



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #565

Air Permit System Streamlining and Air Operation Permit Fees and Staff (DNR -- Air, Waste and Contaminated Land)

[LFB 2005-07 Budget Summary: Page 378, #1 and #2]

CURRENT LAW

An air construction (new source review) permit allows a company to build, initially operate and test the air pollution source. The construction permit expires after 18 months and can have one 18-month extension under certain instances. The DNR Air Management program receives construction permit fee revenue from new, modified, reconstructed, relocated or replaced air pollutant sources that are required to obtain an air construction permit before beginning construction. In 2004-05, DNR is authorized \$1,737,400 PR with 19.5 PR positions from new source construction permit fees. In 2003-04, DNR collected \$2.6 million in construction permit fees.

The same sources subject to construction permit requirements are required to file an operation permit application at the same time they file a construction permit application. DNR issues federal operation permits (FOPs) for major sources (major sources have the potential to emit over a certain threshold amount of air pollutants) under the operation permit program generally known as the federal Title V program, after the subchapter of U.S. Environmental Protection Agency (EPA) regulations. DNR also issues federally-enforceable state operating permits (FESOPs) for synthetic minor sources (an option for a major source that wants to reduce emissions enough to become a minor source) and state operation permits (SOPs) for minor sources not subject to federal permit requirements. The owner or operator is required to have a complete operation permit for the source of air pollutants on file with DNR by the time the construction permit expires in order to continue operating the source. DNR collects air emission tonnage fees of \$35.71 per ton for air emissions of at least five tons, up to 5,000 tons per pollutant per facility. In 2003-04, DNR assessed \$9,740,500 for 272,766 billable tons of emissions. In 2003-04, DNR collected \$10,582,300 in emission tonnage fees. (The amount

collected is larger than the amount assessed because it includes some fees assessed in the prior billing year and collected in 2003-04.) In 2004-05, DNR is appropriated \$9,797,000 PR with 100.25 PR positions from air emission tonnage fees. In addition, Commerce is appropriated \$196,000 PR with 2.0 PR positions from the emission tonnage fees for administration of the small business clean air assistance program.

2003 Wisconsin Act 118 required DNR to develop a process for issuing general permits authorizing construction or operation, or both, for similar stationary sources. DNR must promulgate rules that include criteria for identifying categories of sources the owners or operators of which may elect to obtain general permits and general requirements applicable to sources that qualify for general permits. DNR is required to establish registration permits that authorize construction or operation, or both, for stationary sources with low, actual or potential emissions. DNR is required to exempt minor sources from construction and operation permits, if the emissions from the sources do not present a significant hazard to public health, safety, welfare, or to the environment. DNR is in the process of promulgating administrative rules to implement Act 118.

GOVERNOR

Provide \$756,100 PR in 2005-06 and \$915,900 PR in 2006-07 in ongoing funding from air construction permit fee revenue for several air permit database system and permit issuance activities, including: (a) \$259,600 in 2005-06 and \$517,200 beginning in 2006-07 to pay private contractors for information technology development and maintenance to redesign the existing air management permit system; (b) \$225,300 in 2005-06 and \$263,100 in 2006-07 to pay for DNR computer programming activities and database development and support; and (c) \$271,200 in 2005-06 and \$135,600 in 2006-07 to pay four private contractors to issue operation and construction permits in 2005-06 and for two on an ongoing basis beginning in 2006-07.

Transfer \$1,626,700 PR in 2006-07 from the existing air operation permit program revenue appropriation (air emissions tonnage fees) to a new state permit sources annual appropriation. Create several new fees for types of operation permits created in 2003 Wisconsin Act 118 for air pollution stationary sources that are required to obtain an operation permit under state law but not under the federal Clean Air Act. The changes to the fee structure for operation permits would be effective January 1, 2006. The bill would not change fees applicable to stationary sources that are required to obtain an operation permit or construction permit under the federal Clean Air Act. The administration and DNR originally estimated that the air program fee changes under the bill would generate an annual fee increase of approximately \$1,286,700. They also estimated that fee reductions resulting from a proposed administrative rule, that would contain criteria for general operation permits and registration operation permits, would be \$1,174,500 for an annual net fee increase of \$112,200. The reestimated fiscal effect of the fee changes is discussed in a later section of this paper.

