



Legislative Fiscal Bureau

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Joint Committee on Finance

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Air Management Staff (Natural Resources – Air, Waste, and Contaminated Land)

[LFB 2003-05 Budget Summary: Page 336, #9]

CURRENT LAW

The Department of Natural Resources (DNR) administers the requirements of the federal Clean Air Act Amendments of 1990 in Wisconsin. DNR issues operation permits for stationary sources (such as businesses, factories or power plants) that generate toxic air emissions and construction (new source) permits for new and modified stationary sources, and conducts monitoring, compliance and enforcement, emissions inventory, ozone control, modeling and planning activities. In 2002-03, DNR is authorized \$18,257,800 for 188.5 positions for air management activities. Approximately one-half of the staff work in the Madison central office and the other half work in the DNR regional offices in Eau Claire, Green Bay, Madison, Milwaukee, Rhinelander and Spooner. Funding sources for the positions are: (a) 109.75 PR from stationary source emissions tonnage fees; (b) 19.5 PR from construction permit (new source review) fees; (c) 2.0 PR from asbestos abatement fees; (d) 2.0 PR from ozone-depleting refrigerants (CFCs) fees; (e) 46.5 FED from the U.S. Environmental Protection Agency air program grants; (f) 0.5 FED from leaking underground storage tank program grants; (g) 6.5 SEG from the petroleum inspection fund; (h) 1.0 PR from other program revenues; and (i) 0.75 GPR position. In addition, emissions tonnage revenues are transferred to Commerce to fund 2.0 PR positions for administration of the small business clean air assistance program.

Of the authorized 188.5 DNR positions, the Bureau of Air Management is authorized 169.25 positions to conduct monitoring, permitting, planning and compliance activities. The Air and Waste Division is authorized 3.0 positions for divisionwide program management. The Division of Enforcement and Science is authorized 1.0 position for law enforcement and is also allocated \$120,000 in federal clean air grants and 1.5 position. The Division of Administration and Technology is authorized 6.0 positions for legal, administrative and information technology

services and is also allocated \$944,000 in federal indirect cost reimbursement from federal clean air grants. The Division of Customer Assistance and External Relations is authorized 7.75 positions for customer service and licensing, cooperative environmental assistance and communication and education strategy.

GOVERNOR

Delete \$1,085,100 PR annually (a 12% reduction from base level funding) and 11.5 PR air management positions funded from stationary source air emission tonnage fees in the Bureau of Air Management to reconcile authorized expenditures with anticipated revenues (as of April 19, 2003, 3.75 of 102.0 positions funded from these fees in the Air and Waste Division were vacant). The reduction includes \$680,000 for permanent salary and fringe benefits, \$205,100 for supplies, and \$200,000 for permanent property.

DISCUSSION POINTS

1. Under the bill, there would be 98.25 DNR positions authorized from emission tonnage fees, including 87.5 in the Bureau of Air Management, 3.0 in Air and Waste Division management, 1.0 in the Division of Enforcement and Science and 6.75 in the Division of Customer Assistance and External Relations. The bill also continues funding from the fees for 2.0 positions in Commerce.

2. The DNR air management program is funded primarily from program revenues collected by DNR. Table 1 shows funding for DNR's air management program for 2002-03, and under the bill for 2003-04 and 2004-05. In 2002-03, program revenue provides 66% of expenditure authority and 71% of position authority. Federal funds provide 22% of expenditure authority and 25% of position authority. Stationary source emission tonnage fees provide the largest revenue source for the DNR air management programs. DNR collected emissions tonnage fees totaling \$9.73 million in 2001-02. DNR estimates it will assess emissions fees totaling \$9.82 million in each of 2002-03, 2003-04 and 2004-05, on total billable tons of approximately 275,000 in each year. Appropriations from emission tonnage fees represent 55% of 2002-03 expenditure authority for DNR air management activities.

3. The Clean Air Act Amendments require states to assess fees based on the tonnage of emissions generated by a facility and establish an emissions tonnage fee of \$25 per ton plus an annual adjustment based on the consumer price index (CPI) as a presumptive minimum. If states charge less than \$25 plus the CPI adjustment, they must demonstrate that program funding is adequate to fund a state program that reduces the emissions of facilities being assessed the fees (known as Title V sources). States must charge more than the \$25 plus CPI adjustment if necessary to fund the direct and indirect costs of the operation permit program, including activities such as air quality monitoring, compliance and enforcement.

