

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

The Wisconsin Natural Resources Board adopts an order to **amend** NR 410.05(3)(a) to (d); and to **create** NR 410.05(3)(e) and (f) and (4) relating to asbestos project inspection and notification revision fees and affecting small business.

AM-06-10

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** s. 285.69(3), Stats.
- 2. Statutory authority:** ss. 227.11(2a), 285.11(1), and 285.69(3), Stats.
- 3. Explanation of agency authority:** Sections 227.11(2)(a) and 227.14(1), Stats., expressly convey rulemaking authority. Section 285.69(3), Stats., conveys authority to establish fees for specified department activities, and sets maximum levels for those fees.
- 4. Related statute or rule:** Chapter NR 447 contains regulations related to asbestos abatement activities.
- 5. Plain language analysis:** The rules amended and created by this proposed order increase fees for certain Department of Natural Resources (Department) asbestos regulatory activities, and create new fees for asbestos regulatory activities related to fire training burns and revised asbestos notifications. These additional fees will offset decreases in federal United States Environmental Protection Agency (EPA) Air Pollution Control grant funds that had previously been used to fund (in part) Department asbestos regulatory activities.
- 6. Summary of, and comparison with, existing or proposed federal regulation:** Chapter NR 447 contains asbestos regulatory requirements, which parallel corresponding federal regulations. The rule changes and additions proposed in this order change the fees used to fund Department asbestos regulatory activities, but do not affect the underlying regulatory requirements themselves. There is no federal counterpart to the ch. NR 410 fee rule.
- 7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** Illinois, Iowa, Michigan, and Minnesota each operate federally delegated asbestos programs. Iowa, Michigan, and Minnesota each fund their respective asbestos programs with federal grant funds. Illinois, similar to Wisconsin, funds their asbestos program activities through fees charged for asbestos notifications. Illinois fees are \$150 per notification, regardless of other factors (size of project, etc.). 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, along with employee overtime costs that result from enforcement cases.
- 8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** The Asbestos Program is funded by asbestos inspection

and permit exemption review fees paid by persons who perform asbestos abatement as part of nonresidential demolition and certain renovation projects. In addition, asbestos program funding has been supplemented by the equivalent of 2.0 full time employees (FTE) from the EPA federal Air Pollution Control grant (105 grant). Asbestos program fees currently fund 2.0 permanent FTE, two half-time limited term employee (LTE) field inspection positions, and four contracts with the following government agencies to perform inspections on behalf of the Department's Air Management Asbestos Program: City of Menasha; City of Milwaukee, Sauk County, and Waushara County. Due to declining levels of 105 grant funds, that funding source can no longer be used to fund asbestos program activities. Consequently, additional asbestos fee revenue is needed to replace 2.0 FTE of funding from the 105 grant, and thus maintain present levels of asbestos program staffing and public health protection activities.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: Asbestos related regulatory requirements are not changed by the proposed rules. The proposed rules do increase notification fees for asbestos related projects. See "Effect on small business" section below.

10. Effect on small business: Asbestos related regulatory and reporting requirements will not be changed by the proposed rules. The proposed rules will increase notification fees for asbestos related renovation and demolition activities. The fees increases vary according to the quantity of asbestos involved in a renovation or demolition project, and the increases range from \$60 per project for small projects (less than 160 square feet or less than 260 linear feet of asbestos containing material) to \$575 per project for very large projects (more than 5000 combined linear and square footage of asbestos containing materials). On the order of 1600 project notifications are received annually. It is not possible to predict the number of these projects that will be undertaken by small businesses.

11. Agency contact person: William Baumann – (608)267-7542, William.Baumann@wisconsin.gov

SECTION 1. NR 410.05(3)(a) to (d) are amended to read:

NR 410.05(3)(a) ~~\$75~~ 135 if, in a facility being demolished, the amount of regulated asbestos containing material is less than 260 linear feet on pipes and less than 160 square feet on other facility components.

(b) ~~\$175~~ 350 if the asbestos renovation or demolition operation involves at least 260 linear feet or at least 160 square feet of 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) ~~\$275~~ 575 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 1000 and less than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

(d) ~~\$625~~ 1200 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 2. NR 410.05(3)(e) and (f) and (4) are created to read:

NR 410.05(3)(e) \$100 if the property is to be demolished by intentional burning as a community fire safety training project.

(f) An amount equal to and in addition to the inspection fee specified in par. (a) to (d) to inspect property for a project for which a notice of an asbestos renovation or demolition activity was not provided before the work began.

(4) NOTICE UPDATE FEE. Any person submitting an updated notice, as required by s. NR 447.07(2), for an asbestos renovation or demolition activity when the amount of affected asbestos changes by at least 20% shall pay a fee of \$100.

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 August 11, 2010.

Dated at Madison, Wisconsin: November 1, 2010.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____/S/_____
Matthew J. Frank, Secretary

(SEAL)