

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 410.03 (intro.) and (1) (d); to **renumber and amend** NR 410.03 (1) (a) 5. to 7., and (f), and (4); to **amend** NR 410.03 (title), (1) (a) (intro.) and 1. to 4. and 8. to 10., (b) (intro.) and 1. to 4., and (e), (2), and (4) (title); and to **create** NR 410.02 (7) and (8), and 410.03 (4) (b), relating to fees for reviewing applications for construction of air pollution sources and affecting small business.

AM-09-10

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Sections 227.11(2), 285.11(1) and (6), 285.14(1), and 285.69(4), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.
- 2. Statutory authority:** Sections 227.11(2), 285.11(1), and 285.69(1), Stats.
- 3. Explanation of agency authority:** Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11, Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.14(1) gives the Department general authority to implement rules consistent with Chapter 285, Stats. Section 285.69 gives the department the authority to promulgate rules for the payment and collection of reasonable fees for construction permit related activities.
- 4. Related statute or rule:** None.
- 5. Plain language analysis:** The proposal is to increase fees for construction permit related actions to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Stats.
- 6. Summary of, and comparison with, existing or proposed federal regulation:** Existing federal regulations require, but do not set, fees for review of construction permit applications. Section 110(a)(2)(E)(i) of the Clean Air Act requires that any government who wishes to carry out a State Implementation Plan have “adequate personnel, funding, and authority under State law to do so.” Wisconsin’s new source review program is an approved part of the State Implementation Plan and therefore requires adequate funding. US EPA last approved a revision to Wisconsin’s State Implementation Plan for a fee related provision on March 11, 2008. [73 FR 12893].
- 7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** Other state agencies were contacted to obtain information regarding their air permit programs. While an attempt was made to do a direct comparison, it proves to be difficult since the funding sources and fee structures differ from state to state. No state was able to provide accurate, average costs of different types of construction permit reviews. Based on the review conducted, it appears that fees proposed in this order are similar to those being charged for similar activities in adjacent states having a fee based construction permit program.

Illinois and Indiana have similar programs to Wisconsin where their new source review program is funded mainly by construction permit fees. Illinois last raised their fees in 2004, Indiana in 2007.

Michigan relies on general funding for their new source review program. Communications with Michigan indicate there have been internal proposals in Michigan to establish permit fees to help fund the new source review program, but none have moved forward at this time.

Minnesota currently has a proposal to raise construction permit fees and to structure the fees much like Wisconsin, Illinois, and Indiana. Their proposal would have core activities paid through permit fees. Major reasons given for their proposal to raise fees are that the cost and complexity associated with new source review has increased significantly over the years. Minnesota's current fee structure attempts to base the amount on the level of effort needed to review and issue the air permit.

Iowa funds its new source review program through grants and general funds. There are two local Iowa air pollution control agencies that do charge construction permit fees to fund new source review.

Comparisons for fees common to adjacent states:

	Illinois	Indiana	Minnesota	Wisconsin (current)	Wisconsin (proposed)
Initial Application Fee	\$5,000	No fee	No fee	\$1,350	\$7,500
BACT/LAER Determination	\$5,000	\$4,375	\$4,275	\$2,700	\$4,500
Case by case MACT Determination	\$5,000	No fee	No fee	\$2,700	\$4,500
Detailed Modeling Analysis	No fee	\$4,375	\$4,275	\$3,200	\$4,500
Public Hearing	\$10,000	\$625	No fee	\$150	\$950
Application for Major Modification	\$8,000/\$12,000	\$10,000	No fee	\$8,000	\$12,000

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: Data related to revenues generated by new source fees for FY05-FY09, along with projected workload and costs to administer the new source review program, were used to develop and support this order.

Annual new source review program cost. Estimates were made as to the type and number of construction permit reviews to be conducted in the upcoming fiscal year. For each of these, the level of program effort required to complete each type of review was determined. These levels of efforts then were used to estimate the annual cost to administer the construction permit program, taking into account estimated costs for program staff.

