



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Environment

Clearinghouse Rule 10-046

Relating to asbestos project inspection and notification revision fees and affecting small business.

Submitted by Department of Natural Resources.

August 19, 2010 Referred to Committee on Environment.

September 29, 2010 **PUBLIC HEARING HELD**

Present: (5) Senators Miller, Jauch, Wirch, Kedzie and Olsen.
Absent: (0) None.
Excused: (0) None.

Appearances For

- Bill Bauman, Madison — DNR
- Stephanie Porsley, Milwaukee — Milwaukee Lead & Asbestos

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

- None.

Registrations for Information Only

- None.

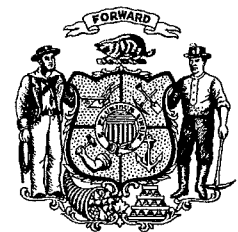
October 19, 2010 No action taken.



Elizabeth Bier
Committee Clerk



WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

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

Board Order Number: AM-06-10
Clearinghouse Number: CR 10-046
Subject of Rules: A rule-making order to revise s. NR 410.05 relating to inspection and notification fees for sources that may emit asbestos into the ambient air.
Date of Transmittal: August 18, 2010

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

**Linda Haddix – Department Rules Coordinator
DNR Bureau of Legal Services
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or robert.eckdale@wisconsin.gov

REPORT TO LEGISLATURE

NR 410, Wis. Adm. Code
Asbestos project inspection and notification fees, and affecting small business

Board Order Number: AM-06-10
Clearinghouse Rule Number: CR 10-046

BASIS AND PURPOSE OF THE PROPOSED RULE

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

Air Management asbestos program activities have in the past been funded by a combination of asbestos program fees and funding from the Air Management Program federal 105 grant. The federal 105 grant also funds a variety of other EPA mandated Air Management Program activities such as SIP development, ambient air quality monitoring, and so on. Due to declining grant amounts, the 105 grant can no longer support all of the activities previously funded. The fee increases contained in the proposed NR 410.05 revisions will enable the Air Program to maintain the current levels of service and activities, funded completely by asbestos program fees. It is important to continue asbestos regulation activities due to adverse public health effects that result from exposure to asbestos. There is no "safe" asbestos exposure level; any exposure may lead to diseases such as asbestosis, lung cancer, mesothelioma, and other forms of cancer.

SUMMARY OF PUBLIC COMMENTS

Two public hearings were held on the proposed rule changes, one in Madison on June 3, and one in Wausau on June 4. Five people attended the Madison hearing, two of whom spoke on the record. There were no attendees at the Wausau hearing. One comment on the proposed fee changes was received via the Administrative Rules System web site. One additional comment was received via e-mail.

Three of the public comments were from asbestos abatement contractors who felt that the proposed fee increases were too large. The contractors typically pay the asbestos notification fees for their clients prior to the initiation of an abatement project, and "carry" those fees until being compensated for their work at the conclusion of the project. The proposed fee increases result in an increase in costs temporarily carried by the contractors. No change was made to the proposed rule as a result of these comments. It is felt that it would be possible for contractors to include language within contracts for abatement projects that would require payment of the notification fees as they are incurred by the contractors. DNR Asbestos Program staff conduct an asbestos seminar for contractors and other interested parties in December of each year, and staff plan to include information on how to address up-front payment of notification fees within abatement project contracts as part of the seminar this December to assist contractors in this regard.

The fourth comment received was in support of the proposed fee increase, and commended the DNR Asbestos Program staff for their effectiveness, and for the day-to-day outreach and education activities undertaken by those staff.

MODIFICATIONS MADE

An informal discussion was held with the attendees of the Madison hearing after the close of the hearing. The discussions pointed to the need to clarify that the proposed new fee for updated project notifications was intended to only apply where amounts of asbestos affected in a project changed by more than 20%. That clarification was added to the rule language. Other alternative fee mechanisms, e.g., charging notification fees as a percentage of overall project costs, were also discussed. However, such a change could not be implemented by rule alone, additional changes to the underlying statutory fee authority would be required as well.

APPEARANCES AT THE PUBLIC HEARING

Five persons filed a hearing appearance as follows:

June 3, 2010 – Madison

In Support:

Jewel Olson, Milwaukee Lead & Asbestos Information Center, 2223 S Kinnickinnic Ave,
Milwaukee, WI 53207

In Opposition:

None

As interest may appear:

Doug Anderson, PO Box 7394, Madison, WI 53707

Sueid Rahmanpanuh, Parss Corporation, 12440 W Robin Ln, Brookfield WI 53005

Dan Day, WIDOA, Division of State Facilities, 101 E Wilson St, Madison WI 53707

June 4, 2010 – Wausau

No appearances

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

None were required.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

A comment was received from the Wisconsin Legislative Rules Clearinghouse regarding clarity of s. NR 410.05 (3) (f). Suggested language to clarify this provision was included in the rule.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rules do not have a significant economic impact on a substantial number of small businesses, and do not increase any regulatory or reporting requirements on small businesses. Asbestos notification fees that are proposed to be increased by this rule are ultimately paid by the owners of the structures that are being renovated or demolished. Some of those owners are small businesses. However, the increased fee amounts are a very small percentage of the overall cost of the related renovation or demolition projects. No comments were received from building owners concerning the proposed increased fees. Three comments were raised during the public comment period by asbestos abatement contractors, who were likely small businesses. It is quite common for abatement contractors to initially pay the notification fees for a project, and then be reimbursed once they are paid for their work. The issue is the notification fee cost that is "carried" by the contractors during the course of the abatement contract. The Department believes it is reasonable to expect that this can be mitigated by structuring abatement project contracts to provide for payment of notification fees by the project owners as those costs are incurred.

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

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

AM-06-10

Analysis Prepared by the Department of Natural Resources

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

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

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

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

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

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

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

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

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

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

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

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

(4) NOTICE UPDATE FEE. Any person submitting an updated notice, as required by s. NR 447.07(2), for an asbestos renovation or demolition activity when the amount of affected asbestos changes by at least 20% shall pay a fee of \$100.

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

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)