

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

The Wisconsin Natural Resources Board proposes an order to **amend** NR 410.05(2)(a) and (b) and (3)(a) to (c); and to **create** NR 410.05(3)(d) relating to asbestos permit exemption fees and inspection fees.

AM-31-04

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** s. 285.69(3), Stats.
2. **Statutory authority:** s. 285.69(3), Stats.
3. **Explanation of agency authority:** The Department received statutory authority to revise rules for payment and collection of fees for the inspection and permit exemption of non-residential asbestos demolition and renovation projects as part of 2003 Wisconsin Act 33. The Department also received statutory authority to promulgate rules for the laboratory testing costs that it incurs for inspections of non-residential asbestos demolition and renovation projects.
4. **Related statute or rule:** Chapter NR 447, Wis. Adm. Code.
5. **Plain language analysis:** Chapter NR 410.05 outlines the scenarios in which a fee is charged with the Notification of Intent to Demolish or Renovate required in ch. NR 447. The current language establishes three fees based on the amount of regulated asbestos containing material that will be involved in the scope of the project. This order modifies ch. NR 410 by increasing the inspection fee amounts that can be collected, as well as adding a new level in which inspection fees can be charged. This order also revises language in ch. NR 410 that is inconsistent with ch. NR 447.
6. **Summary of, and comparison with, existing or proposed federal regulation:**
The Wisconsin DNR has been delegated authority by the USEPA to implement the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. This rule has been incorporated through ch. NR 447. The fees associated with ch. NR 447 have been established under ch. NR 410.
7. **Comparison with rules in adjacent states:**
Of the states within EPA Region 5, half of the NESHAP delegated programs charge a fee in relation to the notification process. These fees are used to partially or completely fund the programs. Notification trends throughout Region 5 show that the number of notifications received by these programs has stayed consistent or shown a slight increase. Each program receives between 2000-3000 notifications each year, including Wisconsin. Illinois is the exception, receiving 4000-5000 notifications.

Wisconsin: Chapter NR 410.05 outlines two fees charged in relation with the asbestos notification. The first fee is the permit exemption review fee, which is a fee to determine if a project is exempt under s. NR 406.04(1). This fee is \$50 for an asbestos renovation or demolition that involves at least 160 square feet, or 260 linear feet of regulated asbestos containing material, and a combined total less than 1000 combined feet (the sum of the square and linear feet). For any project involving 1000 or more combined feet of regulated asbestos containing material, the fee is \$125. The second fee is the inspection fee. The inspection fee is \$50 for a demolition that involves less than 160 square feet or 260 linear feet of regulated asbestos containing material. If an asbestos renovation or demolition involves at least 160 square feet or 260 linear feet of regulated asbestos containing material, but less than 1000 combined feet, the inspection fee is \$100. For an asbestos renovation or demolition involving 1000 combined feet or greater, the inspection fee is \$200. The two fees are combined and expressed as a single fee on the notification form 4500-113. The notification fees are expressed as: \$50 for demolition projects with less than 260 linear feet or

160 square feet of regulated asbestos containing material; \$150 for demolition or renovation projects that include the disturbance of 260 linear feet or 160 square feet of regulated asbestos containing material, but less than 1000 total combined feet; and \$335 fee is charged for any demolition or renovation that is equal to or greater than 1000 total combined feet of regulated asbestos containing material. The increase in fees would only include inspection fees. The program supports 2 full time employees with these fees. A third employee is funded in conjunction with an EPA grant. The Wisconsin Department of Health and Family Services also receives asbestos notifications, but does not collect fees.

Minnesota: The NESHAP program within the state of Minnesota is delegated to the Minnesota Pollution Control Agency (MPCA). The program is funded completely by EPA grants. The program supports 2 full time inspectors who conduct approximately 200 inspections per year. However, the Minnesota Department of Health (MDH) does collect notification fees. The MDH has created their own rule that includes licensing of asbestos workers, OSHA requirements, and work practice requirements. Their notification fees include 1% of the total asbestos contract as a fee. Additional fees are paid by air monitoring firms that are required to be on site during asbestos abatement projects. These fees are 1% of the air monitoring contract. This state does not charge for lab analysis cost incurred on non-residential projects.

Michigan: The NESHAP program is delegated to the Michigan Department of Environmental Quality. This program does not charge fees with notifications and is federally funded. The program supports 3 full time inspectors. Notification fees are charged by the Michigan Department of Labor and Economic Growth (DLEG), and are 1% of the total project cost. This state does not charge for lab analysis cost incurred on non-residential projects.

Ohio: The Ohio EPA has been delegated the NESHAP program. Notification fees are charged for asbestos abatement only. The fees start at \$75 plus \$3 for every additional 50 square or linear feet, and \$4 for every additional cubic yard. The program is funded only by these fees and supports 2 full time employees in a central office, and contracts with local air districts throughout the state. The Ohio Department of Health also charges a \$65 fee with their notifications. This state does not charge for lab analysis cost incurred on non-residential projects.