The changes under the bill, and the revenue effect of each, include:

a. Create a program revenue "state permit sources" appropriation for purposes related to air pollution stationary sources that are required to obtain an operation permit under state law, but not under the federal Clean Air Act. Deposit the new fees described in the following sections into the appropriation.

b. Provide \$1,626,700 PR in expenditure authority beginning in 2006-07 to reflect anticipated revenues for the state permit sources appropriation. Delete the same amount from the existing air operation permit appropriation (air emissions tonnage fees). (A technical correction would be required to transfer the 14.0 associated positions the administration intended to transfer from the existing air operation permit appropriation to the new state permit sources appropriation.)

c. Specify that the new fees collected under the bill and deposited in the state permit sources appropriation must be used for the following costs as related to stationary sources for which an operation permit is required under state law but not under the federal Clean Air Act, including the costs of: (1) reviewing and acting on applications for state operation permits; (2) implementing and enforcing operation permits except for court costs or other costs associated with an enforcement action; (3) monitoring emissions and ambient air quality; (4) preparing rules and materials to assist persons who are subject to the state operation permit program; (5) monitoring ambient air quality; (6) preparing and maintaining emission inventories; (7) any other direct and indirect costs of the state operation permit program; and (8) any other activities related to stationary sources of air contaminants.

d. Create a \$300 fee that would be paid by an owner or operator of a stationary source that requests a waiver of the requirement to obtain a construction permit prior to beginning construction. Deposit the fees in the existing air construction permit appropriation.

e. Create an annual \$300 fee to be deposited in the state permit sources appropriation that would be paid by an owner or operator of a stationary source that is exempt from the requirement to obtain an air operation permit, if the stationary source had actual emissions of a regulated pollutant in excess of three tons in the preceding year. Deposit the fees in the new state permit sources appropriation.

f. Create an annual \$1,500 registration operation permit fee to be deposited in the state permit sources appropriation to be paid by the owner or operator of an entire facility for which an operation permit is required under state statute, but not under the federal Clean Air Act, if the entire facility was covered by a registration operation permit in the preceding year. "Entire facility" would mean all stationary sources that are under the control of one person or under the control of persons who are under common control and that are located on contiguous properties.

g. Create an annual \$1,500 general operation permit fee to be deposited in the state permit sources appropriation to be paid by the owner or operator of an entire facility for which an operation permit is required under state statute but not under the federal Clean Air Act if the entire facility was covered by a general operation permit in the preceding year.

h. Create an annual \$3,000 fee to be deposited in the state permit sources appropriation to be paid by the owner or operator of an entire facility for which a state operation permit is required (but not a federal permit), if the entire facility was not covered by a registration operation permit or a general operation permit in the preceding year.

i. Specify that the current annual emission tonnage fees for persons required to obtain air operation permits would be for persons required to have air operation permits "under federal law." Under the bill, persons who are not required to obtain operation permits under federal law would no longer have to pay emission tonnage fees but would instead pay one of the state operation permit fees described in the preceding sections.

DISCUSSION POINTS

Reasons for Budget Provisions

1. The air program changes in the bill are intended to respond to, and implement provisions in: (a) a February, 2004, Legislative Audit Bureau evaluation of air management programs; (b) a U.S. Environmental Protection Agency notice of deficiency issued March 4, 2004, related to Wisconsin's air program; and (c) 2003 Wisconsin Act 118, effective February, 2004, which created several provisions related to registration and general operation permits.

2. The EPA Notice of Deficiency (NOD) for the federal Title V air operating permit program in Wisconsin stated that EPA determined the state's program does not comply with the Clean Air Act. Wisconsin must fully address the deficiencies identified by EPA by September 4, 2005 (18 months after the NOD was published) or face sanctions that include a withholding of certain federal highway aids and placing more stringent requirements on industrial sources in the southeastern Wisconsin ozone nonattainment area. If Wisconsin does not correct the deficiencies by March 4, 2006, (24 months after the NOD was published) EPA will have to withdraw federal approval for Wisconsin to administer the operating permit program and assume federal responsibility for administering the program in the state. EPA has not issued an NOD for any other Midwestern state programs.

