an applicant, and the clock stops when the additional information is requested and does not start again until the requested information is received. Indiana may request information and stop the clock multiple times.

<sup>3</sup> In Michigan the clock does not start until an application is deemed complete. The clock stops when Michigan requests additional information from an applicant and does not start again until the requested information is received.

<sup>4</sup> In Minnesota the clock does not start until an application is deemed complete and may be stopped for the number of days beyond 30 that it takes an applicant to provide additional requested information. Minnesota has two types of permits that are similar to Wisconsin's minor permits.

<sup>5</sup> In Ohio the clock does not start until an application is deemed complete, and Ohio has 60 days to deem an application complete or request additional information.

Only two of the other Region 5 states were able to provide us with data that demonstrated their performance in meeting timeliness goals. In 2002, Indiana reported that the median number of calendar days between receipt of an application and permit issuance was 137 for permits similar to Wisconsin's minor permit, and 227 for permits similar to Wisconsin's major permit. An official with the Illinois permitting authority stated that all minor construction permits in that state are issued within 90 days, while major or similar permits generally take between 12 and 18 months for new facilities. The Illinois official noted that it generally takes Illinois between two and three years to process an application for a new coal power plant. This same official also told us that although Illinois law allows only 180 days to issue a permit, the permitting authority routinely tells facilities that their permits will be denied unless they grant the state extra time.

Because very few EPA Region 5 states provided us with timeliness information, we looked for other reliable information. An EPA review of major permits issued nationally from 1997 through 2001

found that it took an average of 7.2 months for states to process the permits, measured from the receipt of a complete application. In June 2002, the Idaho State Legislature's Office of Performance Evaluations issued a report addressing the time Idaho's air quality permitting agency takes to issue construction permits. While Idaho is not a neighboring state and has far fewer facilities that require construction permits than Wisconsin does, the report represents the most accurate and reliable information we were able to obtain about time taken to issue construction permits in another state.

In Idaho, the permitting agency has 30 days to determine if a construction permit application is complete. Once an application is complete, the agency has 60 days to issue a draft permit, notify the applicant of the permit's approval or denial, or issue a proposed permit for public comment. Idaho's rules allow for a 30-day public comment period. Idaho's Office of Performance Evaluations found that the permitting agency exceeded the 60-day deadline for 45 percent of construction permit applications between FY 1998-99 and FY 2001-02. In addition, it found that the average number of days to issue construction permits increased from 91 days in FY 1998-99 to 139 days in FY 2000-01.

We attempted to evaluate DNR's performance in meeting Wisconsin's statutory timeliness requirements using information from DNR's permit tracking database, but we were unable to do so because DNR does not consistently or accurately track all important permit milestones. Therefore, to assess DNR's timeliness in issuing construction permits, we randomly selected 120 construction permit applications. We were able to test only 88 of the 120 applications for several reasons:

- 13 applicants were determined to be exempt from permitting;
- 11 were special types of construction permits, such as permits issued after completion of a project;
- 6 records were missing information needed to verify permit processing milestones; and
- 2 applications were withdrawn prior to permit issuance.

***DNR met the statutory deadline for 86.4 percent of the construction permits we tested.***

Of the remaining 88 applications used in our analysis, we found that DNR met the statutory deadline for 76, or 86.4 percent. The median time to issue a permit from the date DNR deemed an application complete was 53 days; the time ranged from a low of 34 days to a high of 731 days.

**DNR has substantial control over the starting point for measuring statutory timeline compliance.**

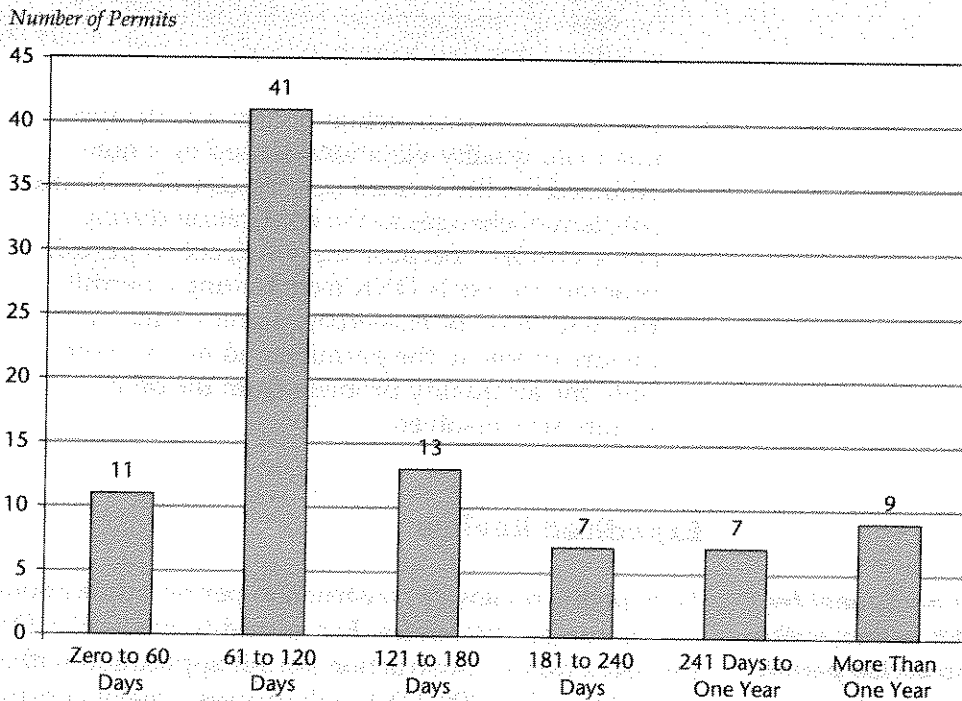
As noted, DNR has substantial flexibility in determining the date an application is deemed complete. To address this issue, we analyzed DNR's median time to deem an application complete for the 88 permits we reviewed. We found it took 40.5 days, and ranged from a low of less than 1 day to a high of 1,084 days. According to DNR staff, most facilities respond quickly to additional information requests because applicants are interested in obtaining their permits as quickly as possible. DNR indicated that when a facility does not need the permit immediately, there is often a longer delay between the date an application is received and when it is deemed complete because the facility has chosen not to respond to additional information requests from DNR.

**DNR's median processing time was 103.5 days from the date an application was received.**

In an effort to provide an alternative measure of how long it takes DNR to issue construction permits, we also analyzed the time taken to issue permits from the dates applications were received. For the 88 permits we reviewed, the median time was 103.5 days. As shown in Figure 10, 52 of the 88 permits we reviewed were issued within 120 days, but 36 took longer than 120 days, including 9 that took longer than one year.

Figure 10

**Time Elapsed from Application Received Date to Permit Issued Date  
For 88 Construction Permits Reviewed**



Because timeliness is of great concern to regulated industries, we more closely reviewed the nine permits that took more than one year and contacted the facilities involved. We found unique circumstances in all nine cases. For example:

- In one case DNR lost the original application, but a facility representative also attributed the delay, in part, to the facility's consultant's failure to follow up on the application.
- One facility decided not to implement all changes approved under an earlier construction permit. This facility applied for a new construction permit so that it could document the changes that actually were made and avoid major-source hazardous air pollution requirements in its forthcoming operation permit. Since this facility was already constructed and operating, the delay did not affect its operations.
- One facility applied for a new electricity generating plant that was delayed until the project received the necessary environmental impact statements and approvals from the Public Service Commission.
- One facility requested that DNR refrain from processing one of its applications in favor of processing other applications for different modifications that were pending.
- One facility's construction permit was delayed due to air quality violations caused by a non-affiliated facility located nearby, as well as its own substantial changes to the application during DNR's review. Because the construction permit program prevents DNR from issuing a permit that will cause or exacerbate a preexisting air quality problem, the permit could not be issued until the air quality problem from the other facility was resolved.

### **Expedited Review**

***For an additional fee, DNR will expedite construction permit processing.***

To expedite review of construction permit applications, applicants can pay an additional fee. For an additional \$2,650, DNR will process a minor construction permit application within 50 days; for an additional \$4,000, DNR will process a major construction permit

application within 60 days. Of the 1,861 construction permits issued from FY 1994-95 through FY-2002-03, 57.4 percent requested an expedited review. DNR officials have stated that applicants that request an expedited review do not "bump" other pending applications because DNR staff review expedited applications using overtime.

Because applicants are billed when permits are finalized, DNR charges the expedited review fee only if it meets the deadlines. In our review of 88 construction permits, we found that 48 applicants requested an expedited review: 41 for minor permits and 7 for major permits. DNR met the deadline for 34 of these applications: 28 for minor permits and 6 for major permits. For the 14 cases in which DNR did not meet the deadline, it did not charge the expedited rate for 6 permits. The expedited rate was charged for the remaining eight permits because delays were caused by applicants' failures to publish public notices of the 30-day comment period in a timely fashion.

Our review highlights a potential problem with the expedited review process. Current regulations allow the applicant, rather than DNR, to have responsibility for publishing the required notice in a local newspaper, because in most cases the applicant can submit the required information to a local newspaper faster than DNR can. DNR encourages this practice with a \$150 credit for applicants that publish their own notices. However, if an applicant fails to publish the notice in a timely fashion after DNR has completed its review, issuance of the final permit can be delayed, resulting in a failure to meet the expedited review deadline.

