

**SUBJECT:**

Request authorization for public hearing for Board Order AM-09-10, proposed rules affecting NR 410 pertaining to fees for reviewing applications for construction of air pollution sources.

**FOR: APRIL 2010 BOARD MEETING**

**TO BE PRESENTED BY:** Andrew Stewart, Chief, Permits & Stationary Source Modeling Section

**SUMMARY:**

The Bureau of Air Management proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to change its present policy of not collecting fees for significant review work performed when an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats. The Board last authorized a fee increase in 1999.

The Clean Air Act requires sources that emit air pollution to obtain a new source permit before beginning construction of a new source. The fees for any individual source vary depending on factors such as the location of the source, type and amount of pollutant, whether emission testing is required, and whether the applicant requests expedited review. The Bureau of Air Management operates the new source review program under the US EPA approved State Implementation Plan. Program activities are funded by collecting fees authorized in ch. NR 410. At the present time the agency is collecting significantly less than what is needed to administer the new source review program. This deficit spending has been occurring for the last four years and has depleted what had been a surplus in the new source review account.

The Bureau is also proposing to collect fees in situations where significant amount of staff time is spent on reviews for applications that the source later decides to withdraw or not pursue to issuance. Currently, ch. NR 410 only allows the agency to collect an initial application fee of \$1,350 for work on applications that do not result in a permit being issued. Reasons why an applicant would withdraw an application vary, but includes such as project is no longer viable, applicant decides to locate in another state, or other local, state or federal approvals for the project are not obtained.

The proposed fee changes will affect permit applicants, including small businesses, seeking to construct or modify air pollution sources in all industrial categories. Key issues are expected to be related to the amount of increase and fees billed for withdrawn applications.

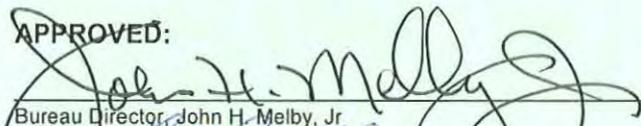
**RECOMMENDATION:** That the Board authorize the Department to hold hearings on Board Order AM-09-10.

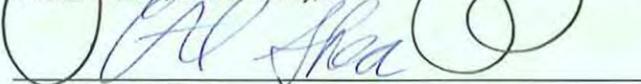
**LIST OF ATTACHED MATERIALS:**

- No  Fiscal Estimate Required
- No  Environmental Assessment or Impact Statement Required
- No  Background Memo

- Yes  Attached
- Yes  Attached
- Yes  Attached

**APPROVED:**

  
 Bureau Director, John H. Melby, Jr

  
 Administrator, Al Shea

3/22/10  
 Date

3/22/10  
 Date

4-8-10  
 Date

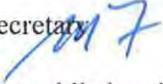
  
 Secretary, Matthew J. Frank

cc: Laurie Ross - AD/8                      Department Rules Coordinator - LS/8  
 Mike Scott- LS/8                          R. Eckdale - AM/7

DATE: March 30, 2010

FILE REF: 4530

TO: Natural Resources Board Members

FROM: Matthew J. Frank, Secretary 

SUBJECT: Background memo on public hearing authorization for Order AM-09-10, proposed rules affecting NR 410, pertaining to fees for reviewing applications for construction and/or modification of air pollution sources.

**Why is this rule being proposed?**

The department proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to begin collection of fees for significant review work performed before an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to meet permit process timelines and to provide sufficient technical assistance to applicants and thorough review to ensure that environmental standards are met in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats.

New source review ensures that new construction doesn't negatively impact the environment and/or public health, and allows for timely economic development.

**What event or action triggered the proposal?**

Existing rules provide for the collection of fees to fund review and issuance of construction permits for air pollution sources under the new source review program. These fees consist of a basic application fee and any applicable additional fees that apply. The additional fees are imposed when case-by-case determinations are needed, the source is subject to prescribed EPA programs, or in situations that require review of testing procedures or of alternative operation scenarios.