3. EPA's NOD identified several deficiencies in the Wisconsin program. The provisions in the bill are intended to address the following EPA findings: (a) Wisconsin has failed to demonstrate that its Title V operating permit program requires owners or operators of federally-regulated sources to pay fees that are sufficient to cover the costs of the state's Title V program; (b) Wisconsin is not adequately ensuring that its Title V program funds are used solely for Title V permit program costs; and (c) Wisconsin has not issued operating permits to all of the required regulated sources within the time required by the Clean Air Act. DNR is currently working with EPA to address other programmatic issues included in the NOD. EPA sent a follow-up letter to DNR in August, 2004, that included a requirement that DNR finish issuing FESOP permits by March 4, 2006. DNR plans to complete these permits by December 31, 2005.

4. The February, 2004, Legislative Audit Bureau evaluation of the air management

program made several recommendations that are intended to be addressed in the bill, including that DNR should: (a) assign additional permit engineers from other regions to issue operation permits in the Southeast region to help eliminate the backlog; (b) evaluate the potential of implementing permit streamlining measures; and (c) improve its data systems. (The LAB evaluation also included other recommendations related to processes and reporting.)

Information Technology Proposal

5. DNR submitted a s. 16.505/.515 request to DOA in August, 2004, for \$756,100 in 2004-05 to begin six years of funding for contractors and computer systems to develop an air permit processing and data system, DNR staff to assist with the development project, and contractors to issue permits. DOA did not forward the s. 16.505/.515 request to the Joint Committee on Finance. Instead, the budget bill incorporates DNR's request as a recommendation to begin funding the project in 2005-06.

6. In June, 2003, DNR began an Air Permit Improvement Initiative intended to streamline the air permit issuance system and integrate data systems that would serve the entire Air Management program. The bill would provide \$259,600 in 2005-06 and \$517,200 annually beginning in 2006-07 for the first two years of several master leases over a six-year period that would cost a total of approximately \$2,129,000 (including interest) to pay private contractors for information technology development and maintenance. The project would include redesign of the existing air management permit system to provide access to information for regulated facilities on the Internet, and purchase of computer hardware and software. Table 1 shows the cost components, contract amount, year of work, and the master lease cost by fiscal year.

TABLE 1

Air Permit Streamlining - Master Leases for Information Technology Contracts, Hardware and Software

	Contract Amount	Year of Work	Master Lease Cost by Fiscal Year					
			2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Information Technology								
(IT) Contractor - Development	\$606,600	2005-06	\$202,200	\$202,200	\$202,200			
Hardware and Software	135,000	2005-06	45,000	45,000	45,000			
IT Contractor - Development	686,000	2006-07		228,700	228,700	\$228,600		
Hardware and Software	50,000	2006-07		16,700	16,700	16,700		
IT Contractor - Development	450,000	2007-08			150,000	150,000	\$150,000	
IT Contractor - Post Development and Maintenance	<u>100,000</u>	2008-09				<u>33,300</u>	<u>33,300</u>	<u>\$33,300</u>
Subtotal	\$2,027,600		\$247,200	\$492,600	\$642,600	\$428,600	\$183,300	\$33,300
Plus Interest 5%	<u>101,400</u>		<u>12,400</u>	<u>24,600</u>	<u>32,100</u>	<u>21,400</u>	<u>9,200</u>	<u>1,700</u>
Total	\$2,129,000		\$259,600	\$517,200	\$674,700	\$450,000	\$192,500	\$35,000

7. DNR indicates that the contractors would focus on five information technology

projects. First, the project would integrate several separate databases into one large database that can be used to access all of the data for multiple purposes in the air permit system. Old, obsolete and duplicative data would be eliminated, common data fields would be identified, and the system would be made consistent with current state information technology standards. Definitions for data collected in the system would be made consistent, data sets would be synchronized, and procedures would be developed to transfer data from old and inconsistent systems to a new integrated database system. Second, an electronic permit application would be developed and made available on the Internet. The permit application system would track the permit status, and store application data in the integrated database. Third, the project would automate as much of the permit issuance documents and data as possible, and would allow permit applicants to review the types of information needed to process a permit. Fourth, a compliance reporting system would be developed that would allow permittees to make electronic submittal of required compliance reports. Fifth, the air emission inventory and combined reporting system would be upgraded from an old system to allow for electronic transfer of emission data from the regulated facility to DNR.

