

Report to  
Legislative Council Rules Clearinghouse  
NR 410, Wis. Adm. Code  
Natural Resources Board Order No. AM-10-23

Wisconsin Statutory Authority

Section 227.11 (2) (a), Stats., confers rulemaking authority to an agency where such rules are necessary to effectuate the purpose of existing statutory authority. The department is required under s. 285.11 (1), Stats., to promulgate and implement rules consistent with state air pollution statutes in ch. 285, Stats.

Section 285.69 (1), Stats., authorizes the department to collect reasonable fees to fund the review of applications for, and issuance of, a construction permit for air pollution sources and for the review of a request for an exemption from the requirement to obtain an air pollution control permit.

Section 285.11 (6), Stats., requires the department to prepare, develop and revise a state implementation plan (SIP) for the prevention, abatement and control of air pollution in the state. A control measure or strategy submitted by the department for inclusion in the SIP must be promulgated as a rule under s. 285.14 (1), Stats.

Federal Authority

Section 110(a)(2)(E) of the federal Clean Air Act (CAA) requires that each state has “adequate personnel, funding, and authority under State law” to carry out its SIP, which includes the construction permit program. There are no existing or proposed federal regulations that mandate how states must fund their construction permit programs. State approaches to funding construction permit programs vary widely.

Comparison of Adjacent States

Sources of construction permit program funding vary significantly between states. Most states rely on a combination of fees and general funding or state grants to support their construction permit programs. Of the nearby states assessed for comparison, Michigan and Wisconsin are the exceptions, as Michigan does not charge construction permit fees, whereas Wisconsin relies entirely on fees.

Because states use different mechanisms to fund their construction permit programs, a comparison of Wisconsin’s construction permit program fees with nearby states needs to consider not only the fees themselves, but the amount states spend on construction permitting, how much is covered by fee-generated revenue, and the overall size of the construction permit program, including the number of full-time equivalent (FTE) staff.

To inform this comparison, the department contacted the Illinois Environmental Protection Agency (IEPA), the Michigan Department of Environment, Great Lakes, and Energy (EGLE), the Minnesota Pollution Control Agency (MPCA), the Iowa Department of Natural Resources (IDNR), and the Indiana Department of Environmental Management (IDEM). Based on the information received, a summary of which is provided below, it is evident that the revenue and staffing levels the proposed rule is intended to support are comparable to, or substantially lower than, the levels in these nearby states.<sup>1</sup>

The current construction permit fee schedules for Illinois, Minnesota, Iowa, and Indiana are included in Appendix B (Michigan does not charge fees, relying instead on other state funding). Fee structures in these states differ considerably, making direct comparisons challenging. For example, one state may offset a low “base fee” with additional fees that reflect the complexity of the permit, while another might

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<sup>1</sup> Note that much of this data is not publicly available, and other states are not obligated to provide the department with this information. The department has included in this assessment the information that other states were willing or able to provide about their permit programs in the manner they provided it. When data was incomplete, the department applied reasonable assumptions.

charge a higher base fee. As a result, the exact fee a state might charge is highly project dependent.<sup>2</sup>

### *Illinois*

The IEPA unit that handles construction permits for higher-emitting sources currently consists of 9 FTE (1 supervisor, 3 lead workers, and 5 permit writers). Illinois is in the process of increasing staffing in this unit to 19 FTE (1 supervisor, 3 lead workers, and 15 permit writers). A separate unit, which handles a mix of construction and operation permits for lower-emitting sources, employs 18 FTE (1 supervisor, 3 lead workers, and 14 permit writers). One additional permit writer hire to this unit is planned.

Illinois funds its construction permit program through a combination of fees and other sources. The IEPA did not provide complete funding or budget information for its construction permitting operations, but estimated the salary and fringe costs for its current 27 FTE would be around \$5.1 million. The agency collects approximately \$1.3-1.4 million in construction permit fees.

### *Michigan*

Michigan's construction permit program is comprised of two units that together employ 21 FTE (2 supervisors and 19 permit writers). These figures do not include support staff or administration. Michigan EGLE is in the process of adding one more permit writer for one of its existing units, as well as adding an additional construction permit unit comprised of 6 FTE (1 supervisor, 3 permit writers and 2 technical writers).

Michigan EGLE does not charge fees for construction permits, relying instead on various state funds (especially the state's general fund, but also other sources).<sup>3</sup> Michigan estimates the cost to support salaries for its current 21 FTE to be approximately \$3.4 million.

### *Minnesota*

The MPCA operates a combined air permitting program without a clear delineation between construction and other permitting. The MPCA employs 34 permit writers at an approximate cost of \$5.4 million. This cost does not include program managers and other support staff. The MPCA is in the process of hiring an additional 14 FTE to work on permits.

Minnesota funds its construction permit program through both fees and state general funds. The MPCA was unable to provide the amount of revenue provided by construction permit fees, but noted they have recently received additional general funding from the legislature to support construction permitting.