Increasing complexity of permit review work due to new Federal requirements as well as increased inflation has increased costs for the new source review program. Beginning in FY 2005 the fees collected have not been adequate to fully support the work to review applications submitted. The shortfall has been covered by spending a revenue surplus that had been built up in earlier years - as well as reducing costs through extensive process streamlining and technology improvements. The surplus has been shrinking and will be gone by the end of FY 2010. The new source review program will have a growing deficit starting in the next fiscal year. No other viable alternatives to the proposed fee changes have been identified that will adequately address the funding deficit.

Other than the non-refundable initial application fee, fees cannot currently be collected from an applicant if the permit is not issued, regardless of the time spent on the review. Since the initial cost to the applicant to submit a permit application is not significant, it is not uncommon for companies to submit an application prior to obtaining adequate project financing, or to submit multiple applications for the same, or similar, project while still evaluating the pros and cons of the various project locations. In many of these cases, applications are either withdrawn or the department is asked to stop working on it prior to final decision and permit issuance. Because the Department is required to act timely on each application, these practices often result in unnecessary application processing and review.

In 2008 and 2009 an estimated \$300,000 in fees were not realized due to applications being withdrawn.

**What issues are addressed by this rule?**

Section 110(a)(2)(K) of the Federal Clean Air Act requires states to incorporate a permit fee system in their state implementation plans (SIP) to recover the reasonable cost of reviewing and acting on permit

applications and enforcing the conditions of the permits. Section 285.69 Wis. Stats., authorizes the department to establish air permit fees.

Over the last four years the Department has implemented changes in the air program that has reduced the regulatory burden associated with new source permitting, especially for smaller sources of air pollution. Examples include new permit exemptions, general and registration permits and a new integrated information management system.

These changes have eliminated about one hundred new source permit actions per year. Besides the obvious benefits of reduced costs and streamlined processing for the smaller sources, air staff can focus on larger, more complicated permits with more significant air quality impacts. Larger businesses have benefited as the average time it takes to obtain these more complicated permits dropped significantly, from 157 days on average in 2007 to 67 days in 2009.

However, these improvements have had a significant revenue impact. Smaller emission sources (non-major sources) were paying more than they should based on their emissions and in effect subsidizing major sources. Eliminating approximately 100 new source permit actions has resulted in reduced program revenue of \$600,000 to \$1,200,000 per year for the last four years. In FY 2009 new source revenue only covered \$1,576,206 of the \$2,250,792 needed to administer the program. The current fiscal year, ending June 2010, is expected to be as bad, if not worse, than FY 2009.

FY	Revenue	Expenditure	Shortfall (\$)	Shortfall (%)	Cumulative Shortfall (\$)
2006	\$1,746,815	\$2,352,031	-\$605,216	-26%	-\$605,216
2007	\$1,814,375	\$2,772,493	-\$958,118	-35%	-\$1,563,334
2008	\$1,451,775	\$2,700,650	-\$1,248,875	-46%	-\$2,812,209
2009	\$1,576,206	\$2,250,792	-\$674,586	-30%	-\$3,486,795

The new source review account has had a structural deficit for a number of years. This shortfall has been covered by a revenue surplus built up in the new source review fund during FY 2000-2005. This surplus had shrunk to \$841,000 at the end of FY 2009 and will be gone at the end of FY 2010. The consequences of this will be immediate as there will not be sufficient funds at the current fee level to pay the necessary staff to review new source permits under the deadlines required by law.

The projected work effort for FY 2011\* is presented in the table 2 below:

Type of Review	NAA New Source Review (LAER)	Major New Source Review (PSD)	Minor New Source Review	Const Permit Revisions	Const Permit Exemptions	General Const Permits	Registration Const Permits	Const Permit Waivers
Number	5	20	100	20	50	25	10	5
Effort (hrs/review)	448	298	128	24	24	32	22	12

\*This projected effort does not include increased review work resulting from implementing greenhouse gas regulations expected to begin in January 2011.