TABLE 1

DNR Air Management Program -- Expenditure and Position Authority

Source	Fund Source	2002-03 Funding (Adjusted Base)	2002-03 Positions	2003-04 SB 44	2003-04 Positions	2004-05 SB 44	2004-05 Positions
Bureau of Air Management							
Program Fees							
Stationary Source Emission Fees**	PR	\$8,943,600	99.00	\$8,126,600	87.50	\$8,126,600	87.50
New Source Construction Permit Fees	PR	1,498,200	19.50	1,643,600	19.50	1,643,600	19.50
Asbestos Abatement Fees	PR	344,400	2.00	340,800	2.00	425,800	2.00
Ozone-Depleting Substance Fees	PR	133,100	2.00	122,700	2.00	122,700	2.00
Other Program Fees	PR	100,000	1.00	100,000	0.00	100,000	0.00
Federal Grants*							
Clean Air	FED	2,947,800	39.50	3,023,700	38.50	3,023,700	38.50
Leaking Underground Storage Tank	FED	23,600	0.50	24,000	0.50	24,000	0.50
Petroleum Inspection Fund	SEG	1,373,900	5.00	1,276,300	5.00	1,276,300	5.00
General Fund	GPR	<u>64,800</u>	<u>0.75</u>	<u>50,900</u>	<u>0.75</u>	<u>50,900</u>	<u>0.75</u>
Subtotal Bureau of Air Management		\$15,429,400	169.25	\$14,708,600	155.75	\$14,793,600	155.75
Air and Waste Division Management							
Stationary Source Emission Fees	PR	363,100	3.00	371,900	3.00	371,900	3.00
Division of Enforcement and Science							
Stationary Source Emission Fees	PR	81,800	1.00	75,300	1.00	75,300	1.00
Federal Clean Air Grants	FED*	120,000	1.50	120,000	1.50	120,000	1.50
Division of Administration and Technology							
Federal Indirect Cost Reimbursement	FED*	944,000	5.50	709,900	5.50	709,900	5.50
Petroleum Inspection Fund	SEG	561,800	0.50	562,800	0.00	562,800	0.00
Division of Customer Assistance and External Relations							
Stationary Source Emission Fees	PR	593,800	6.75	614,100	6.75	614,100	6.75
Petroleum Inspection Fund	SEG	<u>163,900</u>	<u>1.00</u>	<u>175,300</u>	<u>1.00</u>	<u>175,300</u>	<u>1.00</u>
Total DNR Air Management Funding		\$18,257,800	188.50	\$17,337,900	174.50	\$17,422,900	174.50

*Federal air pollution abatement grants are estimated.

**In addition to DNR air management funding, DNR will transfer additional emissions fee revenues to the Department of Commerce for administration of the small business clean air assistance program totaling \$199,700 in 2002-03, \$199,600 in 2003-04 and \$199,600 in 2004-05 for 2.0 positions.

4. Wisconsin adopted an air emissions tonnage fee system consistent with the Clean Air Act Amendments, beginning with 1992 emissions, and first collected emission fees in 1992-93. Wisconsin originally adopted an annual cap of 4,000 tons per pollutant per facility, which was consistent with the presumptive minimum. Beginning with calendar year 2000 emissions, the annual cap was increased to 5,000 tons and a \$0.86 per ton fee was added. The CPI adjustment factor was eliminated for years after 2000, resulting in a fixed fee per ton of \$35.71 for 2000 and

subsequent years.

5. Table 2 shows actual and estimated fiscal year emission fee revenue collections. Under the bill, the emission tonnage fees assessed are expected to remain constant at approximately \$9.82 million in each of 2003-04 and 2004-05.

TABLE 2
Air Emission Fees -- Revenues and Expenditures
(\$ Millions)

	2001-02	2002-03	2003-04	2004-05
	<u>Actual</u>	<u>Estimated</u>	<u>Estimated</u>	<u>Estimated</u>
Revenues				
Opening Balance	-\$0.40	\$0.11	\$0.02	\$0.08
Emission Fees	<u>9.73</u>	<u>9.82</u>	<u>9.82</u>	<u>9.82</u>
Total Available	\$9.33	\$9.93	\$9.84	\$9.90
Expenditures				
DNR Division of Air and Waste	\$8.44	\$9.14	\$8.50	\$8.50
DNR Division of Enforcement and Science	0.08	0.08	0.07	0.07
DNR Division of Customer Assistance and External Relations	0.53	0.59	0.61	0.61
Commerce Small Business Clean Air Assistance Program	0.17	0.20	0.20	0.20
Reserves	0.00	0.00	0.47	0.57
Lapses	<u>0.00</u>	<u>- 0.30</u>	<u>- 0.09</u>	<u>- 0.09</u>
Total Expenditures and Reserves	\$9.22	\$9.71	\$9.76	\$9.86
Encumbrances		<u>0.20</u>		
Closing Balance	\$0.11	\$0.02	\$0.08	\$0.04

6. If EPA finds that state emission fees are inadequate to implement an operation permit program that complies with federal regulations, EPA may take action to implement the operation permit program in the state and charge fees to cover EPA program administration costs. EPA granted Wisconsin interim operation program delegation approval in March, 1995, and granted full approval of the Wisconsin operation permit program effective November 30, 2001.