#### Recommendation

*We recommend the Department of Natural Resources revise its expedited review process in order to avoid situations where delays caused by the applicant hinder DNR's ability to meet expedited review deadlines.*

For example, once DNR issues the draft permit, the clock should stop until the applicant publishes a public notice, at which point the 30-day comment period could begin.

### Permit Streamlining

As noted, 2003 Wisconsin Act 118 recently made several changes to streamline and shorten the construction permitting process. In addition, in June 2003 DNR announced its intention to streamline the permitting process. The streamlining initiative includes a

proposed two-year effort to study both the construction and the operation permitting processes and to develop solutions to reduce permit backlogs, improve permitting efficiency, and provide more regulatory certainty to applicants.

**DNR has not implemented permit streamlining recommendations developed by its own workgroup.**

Efforts to streamline the permitting process are not new. In August 1998, DNR convened a group of agency staff and industry representatives to identify ways of improving the permitting process. In January 1999, this workgroup issued a report. Although DNR implemented some of the group's recommendations, including making permit review documents available over the Internet and developing an electronic application system to make data entry into DNR's permit tracking database more efficient, many recommendations were not implemented.

DNR has not implemented its workgroup recommendations for:

- improving communication by designating one DNR staff person in each region as the regional permit coordinator, to answer external questions and to coordinate policy changes with other regions and the central office;
- simplifying the application process by reducing the number of forms required (currently as many as 36), developing forms targeted to small businesses and specific industrial sectors, and eliminating unnecessary and redundant information from the forms;
- providing computer software to assist applicants with correctly estimating pollutant emissions and performing other calculations;
- providing better instructions for completing the application forms;
- developing a checklist so that applicants can easily determine which portions of the application packet are required for their projects;
- allowing applicants or their consultants—rather than DNR staff—to complete the required air quality modeling; and



- streamlining and shortening the length of the draft permit and the preliminary determination document by referencing, rather than repeating, administrative rule requirements; eliminating repetition of compliance and demonstration methods; and avoiding repetition of information in the permit that can be found in the preliminary determination.

A number of recommendations put forward by DNR's workgroup have been incorporated into the new requirements established by 2003 Wisconsin Act 118. However, reconsideration of others could further streamline DNR's permitting process.

#### Recommendation

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*We recommend, as part of its current air permit improvement initiative, the Department of Natural Resource re-evaluate the potential of implementing streamlining recommendations made by its 1998 workgroup.*

■ ■ ■ ■

## Enforcement Efforts ■

***Adequate enforcement is important to ensuring the integrity of the State's air management programs.***

Overly aggressive enforcement of program rules and regulations may be viewed as unnecessarily burdensome by regulated industries and could have a negative effect on the business climate. However, adequate enforcement is important to ensuring the integrity of the State's air management programs. We found the number of facilities inspected by DNR has generally declined in recent years, and some facilities have never been inspected. DNR is not consistently meeting federally established goals for processing high-priority violations in a timely fashion. In addition, DNR does not follow its own policies regarding enforcement against facilities that apply for construction permits after work is already complete, or against facilities that do not submit timely compliance certifications.

### Compliance Process

DNR staff conduct on-site inspections, review annual compliance certifications and emission inventory reports submitted by facilities, assess quarterly monitoring reports from specific pollution sources, observe stack tests, and respond to citizen complaints about air pollution.

If DNR compliance staff detect evidence of possible violations, they can initiate enforcement action, which may include:

- issuing a letter of inquiry, which seeks additional data in order to determine whether a facility is out of compliance;

- issuing a letter of non-compliance, which provides notice that DNR staff believe a facility is out of compliance with specific rules and regulations and that corrective action is necessary;
- issuing a notice of violation, which provides written notice of a compliance concern that has gone uncorrected, describes the specific violation, notes the potential penalties, and requires the facility to respond in writing or to meet with DNR officials; or
- referring the case to the Wisconsin Department of Justice (DOJ) for prosecution, which may be done initially in the case of a very serious violation, or after failure to gain compliance through the other enforcement methods.

Table 23 shows the number and type of enforcement actions DNR has taken each year since FY 1999-2000. DNR officials attribute the decrease in letters of non-compliance to changes in federal policy requiring more serious enforcement actions when violations are identified, which they indicate also accounts for the increase in notices of violation. The number of cases referred to DOJ has been fairly consistent, ranging from 17 to 20 annually. The cases referred range from alleged violations at a county-owned asphalt plant that failed to test its pollution-control equipment to excess emissions from a scrap metal furnace. The large civil penalty collected in FY 2001-02 is largely the result of two judgments, totaling \$1.5 million, levied against an oil refinery in Superior that failed to obtain a required construction permit.

Table 23

**DNR Air Management Enforcement Actions**

Action	FY 1999-2000	FY 2000-01	FY 2001-02	FY 2002-03
Letter of Non-Compliance	146	144	116	70
Notice of Violation	108	109	100	171
Referrals to DOJ	18	20	17	20
Civil Penalties Collected	\$977,500	\$393,000	\$2,833,800	\$773,700

## Compliance Inspections

**The number of facilities DNR inspected declined 41.3 percent from FY 1994-95 to FY 2002-03.**

As shown in Table 24, the number of facilities DNR inspects annually has generally declined over time, from 470 in FY 1994-95 to 276 in FY 2002-03. DNR officials indicate this 41.3 percent decline likely reflects a declining number of compliance staff. However, available staffing data suggest that more time has been spent on compliance and inspections in recent years than in the past. In FY 1997-98, DNR staff reported spending 23,715 hours on compliance and inspection work. In FY 2002-03, this increased to 27,464 hours, an increase of 15.8 percent.

Table 24

### Number of DNR Air Management Inspections

Fiscal Year	Number of Inspections	Percentage Change
1994-95	470	
1995-96	455	(3.2)%
1996-97	300	(34.1)
1997-98	365	21.7
1998-99	280	(23.3)
1999-2000	240	(14.3)
2000-01	275	14.6
2001-02	282	2.5
2002-03	276	(2.1)

**DNR records indicate that 10.0 percent of major facilities and 19.7 percent of synthetic minor facilities have not been inspected.**

In addition, DNR data indicate that many facilities have never been inspected. As shown in Table 25, 173 facilities, including 10.0 percent of major facilities and 19.7 percent of synthetic minor facilities, had no record of an inspection as of June 30, 2003. The West Central Region had the greatest percentage of uninspected major facilities, 15.3 percent, and the Northern Region had the greatest percentage of uninspected synthetic minor facilities, 35.8 percent.

Table 25

**Facilities that Have Never Been Inspected  
Through June 30, 2003**

Region	Number of Facilities <sup>1</sup>	Number of Facilities with No Inspections	Percentage of Facilities with No Inspections
<b>Major Facilities</b>			
Northeastern	118	11	9.3%
Northern	46	6	13.0
South Central	85	8	9.4
Southeastern	218	17	7.8
West Central	98	15	15.3
Portable <sup>2</sup>	3	0	0.0
<b>Subtotal</b>	<b>568</b>	<b>57</b>	<b>10.0</b>
<b>Synthetic Minor Facilities</b>			
Northeastern	135	20	14.8
Northern	53	19	35.8
South Central	117	25	21.4
Southeastern	141	18	12.8
West Central	80	13	16.3
Portable <sup>2</sup>	62	21	33.9
<b>Subtotal</b>	<b>588</b>	<b>116</b>	<b>19.7</b>
<b>Total</b>	<b>1,156</b>	<b>173</b>	<b>15.0</b>

<sup>1</sup> Represents facilities that DNR has reported to the EPA as needing to be inspected.

<sup>2</sup> Represents road building machinery that can be moved throughout the state.

Although good management practices suggest that facilities should be inspected on a regular basis, it was not until April 2001, when the EPA issued a new policy in an effort to establish national consistency in inspection procedures, that DNR began developing a plan to conduct regular inspections. The EPA policy:

- created a new standard for inspections known as full compliance evaluations, which includes a review of all existing reports and on-site logs,

assessment of control devices, observation of visible emissions, and stack testing to determine compliance with emission limits;

- mandated that states identify all major and synthetic minor facilities that require full compliance evaluations and designate which facilities will be inspected each year; and
- established a goal that all major facilities receive full compliance evaluations every two years and that all synthetic minor facilities receive full compliance evaluations once every five years, unless the state develops an alternative policy that is approved by the EPA.

In FY 2003-04, DNR plans to inspect 245 facilities, which is fewer than in any year in the past nine except FY 1999-2000. DNR will not meet the federal goal of inspecting all major facilities every two years and all synthetic minor facilities every five years. Instead, DNR implemented an EPA-approved alternative strategy whereby it plans to inspect all federally permitted facilities on a five-year cycle, except for 100 "high-ranked" facilities, which will be inspected every two years. These high-ranked facilities will be determined by criteria developed by DNR, including reported emissions, the type of hazardous air pollutants, and the population of the county in which the facility is located. This ranking was first completed in spring 2003, and it will be repeated every two years to reflect updated emission data.

Whether DNR's regional offices will adhere to the agency's statewide inspection plan remains unclear. For example, 72 of the 276 inspections in FY 2002-03 were facilities chosen independently by regional offices, which may or may not reflect DNR's programmatic goals. Moreover, 4 of the 245 facilities for which inspections are scheduled in FY 2003-04 were not included in DNR's spring 2003 ranking process but were added independently by the South Central regional office, and 8 Northern Region facilities will be added by the regional office based on citizen complaints. DNR officials told us that they have no plans to periodically review their compliance database to determine if regional offices are actually inspecting the planned facilities, or to require regional supervisors to communicate changes in inspection plans to central office personnel. DNR managers indicate the only goal they have for regional offices is to inspect a number of facilities equal to the number each office committed to inspecting for FY 2002-03.