Meeting decision deadlines while maintaining adequate compliance and effective applicant service levels is a challenge even with the full complement of authorized staff. Reduced funding and fewer staff will create delays in permit processes that, at best, will delay a business from being able to take advantage of a new opportunity. In other cases the delay or the inability for a business to get a permit in a timely manner

may put an entire business at risk. In addition, businesses obtaining or trying to stay eligible for grants may be also be placed in jeopardy if permit decisions are delayed due to inadequate staffing or legal challenges due to hasty review.

The proposed fee increases are intended to prevent this unacceptable situation.

### Summary of the Rules

The New Source Review and Prevention of Significant Deterioration permit programs are required under Title I of the Clean Air Act. However there are no specific federal regulations that direct how rules to collect fees for these programs are to be written or to the specific content of the fee rules.

This proposal will allow adequate fees to be collected to support the new source review program by increasing fees to address the two causes of increased costs previously mentioned.

The proposal includes an increase in permit fees across the board to account for inflation, as the last fee increases were implemented back in 1999. The cumulative rate of inflation since then (1999-2010) is 30%.

In addition, some fees are proposed to increase to better reflect the amount of staff resources necessary to complete certain permit review actions. An example of increased review complexity is that in the last few years dozens of new industry source categories have become subject to federal regulation and permitting for hazardous air pollutants.

The upcoming regulation of greenhouse gasses will present additional regulatory challenges. While fiscal impacts are difficult to estimate at this time, it is clear that the permit workload will significantly increase both in terms of the number of reviews that will be conducted and in their level of complexity. New fees for this work are not being proposed at this time. Fees for this work in the future are expected to be covered under the existing fee categories.

New fees in this proposal include fees for reviewing and issuing coverage for non-major sources (low emissions) under general and registration operation permits, and for making determinations for exempt sources.

Table 3 below compares existing fees to what is being proposed in this order. The proposed increases are based on the following:

- projected workload (Table 2) by type of permit,
- level of effort which includes application, technology, modeling, and emission and AQ impacts reviews, that are required to make determinations for the different types of permit actions,,
- types of fees associated with the different types of permit actions, and
- program costs.

Fee description	Existing	Proposed	Increase	Last Raised
Major source construction (PSD or nonattainment)	\$12,000	\$16,000	33%	1999
Major modification	\$8,000	\$12,000	50%	1999
Minor modification at major source	\$4,400	\$7,500	70%	1999
Expedited review (PSD-under 60 days)	\$4,000	\$7,500	88%	1999
Modeling analysis (detailed for a major source)	\$3,200	\$4,500	41%	1999
MACT, BACT, LAER (case-by-case analysis)	\$2,700	\$4,500	67%	1999
Expedited review (PSD-61 to 90 days)	\$2,650	\$4,000	51%	1999
Expedited review (non PSD-under 50 days)	\$2,650	\$5,000	89%	1999
Minor source construction	\$2,300	\$3,500	52%	1995
Emission testing (initial unit)	\$1,350	\$2,500	85%	1999
Revision to a construction permit	\$1,100	\$1,500	36%	1999

Public Hearing	\$950	\$1,500	58%	1999
Actual based exemption	\$800	\$1,250	56%	2007
Research & Testing exemption	\$800	\$1,250	56%	1999
Analysis of emission unit (per unit, 2 or more units)	\$400	\$800	100%	1999
Construction permit waiver	\$300	\$500	67%	2007
Exemption determinations (not otherwise specified)	\$0	\$500	New fee	New fee
General Construction Permit (non-part 70 source)	\$0	\$1,500	New fee	New fee
Registration Construction Permit (non-part 70 source)	\$0	\$1,000	New fee	New fee

**How does this proposal affect existing policy?**

This proposal will increase the fees for reviewing applications to construct or modify sources of air pollution and to begin collection of fees for significant review work performed before an application is withdrawn.

**Has the Board dealt with these issues before? If so, when and why?**

Chapter NR 410, first implemented in 1984, has had numerous changes in the past. The last major permit review fee increase was in 1999, and prior to that, 1995. These increases were due to the same reasons as the current proposal, that is, increasing complexity of the permit review process and inflation increasing the costs of permitting.

