

Clearinghouse Rule 08-106

WEM 1

DIVISION OF EMERGENCY MANAGEMENT

The Wisconsin Division of Emergency Management proposes an order to amend WEM 1.03 and WEM 1.04 relating to fees.

Statutes Interpreted: Sections 166.20 generally, 166.20 (5), 166.20 (7), and 166.21 Stats.

Statutory Authority: Sections 166.20 generally, 166.20(5), and 166.20(7) Stats.

Explanation of Agency Authority

The Department of Military Affairs, through its Division of Emergency Management (WEM)/State Emergency Response Commission, is required under s. 166.20 (7), Stats. to promulgate and adopt rules establishing a one-time fee when a facility makes the planning notification requirement under s. 166.20 (7) (a) 1. The Division of Emergency Management is also required under s. 166.20 (7) to promulgate and adopt rules establishing an annual inventory fee when a facility submits the emergency and hazardous chemical inventory forms required under s. 166.20 (5) (a) (3).

Related Rule or Statute

There are no other related statutes or rules other than those listed above.

Plain Language Analysis

The proposal to amend WEM 1.03 and WEM 1.04 (7) (a) – (j) would establish fee revisions to facilities housing hazardous chemicals and extremely hazardous substances as defined in WEM 1.02 (5).

The federal government created and adopted the Emergency Planning and Community Right-to-Know Act (EPCRA) 22 years ago and required states to participate with emergency planning, response, exercising and training. Since Wisconsin is a home rule state, the responsibility to plan for chemical emergencies falls to local units of government/Local Emergency Planning Committees (LEPCs). To alleviate the burden of another unfunded mandate to local government, the legislature implemented a fee collection program to facilities which store hazardous materials and extremely hazardous substances. WEM was instructed by the legislation to implement a fee structure in order to fund the program. The current fee structure was implemented in 1990 and has not been modified since its inception. The fees collected are designated to fund the grant program to counties/LEPCs and a small portion is designated to WEM to fund programs designed to assist local units of government

Emergency planning needs have evolved and become more complex since the initial implementation of EPCRA. Planning for and emergency response to accidental and purposeful releases of dangerous chemicals will be compromised by a significant reduction of money available

to fund activities at the county level of emergency management. County emergency management agencies will be unable to protect citizens and to fully comply with state and federal laws if adequate funds are not available to counties to support the grant program. Wisconsin Emergency Management would also experience substantial reductions in capabilities to assist local units of government.

Facilities and certain small businesses which have 10 or more full-time employees and submit emergency planning notification when the threshold planning quantity of an extremely hazardous substance is present must submit a one-time fee. Facilities and certain small businesses which have 10 or more full-time employees and store hazardous chemicals must submit an annual fee based on the types and numbers of chemicals present.

Wisconsin Emergency Management (WEM) has been successful in stretching dwindling dollars over the years but projections indicate that a change in fees is necessary to avoid substantial reductions of services at county and state levels of emergency management.

The fees assessed to facilities would increase by 35%. Fees have not increased since the initial implementation of the fee structure in 1990. It is anticipated that the fee revision will fund the program for through the year 2014

Comparison with Rules in Adjacent States

Illinois:

Does not have a fee assessed to facilities.

Iowa:

Does not have a fee assessed to facilities.

Michigan:

Does not have a fee assessed to facilities.

Minnesota:

The EPCRA Program collects fees related to hazardous materials storage and release. The fees are used to prepare communities for emergencies that are the result of hazardous materials incidents/accidents.

A. The hazardous Chemical Inventory Fee

1. Facilities reporting the storage of hazardous materials under Section 312 of the federal EPCRA law are required to pay a fee based on the number of chemicals they store. Fees range from \$25.00 to \$1,000.00 within 3 categorical fee ranges.

B. The Hazardous Materials Incident Response Act Fee

1. Minnesota law authorizes the establishment of up to five Regional Hazardous Materials Response Teams and creates fee structure to support these teams.
 - a. Facilities that report the storage of an extremely hazardous substance (EHS) under Section 302 of the federal EPCRA law are required to pay a fixed annual fee of \$75.00 per facility
 - b. Facilities that report releases and/or transfers under Section 313 of the federal EPCRA law are required to pay an annual fee based on the amount released and transferred. These fees range from \$200.00 to \$800.00 in 3 categorical fee ranges.