Individual fee increases. A 30% increase was applied to fees last revised in 1999 to account for inflation over the last 11 years. An additional increase was also applied to each fee category to better reflect the level of effort associated with the fee related action. Estimates were made as to the number of fee related actions associated with each type of permit review. These estimates were used in conjunction with the proposed fee to determine that the projected future revenue is sufficient to cover the annual program cost.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: The same information described under number 8. was used to determine the effect on small business. No economic impact report has been requested.

10. Effect on small business: The cost to small business to obtain a minor construction permit is proposed to increase in the range of 30 to 75 percent depending on the air regulations applicable to the project. The current cost of a minor construction permit sometimes associated with small business, ranges from \$6,000 to \$8,000.

Many small businesses are able to qualify for coverage under general or registration permits in lieu of needing to obtain a minor construction permit. Currently there is no charge for review and issuance for this type of coverage. No changes are proposed that would either affect small business eligibility for coverage under these permits or that would impose a fee for issuance of coverage.

11. Agency contact person: Andrew Stewart, andrew.stewart@wisconsin.com, 608-266-6876.

SECTION 1. NR 410.02 (7) and (8) are created to read:

NR 410.02 (7) "Non-part 70 source" has the meaning given in s. NR 407.02 (5).

(8) "Part 70 source" has the meaning given in s. NR 407.02 (6).

SECTION 2. NR 410.03 (title) is amended to read:

NR 410.03 (title) **Application fee and review fees.**

SECTION 3. NR 410.03 (intro.) is repealed.

SECTION 4. NR 410.03 (1) (a) (intro.) and 1. to 4. are amended to read:

NR 410.03 (1) (a) (intro.) Each person ~~issued a~~ submitting an application for an individual construction permit for a direct source shall pay the ~~following applicable~~ basic fee in this paragraph and shall submit a \$7,500 initial fee with the application. The initial fee shall be subtracted from the final fee required under this section and may not be refunded, except as provided in sub. (4). If the department determines that a permit is not required, the individual permit application shall be

treated as an application or request under par. (b), and the appropriate fee under par. (b) shall be charged. In the event that an applicant chooses to apply for coverage under either a general or registration construction permit, the individual permit application shall be treated as an application or request under par. (am) or (as) and the appropriate fee under par. (am) or (as) shall be charged.

The basic fees are as follows:

1. ~~\$2,300~~ \$3,000 if the application is not reviewed under ch. NR 405 or 408, and the application is for a new facility or for an emissions unit to be located at a minor source.
2. ~~\$4,400~~ \$7,500, for a modification not defined as major in s. NR 405.02 (21) or 408.02 (20), when the application is for an emissions unit to be located at a major source as defined in s. NR 407.02 (4).
3. ~~\$8,000~~ \$12,000, for a major modification as defined in s. NR 405.02 (21) or 408.02 (20), unless and the emissions unit is a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).
4. ~~\$12,000~~ \$16,000, for a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

SECTION 5. NR 410.03 (1) (a) 5. including the Note, 6., and 7. are renumbered NR 410.03 (1) (ae), (am), and (as) respectively, and as renumbered are amended to read:

NR 410.03 (1) (ae) ~~\$1,100, for~~ Each person requesting a revision of a construction permit ~~when requested by the permit holder or the permit holder's agent shall pay a fee of \$1,500 which shall be submitted with the request.~~ unless the only reason for the revision is to make the source eligible for a registration operation permit.

(am) ~~\$2,300~~ Each person applying for coverage under a general construction permit issued to ~~for a part 70 source under s. NR 406.16 shall pay a fee of \$3,000 which shall be submitted with the~~

application for coverage.

(as) ~~\$1,100~~ Each person applying for coverage under a registration construction permit issued ~~to~~ for a part 70 source under s. NR 406.17 shall pay a fee of \$1,500 which shall be submitted with the application for coverage.

