

## **ISSUE: Updates and clarifications to Wis. Admin. Code ch. NR 749 regarding fees**

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**Rule Subgroup:** Other - Fees

### **BACKGROUND**

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Wis. Admin. Code ch. NR 749 establishes fees to offset the department's costs of providing assistance under Wis. Stat. ch. 292. The cost of providing the services established in ch. NR 749 are subject to changes that occur over time, such as evolving practices and cost inflation; therefore, this chapter must be regularly updated to stay consistent and current. The department is proposing to revise this chapter to ensure that it is current and is able to offset the costs of providing this assistance.

### **PROPOSED CHANGES**

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Rule revisions may be proposed within ch. NR 749 and other affected chapters to accomplish the following goals:

*Clarify closure fees for deficient closure requests.*

Wis. Admin. Code § NR 749.04(1), Table 1(c)(11), establishes the fee for case closure actions. On limited occasions, the department receives a closure submittal that lacks in completeness (see Wis. Admin. Code § NR 726.05(5)) to the extent that it cannot be meaningfully processed by program staff (for example, the site has not been sufficiently investigated and a great deal more work needs to be accomplished and the closure request must be redone). The program may propose modifying language within Wis. Admin. Code chs. NR 749 and NR 726 as needed to clarify that the department may apply closure fees that are submitted for incomplete closure requests to other submittals that are required by code. Language within the note to Wis. Admin. Code § NR 726.05(5) regarding fees would be incorporated into rule. This revision would describe more accurately the technical assistance tasks that require staff time and resources.

*Clarify the fees applicable to contracts.*

Wis. Admin. Code § NR 749.04(1), Table 1(a) clarifies the fees applicable to several specific types of agreements authorized under Wis. Stat. ch. 292; however, fees are not established for the contracts and agreements that are authorized under Wis. Stat. § 292.31. The program may propose revising language within Table 1 to clarify the fees applicable to these types of contracts and agreements.

*Clarify the rate options for various environmental agreements.*

Wis. Admin. Code § NR 749.04(1), Table 1(a) clarifies the fees applicable to several specific types of agreements authorized under Wis. Stat. ch. 292 and Wis. Admin. Code § NR 749.05 further establishes that persons subject to fees for negotiated agreements may agree to pay an hourly fee for project oversight. The program may propose rule language that clarifies applicable activities, rates, deposit methods, and payment methods for these fees, and may also clarify that hourly fees may be applied for other types of agreements.

*Clarify fees for enforcement submittals.*

Per Wis. Stat. § 292.94, the department may assess and collect fees from a person who is subject to an order or other enforcement action. Wis. Admin. Code § NR 749.04(1), Table 1(a)(4), and Wis. Admin. Code § NR 728.06 clarify the fees applicable to enforcement actions, stating that persons subject to such orders, agreements, or processes shall pay fees for each service requested or required by the department. The program may propose rule language to further clarify that fees applicable to enforcement actions shall be assessed beginning with those submittals identified in the enforcement conference summary until enforcement action is formally resolved by the state. The program may propose rule revisions to include enforcement related actions in Wis. Admin. Code § NR 749.05, the section relating to alternative fees.

Comments on this white paper may be sent to [DNRRNR700input@wisconsin.gov](mailto:DNRRNR700input@wisconsin.gov).

*Update fees for agreements, letters, and technical assistance requests to be in line with inflation and consider consolidation of fees for department database.*

Wis. Admin. Code § NR 749.04(1), Table 1(d), establishes rates for database fees. Input from persons subject to these fees indicates that they are perceived as duplicative and confusing. The program may propose rule language that consolidates and streamlines these fees while creating a 3% or similar increase to remaining fees, such that the remaining fees for technical assistance and other request incorporate the database fees required under Wis. Stat. § 292.12(3) without requiring multiple charges to persons for one action. The fee increase will also partially account for inflation occurring since the last set of rule revisions in 2013. The program will consider creating a formula that allows for the adjustment of fees on an annual or biannual basis.

*Include interim action-related fees pursuant to 2015 Wis. Act 204 changes regarding interim action approvals.*

Following the passage of 2015 Wis. Act 204, the department may now require continuing obligations as conditions of interim action approvals, and the department must include any interim action that includes the use of an engineering control on the department database. The program may propose rule language to clarify that a technical assistance fee for the review of interim action reports (at Wis. Admin. Code § NR 749.04(1), Table 1(c)) is required if department review is requested and may propose other language needed within Wis. Admin. Code ch. NR 749 to require a continuing obligation with database fee and implement statutory changes related to interim actions.

*Electronic payment.*

Revisions may be proposed within Wis. Admin. Code ch. NR 749 and elsewhere in code to provide for the electronic payment of fees and to clarify that any processing charges incurred by the department (e.g., credit card fees) may be passed on to the fee payer.

In addition to the goals listed above, other revisions may be proposed.

#### **AFFECTED RULE CHAPTERS**

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Wis. Admin. Code ch. NR 749

#### **OTHER RELATED RULE REVISIONS**

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Not applicable.

#### **COMPARABLE STATE OR FEDERAL POLICIES**

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Not applicable.

#### **DISCUSSION OF POTENTIAL ECONOMIC IMPACTS**

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Adding fees for Wis. Stat. § 292.31 agreements may have an economic impact. Based on the number of these agreements executed per year, this impact is not likely to exceed \$3,000 per year in total; impact borne by any single person is not likely to exceed \$1,500.

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Raising the amount of the fees within Wis. Admin. Code ch. NR 749 to adjust to inflation may have an economic impact. The impact would range from about \$10 to \$30 per request and the impact on any single site is not likely to exceed \$200.

## **COMMENTS**

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The remaining rule changes that are needed due to Act 204 statutory changes related to continuing obligations for interim actions will be discussed as part of future rule items.