### *Iowa*

In FY24 the IDNR's construction permit program employed a total of 15.5 FTE, including 13 permit writers, on a budget of \$2.1 million. These figures do not include support staff or administrative activities, which are covered by IDNR's core program funding. Also not included are most construction permitting actions undertaken in Des Moines and Cedar Rapids.<sup>4</sup>

The IDNR funds its construction permit program through a combination of fees and other sources, primarily state general funds. In FY24, construction permit fees and interest generated approximately \$1.1 million in revenue. State general funds and grants are especially important to minor source construction permitting, accounting for over 80% of total minor source construction permit program revenue.<sup>5</sup>

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<sup>2</sup> Iowa's [2014 Air Quality Bureau Stakeholder Report](#) (section E, "Fee Structure Benchmarking") provides a good overview of this issue, including an assessment of what permit fees might be charged in different states for specific types of projects.

<sup>3</sup> [Michigan EGLE Air Quality Division Annual Program Report – Fiscal Year 2023](#).

<sup>4</sup> Polk and Linn counties, which contain Iowa's two largest cities (Des Moines and Cedar Rapids), implement their own minor source permit programs. Linn County also drafts major source permits, with the IDNR issuing the final permit. The IDNR budget figures described here do not address the cost of construction permitting managed by those counties.

<sup>5</sup> [IDNR Air Quality Fiscal Year 2025 Draft Budget memo](#).

### *Indiana*<sup>6</sup>

The IDEM has 42 air permit writer positions (handling all permit types, including construction permits), of which 2-3 positions may be vacant at any given time. The IDEM did not provide expense information, but based on data provided by other states, the department estimates that IDEM's 40 permit writers would cost between \$5.3-\$7.6 million.<sup>7</sup> Additional support staff and expenses would be in addition to this figure.

Indiana funds its construction permit program through a combination of fees and other sources. The IDEM did not provide any additional details regarding construction permit program funding sources, fee revenue, or overall program budget.

### *Wisconsin*

In FY24, Wisconsin's construction permit program supported 12.5 FTE at a cost of about \$1.7 million. Of those 12.5 FTE, 5 are considered full-time permit writers, with the remainder going towards permit processing, supervision, policy coordination, technology support, financial administration, and other allocable costs required to be covered by this account.<sup>8</sup> Wisconsin's construction permit fees in FY24 are projected to generate revenue of about \$878,000, sufficient to cover about half of the program's expenses.

In FY25, Wisconsin's program is planned to further downsize, with expenses of approximately \$1.4 million supporting just 9.75 FTE, including 5 full-time permit writers. In FY29, promulgation of these rule revisions is projected to support a \$2.1 million program and 13.25 FTE.

On a comparative basis, Wisconsin's current program is therefore considerably smaller than nearby states in both budget and staffing, and will remain smaller even after this rule is implemented.

### Court Decisions Directly Relevant

No court decisions are directly relevant to the proposed rule.

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

The department operates a new source review (NSR) construction permit program that applies to the construction, reconstruction, replacement, relocation, or modification of stationary sources that emit air contaminants. In most cases where a construction permit is required, a facility cannot construct or modify a source of air pollution before the construction permit is issued. Since economic development relies on industry's ability to quickly react to business opportunities and market changes, the department has long prioritized the timely issuance of construction permits.

For the past several years, the construction permit program has experienced a significant deficit between its revenues and the spending levels needed to operate the program. In response to this deficit, the department has implemented all available efficiencies to decrease the construction permit program's expenses without sacrificing services critical to permitted customers. However, increases in construction permit fees are necessary to ensure adequate revenue to meet critical needs and fund the program in a sustainable manner.

To achieve this objective, the proposed rule would increase existing construction permit fees, create several new fees, and add a provision to adjust fees every four years to reflect any general wage adjustments included in approved state compensation plans, thus ensuring that the department can respond to economic development needs in a timely fashion into the future.

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<sup>6</sup> Although not adjacent to Wisconsin, a summary of Indiana's construction permit program is provided because many businesses operate in both Wisconsin and Indiana. Indiana also is part of the tristate IL-IN-WI Chicago ozone nonattainment area, in which construction permitting requirements apply.

<sup>7</sup> The per-FTE cost estimates obtained from other states ranged from \$132,000/year to \$190,000/year.

<sup>8</sup> Unless specifically noted, these types of costs are not included in the other state summaries.

Over time, the department projects that the increase in revenue from the revised fee structure would allow the department to hire additional permit writers. This additional capacity will ensure the program can take timely action on customer permit requests.

Agency Procedures for Promulgation

The department will hold a virtual hearing on August 29, 2024, at 10:00 AM. The hearing will be followed by board adoption, expected in December 2024, followed by a request for the governor's approval and legislative review.

Description of any Forms (copies attached)

None

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