7. Over the last several years, some have expressed concern that the air management program may have insufficient resources and staff levels to administer an adequate program to comply with federal requirements. DNR has also expressed concern that if EPA determines the DNR program to be inadequate, that EPA could act to take over the state program and directly administer Clean Air Act permitting and compliance activities.

8. On December 6, 2002, EPA asked DNR for additional information about the state's operating permit fee provisions that would demonstrate that the fee structure meets federal air regulations. EPA's letter also expressed concern that the state's program may not meet federal requirements. On December 16, 2002, Midwest Environmental Advocates, Inc., the Sierra Club and other groups petitioned EPA to issue a notice of deficiency to Wisconsin for failing to

adequately administer its operating permit program.

9. On December 16, 2002, DNR sent a letter to EPA indicating that the Department had issued 760 federal operation permits and federally enforceable state operation permits, and 508 permits remained to be completed. The federal deadline for issuance of these permits was April, 1998, three years after EPA approval of the program. In its December 16, 2002, letter, DNR submitted a proposed schedule to issue the remaining permits and permit renewals by December, 2005. DNR's proposed timeline was based on continuance of 2002-03 staff levels of 188.5 FTE.

10. DNR responded to EPA's December 6, 2002, request for information on March 3, 2003, and April 18, 2003, and informed EPA that the Department would provide further information about the impacts of the 2003-05 biennial budget bill by May 30, 2003. In its March and April, 2003, responses to EPA, DNR indicated that, while Wisconsin no longer adjusts emission tonnage fees with a consumer price index, the current fee schedule provides revenue that exceeds that which would be obtained by utilizing the presumptive minimum in federal regulations. DNR informed EPA that the reasons are: (a) Wisconsin raised its billable cap from 4,000 tons per regulated pollutant, as prescribed by the federal presumptive minimum, to 5,000 tons per regulated pollutant, beginning with year 2000 emissions (a difference of approximately 25,000 billable tons in each of 2000 and 2001); (b) Wisconsin's emission fee regulation requires emission fees to be paid by sources in addition to those regulated by Title V of the Clean Air Act (a difference of approximately 15,000 tons annually); and (c) the fixed \$35.71 billable fee rate per ton effective in 2000 and subsequent years, exceeded the 2000 presumptive minimum rate of \$34.85.

11. DNR reported to EPA that a declining trend in emissions was measured in 2001 and appears to have continued in 2002. DNR estimated that in 2002 through 2007, approximately 275,000 tons would be assessed the Wisconsin \$35.71 emission fee per ton, of which 250,000 tons would be billable under the federal presumptive minimum provisions. While the Wisconsin fee would remain constant at \$35.71 per ton for 2000 and subsequent years, DNR estimates that the presumptive minimum fee would increase at approximately 2% per year to \$40.13 per ton for 2007 emissions. DNR indicated that in 2000, it assessed \$10.2 million in emission fees for 285,600 tons at \$35.71 per ton, but under the presumptive minimum it would have assessed \$8.5 million for 244,800 tons at \$34.85 per ton, a difference of \$1.7 million. In 2001, DNR assessed \$9.9 million for 276,400 tons at \$35.71 per ton, while under the presumptive minimum it would have assessed \$8.6 million for 237,700 tons at \$36.00 per ton, a difference of \$1.3 million. DNR informed EPA that while revenues currently exceed presumptive minimum levels, the Department anticipates that at a constant billable emissions level of 275,000 tons, in combination with not charging the presumptive minimum per ton fee, may result in program revenues that decrease to levels below the presumptive minimum levels in 2006 and beyond.

12. On March 20, 2003, EPA informed Midwest Environmental Advocates and Sierra Club that it would review additional information to be submitted by DNR, and that if there are changes in Wisconsin air program funding relevant to the operating permit program in the final enacted budget, DNR would need to supplement its fee demonstration to reflect the budget act changes.

13. EPA is continuing to review the issue of Wisconsin's compliance with Title V operating permit program requirements before making a determination of whether a notice of deficiency is warranted. EPA has not yet determined whether it will issue a notice of deficiency to the state for the DNR air operating permit program, and has not yet identified the specific level of staff that would be required to demonstrate that DNR is administering an "adequate" program. It is possible that EPA will make a decision in the summer of 2003 about whether to issue a notice of deficiency.