Additional fees for new permit actions were added in 2005, 2007 and 2008.

**Who will be impacted by the proposed rule? How will they be impacted?**

The proposed fee changes will apply to new applicants and existing permittees, including some small businesses, seeking to construct or modify air pollution sources in all industrial categories.

A base increase to compensate for inflation is being proposed for all fees. An increased nonrefundable initial application fee is being proposed to help offset lost revenues that occur when applications are withdrawn prior to permit issuance. The increased initial application fee would not have an effect on applications that resulted in permit issuance, as the full amount would be credited to their final bill.

Under this proposal, applicants choosing to withdraw or otherwise stop work on an application would need to pay for review work completed up to that point.

This proposal would exempt small business from paying any additional fees that exceed the initial application fee regardless of the work that was completed prior to the application being withdrawn.

Fees associated with more complex reviews will be increased proportionally in order to support the analytical and other additional work necessary to conduct these reviews.

**Information on environmental analysis.**

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

**Small business analysis.**

This proposal will affect small business by increasing the cost of obtaining a permit to construct or modify a source of air pollution.

While there is no direct correlation between the amounts of air pollution or air regulations that might be

associated with a small business as defined under s. 227.114, Wis. Stats., the current cost of a minor construction permit, sometimes associated with small business, ranges from \$6,000 to \$8,000. The increase may be in the range of 30 to 75 percent depending on the air regulations applicable to the proposed project.

Many small businesses are able to qualify for coverage under general or registration permits in lieu of needing to obtain a construction permit. Currently there is no charge for this type of permit coverage.

Small businesses applying for coverage under a general or registration construction permit may be subject to new fees proposed for general construction permits at \$1,500 and a registration construction permits at \$1,000.

Cost to small businesses that withdraw applications for projects that they decide not to pursue are not subject only to the initial application fee; they will be exempted from paying the costs of additional review that might occur prior to application withdrawal.

**Fiscal Estimate — 2009 Session**

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number AM-09-10

**Subject**

Order AM-09-10, proposed rules affecting NR 410, pertaining to fees for reviewing applications for construction of air pollution sources

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No  
 Decrease Costs

**Local:  No Local Government Costs**

1.  Increase Costs  
     Permissive     Mandatory  
 2.  Decrease Costs  
     Permissive     Mandatory

3.  Increase Revenues  
     Permissive     Mandatory  
 4.  Decrease Revenues  
     Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

**Rule Summary:**

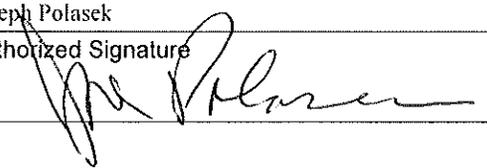
The Bureau of Air Management proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to change its present policy of not collecting fees for significant review work performed when an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats. The Board last authorized a fee increase in 1999.

**Fiscal Summary:**

Revenue increase of \$1,334,307 is projected based on a four year actual average for revenue generated through new source review fees for FY2006-2009 of \$1,647,293.

This proposal does not seek to authorize an increase to Chapter 20 spending authority.

**Long-Range Fiscal Implications**

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 03-22-10

**Fiscal Estimate — 2009 Session**

**Page 2 Assumptions Narrative  
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-09-10

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Assumptions Used in Arriving at Fiscal Estimate – Continued

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**Fiscal Estimate Worksheet — 2009 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-09-10

**Subject**

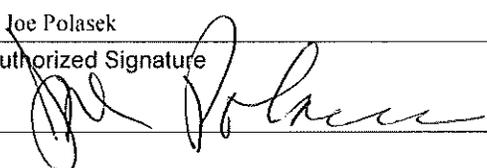
Proposed rule package to increase fees associated with applying for and receiving an air permit for new and modified sources of air pollution.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
 None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$ 0	\$ - 0
(FTE Position Changes)		( FTE )	(- FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$ 0	\$ - 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	<b>Increased Revenue</b>	<b>Decreased Revenue</b>
GPR Taxes		\$ 0	\$ - 0
GPR Earned		0	- 0
FED		0	- 0
PRO/PRS		1,334,307	- 0
SEG/SEG-S		0	- 0
<b>Total State Revenues</b>		\$ 1,334,307	\$ - 0