Indiana: The Indiana Department of Environmental Management (IDEM) has been delegated the NESHAP program. This agency covers a number of asbestos related federal programs for the state. This does include notification fees. The fees are based on project size. All demolition notifications are assessed at a minimum of \$50.00. Demolition/Renovation projects with removal of less than 2,600 linear feet, 1,600 square feet or 400 cubic feet are charged \$50.00; demolition/renovation projects with removal of greater than or equal to 2,600 linear feet, 1,600 square feet or 400 cubic feet are charged \$150.00. The program is supported by a combination of fees from notifications, licensing of asbestos professionals, and training providers. The program has 2 full time inspectors and a full time supervisor. In addition to this the IDEM maintains a local agency agreement with the Indianapolis Air Pollution Control Board to regulate asbestos NESHAP projects within Marion County. This state does not charge for lab analysis cost incurred on non-residential projects.

Illinois: The Illinois Environmental Protection Agency, the delegated NESHAP program, also charges fees in relation to notifications. Fees are \$150 per notification, regardless of any other factor. If a notification is received late, an additional \$300 is charged to the contractor. Lab analysis costs may be charged to the owner or operator in large enforcement cases, as well as employee overtime spent as a result of the enforcement case.

Iowa: The delegated NESHAP program in the state of Iowa is the Iowa Department of Natural Resources. This program is completely funded through an EPA grant. The program supports 3¾ inspectors that conduct approximately 100 inspections per year. There are no other agencies within Iowa that collect fees in relation to asbestos notifications. This state does not charge for lab analysis cost incurred on non-residential projects.

8. Summary of factual data and analytical methodologies:

Rule revisions to ch. NR 410 are in response to 2003 Wisconsin Act 33. Wisconsin Act 33 increased fee limits for inspection fees and added a new category in which to charge inspection fees. It also created the option to charge for asbestos sample analysis costs incurred for samples taken at non-residential projects. The data used to create the option to charge for asbestos sample analysis costs in Wisconsin Act 33 was the Fiscal Year 2002 asbestos program budget that indicated asbestos sample analysis costs in excess of \$20,000.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Analysis to determine the effect of this rule revision maintains that this revision to ch. NR 410 will not create a significant change in compliance. The rule revision creates no change for reporting, schedules, deadlines, or bookkeeping requirements. The proposed rule revision does create minor compliance changes by increasing the amount of the fees and adding a new category to the existing fees. However, fees are currently required and the scenarios in which a fee would be required do not change. The proposed revision was developed with the assumption that the demographic affected by the changes would be small business. An economic impact report was not requested for this rule.

10. Anticipated costs incurred by private sector: Because costs incurred are based on the number and size of projects and compliance, and because historical data is not an accurate indicator of individual impact of this fee increase, we can not determine the costs that would be incurred by specific portions of the private sector as a result of these proposed rule changes. However, by estimating the total number of original notifications annually and the percentage of those notifications within each fee level, the WDNR can estimate that an additional \$187,500 per year would be generated by incorporating the fee increases. These costs would be paid by contractors and building owners.

11. Effect on small business: Analysis to determine the effect of this rule revision maintains that this revision to ch. NR 410 will not create a significant change in compliance, and no change for reporting, schedules, deadlines, or bookkeeping requirements. Increased fees will require small business to have higher costs in relation to notification to the WDNR. This increased cost will in turn be passed on to other small businesses within the state.

12. Agency contact person: (including email and telephone):
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SECTION 1. NR 410.05(2)(a) and (b) and (3)(a) to (c) are amended to read:

NR 410.05(2)(a) \$50 for a determination of exemption if the asbestos renovation or demolition operation involves at least 260 linear feet or at least 160 square feet of ~~friable~~ regulated asbestos containing material and a combined square and linear footage of less than 1000. The combination of square and linear footage shall be determined by adding the square footage of asbestos containing material on all areas other than pipes to the linear footage of asbestos containing material on pipes.

(b) \$125 for a determination of exemption if the asbestos renovation or demolition operation involves ~~friable~~ regulated asbestos containing material with a combined square and linear footage of equal to or greater than 1000. The combination of square and linear footage shall be determined by the method given in par. (a).

(3)(a) \$50 75 if, in a facility being demolished, the amount of ~~friable~~ regulated asbestos containing material is less than 260 linear feet on pipes and less than 160 square feet on other facility components.

(b) ~~\$100~~ 175 if the asbestos renovation or demolition operation involves at least 260 linear feet or at least 160 square feet of ~~friable~~ regulated asbestos containing material and a combined square and linear footage of less than 1000. The combination of square and linear footage shall be determined by the method given in sub. (2)(a).

(c) ~~\$240~~ 275 if the asbestos renovation or demolition operation involves ~~friable~~ regulated asbestos containing material with a combined square and linear footage of equal to or greater than 1000 and less than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2)(a).

SECTION 2. NR 410.05(3)(d) is created to read:

NR 410.05(3)(d) \$625 if the asbestos renovation or demolition operation involves regulated asbestos containing material with a combined square and linear footage of equal to or greater than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2)(a).

SECTION 3. 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 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 22, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)