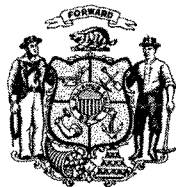


WISCONSIN STATE SENATE



**Carol Roessler**  
STATE SENATOR

July 9, 2004

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care.

From: Senator Carol Roessler, Chair

Re: Clearinghouse Rule 04-045 relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

CR 04-045 has been referred to the Senate Committee on Health, Children, Families, Aging and Long Term Care.

CR 02-045

The Department of Health and Family Services is authorized to assess the owners of each nuclear plant in the state an annual fee to finance the Department's environmental radiation monitoring of nuclear plants. The Department is also authorized to change this fee by administrative rule. This rule is being proposed to raise the annual base fee from the current \$47,500 to \$95,000.

The only entities affected by this rule are the two utilities operating a nuclear plant in Wisconsin.

If you have any concerns regarding CR 04-045, please contact my office at 266-5300 by **Friday July 16, 2004**.

**PROPOSED ADMINISTRATIVE RULES – CR04-045; HFS 158  
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES  
PURSUANT TO S. 227.19 (3), STATS.**

**Basis and Purpose of Proposed Rules**

The Department is authorized under s. 254.41, Stats., to assess the owners of each nuclear plant in the state an annual fee to finance the Department's environmental radiation monitoring of nuclear plants. The Department is also authorized to change this fee by administrative rule. Chapter HFS 158 specifies the Department's annual base fee, which is currently \$47,500. Chapter HFS 158 also allows the Department to raise the fee each year based on changes in the Consumer Price Index. As a result of these annual increases, the current fee is \$55,940. This rule is being proposed to raise the annual base fee from the current \$47,500 to \$95,000.

The base fee in ch. HFS 158 was last increased in 1991. The Department's monitoring costs over the past 13 years have risen at a rate exceeding that of the consumer price index. In addition, federal and other funding sources that also supported monitoring activities have either been eliminated or reduced. Consequently, the fee has become the primary funding source for monitoring activities. In response to these revenue losses, the Department reduced the scope of monitoring activities rather than raise the base fee in ch. HFS 158. However, the Department cannot further reduce monitoring activities without compromising national standards. Therefore, to continue to monitor activities at a minimum level consistent with national standards, the Department is proposing to increase the base fee in ch. HFS 158 to \$95,000.

**Changes to Rulemaking Order Analysis or Fiscal Estimate**

- *Changes to Rulemaking Order Analysis*

The Department has made no changes to its original order analysis.

- *Changes Fiscal Estimate*

The Department has made no changes to its original fiscal estimate.

**Responses to Clearinghouse Recommendations**

The Department accepted two of the three comments offered by the Legislative Council Rules Clearinghouse and modified the rulemaking order accordingly. The Department's did not accept the following Clearinghouse comment:

Comment 2.b.: The rule shows the title "CPI Detailed Report" in italics, while the current Administrative Code does not. If the Department intends to change this title to italics, it must do so by striking through the existing title and underscoring the new, italicized title.

Response: No change. The term "CPI Detailed Report" already appears in italics in the existing rule.

**Effect on Small Business**

This proposed rule has no effect on small businesses. The only entities affected by this rule are the two utilities operating a nuclear plant in Wisconsin.

### **Modifications to Initial Proposed Rule**

The only modifications the department has made to its initial proposed rulemaking order are those offered by the Rules Clearinghouse.

### **Comments on Proposed Rule**

#### *- Public Hearing Summary*

The Department held one public hearing on the proposed ch. HFS 158 rules on June 22, 2004 in Madison. No individuals attended the hearing.

#### *- Public Comments Summary*

The Department received no oral or written testimony on this proposed rule amendment.

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING RULES

To amend s. HFS 158.04, relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

**Statute interpreted**

The rules interpret s. 254.41, Stats.

**Statutory authority**

The Department's authority to amend and create these rules is found in s. 254.41, Stats.

**Explanation of agency authority**

Section 254.41, Stats., directs the Department to charge the owners of each nuclear power plant an annual fee of \$30,000. It also authorizes the Department to change the annual fee through administrative rule.

**Related statutes or rules**

The Department knows of no related statutes or rules.

**Plain language analysis**

Under section 254.41 of the Wisconsin statutes, the Department of Health and Family Services is responsible for monitoring radiation emissions around nuclear plants operating in or near Wisconsin. The Department assesses a fee to operating nuclear plants in Wisconsin that supports the Department's and local health agencies' collection of emissions and analysis activities. Chapter HFS 158 specifies the Department's annual base fee, which is currently \$47,500. Chapter HFS 158 also allows the Department to raise the fee each year based on changes in the consumer price index. Consequently, the current fee is \$55,940.

The Department's monitoring costs over the past 13 years have risen at a rate exceeding that of the consumer price index. In addition, federal and other funding sources that also supported monitoring activities have either been eliminated or reduced. Consequently, the fee has become the primary funding source for monitoring activities. In response to these revenue losses, the Department reduced the scope of monitoring activities rather than raise the base fee in ch. HFS 158. However, the Department cannot further reduce monitoring activities without compromising minimal national standards. Therefore, to continue to monitor activities at a minimum level consistent with national standards, the Department is proposing to increase the base fee in ch. HFS 158 to \$95,000.

**Summary of, and comparison with, existing or proposed federal regulation**

This proposed rule does not conflict with any existing or proposed federal regulations. The Nuclear Regulatory Commission (NRC) is responsible for regulating nuclear power plants. NRC regulations require each nuclear plant to monitor the environment around their respective plant for radiation emissions. In addition to the NRC required monitoring, the Department independently monitors the environment around the five nuclear plants affecting Wisconsin, as required by s.

