

SUBJECT:

Request Board adoption of Order AM-06-10, proposed rules affecting NR 410.05 pertaining to the increase of asbestos inspection fees and the addition of fees for review of revised notifications and inspection of fire training burns.

FOR: AUGUST, 2010 BOARD MEETING

TO BE PRESENTED BY: Bill Baumann - Compliance, Enforcement, and Emission Inventory Section Chief

SUMMARY:

Revision of Chapter NR 410.05 increases asbestos inspection fees and adds new fees related to review of revised asbestos notifications and fees for notifications of residential fire training burns. In the past, Air Management asbestos regulatory activities have been funded in part by asbestos inspection and review fees, and in part by funds from the Air Management federal 105 grant (which also funds a variety of other Air Management program activities). The 105 grant is no longer able to support all these activities. The increase in asbestos fees will enable the asbestos program to be self-sufficient while maintaining the current level of activities and services.

The inspection fee increases and the new notification revision and fire training burn fees were part of Wisconsin 2009 Act 28 (the 2009-2011 biennial budget bill) and have been incorporated in s. 285.69(3), Stats. The proposed rule language is consistent with the State Statute.

Interested groups or parties include public health agencies, the WI Department of Health Services, the Wisconsin Occupational Health Laboratory, building owners, demolition and asbestos abatement contractors, environmental consultants, fire departments and the public.

Public comment was generated through an e-mail notification about the proposed rule change sent to a distribution list of asbestos abatement contractors, two public hearings (Madison and Wausau), an informal discussion held with attendees at the Madison hearing after the close of the formal hearing, and the opportunity to provide comments via the Internet. The comments received, and the resulting changes to the proposed rule are discussed within the background memo for this Board Order.

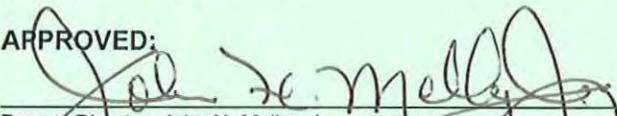
RECOMMENDATION: Adoption of Board Order AM-06-10.

LIST OF ATTACHED MATERIALS:

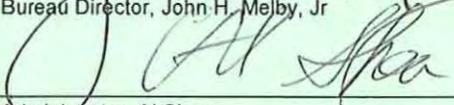
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

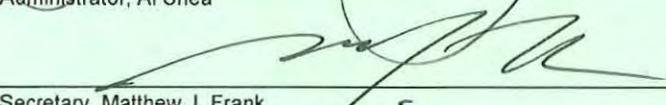
APPROVED:


Bureau Director, John H. Melby, Jr

6/28/2010
Date


Administrator, Al Shea

6/30/10
Date


Secretary, Matthew J. Frank

7-19-10
Date

cc: Laurie Ross - AD/8
Mike Scott- LS/8

Linda Haddix - LS/8
R. Eckdale - AM/7

DATE: July 12, 2010

FILE REF: 4533

TO: Natural Resources Board Members

FROM: Matthew Frank, Secretary 

SUBJECT: Background Memo for adoption of Order AM-06-10, pertaining to the revision of ch. NR 410.05, Wis. Adm. Code for the increase of asbestos inspection fees and the addition of fees for review of revised notifications and inspection of fire training burns.

1. Why is this rule being proposed?

The revision of s. NR 410.05 is in response to Wisconsin 2009 Act 28 (the 2009-2010 biennial budget bill), enacted in July of 2009 and incorporated into s. 285.69(3), Stats. Wisconsin 2009 Act 28 increased the fee caps for asbestos inspection fees, and added two addition fee categories: 1) review of revisions to asbestos notifications, and 2) inspection fees related to residential fire training burns.

Air Management asbestos program activities have in the past been funded by a combination of asbestos program fees and funding from the Air Management Program federal 105 grant. The federal 105 grant also funds a variety of other EPA mandated Air Management Program activities such as SIP development, ambient air quality monitoring, and so on. Due to declining grant amounts, the 105 grant can no longer support all of the activities previously funded. The fee increases contained in the proposed NR 410.05 revisions will enable the Air Program to maintain the current levels of service and activities, funded completely by asbestos program fees. It is important to continue asbestos regulation activities due to adverse public health effects that result from exposure to asbestos. There is no "safe" asbestos exposure level; any exposure may lead to diseases such as asbestosis, lung cancer, mesothelioma, and other forms of cancer.

2. Summary of the Rule

Section NR 410.05 contains standards for charging fees in relation to the asbestos notification requirements of ch. NR 447. Inspection fees are based on the size of project and amount of asbestos involved. The revised asbestos inspection fees proposed in the rule range from \$135 (increase of \$60 over the current fee) for small projects defined as less than 160 square feet or 260 linear feet of asbestos containing material, to \$1200 (increase of \$575 over the current fee) for extra large projects defined as more than 5000 square and linear combined feet of asbestos containing material. The proposed rule also adds a new \$100 fee for review of updated asbestos notifications, and provides for charging an additional fee, equal to the inspection fee, for projects that are begun prior to submitting the required notification to the department. Historically, over 60% of projects fall into the small category, while just over 5% of projects fall into the extra large category.

3. How does this proposal affect existing policy?

This proposal does not affect existing policy.