**Recommendation**

*We recommend the Department of Natural Resources:*

- *develop a plan to ensure all facilities that have never been inspected are given a higher priority in future years;*
- *require changes in the list of facilities to be inspected in each region to be reviewed and approved by central office personnel, to better ensure that statewide priority facilities are inspected in a timely fashion; and*
- *regularly monitor and report on the progress of each regional office in completing its specific facility inspection goals throughout the fiscal year.*

**High-Priority Violations**

In December 1998, the EPA issued a policy directing state and local pollution control agencies, including DNR, to identify high-priority violation cases that met certain criteria, such as a violation of allowable emission limits during a stack test, and to issue appropriate enforcement actions in a timely fashion. This policy specifies that, starting in 1999, all high-priority cases should be issued a notice of violation within 60 days and be resolved within 270 days, either by the facility returning to compliance status or by referral to DOJ.

From FY 1998-99 through FY 2002-03, DNR identified 134 high-priority violations and pursued enforcement actions in 125 cases, including violations by a metalworking company that failed to perform a stack test; a state agency with excessive pollution from a coal-fired furnace; and a woodworking company that did not control vapors from a varnishing tank. The EPA took the lead in the remaining nine cases, as allowed by federal law. We spoke to EPA Region 5 officials who indicated that their assumption of leadership in these cases did not reflect any general concerns about the enforcement efforts of DNR, but were case-specific decisions often related to the familiarity of federal staff with these specific facilities.

***DNR is not consistently meeting federal goals for addressing high-priority violations.***

As shown in Table 26, through FY 2002-03 DNR met the 60-day guideline in only 76 of 125 cases. Moreover, in five cases DNR never issued a notice of violation to the facility, as required by the policy.

Table 26

**Timeliness of Enforcement for High-Priority Violations**

Fiscal Year	Number of Cases	Number of Cases in Which a Notice Was Issued in 60 days	Percentage of Cases Meeting the 60-Day Deadline
1998-99	4	0	0.0%
1999-2000	36	24	66.7
2000-01	29	20	69.0
2001-02	30	14	46.7
2002-03	26	18	69.2
<b>Total</b>	<b>125</b>	<b>76</b>	<b>60.8</b>

For more than half of the high-priority violations, DNR has also failed to meet the federal guideline to resolve the case within 270 days. As shown on Table 27, DNR met the 270-day standard in only 41 of 110 cases resolved between FY 1998-99 and FY 2002-03.

Table 27

**High-Priority Cases Resolved by DNR**

Fiscal Year	Total Number of Resolved Cases	Number of Cases Resolved Within 270 Days	Percentage Resolved Within Deadline
1998-99	4	1	25.0%
1999-2000	36	15	41.7
2000-01	29	7	24.1
2001-02	30	12	40.0
2002-03 <sup>1</sup>	11	6	54.5
<b>Total</b>	<b>110</b>	<b>41</b>	<b>37.3</b>

<sup>1</sup> Fifteen cases started in FY 2002-03 have been open for less than 270 days and, therefore, are not subject to the 270-day closure standard.



***DNR has neither tracked its timeliness nor developed an alternative standard for tracking violations.***

DNR's memorandum of understanding with EPA Region 5 requires that high-priority violation cases be processed in accordance with federal timeliness standards. However, DNR does not track its timeliness in meeting this standard and has not developed an alternative standard to assess whether air pollution cases are processed in a timely fashion to ensure public health.

**Recommendation**

*We recommend the Department of Natural Resources comply with federal policy and develop procedures to track, on a case-by-case basis, compliance with the 60-day notice of violation and 270-day resolution standards.*

### **DNR Management Guidance on Enforcement Cases**

In response to federal requirements, NR 439.03(1)(c), Wis. Adm. Code, requires that all facilities holding air operation permits submit annual statements to DNR certifying that they are in compliance with the terms of their permit. This compliance certification report must describe any deviations from permit provisions, such as excess emissions, and must be signed by a responsible official, such as the company's president. In June 2002, DNR issued guidance to its enforcement and air management compliance staff, directing them to issue a notice of violation to any major or synthetic minor facility that is more than 60 days late in submitting its annual compliance report. The guidance also notes that facilities with major permits that fail to submit a compliance certification report within 60 days of its due date should be pursued as high-priority violations. However, DNR officials have indicated both that they do not keep accurate records of the number of instances in which compliance reports are submitted 60 or more days late and that central office compliance management personnel make no effort to ensure that facilities submitting these late reports are issued notices of violation as required.

***DNR is not consistently enforcing its requirement that facilities submit annual compliance reports.***

As shown in Table 28, a total of 787 compliance reports were to have been submitted from June 2002 through June 2003, and a total of 527, or 67.0 percent of these reports, were submitted within 60 days of their due date, as required by the policy. However, 93, or 11.8 percent of these reports, were submitted between 61 and 119 days of the due date, and 167, or 21.2 percent, were submitted 120 days or more after the due date. Based on the June 2002 policy, a total of 260 facilities should have been issued a notice of violation for untimely certification reporting. However, DNR's compliance database indicates that since June 2002, only ten facilities have been issued a notice of violation for late certification reporting. DNR officials argue that their data do not accurately document

compliance certification submission, because dates entered reflect when DNR's central office, rather than a regional office, receives the certification report. However, this is DNR's best available information. Therefore, either DNR is failing to determine if facilities are in violation of the compliance reporting requirement or it is failing to issue a notice of violation against facilities that have not submitted their reports in a timely manner.

Table 28

**Compliance Certification Reporting**

Since New Policy Was Issued in June 2002, through June 2003

Days After Deadline that Reports Were Submitted	Number	Percentage
120 or More Days	167	21.2%
Between 61 and 119 Days	93	11.8
Within 60 Days	527	67.0
<b>Total</b>	<b>787</b>	<b>100.0%</b>

**Recommendation**

*We recommend the Department of Natural Resources implement procedures to more accurately track compliance certification submission dates and that it consistently follow its enforcement policy regarding timeliness of compliance certification reports.*

**DNR cannot verify that enforcement actions are initiated for after-the-fact construction permits.**

A March 2003 DNR policy directs DNR staff to initiate enforcement actions against facilities that apply for construction permits after they have already completed construction or modification projects. While DNR still issues these "after-the-fact" construction permits, it cannot ensure that a project will meet air quality standards or that appropriate controls are in place prior to completion of its review. Furthermore, we found DNR cannot verify if its regional offices are complying with this directive, which requires that:

- all major and synthetic minor facilities that are issued an after-the-fact permit receive a notice of violation if the pollutants affected by the project qualify the facility as a major source of pollutants (such cases are also subject to high-priority violation provisions);

- facilities holding state-mandated minor permits and receiving an after-the-fact permit be issued a letter of non-compliance; and
- most major and synthetic minor facilities receiving an after-the-fact permit be referred to DOJ for enforcement.

Some have expressed concern that unless after-the-fact permits are accompanied by enforcement actions, there is little incentive for facilities to comply with the pre-construction permitting requirement. DNR does not maintain a database that accurately identifies when facilities are issued after-the-fact permits. For example, when we performed the file review of 120 construction permits, we found that only 3 were identified as after-the-fact in DNR's database. After reviewing the files, we identified an additional seven after-the-fact permits, for a total of ten, or 8.3 percent of the files in our sample. In addition, DNR has neither investigated whether regional compliance staff are notified when after-the-fact permits are issued nor made clear efforts to ensure that the mandated compliance actions are issued.

Given that the after-the-fact permit directive was issued only recently, we could not verify if its provisions are being implemented. However, compliance personnel we spoke to in regional offices provided anecdotal evidence that this policy is not being enforced. For example, a compliance engineer in DNR's Northeast Region does not follow the directive because he believes that a notice of violation should be issued for after-the-fact permits only if the facility concerned is in a non-attainment area. A Southeast Region compliance engineer doubted that the new policy was being implemented, since no referrals for compliance actions for after-the-fact permits have been made in that region. Finally, a compliance engineer with permitting and compliance experience in two regions indicated that approximately one-quarter of all construction permits are issued as after-the-fact permits, but these rarely result in enforcement actions.

#### Recommendation

*We recommend the Department of Natural Resources develop procedures to accurately identify all after-the-fact permits issued, determine if regional permitting staff are informing compliance staff of these permits, and determine if compliance and enforcement personnel are following DNR's guidelines for enforcement of after-the-fact permits.*

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## Future Considerations ■

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***Program management must improve to meet air management goals.***

In addition to the program and policy changes that recently took effect under 2003 Wisconsin Act 118, a number of proposed changes in federal law could also significantly affect the State's air management programs. Regardless of changes already enacted at the state level and additional changes that may result from efforts to modify federal requirements, DNR's program management must improve if Wisconsin's air management goals are to be achieved.

