

Report From Agency

WEM 1

DIVISION OF EMERGENCY MANAGEMENT

The Wisconsin Division of Emergency Management proposes an order to amend WEM 1.03 and WEM 1.04 (7) (a) to (j) relating to fees.

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

Statutory Authority: Section 166.20 (7) (a), Stats.

Explanation of Agency Authority

Section 166.20 (7) (a), Stats., directs the Department of Military Affairs, through its Division of Emergency Management (WEM), to establish by rule a one-time emergency planning notification fee and an annual inventory form fee. The one-time fee is paid when a facility gives the hazardous materials planning notification required under s. 166.20 (5) (a) 1., Stats., and the inventory form fee is paid annually when the facility submits the emergency and hazardous chemical inventory forms required under s. 166.20 (5) (a) 3., Stats.

Related Rule or Statute

There are no 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) to (j) would establish fee revisions to facilities housing hazardous chemicals and extremely hazardous substances as defined in WEM 1.02 (5).

The federal government enacted the Emergency Planning and Community Right-to-Know Act (EPCRA) in 1986 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 and Local Emergency Planning Committees (LEPCs). To alleviate the costs of such planning on local governments, the legislature in 1987 enacted a fee collection program for facilities that store hazardous chemicals and extremely hazardous substances. Under the program, WEM is directed to promulgate rules establishing a one-time emergency planning notification fee and an annual inventory form fee. The fees collected fund certain WEM administrative expenses as well as emergency planning grants to LEPCs for assistance in complying with EPCRA and related state laws. The current fees have not been increased since the program's inception in 1990.

Facilities and certain small businesses which have 11 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 11 or more full-time employees and store hazardous chemicals must submit an annual fee based on the types and numbers of chemicals present.

A significant reduction of money available to fund emergency planning and response activities at the county level of emergency management is due to an 18-year draw down of a large fund balance, and an increase in expenditures associated with the EPCRA program. Further, emergency planning needs have evolved with homeland security implications and have become more complex since the initial implementation of EPCRA. Effective planning for emergency responses to accidental and intentional releases of dangerous chemicals will be detrimentally compromised by any reduction of money available to fund emergency planning and response activities at the county level of emergency management. The county emergency management agencies' ability to protect their citizens and fully comply with state and federal laws will be severely hampered if adequate funds are not available to support the EPCRA grant program. Lastly, Wisconsin Emergency Management would also experience substantial reductions in its capability to assist the county emergency management offices.

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%, rounded to the nearest \$5. It is anticipated that the fee revision will fund the program 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

Summary of Factual Data and Analytical Methodologies

WEM performed numerous fiscal analyses 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 prevent the depletion of the fund:

1. Increase EPCRA fees at a specified percentage. This would fund the program to meet local and state needs.
2. Increase the Petroleum Environmental Cleanup Fund Act (PECFA) transfer to the EPCRA appropriation. Additional funding, such as the Wisconsin disaster fund has been taken out of PECFA, and currently the fund may not have sufficient money.
3. 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.
4. Obtain additional funding from another source. At this time no other viable funding source has been identified.

After reviewing the options, WEM 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 as well as to take into account increases to the cost of living for the counties.

Final Regulatory Flexibility Analysis

Effect on Small Business:

Facilities with 11 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 in s. 227.114 (5), Stats. and s. 166.20 (5) to (5m) that do not meet the fee exemption in 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 11 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 11 or more employees who must submit the one-time planning notification will receive an increase in the fee of 35%, because the small business fee exemption applies to planning notification as well.

Agency Contact Person

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WEM 1 Fees

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 s. WEM 1.06, an owner or operator shall submit a one-time fee of \$8001080 per facility with the one-time 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 (1) is amended to read:

An owner or operator of a facility required to submit an inventory form under s. 166.20 (5) (a) 3., Stats., shall submit a tier 2 inventory form, a site plan, ~~and~~ inventory form fee statement and the appropriate inventory form fee annually on or before March 1, 1990 and annually hereafter on or before March 1. ~~The appropriate inventory form fee shall be due on or before the due date established by the division.~~

SECTION 3. WEM 1.04 (7) (intro) (a) ~~through~~ to (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 pounds 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 pounds 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 the previous year ~~in 2009 for chemicals in 2008~~ will receive preprinted forms in the mail annually on or around each January 1, ~~to facilities that submit statements in the previous year~~. 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.