8. The information technology estimated contract costs include \$606,600 in 2005-06 (master lease of \$202,200 per year beginning in 2005-06 plus interest for three years) for approximately 7,583 hours at \$80 per hour for computer program and systems development for the first four activities described above, and \$686,000 in 2006-07 (master lease of \$228,700 per year plus interest for three years) for 8,575 hours for the second through fifth activity. The master leases would also pay for computer hardware, software, and software licenses to be used in the new system, and would include contracts of \$135,000 in 2005-06 (\$45,000 per year beginning in 2005-06 plus interest for three years) and \$50,000 in 2006-07 (\$16,700 per year beginning in 2006-07 plus interest for three years).

9. The bill would also provide \$225,300 in 2005-06 and \$263,100 in 2006-07 to pay for two types of DNR information technology activities related to the permit streamlining project. First, \$168,600 would be allocated in each year to support two existing DNR Bureau of Technology staff to manage the contract with the private contractor described in the previous paragraph, ensure that permit system development stays in conformance with DNR and DOA information technology standards, perform systems development, and coordinate establishing the permit system links to the DNR web site. Second, \$56,700 in 2005-06 and \$94,500 in 2006-07 would be provided for limited-term-employees (LTEs) in the Bureau of Air Management to provide database development and support, data cleanup, and data entry of permit data into the new system. The funds would pay for approximately 3,120 hours of LTE time in 2005-06 (1.5 full-time equivalent) and 5,200 hours of LTE time in 2006-07 (2.5 FTE).

10. DNR submitted a required 90-day response to EPA's NOD in June, 2004, which described the Department's plan of action to address the issues raised by the NOD. DNR described a workload analysis that was conducted to determine the staff resources that would be required to perform Wisconsin's federal Title V air program activities in 2004-05 through 2007-08. In its submittal to EPA, DNR stated that time and money spent on permit streamlining and information technology improvements would be recouped through efficiencies gained in subsequent years. DNR also stated that its current staffing levels would be sufficient to accomplish Title V activities

over the four years, and would rely significantly on permit streamlining and information technology improvements in order to avoid the need for additional state staff.

11. On April 8, 2005, Acting Regional Administrator Bharat Mathur of EPA's Region 5 sent a letter to DNR Secretary Scott Hassett, in which he stated that EPA supports the Governor's air information technology and permit fee restructuring proposal. He wrote, "USEPA is very concerned that DNR will not be able to resolve certain aspects of the March 4, 2004, Clean Air Act Notice of Deficiency if these elements of the proposed budget are not approved. In addition, the State is required to demonstrate that its Title V fees collected are sufficient to cover the costs of the program. Given the resources available, we recognize the State's interest in utilizing the proposed streamlining effort to address this sufficiency issue and demonstrate adequacy over the longer term. USEPA supports the proposed information technology provision necessary for this streamlining effort as a mechanism to resolve this aspect of the NOD."

12. The bill would fund the request from air construction new source review permit fee revenues, and would provide the funding on an ongoing basis. The construction permit appropriation had a July 1, 2004, balance of \$4,077,800. Revenues have exceeded spending authority during the past five years. DNR indicates that this is the result of: (a) a higher volume of application submittals than were anticipated during a fee adjustment analysis completed in 1997-98; (b) there has been a recent increase in new major source permitting activity primarily related to state electric energy reliability issues and EPA enforcement activity; and (c) from 1999-00 through 2004-05, the average annual number of new major source permit reviews tripled from an average of five per year to 15, and is expected to stabilize at an average of at least 10 per year through 2005-07. The current fee schedule went into effect in January, 2000. DNR indicates that the average new major source permit fee is \$40,000 and the average new minor source permit fee is \$8,000.