SECTION 6. NR 410.03 (1) (a) 8. to 10. are amended to read:

NR 410.03 (1) (a) 8. ~~\$10,150~~ \$12,000, per air contaminant regulated under a plant-wide applicability limitation, when establishing a plant-wide applicability limitation under s. NR 406.035 (1).

9. ~~\$4,850~~ \$6,000 for the increase of a plant-wide applicability limitation under s. NR 405.18 (11) or 408.11 (11).

10. ~~\$4,850~~ \$6,000 for the distribution of allowable limits upon expiration of a plant-wide applicability limitation under s. NR 406.035 (2).

SECTION 7. NR 410.03 (1) (b) (intro.) and 1. to 4. are amended to read:

NR 410.03 (1) (b) (intro.) Each person submitting a claim of, or an application for exemption, or otherwise requesting a determination of exemption under ch. NR 406 shall pay the following applicable fee which shall be submitted with the claim, application, or request:

1. ~~\$800~~ \$1,250, for a determination of exemption under s. NR 406.04 (1) (i).

2. ~~\$1,100~~ \$1,500 for a determination of exemption under s. NR 406.04 (1f) for a modification to a stationary source which is regulated by a plant-wide applicability limitation, except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$2,400.

3. ~~\$4,400~~ \$5,500 for a determination of exemption under s. NR 406.04 (1k), except that if a

detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$6,500.

4. ~~\$700, for a detailed air quality modeling analysis of the projected air quality impact of a determination of exemption under s. NR 406.04 (1f) or (1k)~~ \$500 for a determination of exemption under s. NR 406.04 not included in subd. 1. to 3m.

SECTION 8. NR 410.03 (1) (d) is repealed.

SECTION 9. NR 410.03 (1) (e) is amended to read:

NR 410.03 (1) (e) When a construction permit application is received for a source where the basic emissions unit, which is not a portable source, is to be installed at one specified facility and, in the same application, a request is also made to issue construction permits to allow installation of the same basic emissions unit at other facilities at different locations and all the facilities for which construction permits are requested are under common ownership or control, the permit applicant shall pay the basic fee specified in par. (a) plus the additional fees in sub. (2). The fee for each additional construction permit at different locations shall be ~~\$400~~ \$1,000 each, plus the fees in sub. (2) except when the action specified in sub. (2) has been completed for one location and a separate action as set forth in sub. (2) is not required for each additional permit at each different location. When an action covered under sub. (2) must be completed for applications at more than one location, the fee in sub. (2) shall be charged for each time the action is completed.

SECTION 10. NR 410.03 (1) (f) is renumbered to be NR 410.03 (1) (b) 3m., and as renumbered is amended to read:

NR 410.03 (1) (b) 3m. Any person submitting a claim for a construction permit exemption

under s. NR 406.04 (1q) shall pay a fee of ~~\$800~~ \$1,250 which shall be submitted with the claim.

SECTION 11. NR 410.03 (2) is amended to read:

NR 410.03 (2) ADDITIONAL DIRECT SOURCE FEES. Each person ~~issued a~~ submitting an application for an individual construction permit for a direct source shall pay all the following additional fees which apply:

(a) ~~\$400~~ \$800 per basic emissions unit if review and analysis of 2 or more basic emissions units is required.

(b) ~~\$1,350~~ \$2,500, if an analysis of alternatives under s. NR 408.08 (2) is required.

(c) ~~\$3,350~~ \$5,000, if an emission offset under ch. NR 408 or the determination of a net emissions increase under ch. NR 405 is required.

(d) ~~\$2,700~~ \$4,500, for each case-by-case determination of maximum achievable control technology (MACT), best available control technology (BACT) or lowest achievable emission rate (LAER). This does not apply to BACT or LAER determinations made under ch. NR 445.

(e) ~~\$700~~ \$1,000, for a minor source or minor modification to a major source whose projected air quality impact requires a detailed air quality modeling analysis.