***New EPA rules will affect the issuance of major construction permits.***

### Changes in Federal Law

In responding to long-standing industry criticisms and calls for reform, the EPA promulgated regulatory changes in December 2002 that may affect the issuance of major construction permits in Wisconsin, which has until January 2006 to implement the new rules. The changes are intended to:

- simplify or eliminate permitting requirements for specific pollution-control and prevention projects;
- encourage plant modernization and provide operating flexibility by establishing pollution caps that allow facility modifications as long as emissions remain below facility-wide limits;
- create incentives to install state-of-the-art pollution controls; and

- change the way that emissions increases are calculated for a proposed project.

According to the EPA, these changes will provide greater regulatory certainty to industry, encourage emissions reductions, and improve energy efficiency. However, a report issued by the United States General Accounting Office (GAO) in August 2003 found that the EPA had relied on anecdotal evidence submitted by industries most affected by its regulations to quantify the effect of its new rule. The GAO questioned whether the EPA had sufficient information to make reasonable economic estimates of the cost of the rules or their effect on emissions, because the EPA could not determine with any certainty the number of facilities that would opt to use the rules' voluntary provisions. The GAO recommended the EPA work with state and local air administrators to obtain the data necessary for determining the actual costs and potential effects of the rules.

***New EPA rules have been challenged in federal court by 14 states, including Wisconsin.***

The new EPA rules are controversial and have been challenged in federal court by several local air pollution agencies, the District of Columbia, and 14 states including Wisconsin. These governments, along with a number of environmental groups, fear that the proposed regulatory changes will result in less oversight of industry, making it more difficult to achieve national air quality standards. Because it is not known if the challenge to the new rules will prevail, in September 2003 DNR convened a task force consisting of industry representatives and DNR staff to revise Wisconsin's rules in response to the federal law changes. Public hearings were held on proposed state rules in January 2004.

In a separate action in October 2003, the EPA changed the definition of "routine maintenance, repair, and replacement" in construction permit rules. Under the old rules, routine maintenance, repair, or replacement projects were exempt from construction permitting requirements, but the EPA required a complex analysis to demonstrate that a proposed activity was exempt. The new rules are intended to clarify when equipment replacements are automatically excluded from permit requirements. The EPA believes they will encourage companies to make the repairs and replacements necessary for safe, efficient operation, and thereby reduce air pollution emissions as facilities upgrade aging equipment. The State and Territorial Air Pollution Program Administrators, a group representing state air pollution control agencies, opposed the rule changes because this group believes they further complicate, rather than clarify, existing federal regulations and fail to protect air quality. Again, Wisconsin joined 13 other states and the District of Columbia in a suit seeking to block implementation of the changes. The federal court has ordered the EPA to delay implementation of the rule until the case can be heard.

Finally, in December 2003 the EPA proposed new rules to reduce sulfur dioxide and nitrogen oxide emissions and to reduce the amount of mercury emitted from coal-fired power plants. The proposed rules require a 70 percent reduction in sulfur dioxide and a 50 percent reduction in nitrogen oxides by 2015. The proposed rules would reduce the amount of mercury emitted nationwide from coal-fired power plants—the largest source of mercury emissions in the United States—by as much as 70 percent of current levels by 2018. The proposed mercury rules include requests for comments on two proposals to reduce mercury emissions. The first includes an emissions credit trading system, which would allow facilities that exceed the required reduction levels to sell pollution credits to facilities where implementing controls may not be economically feasible. The second would require all existing facilities to install state-of-the-art pollution controls by 2008. The EPA intends to review public comments and issue final rules by December 2004.

### Improving Program Management

**Substantial management efforts are needed to improve program efficiency and effectiveness.**

As noted, DNR's air management programs have been hampered by management deficiencies. We believe that substantial efforts are needed to improve the efficiency and effectiveness of DNR's air management programs, including developing additional performance measures, improving management information, and enhancing program accountability.

### Developing Additional Performance Measures

1999 Wisconsin Act 9, the FY 1999-2001 Biennial Budget Act, directed DNR to establish objective performance measures for air management programs and to create a committee consisting of industry representatives and other interested parties to advise the agency in the selection and evaluation of these measures.

**DNR's performance measures generally focus on outputs rather than outcomes.**

We found that performance measures developed for DNR's air management programs generally focused on outputs, rather than outcomes. Instead of adopting measures that could provide a better assessment of program effectiveness, DNR's measures until recently attempted to track basic program information, such as the number of permits issued, the number of compliance inspections performed annually, and the status of emissions inventory reports submitted by regulated facilities. While these measures provide useful basic information, they do not lend themselves to a more thorough or systematic evaluation of program performance based on desired outcomes, such effectiveness in reducing the amount of pollution emitted and reducing the time necessary to issue permits.

Moreover, we found that DNR did not create the advisory group required by 1999 Wisconsin Act 9. According to DNR officials, invitations were sent to both industry and environmental groups; however, because environmental groups chose not to participate, DNR chose not to create the advisory group. DNR officials assert that the Clean Air Task Force, an existing advisory group consisting of both environmental groups and industry representatives, serves the required advisory function by providing feedback to the program on a wide range of issues, including performance. Nevertheless, the Clean Air Task Force was created primarily as a forum for discussing policy issues, such as proposed rules and the state implementation plan, rather than program performance.

Most of DNR's current performance measures do not address the underlying factors that influence program effectiveness or timeliness. For example, until recently DNR had not implemented performance measures for evaluating compliance with timeliness standards set forth in statute and administrative rule. This information would be useful not only to ensure that DNR is in compliance with timeliness standards, but also to provide regulated facilities with better estimates of the time needed to complete the permitting process in Wisconsin.

Likewise, DNR both tracks the receipt of emissions inventory reports and establishes annual air emissions fees based on emissions reported by regulated facilities; however, it has not established performance measures to ensure that all facilities report emissions and are billed appropriately. Establishing performance measures for timely and accurate data entry would provide better information to program managers and would reduce the potential for billing and permitting errors.

DNR implemented several new performance measures in October 2003, and some of these attempt to measure outcomes by:

- assessing compliance trends to measure which enforcement efforts are having the greatest effect in improving air quality; and
- measuring the number of calendar days from receipt of initial application to permit issuance for construction permits.

However, we believe establishing additional performance measures that focus on outcomes would better assist DNR in evaluating program performance and would provide the Legislature and the public with more useful information.

**☑ Recommendation**

*We recommend the Department of Natural Resources establish additional performance measures that facilitate the assessment of program outcomes, such as improvements in air quality, program efficiency, and timeliness of permit issuance, including measures of the extent to which:*

- *statutorily mandated construction permit time lines have been met;*
- *the 20-day and 15-day deadlines for information requests for construction permits have been met;*
- *DNR refunds application fees when it fails to meet construction permit timeliness deadlines;*
- *the proper facilities have been billed for emission fees annually;*
- *construction permit expedited review deadlines have been met;*
- *the amount of pollution emitted into the air has been reduced;*
- *Wisconsin's air quality has been improved;*
- *compliance inspections have been completed with appropriate frequency;*
- *appropriate enforcement actions have been taken against facilities that fail to meet compliance certification deadlines; and*
- *high-priority violation timeliness standards have been met.*

**Improving Management Information Systems**

At the beginning of our evaluation, we requested basic program information from DNR, including the number of operation and construction permits issued and the number of applications for which DNR has not yet issued permits. DNR staff were unable to provide reliable data on the number and type of pending and issued permits. After more than five months of discussion and assistance from us in improving the accuracy of agency databases, we obtained the best information available on DNR's air permits.



***DNR does not have the basic, accurate data needed for effective program management.***

In providing technical assistance to DNR, we identified three primary factors that contributed to its information management problems. First, DNR does not have adequate procedures in place to ensure timely and consistent entry of data by its staff. The lack of accurate data hinders many aspects of program management, including DNR's ability to comply with permit processing requirements.

Second, DNR does not regularly review permit information contained in its permit-tracking database to ensure data integrity and consistency with other data systems. This information is also needed for basic program management. For example, a review of information contained in various databases would facilitate accurate billing of regulated facilities.

***A lack of basic program information hampers DNR's ability to issue permits.***

Finally, we believe the database used to track permit information is needlessly complicated, leading to potential errors and misinterpretation of data. The lack of proper data management practices has several implications. First, without an accurate inventory, it is difficult to verify whether all of the sources of air emissions have been identified and whether they have applied for permits, if required to do so. In addition, because DNR uses its database to identify priority sources for permitting and compliance inspections, some priority sources may be overlooked because of accuracy problems. In October 2003, DNR made a commitment to the EPA that it would issue the remaining initial operation permits to major sources by January 2005. However, we question whether DNR will be able to verify that this commitment has been reached without an accurate inventory of sources and outstanding permits. Improvements in DNR's management information systems and procedures are needed for effective program management.

**Recommendation**

*We recommend the Department of Natural Resources:*

- *develop a manual for its database that clearly explains staff responsibilities for entering and maintaining database information;*
- *provide training to staff who are responsible for entering information;*
- *implement procedures to improve data quality, including limiting the number of staff who have authority to enter and modify information and implementing procedures to ensure consistent data entry;*

- *develop procedures for regularly reviewing information contained in the database to identify data problems;*
- *work toward eliminating duplicate and unnecessary fields to simplify database use; and*
- *improve integration of existing data systems.*

### **Enhancing Program Accountability**

It is difficult to determine the ultimate cause for each of the program deficiencies we have identified with DNR's air management programs. DNR officials point to the large number of permits to be issued, the complicated nature of air permitting, and limited staff resources. However, the extent to which any of these factors has affected program effectiveness is difficult to assess.