13. It is expected that there will be a sufficient balance in the construction permit appropriation to fund the permit streamlining information technology project during the 2005-07 biennium. This is shown in Table 2. The ongoing revenues deposited in the appropriation will be decreased after implementation of the proposed administrative rule being drafted by DNR. Thus, the ongoing use of the construction permit appropriation for the permit streamlining information technology project may need to be reviewed as part of 2007-09 budget deliberations. The Committee may wish to consider providing the funding on a one-time basis during the 2005-07 biennium, and review the amount of expenditures and appropriate funding source in the 2007-09 budget. The appropriation account balance and its relation to the proposed rule and the operation fee changes in the bill are discussed further in a later section of this paper.

14. Alternatively, the first four components of work identified for completion in 2005-07 in Table 1 could be fully funded from the air construction permit appropriation in the 2005-07 biennium. This would avoid the need for master leases and the associated \$101,000 in interest costs. Under this alternative an additional \$482,000 in 2005-06 and \$218,800 in 2006-07 would be required and the ending appropriation balance would be estimated at \$1.7 million. The amount and source of funding for the final two components could be addressed in the 2007-09 budget.

TABLE 2**Air Construction (New Source Review) Permit Fees -- Revenues and Expenditures
(Federal Construction Permits as of 2006-07 Under AB 100)**

	2003-04 Actual	2004-05 Estimated	2005-06 Estimated	2006-07 Estimated
Opening Balance	\$3,434,800	\$4,077,800	\$4,515,000	\$4,053,900
Revenues				
Construction Permit Fees	\$2,570,900	\$2,200,000	\$2,200,000	\$2,200,000
Revenue Reduction under Proposed Rules	<u>0</u>	<u>0</u>	<u>0</u>	<u>-1,021,600</u>
Total Revenue	2,570,900	2,200,000	2,200,000	1,178,400
 Total Revenue Available	 \$6,005,700	 \$6,277,800	 \$6,715,000	 \$5,232,300
Expenditures and Reserves				
Expenditures	\$1,765,100	\$1,643,600	\$2,608,100	\$2,767,900
Reserves and Prior Year Encumbrances	<u>0</u>	<u>119,200</u>	<u>53,000</u>	<u>110,400</u>
Total Expenditures and Reserves	\$1,765,100	\$1,762,800	\$2,661,100	\$2,878,300
 Lapse to General Fund under 2003 Act 33	 <u>162,800</u>	 <u>0</u>	 <u>0</u>	 <u>0</u>
Closing Balance	\$4,077,800	\$4,515,000	\$4,053,900	\$2,354,000
 Number of Authorized Positions	 19.50	 19.50	 19.50	 19.50

15. If funding is not approved for the permit streamlining information technology project, DNR may not be able to demonstrate to EPA's satisfaction that the Department would have sufficient staff to adequately administer the federal Title V program.

Contracting for Permit Issuance

16. The bill includes \$271,200 in 2005-06 and \$135,600 in 2006-07 to hire contractors to issue FESOPs and construction permits. DNR calculated the annual \$67,800 cost per contractor as the annual cost for an engineer at \$60,000, plus 13% fringe benefits. In 2005-06, two contractors would work on FESOPs and two on construction permits. In 2006-07, FESOPs would be done and two contractors would work on construction permits. DNR intends that each contractor working on FESOPs would complete two to three facility-wide operation permits in 2005-06, and a contractor working on SOPs would complete approximately 15 permits in each year.

17. The estimated contract cost is the same as included in a contract DNR had with the Lake Michigan Air Directors Consortium in 2003-04 for an engineer to assist with the

issuance of federal operation permits. DNR officials anticipate that the contracts under the bill would be based on the work product generated rather than the amount of time spent. In the mid-1990s, DNR undertook a pilot project to hire a contractor to review applications for Title V federal operating permits. DNR officials indicate that they found a contract based on outputs (for example, completed permit reviews) was more effective than a contract based on the number of hours. The earlier contracts included a clause prohibiting a contractor from having a conflict of interest, for example, the contractor was prohibited from reviewing applications that it helped prepare. DNR officials anticipate that the air program would give the permit application materials to the contractor, provide the tracking and required public notice of the application, and provide review, oversight and approval of the completed permit. They further indicate that existing DNR staff would probably work on permits for bigger and more complex sources. Finally, they anticipate that any contracts under the bill would include language to insure that the hired contractor does not and has not done any past work for the sources whose permit applications the contractor would review.

