



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #606

### **Air Management Program Position Transfers (Natural Resources -- Waste, Remediation, and Air)**

[LFB 2023-25 Budget Summary: Page 461, #14]

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#### **CURRENT LAW**

The implementation of air quality programs in Wisconsin is conducted by the Bureau of Air Management in the Department of Natural Resources (DNR) Environmental Management Division, as well as staff in the DNR regional offices and support from staff in the Department's other programs. Air management staff in the five DNR regions perform permit review and issuance for new construction and existing sources, stack emission test plan approval, compliance inspections and enforcement, complaint investigation, inspection of asbestos demolition and renovation, and inventory of industrial source emissions. DNR's air management program has the primary responsibility in Wisconsin to issue permits to federally-regulated major sources of air pollution under the federal Clean Air Act and to ensure permittees' compliance with applicable standards. This authority was first delegated to the state by the Environmental Protection Agency (EPA) in 1995. This program is also known as the Title V stationary source air permit program, after the section of the Clean Air Act Amendments of 1990 that established the program. (Such sources are referred to as "federally-regulated" in this budget paper.)

Generally, major sources for federally-regulated operation permits include facilities that have the potential to emit any one of the following: (a) over 100 tons per year of any criteria pollutant in attainment areas and in marginal or moderate ozone nonattainment areas for any criteria pollutant, or 50 tons per year of volatile organic compounds (VOCs) or nitrogen oxides (NOx) in serious nonattainment areas, or 25 tons per year of VOCs or NOx in severe nonattainment areas; (b) 10 tons per year of any federal hazardous air pollutant (HAP); or (c) 25 tons per year of all combined federal HAPS. Criteria pollutants include ozone, sulfur dioxide, nitrogen dioxide, particulate matter (solid or liquid matter suspended in the atmosphere), carbon monoxide, and lead.

Beginning in 2013-14 for calendar year 2013 emissions, sources that are required to obtain an operation permit under federal law continue to pay an annual air emissions tonnage fee of \$35.71 per ton. In addition, all federally-regulated sources pay an annual base fee, based on the tons of actual billable emissions from the facility in the prior calendar year as follows: (a) \$900 if the source emitted not more than 10 tons of billable emissions in the prior calendar year; (b) \$1,300 if the source emitted more than 10 tons but not more than 25 tons in the prior calendar year; (c) \$1,600 if the source emitted more than 25 tons but not more than 50 tons in the prior calendar year; (d) \$2,300 if the source emitted more than 50 tons and not more than 80 tons in the prior calendar year; and (e) \$3,000 if the source emitted more than 80 tons per year in the prior calendar year. Fee revenue for federally-regulated permits totaled \$3,707,200 in 2020-21 and \$4,180,800 in 2021-22.

## **DISCUSSION POINTS**

### **Associated Positions Funded from Federally-Regulated Permit Fees**

1. Assembly Bill 43/Senate Bill 70 would transfer 8.75 positions and \$896,100 PR funded by operation permit fees for federally-regulated (Title V) stationary air pollution sources to environmental fund SEG. The transfer would fund the 8.75 staff, which serve division-wide purposes, using environmental SEG instead of Title V program revenues (PR), as this source has experienced continuous decline over the last several years. The Department requested a substantially similar transfer under s. 13.10 of the statutes in November of 2021, which is pending before the Committee.

2. Table 1 shows the authorized positions and funding for the air management program for 2022-23. Total base funding for DNR's direct air management responsibilities is \$15.4 million with 128.75 authorized positions. As shown in the table, most program positions are funded from: (a) operating permit fees for federally-regulated and state-regulated sources; (b) permit fees for the construction of new emission sources; and (c) federal grants under the Clean Air Act. Other positions are funded by other PR sources as well as petroleum inspection fund SEG and the environmental management account of the environmental fund. The petroleum inspection fund is supported by 1¢ per gallon of the 2¢ per gallon state petroleum inspection fee assessed on certain products sold in state, primarily motor vehicle fuel and home heating oil. The environmental management account is funded primarily from several state tipping fees on waste disposed of in landfills throughout Wisconsin.

**TABLE 1**

**2022-23 DNR Air Management Authorized Funding and Positions**

<u>Source</u>	<u>Fund Source</u>	<u>Amount</u>	<u>Positions</u>
<b>Bureau of Air Management</b>			
Program Revenue (PR)			
Stationary Source Fees – Federally-Regulated Sources	PR	\$6,024,300	52.00
Stationary Source Fees – State-Regulated Sources	PR	1,316,900	12.00
New Source Construction Permit Fees	PR	2,292,800	19.50
Asbestos Abatement Fees	PR	630,900	4.00
Ozone-Depleting Substance Fees	PR	135,500	1.50
Federal Clean Air Grants	FED	3,424,000	34.00
Petroleum Inspection Fund – Segregated Revenue (SEG)	SEG	1,518,200	4.75
Environmental Management Account – (SEG)	SEG	<u>60,000</u>	<u>1.00</u>
Subtotal Bureau of Air Management		\$15,402,600	128.75
<b>Division of Environmental Management</b>			
Stationary Source Fees --- Federally-Regulated Sources	PR	\$493,500	3.00
<b>Public Safety</b>			
Stationary Source Fees – Federally-Regulated Sources	PR	\$104,000	1.00
Federal Clean Air Grants	FED	161,400	1.50
<b>Internal and External Services Programs</b>			
Stationary Source Fees – Federally-Regulated Sources	PR	\$490,800	5.75
Federal Indirect Cost Reimbursement	FED	544,400	0.00
Petroleum Inspection Fund	SEG	<u>101,900</u>	<u>0.75</u>
Total DNR Air Management Funding		\$17,298,600	140.75