We believe significant improvements in program management are needed to address the problems we have identified and that more attention should be placed on fundamental program management. For example, over the past several years DNR has devoted substantial resources to identifying and proposing the regulation of additional hazardous air pollutants. While the regulation of additional pollutants may be warranted, may lead to improved air quality, and may have the support of the DNR Board and other policymakers, it will serve little purpose if permits are not issued or if it diverts resources from critical management functions for ensuring compliance with existing permitting requirements.

***Significant improvements in program management are needed.***

Greater accountability is needed to ensure that ongoing problems are corrected, future problems are averted, and adequate programmatic information is made available to policymakers and the public.

#### **Recommendation**

*We recommend the Department of Natural Resources report to the Joint Legislative Audit Committee by September 1, 2004, on:*

- *the number and type of facilities that should have been reporting emissions data to DNR but were not;*
- *the procedures it has developed to ensure that all facilities will be billed appropriately in the future;*

- *the number and location of facilities that have not applied for initial or renewal operation permits, as required;*
- *the number of applications for operation permits that were not properly recorded or assigned for review, as well as the reasons for these oversights;*
- *the status of permits that completed the public comment period but were never issued;*
- *the number and type of enforcement actions it plans to take against regulated facilities it finds have failed to submit required applications or emissions data;*
- *its plans to reallocate staffing resources to address backlogged permits, as well as the anticipated effects of these changes;*
- *the extent to which it plans to implement the permit streamlining recommendations made by its 1998 workgroup; and*
- *how it will ensure that inspection frequency goals are met, and all facilities are inspected.*



## Appendix 1

### **Time Line for Regulation of Stationary Sources of Air Pollution**

- 1961 Chapter 508, 1961 Laws of Wisconsin, grants authority to counties to control air pollution. Milwaukee begins to control the emission of visible particulate matter.
- 1967 Chapter 83, 1967 Laws of Wisconsin, directs DNR to organize a program to protect the State's air resources.
- 1970 DNR implements the first statewide air pollution control program in July. These rules primarily affect coal-burning facilities in the southeast portion of the state.
- Congress passes the Clean Air Act Amendments of 1970, creating the first significant national air quality standards and requiring states to submit documents to the EPA that outline a strategy for meeting these standards.
- 1972 As required by the federal Clean Air Act, Wisconsin begins to require large industrial facilities in areas that do not meet air quality standards to control their emissions of particulate matter and sulfur oxides.
- 1977 Congress passes the Clean Air Act Amendments of 1977, which require states to expand their programs for new sources of stationary air pollution to include more stringent performance standards and a formal construction permit system.
- 1977 As required by the federal Clean Air Act, Wisconsin creates its New Source Review program and implements more stringent standards to control air pollution from large stationary sources of air pollution.
- 1985 Chapter 144, 1979 Laws of Wisconsin, creates a state operation permitting program not required by federal law at the time. This program increases the number of facilities required to obtain permits.
- 1988 DNR promulgates new administrative rules that begin regulation of hazardous air pollutants.
- 1990 Congress passes the Clean Air Act Amendments of 1990, which require Wisconsin to begin a federally enforceable operation permit program and begin federal regulation of hazardous air pollutants.
- 1994 As required by the federal Clean Air Act, Wisconsin adopts a federal operation permit program.

## Appendix 2

**Percentage of Monitored Days with Unhealthy Air Quality<sup>1</sup>**

County	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Ashland	-	-	-	-	-	-	-	-	0.0% <sup>2</sup>	0.0% <sup>2</sup>	0.0% <sup>2</sup>
Brown	0.0%	0.0%	0.8%	1.7%	0.3%	0.6%	1.9%	0.8%	1.7	0.8	1.4
Columbia	0.0	0.0	<b>3.3</b>	1.6	0.5	0.0	2.7	0.5	0.5	1.1	0.0
Dane	0.0	0.0	0.8	0.3	0.3	0.3	1.4	0.0	1.6	0.4	1.1
Dodge	0.0	0.0	0.5	1.1	1.1	0.5	2.2	0.3	0.8	0.8	0.8
Door	0.6	<b>3.8</b>	<b>4.9</b>	<b>3.3</b>	<b>3.8</b>	<b>3.8</b>	<b>6.4</b>	1.3	<b>4.1</b>	2.9	<b>3.1</b>
Douglas	0.0 <sup>2</sup>	0.0 <sup>2</sup>	0.0 <sup>2</sup>	0.0 <sup>2</sup>	0.0 <sup>2</sup>	0.0 <sup>2</sup>	0.0	0.0	0.0	0.0	0.0 <sup>1</sup>
Eau Claire	-	-	-	-	-	-	-	-	-	0.0 <sup>1</sup>	0.0 <sup>1</sup>
Florence	0.0	0.0	0.0	0.6	0.0	0.5	2.7	0.0	0.5	0.0	0.0
Fond du Lac	0.0	0.0	1.1	1.1	0.5	0.5	2.7	0.5	1.6	1.1	0.0
Forest	-	0.0 <sup>2</sup>	0.0 <sup>2</sup>	-	-	-	-	-	-	0.0 <sup>2</sup>	0.0 <sup>2</sup>
Grant	-	-	-	-	-	-	1.8 <sup>2</sup>	0.0 <sup>2</sup>	0.9	0.0	0.0 <sup>2</sup>
Green	-	-	-	-	-	-	-	1.4 <sup>2</sup>	0.0	0.5	0.0
Jefferson	0.5	0.0	2.2	1.1	0.0	1.1	<b>3.3</b>	1.4	2.0	1.2	0.0
Kenosha	2.7	<b>3.2</b>	<b>10.3</b>	<b>3.2</b>	<b>3.0</b>	<b>8.1</b>	<b>6.2</b>	1.6	<b>6.1</b>	<b>5.7</b>	2.9
Kewaunee	0.5	2.7	<b>3.2</b>	1.1	2.7	2.2	<b>4.3</b>	<b>1.6</b>	<b>3.8</b>	<b>3.8</b>	<b>3.6</b>
Manitowoc	0.4	<b>5.4</b>	<b>8.6</b>	<b>5.4</b>	<b>4.3</b>	<b>6.5</b>	<b>5.5</b>	0.8	<b>4.1</b>	2.0	<b>3.4</b>
Marathon	0.0	0.0	0.0	0.0	0.0	0.3	0.9	0.5	0.0	0.0	0.0
Milwaukee	1.1	2.2	<b>3.6</b>	1.4	1.4	<b>3.0</b>	<b>4.7</b>	1.4	<b>5.2</b>	<b>3.0</b>	<b>4.1</b>
Oneida	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.0	0.0	0.0	0.0
Outagamie	0.0	0.0	1.6	0.5	1.1	0.5	2.5	0.0	2.0	0.0	1.1
Ozaukee	0.9	<b>4.7</b>	<b>5.9</b>	2.7	2.2	<b>5.4</b>	<b>7.9</b>	1.7	<b>4.5</b>	<b>3.7</b>	<b>4.0</b>
Polk	0.0	0.0	0.0	0.0	0.0	0.3	0.0 <sup>2</sup>	-	-	-	-
Racine	0.5	1.4	<b>3.0</b>	0.8	1.4	0.8	1.6	0.3	1.6	3.0	0.0
Rock	0.5	1.1	2.2	2.7	2.2	1.6	<b>3.7</b>	1.2	1.2	1.6	0.0
Sauk	-	-	1.3	0.0	0.0	0.3	1.4	0.0	0.0	0.0	0.0
Sheboygan	0.0	1.1	<b>4.4</b>	1.7	<b>3.0</b>	<b>3.8</b>	<b>6.5</b>	2.2	<b>7.6</b>	<b>10.3</b>	2.9
St. Croix	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.5	0.0	0.0
Taylor	-	-	-	-	-	-	-	-	0.0 <sup>1</sup>	0.0	0.0 <sup>1</sup>
Vernon	0.0	0.0	0.0	0.0	0.0	0.5	0.5	0.0	0.0	0.0	0.0
Vilas	0.0	0.0	0.0	0.0	0.0	0.0	0.7	0.0	0.0	0.0	0.0
Walworth	0.0	1.6	2.8	1.1	1.1	1.6	<b>3.8</b>	0.0	2.2	1.6	1.4
Washington	0.0	0.5	<b>3.2</b>	1.1	1.1	0.6	<b>3.0</b>	0.0	1.7	2.7	0.7
Waukesha	0.0	0.3	1.4	0.5	0.8	0.6	2.2	0.3	2.2	0.8	0.4
Winnebago	0.0	0.0	2.2	0.0	0.5	0.5	2.1	0.0	2.0	0.4	0.0
Wood	0.0	0.0	-	-	0.0 <sup>2</sup>	0.0	0.0	0.0	0.0	0.0	0.0 <sup>2</sup>

<sup>1</sup> The EPA index category was either "unhealthy for sensitive groups" or "unhealthy."

<sup>2</sup> Based on less than 100 days of monitoring information.