18. The LAB evaluation recommended, and the EPA NOD directed, that DNR eliminate the backlog in operation permits. DNR completed issuance of federal Title V operation permits by December 31, 2004. In August, 2004, EPA directed DNR to finish issuing federally-enforceable state operation permits (FESOPs) by March 4, 2006. The DNR air management program has committed to completing all FESOPs by December 31, 2005. DNR finalized a list as of February 28, 2005, that included 159 FESOPs to be completed. DNR air program managers assigned all of the 159 FESOP applications to permit writers and developed a schedule for completing issuance of the permits. As of April 29, 2005, there were 142 FESOPs remaining to be issued, of which 60 had reached the public comment stage. Seventeen of the 159 FESOPs had been issued or had closed. Three of the 159 had expressed interest in learning more about the potential to obtain a registration operation permit.

19. It could be argued that DNR would only need contractors for FESOPs for six months in 2005-06 since DNR has to complete all of the FESOPs by March 4, 2006. (Alternative B2). Alternatively, DNR may not need any funds for contracting for the review of FESOP permits in 2005-06 because DNR plans to finish all of the FESOPs by December 31, 2005, which is only four to five months after the budget bill would go into effect. (Alternative B3). However, DNR plans to base the contract on the work product instead of the time spent, and Department officials indicate that any contracting funds not needed for FESOP permits would be used for construction permits.

20. Use of contractors to review air construction permits would be intended to lessen the amount of overtime worked by DNR permit writers. Currently, there are 10 permit writers included in the 19.5 positions authorized in the construction permit appropriation. (The other 9.5 positions perform activities such as monitoring, program support, supervision, policy development and environmental assessments.) The construction permit writing workload is 13 FTE, so DNR incurs overtime costs equal to approximately 3.0 FTE. Overtime is available only for expedited review, and approximately two-thirds of applications request expedited review and pay an extra fee of \$2,300. If DNR does not meet the time deadlines for expedited review, the Department cannot charge the extra fee.

21. DNR anticipates that the administrative rule currently being promulgated would exempt up to approximately 1,090 sources from the need to obtain a construction permit. DNR officials estimate that the associated reduction in traditional construction permit reviews would result in a net reduction of 0.6 FTE in work efforts. This would partially offset the 3.0 FTE of overtime spent on construction permit review.

22. DNR's August, 2004, s.16.505/.515 request stated that the contractor provisions were included because Act 118 envisioned outsourcing of permit issuance. However, Act 118 does not have any requirement or language related to contacting for permit review or issuance. The original bill would have authorized a "certified contractor," in addition to DNR, to review, determine completeness, and issue a preliminary determination on a construction or operation permit application, and would have limited modifications DNR could make to a contractor's preliminary permit determination. The certified contractor provisions in the original bill were not included in the bill that passed the Legislature.

23. If the Committee wishes to approve funding for contractors for permit review and issuance activities, it may wish to consider approving the funding on a one-time basis for the 2005-07 biennium and review the future level of permit issuance activities in the 2007-09 biennium.

24. If additional funding is not approved for contractors to conduct permit reviews, DNR could choose to reallocate time from other activities to permit review, as needed, to issue FESOPs by the EPA deadline, and as needed for expedited permit review.