3. In addition to the positions assigned to the air management program, the Environmental Management Division is authorized 3.0 positions from federally-regulated stationary source fees for division-wide program management. The Division of Public Safety and Resource Protection is authorized 2.5 positions from air funding sources for law enforcement purposes. The Internal Services Division and External Services Division are authorized 6.5 positions from federal and state air funding sources for legal, administrative services, customer service and licensing, communication and education strategy, and to assist businesses in meeting environmental requirements. Of these 12.0 positions, 9.75 are funded from fees assessed on federally-regulated sources.

4. Table 2 shows actual annual revenues and expenditures from federally-regulated permit fees for 2012-13 to 2021-22. The table reflects federally-regulated operation permit fee increases that took effect beginning in 2014 under 2013 Wisconsin Act 20. DNR states that billable air emissions and the number of federally-regulated permitted facilities have declined and will continue to decline due to: (a) consistent reductions in emissions pursuant to federal and state air pollution regulations; and (b) shifts by utilities and other emitting facilities from coal-fired power to other sources, including natural gas and renewable sources such as hydropower, solar, and wind. Revenues were insufficient to cover expenditures in several fiscal years shown, including the three fiscal years from 2018-19 to 2020-21. The annual surplus in 2021-22 is mostly attributable to receivable revenues from 2020-21.

**TABLE 2**

**Federally-Regulated Permits Revenue and Expenditures**

<u>Year</u>	<u>Revenue</u>	<u>Expenditures</u>
2012-13	\$5,890,300	\$5,951,300
2013-14	7,281,900	5,765,200
2014-15	7,265,900	6,127,900
2015-16	5,121,300	5,852,200
2016-17	3,882,600	5,235,400
2017-18	6,195,800	5,271,700
2018-19	4,410,800	5,616,600
2019-20	4,189,700	5,057,900
2020-21	3,707,200	3,999,500
2021-22	4,180,800	3,492,900

5. DNR reports that the reduction in billable air emissions and federally-regulated permitted facilities do not necessarily result in a decreased need for program staff. The Department states that when a federally-regulated facility reduces its potential to emit pollution, decreases may be due to these facilities' compliance with additional regulations or operating more complex equipment. DNR contends that verifying permittees' compliance and proper use of additional control technologies requires a sustained or, in some cases, increased workload for the air program overall while also reducing revenue. Some facilities also may transition to operating as state-regulated sources, which are described further in a separate section.

6. DNR's air management program reports that it has been able to use available PR balances, reduce expenditures, and hold positions vacant to account for the federally-regulated permit revenue insufficiencies, and that such measures will continue in the 2023-25 biennium to the extent feasible. The appropriation for federally-regulated source permit fees has 29.5 positions as of April 1, 2023, that had been vacant for at least six months, and 19.0 that had been vacant for two years or longer.

7. DNR indicates that the 8.75 positions to be transferred were selected because they are not directly related to core federally-regulated permitting work to which the agency believes available revenues would be better allocated. Table 3 outlines the 8.75 positions that would be transferred from PR funding to SEG funding, including: (a) 2.00 positions in the Division of Environmental Management administration; (b) 1.00 position in the Division of Public Safety and Resource Protection; and (c) 3.25 positions in the Bureau of Customer and Outreach Services; and (d) 2.50 positions in the Bureau of Environmental Analysis and Sustainability. Funding of \$2,500 listed for communications purposes would be for supplies and services.

**TABLE 3**

**Air Program Position Transfers**

<u>DNR Program</u>	<u>Funding</u>	<u>Positions</u>
Environmental Management Administration	\$249,200	2.00
Enforcement	117,300	1.00
External Services		
Customer Services	226,700	3.25
Environmental Analysis and Sustainability	300,400	2.50
Communications	<u>2,500</u>	<u>0.00</u>
Total	\$896,100	8.75

8. As of April 1, 2023, 3.00 of the 8.75 positions are vacant. Of the 3.0 vacant positions, 1.0 position is a division administrator that has been vacant since March of 2022. Another 1.5 positions are customer service representatives that have been vacant since May of 2022, and the other 0.5 position is a customer services representative that has been vacant since August of 2019. DNR reports that the positions have been held vacant due to funding insufficiencies and that the 2.0 customer services positions are considered crucial to departmental work. Specifically, the positions would increase division-wide support to the public, businesses, and regulated parties seeking help with questions, forms, and website navigation via phone, email, and in person. DNR reports that the 2.0 positions would be filled if funding were changed according to the bill.