## Appendix 3

**Major and Synthetic Minor Permit Issuance Rates**

Through June 30, 2003

State	Number of Major Facilities	Number of Major Permits Issued	Number of Synthetic Minor Permit Issued	Total Permits Issued	Percentage of Major Permits Issued
<b>EPA Region 1</b>					
Connecticut	98	70	397	467	71.4%
Massachusetts	173	96	400	496	55.5
Maine	74	53	276	329	71.6
New Hampshire	53	45	200	245	84.9
Rhode Island	49	30	105	135	61.2
Vermont	23	20	60	80	87.0
<b>Subtotal</b>	<b>470</b>	<b>314</b>	<b>1,438</b>	<b>1,752</b>	<b>66.8</b>
<b>EPA Region 2</b>					
New Jersey	397	203	524	727	51.1
New York	549	488	3,787	4,275	88.9
Puerto Rico	57	22	45	67	38.6
Virgin Islands	7	2	0	2	28.6
<b>Subtotal</b>	<b>1,010</b>	<b>715</b>	<b>4,356</b>	<b>5,071</b>	<b>70.8</b>
<b>EPA Region 3</b>					
District of Columbia	34	34	0	34	100.0
Delaware	85	82	68	150	96.5
Maryland	167	127	22	149	76.0
Pennsylvania	786	746	23	769	94.9
Virginia	300	272	158	430	90.7
West Virginia	202	142	8	150	70.3
<b>Subtotal</b>	<b>1,574</b>	<b>1,403</b>	<b>279</b>	<b>1,682</b>	<b>89.1</b>
<b>EPA Region 4</b>					
Alabama <sup>1</sup>	302	254	117	371	84.1
Florida	1,653	1,653	313	1,966	100.0
Georgia	374	356	671	1,027	95.2
Kentucky <sup>1</sup>	323	240	158	398	74.3
Mississippi	316	313	240	553	99.1
North Carolina <sup>1</sup>	415	370	742	1,112	89.2
South Carolina	299	299	242	541	100.0
Tennessee <sup>1</sup>	326	301	741	1,042	92.3
<b>Subtotal</b>	<b>4,008</b>	<b>3,786</b>	<b>3,224</b>	<b>7,010</b>	<b>94.5</b>

State	Number of Major Facilities	Number of Major Permits Issued	Number of Synthetic Minor Permit Issued	Total Permits Issued	Percentage of Major Permits Issued
<b>EPA Region 5</b>					
Illinois	728	591	680	1,271	81.2%
Indiana	741	566	1,348	1,914	76.4
Michigan	470	401	647	1,048	85.3
Minnesota	336	243	2,280	2,523	72.3
Ohio	705	606	513	1,119	86.0
Wisconsin <sup>2</sup>	590	380	692	1,072	64.4
<b>Subtotal</b>	<b>3,570</b>	<b>2,787</b>	<b>6,160</b>	<b>8,947</b>	<b>78.1</b>
<b>EPA Region 6</b>					
Arkansas	285	275	185	460	96.5
Louisiana	1,058	755	300	1,055	71.4
New Mexico <sup>1</sup>	194	172	79	251	88.7
Oklahoma	459	307	538	845	66.9
Texas	1,942	1,310	0	1,310	67.5
<b>Subtotal</b>	<b>3,938</b>	<b>2,819</b>	<b>1,102</b>	<b>3,921</b>	<b>71.6</b>
<b>EPA Region 7</b>					
Iowa	304	246	186	432	80.9
Kansas	367	301	836	1,137	82.0
Missouri	465	427	81	508	91.8
Nebraska <sup>1</sup>	129	92	64	156	71.3
<b>Subtotal</b>	<b>1,265</b>	<b>1,066</b>	<b>1,167</b>	<b>2,233</b>	<b>84.3</b>
<b>EPA Region 8</b>					
Colorado	131	124	191	315	94.7
Montana	59	59	25	84	100.0
North Dakota	50	49	4	53	98.0
South Dakota	200	200	51	251	100.0
Utah	76	63	76	139	82.9
Wyoming	152	150	30	180	98.7
<b>Subtotal</b>	<b>668</b>	<b>645</b>	<b>377</b>	<b>1,022</b>	<b>96.6</b>

State	Number of Major Facilities	Number of Major Permits Issued	Number of Synthetic Minor Permits Issued	Total Permits Issued	Percentage of Major Permits Issued
<b>EPA Region 9</b>					
Arizona <sup>1</sup>	144	66	131	197	45.8%
California <sup>3</sup>	1,355	922	149	1,071	68.0
Hawaii <sup>4</sup>	125	129	40	169	103.2
Nevada <sup>1</sup>	49	31	0	31	63.3
<b>Subtotal</b>	<b>1,673</b>	<b>1,148</b>	<b>320</b>	<b>1,468</b>	<b>68.6</b>
<b>EPA Region 10</b>					
Alaska	265	180	51	231	67.9
Idaho	51	50	112	162	98.0
Oregon <sup>1</sup>	150	150	123	273	100.0
Washington <sup>1</sup>	135	120	145	265	88.9
<b>Subtotal</b>	<b>601</b>	<b>500</b>	<b>431</b>	<b>931</b>	<b>83.2</b>
<b>Total</b>	<b>18,777</b>	<b>15,183</b>	<b>18,854</b>	<b>34,037</b>	<b>80.9</b>

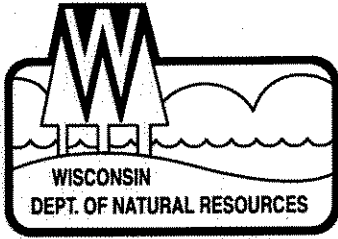
<sup>1</sup> Permits are issued by both state and local permitting authorities.

<sup>2</sup> Totals for Wisconsin differ from numbers reported to the EPA. Synthetic minor permits include general operation permits.

<sup>3</sup> California permits are issued by local permitting authorities.

<sup>4</sup> The EPA reported that Hawaii issued 129 Title V permits, despite having only 125 major sources.





**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

**Jim Doyle, Governor**  
**Scott Hassett, Secretary**

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

February 19, 2004

Janice Mueller  
State Auditor  
22 East Mifflin Street, Suite 500  
Madison, WI 53703

Dear Ms. Mueller:

Thank you for providing us the opportunity to prepare a written response to be published with the final Legislative Audit Bureau report evaluating the Department's Air Management Program.

Enclosed is a copy of our written response. We are in substantial agreement with the findings of the report. In our written response, we provide a context for how past decisions were made, highlight several strengths of the Program, describe the limitations the Program faced and demonstrate how we are already taking action on many of the recommendations.

We found the procedures you used to issue the final report to be very helpful. We believe the opportunity to review a confidential draft and fine tune technical issues and the exit interview allowed for clarification and constructive discussion of the findings.

We appreciate the high level of professionalism, dedication and open communication that the audit team established with us. We will follow-through on your recommendations and report to the Legislative Audit Committee by September 1, 2004. Thank you again.

Sincerely,

Scott Hassett  
Secretary

**Department of Natural Resources Response**  
**Legislative Audit Bureau - Air Management Program Audit**  
**February 19, 2004**



The Wisconsin Department of Natural Resources actively manages programs based on a Continuous Quality Improvement Model. Therefore, the Department and the Air Management Program in particular, view the Legislative Audit Bureau (LAB) evaluation as important feedback to use in enhancing future program management and direction. The Department is in substantial agreement with the report findings. In fact the Department finds many of the report's conclusions to be right on target and the recommendations will dovetail nicely with ongoing and planned program improvement efforts. The Department recognizes that this was a challenging project for the Legislative Audit Bureau and appreciates the high level of professionalism, dedication of the audit team and the open communication they established with Air Management Program staff.

Maintaining an effective air management program in Wisconsin is critical to achieving the clean air needed to support the good health of state citizens. Air pollution is not just "irritating" or "aggravating". Air pollution causes or contributes to very significant health effects. Asthma, chronic lung disease, birth defects, cancer, heart disease and premature death have all been scientifically linked to air pollution in the environment. EPA estimates that implementing the federal standards for fine particles (just one of a number of pollutants) in the U.S would prevent approximately 15,000 premature deaths, 75,000 cases of chronic bronchitis; thousands of hospital admissions and millions of lost work days. So ultimately, health impacts have economic impacts to our society as well.

The report focuses on a limited snapshot of time. Over the last ten year period (1993-2003), Wisconsin's Air Management Program has actually lost 20% of its staff resources (vs. the 8.1% decline documented in the period of time covered in the LAB report). This level of resource reduction has presented substantial management challenges for the program. While the LAB report includes lots of useful information from other states in terms of permit issuance rates, it does not include numbers of permit writers or level of available permit funding in each of the states they evaluated. This type of information would have been extremely useful in helping Wisconsin determine the level of resources needed to operate permit programs comparable to those found in other states. The Department expects the State will still be asked to address the question of adequacy of program funding as part of a response to a federal Notice of Deficiency expected to be issued by the EPA in February 2004.

Throughout this time, the Air Management Program has maintained a highly effective construction permit program. As noted in the audit report, Wisconsin's length of time in processing a new construction permit is 36 days faster than the 139 day average found in Idaho and less than half the time of the national average as measured by EPA. The Air Management Program has consistently given priority to its construction permit program to support industry growth and development. The long turnaround times for the 40 permits cited in this report are for reasons beyond the control of the air program and often at the request of industry. Again, the Air Management Program focused on being customer service oriented by putting applications on hold for industry. This was done consciously and the Department does not view this as a failure in management.

The report portrays the emission fee billing system problems. These problems have received immediate attention. The Department has reimbursed companies that were overcharged and is taking steps to ensure it receives funds from those companies that should have received bills. For the audit time period over \$75.4 million in fees was collected, so the errors affected a very small percentage of the emissions fees billed.

