

Clearinghouse Rule 10-046

Report to Legislative Council Rules Clearinghouse
NR 410, Wis. Adm. Code
Natural Resources Board Order No. AM-06-10

Wisconsin Statutory Authority

Sections 227.11 (2a), 285.11 (1), and 285.69 (3), Stats., interpreting s. 285.69 (3), Stats.

Federal Authority

None

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The revision of s. NR 410.05 is in response to Wisconsin 2009 Act 28 (the 2009-2011 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.

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 (named for the specific section of the federal Clean Air Act). The federal 105 grant also funds a variety of other air management activities including development of State Implementation Plans (or SIP, as required for non-attainment areas), ambient air quality monitoring and other federally-required activities. 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 related to asbestos abatement, funded completely by asbestos program fees, while maintaining other critical activities required under the Clean Air Act to protect against harm from other air pollutants.

Vigorous action on asbestos is essential to avoid the known adverse health effects of asbestos exposure. No "safe" asbestos exposure level exists; any exposure may lead to diseases such as asbestosis, lung cancer, mesothelioma and other forms of cancer.

Section NR 410.05 contains standards for charging fees in relation to the asbestos notification requirements of ch. NR 447. Inspection fees are based on the size of project and amount of asbestos involved. The revised asbestos inspection fees proposed in the rule range from \$135 (increase of \$60 over the current fee) for small projects defined as less than 160 square feet or 260 linear feet of asbestos-containing material, to \$1200 (increase of \$575 over the current fee) for extra large

projects defined as more than 5000 square and linear combined feet of asbestos containing material. The proposed rule also adds a new \$100 fee for review of updated asbestos notifications, and provides for charging an additional fee, equal to the inspection fee, for projects that are begun prior to submitting the required notification to the department. Historically, over 60% of projects fall into the small category, while just over 5% of projects fall into the extra large category.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

William Baumann, Bureau of Air Management – 267-7542

Robert Eckdale, Bureau of Air Management – 266-2856

Michael Scott, Bureau of Legal Services – 266-7527

Submitted on April 29, 2010