Operation Permit Fee Changes

25. The Clean Air Act Amendments of 1990 require states to assess fees based on the tonnage of emissions generated by a facility. The fees may only be used for the implementation of Clean Air Act provisions. States must demonstrate to EPA that the fees collected on emissions are adequate to cover the state's program costs associated with reducing the emissions of facilities being assessed the fees. States may place a cap on the tonnage of emissions that a fee is assessed on. States may adjust the fee rate annually based on the change in the consumer price index. Wisconsin assesses the fees on pollutants including sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, hazardous air pollutants, and other regulated pollutants under the Clean Air Act, such as ozone-depleting pollutants. Wisconsin's air emissions tonnage fee system began with calendar year 1992 emissions, assessed in 1992-93. Wisconsin adopted an annual cap of 4,000 tons per pollutant per facility. In 1999 Wisconsin Act 9, the annual cap was increased to 5,000 tons per pollutant per facility, effective with 1999 emissions. 1999 Act 9 deleted the annual consumer price index adjustment for years after 2000 and included a one-time adjustment of \$0.86 per ton. This fixed the fee rate at \$35.71 per ton for 2000 and subsequent years.

26. EPA's NOD stated that a fee schedule is presumed to be sufficient to cover Title V permit program costs if it would result in the collection and retention of an amount not less than \$25 per ton, adjusted for inflation, times the total tons of actual emissions of each regulated pollutant emitted from each federal Title V source. Federal regulations allow the state to exclude from the

calculation the amount per source that exceeds 4,000 tons per year. EPA's NOD stated that Wisconsin cannot provide an accurate picture of its Title V fee collections because: (a) the state does not account separately for, or maintain separate accounts for, fees collected under Title V and non-Title V fee-based programs; (b) by including non-Title V fee revenues in its calculation of emission fee revenues DNR had overstated the amount of fees it is collecting as part of the Title V permit program; and (c) Wisconsin's emission fee schedule does not allow for adjustments to reflect inflation, but instead relies on billing for emissions in excess of the 4,000 tons per year that EPA allows states to exclude from the presumptive fee calculation.

27. Act 118 required DNR to promulgate rules for registration permits and general permits, but did not contain provisions for fees for these permits. DNR is currently promulgating administrative rules under Act 118 authority to create eligibility criteria for registration operation permits and general operation permits. The DNR Board adopted the rules at its April 27, 2005, meeting, and DNR plans to submit the rules to the Legislature this month. DNR anticipates that if the rules become effective by approximately September, 2005, facilities could begin to apply for a registration operation permit or general operation permit in the fall of 2005. Any facilities that have a registration operation permit or general operation permit in effect by December 31, 2005, would be assessed the new fee under the bill in the spring of 2006 as part of DNR's consolidated annual environmental billing of fees.

28. The bill would split the existing emission tonnage fees appropriation into two, with the existing appropriation to continue receiving fees collected for federal operating permits and the new appropriation to receive fees for state operation permits. This is intended to respond to the EPA NOD requirement that DNR separately track and demonstrate that federal Title V program funds are being used solely for Title V permit program costs. Under the bill, new permit fees would be created for sources that obtain state operation permits, and those fees would be deposited in a new "State Sources" appropriation. The bill specifies that the State Sources appropriation may be used for eight types of costs related to stationary sources for which an operation permit is required under state law but not the federal Clean Air Act. (See the list of costs under the description of the Governor's recommendation.) Sources that pay the new operation permit fees would be exempt from paying existing emission tonnage fees. The existing emission tonnage fees appropriation would become a "Federal Sources" appropriation.

29. Table 3 shows the revenue changes included in the bill and the proposed administrative rule. The attachment provides more detail about how the revenue components were calculated. The estimated revenue effects were calculated by DNR based on the estimated number of FESOPs and SOPs that may be eligible for registration operation permits, general operation permits, or an exemption from an operation permit. DNR also estimated the number of tons of billable emissions by FESOPs and SOPs as a percentage of total billable emissions.

30. Information to project the number of facilities likely to qualify for registration or general permits is limited. During budget preparation last fall, the administration and DNR estimated that air program fee changes under the bill would be expected to generate an annual fee increase of approximately \$1,286,700. They also estimated that the fee reductions resulting from a

draft of the proposed administrative rule would be \$1,174,500 for an annual net fee increase of \$112,200.