The report points to management shortcomings in a number of places. The Department would like to set a bit of historical context. We believe many of the management shortcomings relate to broader policy direction and priority setting under previous administrations. For instance, previously the program very consciously placed a high priority on construction permits versus operation permits in order to support economic and industry needs in the state. At that time, senior agency management approved the schedule provided to EPA, which proposed a balanced approach to permit issuance. This schedule addressed the largest federal operation permits first, kept current with operation permit renewals and included federally enforceable state operation permits.

This was done to balance responsiveness to large and small sources, target the most significant environmental improvements needs first and avoid developing a large backlog of renewals. The downside to this approach was that it allowed a backlog of federal operation permits that did not compare well with other states and did not receive approval from EPA. Under the Doyle Administration and the Grow Wisconsin Initiative, the Department has changed this schedule and has aggressively pursued eliminating the Operation Permit backlog. The Air Management Program is on schedule to eliminate the operation permit backlog by December 2004. In the last year the current administration has changed program priorities and the Air Management Program has responded rapidly to implement the new direction.

### **OCTOBER 2003 AIR MANAGEMENT PROGRAM RESTRUCTURING**

The Air Management Program has restructured its programs and reassigned staff as a result of budget cuts, Title V funding requirements and to align our limited resources with the available funding sources. October 6, 2003, was the effective date for the restructuring and staff reassignments. The most recent state budget reduced the emission fees account by \$1.1 million and eliminated 11.5 full-time positions. Over the past 6 years, Air Management Program staff has decreased by 35 full-time positions. With fewer staff, we have readjusted work assignments to focus on activities that have the greatest impact on air quality in Wisconsin. In the central office, the program has reorganized along functional lines to improve efficiency and make the points of contact clearer for customers. In the regions, field compliance staff was increased in the Milwaukee area (Southeast Region), where air quality concerns are the greatest.

Among the changes were the creation of a permitting section, and a compliance and enforcement section. These sections provide statewide program oversight and points of contact for EPA Region 5 on federal program implementation issues. Implementation of Air Management Program priorities, policies, and guidance is the responsibility of the Section Chiefs and Regional Team supervisors. Both the regional team supervisors and the central office section chief's serve on the Air Management Team (AMT) which is lead by the Air Program Bureau Director.

The reduction in staff due to budget cuts and the reassignment of staff to construction permits and compliance, emission inventory and outreach for large facilities means that programs were eliminated or reduced in scope.

These programs and activities have been eliminated.

- Biomonitoring program (monitors air pollution impacts on the ecosystem)
- 17 ambient air monitoring sites
- Smoke school
- Climate change policy analysis (global warming and greenhouse gases issues)
- Forecasting for particle pollution levels

These programs have been reduced to varying degrees.

- Small source compliance and enforcement
- Non-Title V complaint follow-up
- Mercury modeling and policy analysis
- Ozone policy analysis
- Air toxics policy analysis
- Stack testing
- Asbestos

### **JUNE 2003 AIR PERMIT IMPROVEMENT INITIATIVE**

At the June 2003 Natural Resources Board meeting, Department Secretary Scott Hassett announced the Wisconsin Air Permit Improvement Initiative (APII). The purpose of this initiative is to develop and implement ways to improve our efficiency in environmental regulation and program implementation while meeting the environmental protection needs of our citizens. This initiative is a two pronged approach, including streamlining the permitting process for operation and construction permits in the Air Management Program, and retooling Wisconsin's new source review regulations in light of the federal changes in this area. This initiative complements and supports our goal to reduce the backlog of Title V operation permits by the end of the year.

The Air Permit Streamlining Team is comprised of Department managers and staff, including experienced permit writers, who have focused their efforts on the following:

- Identify obvious and easily implementable streamlining policies and put them into practice as soon as possible.
- Survey stakeholders regarding problems and concerns they have with the permitting process.
- Survey air permit drafters and other air management staff to gather ideas for streamlining.
- Map the permit process for the Air Management Program construction and operation permits.
- Analyze past efforts to streamline air permitting and review the present status of those efforts.
- Review regulatory streamlining methods and non-regulatory tools used by other states and countries, particularly those running successful, environmentally effective programs.

These process improvements are intended to help the air program more efficiently handle revisions or renewals or operation permits while eliminating the permit backlog. The target is to approve or deny a new operation permit application in less than 180 days. This project will work collaboratively with Wisconsin businesses and environmental groups and is scheduled to have all work completed by December 2005.

Wisconsin Act 118 sets additional requirements and changes to the operation and construction permit programs that provide additional foundation for the permit improvement effort.

### **IMPLEMENTING REPORT RECOMMENDATIONS**

The report contains fifteen specific recommendations for the Department to address. Actions have already been taken to address many of these recommendations. We also have plans underway to ensure we completely address all recommendations. We will report our progress on all the recommendations in the report to the Joint Audit Committee by September 1, 2004. The following section highlights what we have already done to implement the recommendations.

- *correct annual emission fee billing errors*

Refunds have been sent to ten facilities. A reassessment showed these companies did not need a permit and consequently should not have been billed. The ten facilities were refunded \$22,225.79 in fees collected from 1996-2003.

The data integration project, that is a component of the APII, will increase the accuracy of the annual emission fee billing by providing the ability to cross check emission reports with permits issued to facilities. In the meantime, a new process to compare the emissions billing to permitted facilities will be used for the May 2004 billing.

The Department plans to review the 232 facilities that applied for operation permits but had not reported or paid emission fees to verify they are exempt from reporting.

- *assign additional permit engineers to issue operation permits in the Southeast Region*

The Department recognizes that a majority of the remaining operation permits to be issued are for facilities that are located in the Southeast Region. The Department has assigned approximately half of the remaining operation permit reviews to staff that are located outside Southeast Region to ensure that we eliminate the backlog by the end of 2004.

- *streamline the operation permit program*

The Department launched the APII in June 2003 to simplify and streamline both the operation and construction permit programs including exploring alternatives to traditional permit approaches. This work is underway with a final completion date of December 2005 for implementation of all improvements. APII will include the following key elements:

- a. Clarification of when, where and who should do air quality modeling.
- b. Simplifying the language and detail required in preliminary determinations and permits.
- c. Development of an IT system that will support (pending funding approval):
  1. Electronic submittal of permit applications
  2. More accurate and timely tracking of who submits or should submit applications and the progress of each review.
  3. Determination of which facilities and projects should be exempt from permits.
  4. Timely notification and follow through of permit renewals.

- *ensure that facilities have properly applied for permits*

Using approaches developed in consultation the Legislative Audit Bureau; the Air Management Program can now consolidate data from its separate and distinct databases to verify whether facilities that submit application fees have applied for operation permits. These new approaches will also exclude from the Department's billing procedures those facilities that are exempt from operation permit requirements. The Department plans to integrate the data in these systems in the future, making it even more automated and more efficient.

The Department is already in the process of verifying the application status of each of the 71 facilities that the Legislative Audit Bureau identified as appearing to be required to apply for operation permits. Responding to another audit finding, the Department is verifying the application status for additional

175 facilities that the Department had identified as exempt from operation permit requirements but had not documented. The Department will fully document its findings.

- *revise the expedited review process for construction permits*

The Department plans to promulgate a rule revision to provide that the time taken for an applicant to publish the notice of the Department's determination is not included in the review time for an expedited permit.

- *streamline the construction permit program*

The Department initiated the Air Permit Improvement Initiation (APII), an intensive effort to streamline both the operation and construction permit programs. This effort has completed its data gathering activities and is now engaged in developing process improvement approaches. The Department is looking at the entire construction permit program, in light of the changes made by 2003 Wisconsin Act 118, and will implement changes to be more efficient and effective.

- *improve the facility inspection process*

The Department issued guidance on activities to be included in full compliance evaluations in May 2002. For fiscal year 2004, the Department's CMS plan provides guidance on selecting facilities for inspections based on factors such as facility emissions and the date of the facility's last inspection.

- *improve compliance with federal policy for high priority violations*

The most recent guidance was issued in May 2003 and the Department is monitoring the resulting progress and performance.

- *improve the compliance certification process*

In July 2003, Air Management compliance staff in the Regions began entering compliance certification data directly into the central compliance database to improve the timeliness of data entry. A policy for dealing with portable sources (which may move from region to region) is currently under development.

- *improve its data system*

An effort is currently underway to develop plans and cost estimates for integrating the various Air Management Program data systems. Assuming funding is approved, the data integration project in the APII will provide staff and managers with the tools needed to better manage compliance and enforcement responsibilities.

We wholeheartedly concur with the audit report's recommendation to improve our data systems. Our data systems were designed over a decade ago as stand-alone systems. They have been incrementally modified over time, as funding has allowed to meet Department hardware and software standards. Recent budget reductions will impact information technology staff Department-wide. This may impact our ability to implement the audit report data systems recommendation.

## COMMENTS ON REPORT CONTENTS

The comments below are provided for clarification and additional context to the LAB report findings in select sections of the LAB report.

### *Highlights Section*

#### Construction Permits

The Legislative Audit Bureau has reported that at the close of its data collection period, the Department had 137 pending construction permit applications and that 29.2 percent of these applications had been pending for more than two years. While the Department does not take issue with these facts, permits that are pending in the construction permit queue are most often a result of factors beyond the Department's control. In the Legislative Audit Bureau's review of 88 construction permit actions, it found nine permit reviews that took longer than 1 year to complete. The Legislative Audit Bureau staff contacted these facilities and found that unique circumstances affected the process of all nine permits, all of which were beyond our control. Examples of such delays include facility requests to put one application ahead of another, applications for new power plants affected by the Public Service Commission's siting laws, and predicted violations of air quality standards. These examples are typical and influence the permit applications that have been pending for more than two years. Thus, the 29.2% pending rate must be taken into context to provide for an objective reaction to this fact.