(f) ~~\$3,200~~ \$4,500, for any source, other than a minor source or minor modification to a major source, whose projected air quality impact requires a detailed air quality modeling analysis.

(g) ~~\$650~~ \$1,000, if the source is subject to an emission limitation under chs. NR 446 to 469, or if the permit establishes an emission limit for a hazardous air contaminant listed in Table A, B or C of s. NR 445.07.

(h) If the construction permit requires emission testing, ~~\$1,350~~ \$2,500 for the first air contaminant tested and ~~\$950~~ \$1,250 for each additional air contaminant tested up to a maximum of ~~\$4,200~~ \$6,000. If the department later finds that some or all of the tests are not required, the

corresponding fees shall be refunded.

(i) ~~\$1,050~~ \$1,500, if an environmental assessment under ch. NR 150 is required.

(j) ~~\$950~~ \$1,500, if a public hearing is held at the request of the applicant or the applicant's agent.

(k) ~~\$400~~ \$600 for each basic emissions unit at a source which requires an emission limit determination under s. NR 424.03 (2) (c).

(L) ~~\$1,350~~, \$2,000 for each case-by-case determination of best available control technology (BACT) or lowest achievable emission rate (LAER) required under ch. NR 445. If the department makes a single BACT or LAER determination addressing the control of multiple air contaminants, the source shall be billed for only one BACT or LAER determination under this paragraph.

(m) ~~\$2,150~~ \$3,500, if specific permit conditions limiting the potential to emit are required to make the source a minor source or to make the modification a minor modification.

(n) ~~\$2,650~~ \$3,500, for a medical waste incinerator requiring review of a needs and siting analysis under s. 285.63 (10), Stats.

(o) If the applicant requests, in writing, that the permit be issued in a shorter time interval than the time interval allowed under s. 285.61, Stats., and the department is able to comply with the request:

1. ~~\$2,650~~ \$5,000, for an application not subject to review under ch. NR 405 or 408 if the permit is issued within 50 days of receipt of a complete application.

2. ~~\$4,000~~ \$7,500, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 60 days of receipt of a complete application.

3. ~~\$2,650~~ \$4,000, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 61 to 90 days of receipt of a complete application.

SECTION 12. NR 410.03 (4) (title) is amended to read:

NR 410.03 (4) (title) PAYMENT AND REFUNDS.

SECTION 13. NR 410.03 (4) is renumbered NR 410.03 (4) (a) and as renumbered is amended to read:

NR 410.03 (4) (a) ~~The~~ When the amount due with an application or request is less than the final fee, the department shall bill the applicant for the ~~construction permit application fee balance~~ due when ~~the permit~~ a final decision is issued or upon a determination that no further action will be taken on the application. For a determination of no further action, the final fee shall include an amount for work completed under subs. (1) to (2), except that the final fee for a small business, as defined in s. 277.114, Stats., shall only be the initial amount due with the application or request. The ~~application fee balance due~~ shall be paid within 30 days of the date of the billing statement.

SECTION 14. NR 410.03 (4) (b) is created to read:

NR 410.03 (4) (b) The department may refund all of, or a portion of, the fee submitted with an application or request for a direct source, in the following situations and amounts:

1. If, upon review of an individual permit application for a direct source, the department determines that the source is exempt from the need to obtain the permit, the difference between the initial application fee and the appropriate amount in sub. (1) (b).
2. If an applicant for an individual permit for a direct source that is a part 70 source requests that the application be processed as an application for coverage under either a general or registration construction permit, the difference between the initial fee submitted with the individual permit application and the appropriate amount in sub. (1) (am) or (as).
3. If the initial application fee is greater than the final fee, the difference between the

application and final fees.

4. If an applicant for an individual permit for a direct source that is a non-part 70 source requests that the application be processed as an application for coverage under either a general or registration construction permit, the full initial fee submitted with the individual permit application.

SECTION 15. 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 16. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin: November 1, 2010.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____ /S/ _____
Matthew J. Frank, Secretary

(SEAL)