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 1,334,307	\$ 0

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	03-27-10

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 410.03 (1) (d); to **renumber and amend** NR 410.03 (1) (a) 5. to 7., and (b) (intro.) and 1. to 4., (f); to **amend** NR 410.03 (intro.), (1) (a) (intro.), 1. to 4., and 8. to 10., (bm), and (e), (2), and (4); and to **create** NR 410.03 (am) 1. and 2., and (as) 1. and 2. relating to fees for reviewing applications for construction of air pollution sources and affecting small business.

AM-09-10

**Analysis Prepared by the Department of Natural Resources**

- 1. Statute interpreted:** Sections 227.11(2), 285.11(1) and (6), 285.14(1), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.
- 2. Statutory authority:** Sections 285.11, 285.69(1) and (1d), Wis. Stats.
- 3. Explanation of agency authority:** Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11, Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.69 gives the department the authority to promulgate rules for the payment and collection of reasonable fees for construction permit related activities.
- 4. Related statute or rule:** None.
- 5. Plain language analysis:** The proposal is to increase fees for construction permit related actions to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats.
- 6. Summary of, and comparison with, existing or proposed federal regulation:** Existing federal regulations require, but do not set, fees for review of construction permit applications. Section 110(a)(2)(E)(i) of the Clean Air Act requires that any government who wishes to carry out a State Implementation Plan have "adequate personnel, funding, and authority under State law to do so." Wisconsin's new source review program is an approved part of the State Implementation Plan and therefore requires adequate funding. US EPA last approved a revision to Wisconsin's State Implementation Plan for a fee related provision on March 11, 2008. [73 FR 12893].
- 7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** Other state agencies were contacted to obtain information regarding their air permit programs. While an attempt was made to do a direct comparison, it proves to be difficult since the funding sources and fee structures differ from state to state. No state was able to provide accurate, average costs of different types of construction permit reviews. Based on the review conducted, it appears that fees proposed in this order are similar to those being charged for similar activities in adjacent states having a fee based construction permit program.  
  
Illinois and Indiana have similar programs to Wisconsin where their new source review program is funded mainly by construction permit fees. Illinois last raised their fees in 2004, Indiana in 2007.  
  
Michigan relies on general funding for their new source review program. Communications with Michigan indicate there have been internal proposals in Michigan to establish permit fees to help fund the new source review program, but none have moved forward at this time.  
  
Minnesota currently has a proposal to raise construction permit fees and to structure the fees much like Wisconsin, Illinois, and Indiana. Their proposal would have core activities paid through permit fees. Major reasons given for their proposal to raise fees are that the cost and complexity associated with new source review has increased significantly over the years. Minnesota's current fee structure attempts to base the amount on the level of effort needed to review and issue the air permit.

Iowa funds its new source review program through grants and general funds. There are two local Iowa air pollution control agencies that do charge construction permit fees to fund new source review.

Comparisons for fees common to adjacent states:

	Illinois	Indiana	Minnesota	Wisconsin (current)	Wisconsin (proposed)
Initial Application Fee	\$5,000	No fee	No fee	\$1,350	\$7,500
BACT/LAER Determination	\$5,000	\$4,375	\$4,275	\$2,700	\$4,500
Case by case MACT Determination	\$5,000	No fee	No fee	\$2,700	\$4,500
Detailed Modeling Analysis	No fee	\$4,375	\$4,275	\$3,200	\$4,500
Public Hearing	\$10,000	\$625	No fee	\$150	\$950
Application for Major Modification	\$8,000/\$12,000	\$10,000	No fee	\$8,000	\$12,000

**8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** Data related to revenues generated by new source fees for FY05-FY09, along with projected work load and costs to administer the new source review program, were used to develop and support this order.

Annual new source review program cost. Estimates were made as to the type and number of construction permit reviews to be conducted in the upcoming fiscal year. For each of these, the level of program effort required to complete each type of review was determined. These levels of efforts then were used to estimate the annual cost to administer the construction permit program, taking into account estimated costs for program staff.