9. By reducing the ongoing commitments of federally-regulated sources permit fees, the request may extend the time under which DNR could operate the program at current fee levels without requesting fee increases under budget legislation. Under a federal program delegation, Wisconsin is required to demonstrate to EPA that the emissions fees assessed by the state for federally-regulated sources will be sufficient to fully support the federally-regulated program. EPA requires delegated state programs to monitor fee adequacy as part of their operations, and when necessary to propose fee adjustments to keep the state program fully funded. Any fee adjustment made must be approved by the Legislature and must be submitted with a fee adequacy showing to EPA for approval. DNR last provided a fee adequacy report to EPA in February, 2017, along with other updates to information about how the federally-regulated air permit program meets federal requirements and collects adequate fees. EPA last approved a fee adequacy showing in December, 2019.

10. EPA can also request fee adequacy reports if there are concerns that a state is not adequately implementing a program. If current state fees were to continue to be insufficient to support the permitting program for federally-regulated sources, the state would be required to implement fees sufficient to support the program or risk the program being found deficient by EPA. A program that does not remedy a deficiency ultimately could be subject to loss of certain federal air management or highway funding, or EPA could assume responsibilities for collecting fees in the state and administering permitting in the state. DNR estimates that 46.0 positions are needed to maintain staffing levels that would demonstrate program adequacy to EPA in the long term. Although current vacancy levels and fund sufficiency have led to DNR operating the program with fewer filled

positions than that amount, it is likely the program in the coming biennia would have to consider a reallocation of staffing to different funding sources, request a fee increase, or both, in order to satisfy federal requirements for the program.

11. Given the continued DNR workload for federally-regulated sources and declining program revenues, the Committee could approve the request and transfer 8.75 PR positions and \$896,100 PR annually in funding to environmental fund SEG [Alternative A1]. The environmental management account is expected to have a closing available balance of \$33.2 million on June 30, 2023. The account's ongoing revenues are anticipated to exceed base expenditures by an average of \$6 million annually. This is due primarily to declining debt service payments for certain programs funded by state SEG-supported general obligation bonds. Therefore, the account could accommodate the additional \$896,100 SEG in annual expenditures needed to fund the 8.75 positions in the bill.

12. The Committee could also delete the 3.00 vacant positions and associated funding and transfer only the 5.75 filled positions and corresponding funding to environmental management SEG [Alternative 2]. A deletion of a division administrator position would also require a reduction of the number of unclassified division administrator positions enumerated for DNR under s. 230.08 of the statutes. The Committee could take no action [Alternative 3]. DNR reports that the positions would continue to be held vacant due to funding source insufficiencies, despite the departmental need for the positions to be filled.

### **Other Transfers**

13. Assembly Bill 43/Senate Bill 70 would also transfer the following positions and funding, with no net change to funding sources: (a) 3.0 PR vacant air management positions and \$228,900 PR from the appropriation for federally-regulated sources to the appropriation for state-regulated sources; (b) 1.0 PR vacant air management position and \$77,800 PR from the appropriation for federally-regulated sources to the PR appropriation for asbestos management; and (c) 1.0 FED position and \$77,800 FED from air management to the safe drinking water loan program. The intention of these 5.0 transfers would be to reallocate the positions according to current staffing needs and available funding sources.

14. As previously discussed, a change in the quantity or type of emissions by a given facility could lead to the facility being regulated under a different air emissions permitting regime. The transfers of PR position authority from the federally-regulated sources program to the state-regulated sources program and asbestos management is intended to better reflect the current workload of the programs. The receiving appropriations do have sufficient revenues and balances to accommodate the transferred positions; the state-regulated sources appropriation had a July 1, 2022, balance of \$2.5 million, while the asbestos management program had available balances of \$3.0 million.

## **ALTERNATIVES**

### **A. Associated Positions Funded from Federally-Regulated Permit Fees**

1. Transfer 8.75 positions and \$896,100 PR annually funded by operation permit fees for

federally-regulated (Title V) stationary air pollution sources to environmental fund SEG.

ALT A1	Change to Base	
	Funding	Positions
PR	- \$1,792,200	- 8.75
SEG	<u>- 1,792,200</u>	<u>8.75</u>
Total	\$0	0.00

2. Transfer 5.75 positions and \$1,278,600 PR to environmental fund SEG. Delete 3.00 vacant positions and \$513,600 PR in associated funding. Reduce from 10 to 9 the number of DNR unclassified division administrator positions authorized under s. 230.08(2)(e) of the statutes.

ALT A2	Change to Base	
	Funding	Positions
PR	- \$1,792,200	- 8.75
SEG	<u>1,278,600</u>	<u>5.75</u>
	- \$513,600	- 3.00

3. Take no action.

**B. Other Transfers**

1. Transfer 5.00 positions to appropriations of the same funding sources, to better align the positions with staffing needs and available funding sources.

2. Delete 4.00 vacant PR positions and associated funding.

ALT B2	Change to Base	
	Funding	Positions
PR	- \$613,400	- 4.00

3. Take no action.

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