254.41, Stats. The NRC has no authority or regulations governing or affecting the fees that states can charge and has no authority to prohibit a state from establishing independent monitoring around the nuclear plants, outside of the plant boundaries. In past years, the NRC paid states (including Wisconsin) to perform independent monitoring for NRC, piggy-backing off state environmental programs.

### **Comparison with rules in adjacent states**

*Minnesota* – Minnesota law authorizes independent state monitoring for radiation emissions around interim spent (reactor) fuel storage installations (ISFSI). There is only one nuclear plant in Minnesota with an ISFSI. The state assesses the nuclear plant an annual fee of \$35,000 to support monitoring activities.

*Iowa* - There is no requirement in Iowa law for the state to independently monitor radiation emissions around nuclear plants.

*Michigan* - Michigan law authorizes the state to monitor the environment for radiation emissions around the nuclear plants that affect Michigan. The nuclear utilities are required to reimburse the state for the actual costs of conducting environmental monitoring around their sites. In fiscal year 2003, the state of Michigan billed the four affected utilities a total of \$1,100,000.

*Illinois* – The State of Illinois monitors the environment for radiation emissions around the nuclear plants affecting the state. Illinois law authorizes the state to assess each nuclear plant an annual fee to support state environmental radiation monitoring and radiological emergency preparedness activities. The fiscal year 2004 fee was \$1,757,727 per reactor, or \$3,515,454 for a typical, two reactor site.

### **Summary of factual data and analytical methodologies**

The Department has projected revenue and expenditures for environmental monitoring for state fiscal year 2004 to 2010. Projections are based on fiscal year 2003 actual fiscal data. Projections indicate an environmental monitoring program deficit of \$30,774 in fiscal year 2004. The projections also indicate that a fee increase to \$95,000 will ensure adequate program funding thru at least fiscal year 2010.

### **Analysis and supporting documents used to determine effect on small business**

As the other entities affected are not small businesses, this rule will not affect small businesses.

### **Anticipated costs incurred by private sector**

These proposed rules will increase the annual environmental monitoring fee paid by the two utilities operating a nuclear plant in Wisconsin from \$55,940 to \$95,000.

### **Effect on small business**

These proposed rule changes will not effect small business.

### **Agency contact person**

Paul Schmidt; 608-267-4792; schmips@dhfs.state.wi.us

**Place where comments are to be submitted and deadline for submission**

A public hearing on this proposed rule was held on June 22<sup>nd</sup> in Madison. No one attended. The comment period ended on June 25<sup>th</sup>. The Department received no comments on this proposed rule amendment.

**Rule text**

SECTION 1. HFS 158.04 is amended to read:

**HFS 158.04 Fee.** Beginning with the state fiscal year ~~1991-92~~ 2004 - 05, the annual fee charged to the owner of a nuclear power plant that is operating in the state shall be ~~\$47,500~~ \$95,000, payable within 30 days after receipt of a statement. The fee may be increased each year at the annual rate of inflation as determined by movement in the consumer price index for all urban consumers (CPI-U), published each month in the *CPI Detailed Report* by the U.S. department of labor's bureau of labor statistics.

**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.

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_  
Helene Nelson  
Secretary

SEAL:

FISCAL ESTIMATE FOR ADMINISTRATIVE RULES

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number HFS 158

Subject:  
Fee for monitoring radiation emissions in the vicinity of nuclear power plants.

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs – May be possible to absorb within agency's budget.  
 Yes     No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
     Permissive     Mandatory  
2.  Decrease Costs  
     Permissive     Mandatory  
3.  Increase Costs  
     Permissive     Mandatory  
4.  Decrease Costs  
     Permissive     Mandatory

5. Types of Local Government Units Affected:  
 Towns       Villages       Cities  
 Counties     Others:  
 School Districts       WCTS Districts

Private:  No Private Sector Costs

1.  Increase Costs  
2. Amount of Increase  
    **\$39,060**  
3. Private Entities Affected  
    Two utilities operating nuclear power plants in Wisconsin.

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

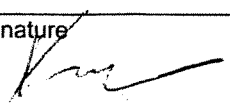
The Department of Health and Family Services is mandated by s. 254.41, Stats., to conduct environmental radiation monitoring within 20 miles of any nuclear plant impacting Wisconsin. The Department assesses an annual fee to the operating plants in Wisconsin that supports the Department's sample collection and analysis activities. The base fee established in rule may be increased annually by the cost of living index. The current fee is \$55,940. Since the last fee increase by administrative rule in 1991, program costs have increased faster than the cost of living index. To meet current costs, the Department is proposing to increase the base fee in ch. HFS 158 from \$55,940 to \$95,000 annually for each nuclear plant in FY 05.

Revenue from current fees is not sufficient to cover current operating expenses. The Department projects a deficit of (\$30,774) in FY 04. The proposed fee increase will reduce the deficit to (\$14,276) in FY 05 and eliminate it by FY 06. The net effect of this rule change will be to provide sufficient revenue for the environmental radiation monitoring program to operate as required by state law.

The fiscal effect on the utilities which are operating nuclear plants in Wisconsin will be minimal.

Long Range Fiscal Implications

This rule order is projected to provide sufficient revenue to sustain the Department's environmental radiation monitoring activities for a minimum 5-10 years.

Prepared By Paul Schmidt	Telephone Number 267-4792	Agency DPH
Authorized Signature 	Telephone Number 266-9622	Date Signed (mm/dd/ccyy) 5-17-04