Summary of Factual Data and Analytical Methodologies

WEM performed numerous fiscal analogies to determine the best course of action to keep the county grant program and state services to counties operating at a level consistent with changing and diverse needs. Several options were developed to cope with the fact that the fund would be depleted if changes were not implemented:

- Increase EPCRA fees a specified certain percentage. This would fund the program to meet local and state needs.
- Increase the Petroleum Environmental Cleanup Fund Act (PECFA) transfer to the EPCRA fund. Additional funding, such as the state disaster fund has been taken out of PECFA, and currently the fund may not have sufficient money.
- Increase the EPCRA fees and the PECFA transfer. This would have the benefit of reducing the overall increase in EPCRA fees and the PECFA transfer. However, if the PECFA fund does not have a surplus, then it would not be a viable option.
- Obtain additional funding from another source. At this time no other viable funding source has been identified.

After reviewing the options, it was determined that a 35% increase in facility reporting fees and the emergency planning fee was the appropriate option to increase funding in the grant allocation to counties and WEM expenditure levels to take into account increases to the cost of living. Operating costs for both the counties and state have been increasing with no increase to the allocation since 1990. This option will increase support at a level that should keep the fund solvent through 2014.

Initial Regulatory Flexibility Analysis

Effect on Small Business:

Facilities with 10 or more employees would experience a fee change. Under s. 166.20 (7) (d), Stats., facilities with fewer than the equivalent of 10 full-time employees are exempt from inventory fees and the one-time emergency planning fee.

Types of Small Businesses That Will Be Affected By The Rule:

Small businesses as defined s. 227.114 (5), Stats. and s. 166.20 (5) – (5m) and do not meet the fee exemption un s. 166.20 (7) (d).

Reporting, Bookkeeping and Other Procedures Required For Compliance With The Rule:

No new reporting, bookkeeping and other procedures are required for compliance with the rule.

Types of Professional Skills:

No new professional skills are necessary for compliance with the rule.

Rules Have a Significant Impact on Small Business:

No. Most small businesses with 10 or more employees are now paying the minimum annual inventory fee of \$150.00 and will see that increase by 35% annually. Small businesses with 10 or more employees who must submit the one-time planning notification will expect an increase in the fee of 35%.

Agency Contact Person

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Place Where Comments Are To Be Submitted and Deadline for Submission

Comments may be submitted to Sharon Edwards-Billings, EPCRA Planning Specialist, Wisconsin Emergency Management; 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53708-7865. Telephone: (608) 242-3224. Email: sharon.edwardsbillings@wisconsin.gov. Comments must be received on or before December 18, 2008 to be included in the record of rule-making proceedings.

WEM 1

Wisconsin Emergency Management

SECTION 1: WEM 1.03 is amended to read:

An owner or operator who has made an emergency planning notification required under 166.20 (5) (a) 1, Stats., shall submit a fee of ~~\$800~~1080 per facility no later than 2 months after February 1, 1990. Except as provided under as provided under s. WEM 1.06, an owner or operator shall submit a fee of ~~\$800~~1080 per facility with the emergency planning notification required under s. 166.20 (5) (a) 1., Stats. The planning notification fee statement shall be submitted one time to the division.

SECTION 2. WEM 1.04 (7) (a) through (j) is amended to read:

Except as provided under s. WEM 1.07, the appropriate inventory form fee required under this section is:

- (a) For facilities submitting an inventory form listing one hazardous chemical subject to inventory form fee calculations and a maximum daily amount of less than 100,000 pounds, ~~\$150~~205. Facilities with an actual maximum daily amount of 100,000 or more, ~~\$180~~245.
- (b) For facilities submitting an inventory form listing 2 to 10 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$300~~405. Facilities with an actual maximum daily amount of 100,000 or more, ~~\$360~~485.
- (c) For facilities submitting an inventory form listing 11 to 100 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$450~~610. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$540~~730.
- (d) For facilities submitting an inventory form listing 101 to 200 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$550~~745. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$660~~890.

- (e) For facilities submitting an inventory form listing 201 to 300 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$650~~880. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$780~~1055.
- (f) For facilities submitting an inventory form listing 301 to 400 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$750~~1015. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$900~~1215.
- (g) For facilities submitting an inventory form listing 401 to 500 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$850~~1150. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$1020~~1375.
- (h) For facilities submitting an inventory form listing over 500 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$950~~1285. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$1140~~1540.
- (i) For temporary construction facilities, ~~\$20~~27.
- (j) For batch plants, ~~\$20~~27.

Note: Facilities that have submitted Tier II and Inventory Fee Statements in 2009 for chemicals in 2008 will receive preprinted forms in the mail on or about January 1, 2010. These forms can also be obtained through the Wisconsin Emergency Management website at emergencymanagement@wisconsin.gov or call 608-242-3221.

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.