14. If EPA issues a notice of deficiency, the State would have 18 months to correct deficiencies identified by EPA. Under such a scenario, if the State would not correct deficiencies within the required 18 months, EPA would begin to impose sanctions, including requiring emission offsets in the nonattainment area in the southeastern part of the state (require that new construction must be offset by emissions reductions in existing sources) and withdrawing federal highway funds. EPA could also take over administration of the operating permit program in the state, and could impose federal emission tonnage fees in addition to state fees.

15. In its April 18, 2003, submission to EPA, DNR provided preliminary information about the potential impact of the Governor's budget recommendation to delete \$1,085,100 annually and 11.5 positions from the emission fee appropriation. DNR provided EPA with three scenarios of the impact of staffing reductions. First, DNR estimated that if the staffing reductions are split 50/50 between permitting and compliance staff (5.75 FTE reduction in each function), the impacts would be: (a) the number of full compliance evaluations completed statewide would be reduced by about 65 per year, from 280 to 215, resulting in inspection of Title V sources about once every five and one-half years on average, and there would be reductions in enforcement actions, verification of emission data and permit quality; and (b) it would take an additional year, until December, 2006, instead of December, 2005, to issue all of the remaining operating permits. Second, DNR estimated that if the entire 11.5 position reduction were to come from compliance activities, full compliance inspections would decrease by about 130 per year, from 280 to 150, resulting in inspection of Title V sources about once every eight years on average, and there would be the other compliance activity reductions noted above. Finally, DNR estimated that if the entire 11.5 position reduction were to be made in operating permit staff, it would take until December, 2009, instead of December, 2005, to issue the remaining operating permits.

16. 1999 Act 9 included a request for the Legislative Joint Committee on Audit to request the Legislative Audit Bureau to review DNR's air management programs, including a comparison of federally required aspects of the program and aspects required only by state law. In February, 2003, the Joint Committee on Audit directed the Legislative Audit Bureau to undertake an audit of DNR air management programs, including a review of workload issues, staffing levels, permit backlogs, the extent to which fees cover program costs, the extent to which the state has expanded upon regulatory requirements prescribed by federal law, and other issues. The LAB is reviewing both the operating permit program and the construction permit (new source review) program, under which all new, modified, reconstructed, relocated or replaced air pollutant sources are required to obtain a construction permit before beginning construction of the source. LAB anticipates completing the air management audit in the fall of 2003.

17. Some would argue that additional revenues should be provided to the air management program, to retain some of the authorized but unfunded positions, pay for costs that increase over time, and increase the likelihood that the DNR air program would maintain EPA approval of delegation to administer the operation permit program. Others would argue that no additional revenues should be added until or unless EPA determines that Wisconsin's operation permit program does not meet federal requirements, or until the LAB audit of the DNR program has been completed.

18. If the deletion of \$1,085,100 in annual funding and positions is not approved, DNR would have to reduce expenditures by approximately the same amount in each year to maintain a positive account balance. The expenditure reduction could be accomplished through a combination of holding positions vacant, and reducing or delaying expenditures for supplies, equipment and permanent property.

19. While DNR may be able to move incumbent staff from some of the 11.5 positions deleted under the bill to other air management funding sources, it is likely that some staff currently employed in operating permit processing or compliance activities would be determined to be at risk of layoff under the bill. It could be argued that these staff should be retained on other funding sources if possible until EPA and LAB reviews of the program are completed. Under this argument, operating permit program staffing levels should not be reduced below current levels while EPA is reviewing the program and the state may face a legal challenge to the adequacy of the program. On the other hand, if layoffs occur as a result of the budget bill reductions, and later program review results in a decision to provide more staff to DNR, DNR can rehire staff who were previously laid off if they have not found other jobs or could hire staff and train them to perform operating permit program activities.

20. While regulated sources and environmental groups are concerned about administration of the operating permit program, they are also concerned about workload, funding and processing of air construction permits. Under the bill, DNR is appropriated \$1,643,600 PR annually for 19.5 PR positions funded from construction permit fees. The construction permit appropriation will have an estimated July 1, 2003, account balance of \$3.4 million, will receive revenues of approximately \$2.2 million in each of 2003-04 and 2004-05, and will have an estimated appropriation account balance of over \$4.3 million on June 30, 2005. DNR indicates that the balance is explained partially because the number of construction permits processed per year has averaged 230 to 240 rather than 200 under earlier estimates, and the fees that went into effect in January, 2000, were structured in a manner to allow a balance in the first few years that would decline in future years as staff costs increase.