4. Hearing Synopsis

Two public hearings were held on the proposed rule changes, one in Madison on June 3, and one in Wausau on June 4. Five people attended the Madison hearing, two of whom spoke on the record. There were no attendees at the Wausau hearing. One comment on the proposed fee changes was received via the Department of Administration Online comment system. One additional comment was received via e-mail.

Three of the public comments were from asbestos abatement contractors who felt that the proposed fee increases were too large. The contractors typically pay the asbestos notification fees for their clients prior to the initiation of an abatement project, and “carry” those fees until being compensated for their work at the conclusion of the project. The proposed fee increases result in an increase in costs temporarily carried by the contractors. To address this concern, contractors can include language within contracts for abatement projects that would require payment of the notification fees as they are incurred by the contractors. DNR Asbestos Program staff conduct an asbestos seminar for contractors and other interested parties in December of each year, and staff plan to include information on how to address up-front payment of notification fees within abatement project contracts as part of the seminar this December to assist contractors in this regard.

The fourth comment received was in support of the proposed fee increase, and commended the DNR Asbestos Program staff for their effectiveness, and for the day to day outreach and education activities undertaken by those staff.

An informal discussion was held with the attendees of the Madison hearing after the close of the hearing. The discussions pointed to the need to clarify that the proposed new fee for updated project notifications was intended to only apply where amounts of asbestos affected in a project changed by more than 20%. That clarification was added to the rule language. Other alternative fee mechanisms (for example, charging notification fees as a percentage of overall project costs) were also discussed. However, such a change could not be implemented by rule alone, additional changes to the underlying statutory fee authority would be required as well.

Finally, a comment was received from the Wisconsin Legislative Rules Clearinghouse regarding clarity of one portion of the rule language. That requested change was included in the rule.

5. Information on environmental analysis

Under ch. NR 150, Wis. Adm. Code, environmental analysis is not needed because this is considered a Type III action. Type III actions typically do not have the potential to cause significant environmental effects, do not significantly affect energy use, nor involve unresolved conflicts in the use of available resources.

6. Final Regulatory Flexibility Analysis

Does the proposed rule have a significant economic impact on a substantial number of small businesses?

No. The proposed rule changes do not increase any regulatory or reporting requirements on small businesses. Asbestos notification fees that are proposed to be increased by this rule are ultimately paid by the owners of the structures that are being renovated or demolished. Some of those owners are small businesses. However, the increased fee amounts are a very small percentage of the overall cost of the

related renovation or demolition projects. No comments were received from building owners concerning the proposed increased fees. Three comments were raised during the public comment period by asbestos abatement contractors, who were likely small businesses. It is quite common for abatement contractors to initially pay the notification fees for a project, and then be reimbursed once they are paid for their work. The issue is the notification fee cost that is “carried” by the contractors during the course of the abatement contract. We believe this can be mitigated by structuring abatement project contracts to provide for payment of notification fees by the project owners as those costs are incurred. See Section 5, Hearing Synopsis, above.

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 NR 410.05

Subject

Proposed rules affecting NR 410.05(3) and (4) pertaining to increased and new fees related to asbestos notifications and inspections.

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
20.370 2 (bi)

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

The 2009 Wisconsin Act 28, the 2009-11 Budget Bill, increased the fees that support asbestos activities. This rule package increases the rules in NR 410.05 to be the same as found in the budget bill.

Fiscal Estimate:

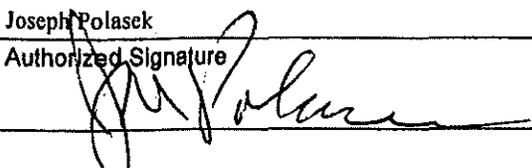
The 2009-11 Budget Bill increased asbestos inspection fees to: \$135 for small, defined as 160 square feet to 260 linear feet; \$350 for medium, defined as involving greater than 160 square feet or 260 linear feet but less than 1,000 combined feet; \$575 for large, defined as greater than or equal to 1,000 combined feet but less than 5,000 combined feet, and \$1,200 for extra large, defined as greater than 5,000 combined feet. These new fees are approximately a 60% increase from the current fees.

The bill also created a new \$100 fee for notification revisions and a new \$100 fee for community fire training burns. Finally, the bill provided supporting statutory language for the above-mentioned fees and for the Department to charge double inspection fees to a project for which a notice of an asbestos renovation or demolition activity was not provided, as required by the Department.

It is projected that the increased fees will generate \$246,400 annually.

Long-Range Fiscal Implications

The current economic downturn will likely result in less building and renovation activity in the short term. This will likely translate into decreased revenue from notification and inspection fees in the short-term.

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

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 NR410.05

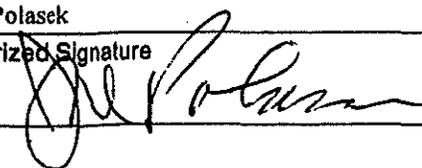
Subject
 Proposed rules affecting NR 410.05(3) and (4) pertaining to increased and new fees related to asbestos notifications and inspections.

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
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		246,400	-
SEG/SEG-S			-
Total State Revenues		\$ 246,400	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$	\$
Net Change in Revenues	\$ 246,400	\$

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

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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)