Individual fee increases. A 30% increase was applied to fees last revised in 1999 to account for inflation over the last 11 years. An additional increase was also applied to each fee category to better reflect the level of effort associated with the fee related action. Estimates were made as to the number of fee related actions associated with each type of permit review. These estimate were used in conjunction with the proposed fee to determine that the projected future revenue is sufficient to cover the annual program cost.

**9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:** The same information described under number 8. was used to determine the effect on small business. No economic impact report has been requested.

**10. Effect on small business:** The cost to small business to obtain a minor construction permit is proposed to increase in the range of 30 to 75 percent depending on the air regulations applicable to the project. The current cost of a minor construction permit sometimes associated with small business, ranges from \$6,000 to \$8,000.

Many small businesses are able to qualify for coverage under general or registration permits in lieu of needing to obtain a minor construction permit. Currently there is no charge for review and issuance for this type of coverage. New fees are being proposed in this order for reviewing and issuing coverage under a general or registration construction permit, establishing the fee for a general construction permit at \$1,500 and a registration construction permit at \$1,000.

**11. Agency contact person:** Andrew Stewart, [andrew.stewart@wisconsin.com](mailto:andrew.stewart@wisconsin.com), 608-266-6876.

**12. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Andrew Stewart

Department of Natural Resources

Bureau of Air Management  
PO Box 7921  
Madison WI 53707-7921  
Fax: (608) 267-0560

E-mail: [andrew.stewart@wisconsin.gov](mailto:andrew.stewart@wisconsin.gov)

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and the comment submission deadline are to be determined.

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SECTION 1. NR 410.03 (intro.) and (1) (a) (intro.) and 1. to 4. are amended to read:

NR 410.03 (intro.) Any person required under s. 285.60, Stats., to obtain a construction permit for a direct source shall pay an application fee which is the sum of the basic fee under sub. (1) and any additional fees under sub. (2). Any person requesting revision of a direct source construction permit shall pay the basic fee in sub. (4)-(a)-5 (1)(ae). Any person required to obtain a determination of exemption from the department shall pay the basic fee in sub. (1) (b). Any person requesting a waiver to commence construction under s. 285.60 (5m), Stats., or s. NR 406.03 (2) shall pay the basic fee in sub. (1) (bm). Any person required under s. 285.60, Stats., to obtain a construction permit for an indirect source or a determination of an exemption under s. NR 411.04 for an indirect source shall pay the appropriate fee under sub. (3).

(1) (a) (intro.) Each person ~~issued a~~ submitting an application for an individual construction permit for a direct source shall pay the ~~following applicable basic fee: in this paragraph and shall submit a \$7,500 initial fee with the application. The initial fee shall be subtracted from the final amount required under this section and may not be refunded, except as provided in this paragraph. If the department determines that a permit is not required, the individual permit application shall be treated as an application or request under par. (b), and the appropriate fee under par. (b) charged. In the event that an applicant chooses to apply for coverage under either a general or registration construction permit, the individual permit application shall be treated as an application or request under par. (am) or (as) and the appropriate fee under par. (am) or (as) shall be charged. The applicable basic fees are as follows:~~

1. ~~\$2,300~~ \$3,000 if the application is not reviewed under ch. NR 405 or 408, and the application is for a new facility or for an emissions unit to be located at a minor source.

2. ~~\$4,400~~ \$7,500, for a modification not defined as major in s. NR 405.02 (21) or 408.02 (20), when the application is for an emissions unit to be located at a major source as defined in s. NR 407.02 (4).

3. ~~\$8,000~~ \$12,000, for a major modification as defined in s. NR 405.02 (21) or 408.02 (20), unless and the emissions unit is a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

4. ~~\$12,000~~ \$16,000, for a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

SECTION 2. NR 410.03 (1) (a) 5. including the Note, 6., and 7. are renumbered NR 410.03 (1) (ae), (am) (intro.), and (as) (intro.) respectively, and as renumbered are amended to read:

NR 410.03 (1) (ae) ~~\$1,100~~, for Each person requesting a revision of a construction permit when requested by the permit holder or the permit holder's agent shall pay a fee of \$1,500 which shall be submitted with the request, unless the only reason for the revision is to make the source eligible for a registration operation permit.