### *Finances and Staffing Section*

#### Staffing

The overall staffing for the implementation of Wisconsin's air quality programs consists of the Department's Bureau of Air Management and air management staff in the five Regions, with support from staff in the Department's other programs and the Department of Commerce's Small Business Assistance Program. The funding for the program is from several sources each with its own limitation on how the funding may be spent. Emission tonnage fees, federal grants, the petroleum inspection fund and permit fees account for over 97% of the program funding. The remaining 3% of the program funding are from fees collected for the regulation of asbestos and ozone depleting refrigerants and general-purpose revenue.

Since the program is virtually funded by program revenues and federal grants, the program monitors the revenues collected closely. When projections indicate inadequate revenues, the program has proactively reduced expenditures and investigated the possibility of increasing the revenues. For the past 8 years, the program has been unsuccessful in obtaining increased fees through the biennial budget process. Therefore, the program was required to eliminate positions to contain costs within our available funding.

The reduction of staffing has required the program to make critical choices on program priorities. The Air Management Program intends to request funding to stabilize our Stationary Source appropriation at current staffing levels at a minimum and possibly increase staffing and spending authority levels if needed in response to an EPA Notice of Deficiency.

#### Finances

Table 4, in the LAB report, itemizes the revenues of the Air Management Program. It is important to note these revenues support the Bureau of Air Management and the air management staff in the Regions, with support from staff in the Department's other programs and the Department of Commerce's Small



Business Assistance Program. The revenue for construction permit fees exceeds the programs' Chapter 20 spending authority and the federal grants cannot be used for work on permits and major source compliance or enforcement. In addition, the FY2002-2003 GPR funded activities were funded by the Department of Transportation in FY1996-97.

Table 5, in the LAB report, indicates a 51.4% increase in contractual services. This increase is due primarily to the activities associated with the increase in federal and state grant funding for specific projects (e.g., PM2.5 monitoring, toxics monitoring, Stage 2 vapor recovery, the gas cap wrench program).

#### *Operation and Construction Permit Programs Sections*

Since the Legislative Audit Bureau ended its period of review, the Department has revised its priorities for operation permit review. Previously the Department had sought to complete operation permit reviews for facilities that had the largest environmental impacts, sought a permit to avoid federal standards or had submitted renewal applications. Using these priorities, the Department had planned on completing the reviews for the operation permits required under federal law by December 2005. Responding to Governor Doyle's Grow Wisconsin Plan, the Department has shifted its work efforts to concentrate on only those applications for operation permit that are required under federal law and is scheduled to complete these reviews by December 2004.

Progress is readily apparent by reviewing EPA's Internet posting of operation permit review progress with Table 15 from the audit report.

As of June 30, 2003				As of January 2004		
State	Number of Facilities	Number of Permits Issued	Percentage of Permits Issued	Number of Facilities	Number of Permits Issued	Percentage of Permits Issued
Illinois	728	591	81.2%	725	675	93%
Indiana	741	566	76.4%	725	582	80%
Michigan	470	401	85.3%	484	438	90%
Minnesota	336	243	72.3%	327	218	67%
Ohio	705	606	86.0%	696	626	90%
Wisconsin	590	380	64.4%	578	426	74%
<b>Total</b>	<b>3,570</b>	<b>2,787</b>	<b>78.1%</b>	<b>3,535</b>	<b>2,965</b>	<b>84%</b>

While this comparison shows the changing nature of major source status throughout the Region, it also shows the progress Wisconsin has made towards the issuance of these permits in comparison to other states in Region 5. Wisconsin no longer has the slowest permit issuance percentage in Region 5 as it has issued the second most permits in of any Region 5 state over the last six months. Wisconsin also had the second highest gain in percentage of permits issued.

To complete these reviews by December 2004 does come at a cost. The Department has diverted resources from the issuance of synthetic minor permits and permit renewals to work on major source permits. As a result, a continuously growing amount of renewal applications are submitted, but not acted upon by the Department because the resources are not available to do so until the major source permit commitments are satisfied. While 2003 Wisconsin Act 118 does set review times for acting on these



renewal applications that the Department is committed to ensuring are received, meeting the required review time frames will prove difficult in 2004. Nonetheless, streamlining efforts and increased utilization of general permitting will provide assurances that the process is more efficient in 2005 and beyond.

The Department agrees with the Legislative Audit Bureau's findings regarding the difficulty in determining the amount of staff resources devoted to permitting throughout Region 5 due to the varying ways that each air program allocates its resources. However, the Department has gathered data that indicates that our allocation of resources to permitting activities is similar to the states that the Department had evaluated, with the exception of Michigan and Illinois, which appear to have allocated a much higher percentage of staff to permitting. This allocation of resources may account for Michigan and Illinois's ability to lead Region 5 in permit issuance percentages.

The Legislative Audit Bureau has identified 113 operation permits that have completed their public comment period but have yet to be issued. Forty-four of these are facility-wide operation permits while the remaining sixty-nine are operation permits that are associated with an expiring or expired construction permit. The Department has initiated steps to ensure that these permits are issued promptly.

The Department has developed a process for notifying holders of expiring air permits of their obligation to submit a permit renewal application. This process is based upon the same system that is used by annually to collect emissions fees by using electronic mail as the primary means for providing notification to these permit holders. Approximately 90% of those that submit emissions data are able to communicate by e-mail, thus the Department believes this method will be equally successful in reaching these permit holders. Those permit holders that are unable to be reached using e-mail or those that are non-responsive to the application requests will be contacted through written correspondence. The department will take appropriate enforcement action with those facilities that fail to submit an application for permit renewal.

The Department's construction permit review program has been implemented historically as a priority program because many projects that are required to obtain a construction permit are related to economic growth. Although minor source construction permitting efforts, which are required under Title I of the Clean Air Act, can vary significantly from state to state, major source review protocols are consistent across the country. EPA has reported that from 1997 through 2001, it took an average of 7.2 months for states to process a major source permit, while Wisconsin's average, using the same benchmark was 68 days in 2003 and has not exceeded 87 days this millennium. The Legislative Audit Bureau found a median review time of 103.5 days from receipt of a permit application to when the permit was issued for the 88 permits it examined. This is twice as fast as the average for all states reported by EPA.

The Legislative Audit Bureau's report provides information from Idaho's Office of Performance Evaluations as the most reliable and accurate data that it could find regarding construction permit issuance rates. The report cites that the average number of days to it took Idaho to issue a construction permit from the date that the application was considered to be complete was 139 days in FY2000-01 and that the state had exceed regulatory timeliness requirements 45% of the time. Of the 88 Wisconsin construction permits that the Legislative Audit Bureau reviewed, 86.4% met statutory timeliness standards with a median time to issue a permit from the date that the application was considered to be complete of 53 days, less than half that of Idaho's.

Despite the Department's ability to process construction permits quicker than national averages, the program continuously seeks to improve efficiency and shorten its review times. The Department is currently undergoing rule writing and streamlining efforts that will provide greater program effectiveness and more responsive feed back to permit applicants. The Department welcomes the challenges brought on by 2003 Wisconsin Act 118's tighter construction permit review timeframes and is encouraged by the

Legislative Audit Bureau's recommendations to provide better benchmarks and data management of the program.

### *Enforcement Efforts Section*

The audit report correctly notes several EPA policies (CMS policy, HPV Policy) that impact the Air Management Program. However, the report does not place implementation of those policies in the context of routine interactions between the Department and EPA.

The two agencies negotiate an EnPPA (Environmental Performance Partnership) agreement every 2 years that sets out expectations for both Department and EPA actions. Assessments of program performance are developed and discussed at the end of the term of each agreement, and changes are made in subsequent agreements. Perhaps more importantly, the two agencies conduct monthly air program conference calls on air program compliance and enforcement issues. EPA compliance and enforcement staff as well as Department Air Management and Environmental Enforcement staff (from both central office and the regions) participate in those calls. Specific individual cases are discussed and concurrence from EPA is obtained where it will take more than 270 days to resolve an enforcement case, or where legal or other circumstances make strict adherence to the HPV policy inappropriate. This forum fosters common understanding of compliance and enforcement policies and their application between the two agencies and across regions and programs in the Department.

Our focus on primarily tracking numbers of full compliance evaluations completed was driven by EPA emphasis with them during EnPPA discussions and during our monthly conference calls. We do concur with the audit report recommendations to track additional areas of compliance program performance, and feel that this will benefit the program. As noted elsewhere, improvements in Air Management data systems will greatly assist program management in assessing and improving program performance.

### **Conclusion**

The Air Management Program is one of the most complicated environmental protection programs due in large part to the length and complexity of the federal and state statutes it must implement. The Department is committed to improving the program and simplifying the regulatory approach while still maintaining and enhancing air quality in Wisconsin. The Department has found the Legislative Audit Bureau review of the Air Management Program to be both a constructive and informative process. This review has helped us identify areas of the program that need improvement as well as approaches we should investigate while making needed improvements. We are rapidly moving forward to address all of the recommendations in the report.