21. DNR indicates that there is not a backlog of construction permit applications waiting to be processed like there is for operating permits. However, industry representatives believe construction permits could be processed and issued faster than is done currently. The Department also indicates that it needs 22.5 positions rather than the authorized 19.5 positions to process the current workload, because staff have worked approximately 4,000 hours of overtime in each of 1998-99 through 2001-02. The bill could be amended to provide \$166,000 PR and 3.0 positions

annually in the construction permit appropriation, and DNR could move three staff currently funded from operating permit activities, whose jobs would be eliminated under the bill, to construction permit activities.

22. Another alternative to maintain the current level of operating permit program effort during the 2003-05 biennium while EPA and LAB review the air permit programs would be to make a transfer of \$560,000 in each year of the 2003-05 biennium only, from the construction permit appropriation account to the operating permit emission tonnage fee appropriation account, and restore \$560,000 PR and 8.5 PR positions that are deleted under the bill. This alternative would maintain the bill's deletion of \$159,100 annually in supplies not allocated to staff and \$200,000 in permanent property. Under this alternative, the estimated June 30, 2005, construction permit appropriation account balance would be \$3.2 million. If the transfer is made and 3.0 positions are also funded directly from the construction permit appropriation, the estimated June 30, 2005, account balance would be approximately \$2.9 million.

23. DNR officials believe that a transfer of construction permit funds to operating permit activities would be permitted under the federal operating permit requirements. However, it is uncertain whether EPA would approve a transfer of construction permit funds to the operating permit program. Representatives of some regulated industry sources that are assessed construction permit fees may prefer that the fees be retained for construction permit activities. However, it is possible that some industry representatives may prefer reallocation of a portion of the construction permit account balance to operating permit activities in lieu of lengthened operating permit issuance timeframes, or facing a potential EPA issuance of a notice of deficiency. Further, it is argued that the remaining balance should be retained for new source review activities and as a contingency against emission tonnage fee increases if program deficiencies are found that require additional staff or other resources to correct.

24. Another alternative would be to maintain a level of total emission tonnage fee revenues that would be expected to exceed the figure obtained under the presumptive minimum formula in federal regulations after 2004-05. If the current flat tonnage fee of \$35.71 would be adjusted by the consumer price index beginning with calendar year 2004 emissions (fiscal year 2004-05 assessment) and subsequent years, the emissions fee would be approximately \$36.42 per ton for calendar year 2004. This would generate increased revenue of approximately \$196,300 in 2004-05, and would be sufficient to restore funding for 2.0 of the 11.5 positions deleted under the bill, with \$110,700 PR annually.

ALTERNATIVES

1. Approve the Governor's recommendation to delete \$1,085,100 PR annually and 11.5 PR air management positions funded from stationary source air emission tonnage fees in the Bureau of Air Management.

2. Approve Alternative 1. In addition, provide \$166,000 PR annually and 3.0 PR air

management positions funded from the construction permit (new source review) appropriation.

<u>Alternative 2</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$332,000
2004-05 POSITIONS (Change to Bill)	3.00

3. Do not adopt the Governor's recommendation. Rather, delete \$359,100 PR annually from the stationary source air emission tonnage fee appropriation in the Bureau of Air Management. Further, transfer \$166,000 PR annually and 3.0 PR air management positions from the air emissions to the construction permit (new source review) appropriation. Transfer \$560,000 in each year of the 2003-05 biennium only from the construction permit appropriation account to the emission tonnage fee appropriation account. (This alternative would maintain the current level of air management staffing, rather than deleting 11.5 positions under the bill.)

<u>Alternative 3</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$1,452,000
2004-05 POSITIONS (Change to Bill)	11.50

4. Approve Alternative 1 or 2. In addition, increase the flat \$35.71 emission tonnage fee assessed in 2002-03 by the consumer price index adjustment, beginning in 2004-05 for calendar year 2004 emissions. (This would establish a fee of approximately \$36.42 per ton in 2004-05 and generate revenue of approximately \$196,300.) Restore \$110,700 PR and 2.0 PR positions in each year.

<u>Alternative 4</u>	<u>PR</u>
2003-05 REVENUE (Change to Bill)	\$196,300
2003-05 FUNDING (Change to Bill)	\$221,400
2004-05 POSITIONS (Change to Bill)	2.00

5. Delete provision (staff would be restored, but revenues would be inadequate to support them).

<u>Alternative 5</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$2,170,200
2004-05 POSITIONS (Change to Bill)	11.50

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