(am) (intro.) ~~\$2,300~~ Each person applying for coverage under a general construction permit issued to a part 70 for a source under s. NR 406.16: shall pay one of the following fees as appropriate, and shall submit the fee with the application for coverage:

(as) (intro.) ~~\$1,100~~ Each person applying for coverage under a registration construction permit issued to a part 70 for a source under s. NR 406.17: shall pay one of the following fees as appropriate, and shall submit the fee with the application for coverage:

SECTION 3. NR 410.03 (1) (a) 8. to 10. are amended to read:

NR 410.03 (1) (a) 8. ~~\$10,150~~ \$12,000, per air contaminant regulated under a plant-wide applicability limitation, when establishing a plant-wide applicability limitation under s. NR 406.035 (1).

9. ~~\$4,850~~ \$6,000 for the increase of a plant-wide applicability limitation under s. NR 405.18 (11) or 408.11 (11).

10. ~~\$4,850~~ \$6,000 for the distribution of allowable limits upon expiration of a plant-wide applicability limitation under s. NR 406.035 (2).

SECTION 4. NR 410.03 (am) 1. and 2. and (as) 1. and 2. are created to read:

NR 410.03 (am) 1. \$3,000 if the source is a part 70 source.

2. \$1,500 if the source is a non-part 70 source.

(as) 1. \$1,500 if the source is a part 70 source.

2. \$1,000 if the source is a non-part 70 source.

SECTION 5. NR 410.03 (1) (b) (intro.) and 1. to 4. are renumbered to be NR 410.03 (1) (b) 1. (intro.) and a. to d. respectively, and as renumbered are amended to read:

NR 410.03 (1) (b) 1. (intro.) Each person submitting an application for exemption or otherwise requesting a determination of exemption under ch. NR 406 shall pay the following applicable fee which shall be submitted with the application or request:

a. ~~\$800~~ \$1,250, for a determination of exemption under s. NR 406.04 (1) (i).

b. ~~\$1,100~~ \$1,500 for a determination of exemption under s. NR 406.04 (1f) for a modification to a stationary source which is regulated by a plant-wide applicability limitation, except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$2,400.

c. ~~\$4,400~~ \$5,500 for a determination of exemption under s. NR 406.04 (1k), except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$6,500.

d. ~~\$700, for a detailed air quality modeling analysis of the projected air quality impact of a determination of exemption under s. NR 406.04 (1f) or (1k).~~ \$500 for a determination of exemption under s. NR 406.04 not included in subd. 1. a. to c.

SECTION 6. NR 410.03 (1) (bm) is amended to read:

NR 410.03 (1) (bm) Any person requesting a waiver of construction permit requirements under s. 285.60 (5m), Stats., or s. NR 406.03 (2) shall submit under s. 285.69 (1d), Stats., a ~~\$300~~ \$500 fee with the request. The fee is non-refundable.

SECTION 7. NR 410.03(1) (d) is repealed.

SECTION 8. NR 410.03 (1) (e) is amended to read:

NR 410.03 (1) (e) When a construction permit application is received for a source where the basic emissions unit, which is not a portable source, is to be installed at one specified facility and, in the same application, a request is also made to issue construction permits to allow installation of the same basic emissions unit at other facilities at different locations and all the facilities for which construction permits are requested are under common ownership or control, the permit applicant shall pay the basic fee specified in par. (a) plus the additional fees in sub. (2). The fee for each additional construction permit at different locations shall be ~~\$400~~ \$1,000 each, plus the fees in sub. (2) except when the action specified in sub. (2) has been completed for one location and a separate action as set forth in sub. (2) is not required for each additional permit at each different location. When an action covered under sub. (2) must be completed for applications at more than one location, the fee in sub. (2) shall be charged for each time the action is completed.

SECTION 9. NR 410.03(1) (f) is renumbered to be NR 410.03 (1) (b) 2. and as renumbered is amended to read:

NR 410.03 (1) (b) 2. Any person submitting a claim for a construction permit exemption under s. NR 406.04 (1q) shall pay a fee of ~~\$800~~ \$1,250 which shall be submitted with the claim.

SECTION 10. NR 410.03 (2) and (4) are amended to read:

NR 410.03 (2) ADDITIONAL DIRECT SOURCE FEES. Each person ~~issued a~~ submitting an application for an individual construction permit for a direct source shall pay all the following additional fees which apply:

(a) ~~\$400~~ \$800 per basic emissions unit if review and analysis of 2 or more basic emissions units is required.

(b) ~~\$1,350~~ \$2,500, if an analysis of alternatives under s. NR 408.08 (2) is required.

(c) ~~\$3,350~~ \$5,000, if an emission offset under ch. NR 408 or the determination of a net emissions increase under ch. NR 405 is required.

(d) ~~\$2,700~~ \$4,500, for each case-by-case determination of maximum achievable control technology (MACT), best available control technology (BACT) or lowest achievable emission rate (LAER). This does not apply to BACT or LAER determinations made under ch. NR 445.

(e) ~~\$700~~ \$1,000, for a minor source or minor modification to a major source whose projected air quality impact requires a detailed air quality modeling analysis.

(f) ~~\$3,200~~ \$4,500, for any source, other than a minor source or minor modification to a major source, whose projected air quality impact requires a detailed air quality modeling analysis.

(g) ~~\$650~~ \$1,000, if the source is subject to an emission limitation under chs. NR 446 to 469, or if the permit establishes an emission limit for a hazardous air contaminant listed in Table A, B or C of s. NR 445.07.

(h) If the construction permit requires emission testing, ~~\$1,350~~ \$2,500 for the first air contaminant tested and ~~\$950~~ \$1,250 for each additional air contaminant tested up to a maximum of ~~\$4,200~~ \$6,000. If the department later finds that some or all of the tests are not required, the corresponding fees shall be refunded.

(i) ~~\$1,050~~ \$1,500, if an environmental assessment under ch. NR 150 is required.

(j) ~~\$950~~ \$1,500, if a public hearing is held at the request of the applicant or the applicant's agent.

(k) ~~\$400~~ \$600 for each basic emissions unit at a source which requires an emission limit determination under s. NR 424.03 (2) (c).

(L) ~~\$1,350~~, \$2,000 for each case-by-case determination of best available control technology (BACT) or lowest achievable emission rate (LAER) required under ch. NR 445. If the department makes a single BACT or LAER determination addressing the control of multiple air contaminants, the source shall be billed for only one BACT or LAER determination under this paragraph.

(m) ~~\$2,150~~ \$3,500, if specific permit conditions limiting the potential to emit are required to make the source a minor source or to make the modification a minor modification.

(n) ~~\$2,650~~ \$3,500, for a medical waste incinerator requiring review of a needs and siting analysis under s. 285.63 (10), Stats.

(o) If the applicant requests, in writing, that the permit be issued in a shorter time interval than the

time interval allowed under s. 285.61, Stats., and the department is able to comply with the request:

1. ~~\$2,650~~ \$5,000, for an application not subject to review under ch. NR 405 or 408 if the permit is issued within 50 days of receipt of a complete application.

2. ~~\$4,000~~ \$7,500, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 60 days of receipt of a complete application.

3. ~~\$2,650~~ \$4,000, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 61 to 90 days of receipt of a complete application.

(4) PAYMENT. The department shall bill the applicant for the construction permit application fee when the permit a final decision is issued or upon a determination that no further action will be taken on the application. For a determination of no further action, fees shall be based on the amount due with the application plus an amount for work completed under subs. (1) to (3), except that the fee for a small business, as defined in s 277.114, Stats., shall only be the initial amount due with the application. The balance due for the application fee shall be paid within 30 days of the date of the billing statement.

SECTION 11. 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 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)