31. The revenue effect of the fee changes in the bill and the proposed administrative rule has been reestimated to result in an annual net revenue decrease of \$142,900, rather than a net annual fee increase of \$112,200. There are two differences between the revenue changes shown in Table 3 and the earlier estimates provided by DNR and the administration. First, DNR had originally estimated that the revenue reduction of emission tonnage fees for persons not required to obtain operation permits under federal law would be approximately \$450,000 annually. DNR subsequently determined that estimate was based on the estimated percentage of total emissions for SOPs but did not include FESOPs. Since both types of permits would become exempt under the bill from paying the emission tonnage fees, DNR recalculated the revenue reduction to be \$856,200 to include emissions from both SOPs and FESOPs. Part B of the Attachment provides detail related to this calculation. The second difference is that DNR originally estimated the revenue reduction under the proposed rule that would occur with the provision of exemptions from construction permits would be \$1,174,500. Some of the exemptions in the earlier draft rule were removed from the draft later approved by the DNR Board. DNR officials recalculated the revenue reduction to be \$1,023,400.

32. If the proposed administrative rule goes into effect by approximately September, 2005, the Department could begin assessing fees under the bill as part of DNR's consolidated environmental billing in the spring of 2006 for facilities that obtain these permits by December 31, 2005, and the new fees under the bill would be received in each of 2005-06 and 2006-07. If the administrative rules would not become effective by the fall of 2005, there would be a minimal fiscal effect in 2005-06, and the first full year of revenue would be received in 2006-07. These facilities would also become exempt under the bill from the existing emission tonnage fees.

TABLE 3

Estimated Annual Revenue Changes

	<u>Draft Rule</u>	<u>AB 100</u>
A. State Operation Permit Fees		
State registration operation permit		\$426,000
State general operation permit		402,000
State operation permit exemption for source with emissions over three tons		210,900
State operation permit for other sources		<u>696,000</u>
Subtotal		\$1,734,900
B. Emission Tonnage Fees		
Persons not required to obtain operation permits under federal law would no longer be assessed emission tonnage fees		-856,200
C. Construction Permit Fees -- AB 100		
Waiver of requirement to obtain construction permit prior to beginning construction		\$1,800
D. Construction Permit Fees -- Draft Rule		
Exemption from construction permit for facilities with a registration operation permit or general operation permit	<u>-\$1,023,400</u>	
Total Fee Changes	-\$1,023,400	\$880,500
Net Annual Change		- \$142,900

Note: See the Attachment for a description of the assumptions used for the number of sources and amount of revenue change.

33. Table 4 shows the estimated revenue and expenditures for the existing emissions tonnage operation permit appropriation under AB 100. Table 5 shows the estimated revenue and expenditures for the state operation permit appropriation created by AB 100. Table 4 shows a revenue reduction from the bill only in 2006-07 for federal sources air emission fees. Table 5 shows a revenue increase from the fees in the bill only in 2006-07 for state sources operation permit fees. However, as mentioned previously, if any sources are able to obtain registration operation permits or general operation permits, there would be a revenue effect in 2005-06.

TABLE 4

**Air Operation Permit (Emission) Fees -- Revenues and Expenditures
(Federal Operation Permits as of 2006-07 Under AB 100)**

	2003-04 <u>Actual</u>	2004-05 <u>Estimated</u>	2005-06 <u>Estimated</u>	2006-07 <u>Estimated</u>	2004-05 <u>Positions</u>	2006-07 <u>Positions</u>
Opening Balance	-\$2,200	\$1,650,400	\$1,278,800	\$730,400		
Revenues						
Emission Fees	10,582,300	9,677,400	9,641,700	9,641,700		
Revenue Reduction under AB 100**	<u>0</u>	<u>0</u>	<u>0</u>	<u>-856,200</u>		
Total Revenue	10,582,300	9,677,400	9,641,700	8,785,500		
 Total Available	 \$10,580,100	 \$11,327,800	 \$10,920,500	 \$9,515,900		
Expenditures and Reserves						
DNR Division of Air and Waste	\$7,901,000	\$8,087,600	\$9,186,800	\$7,560,100	90.50	79.50
DNR Division of Enforcement and Science	67,000	86,300	80,900	80,900	1.00	1.00
DNR Division of Customer Assistance and External Relations	738,400	641,200	420,700	420,700	6.75	3.75
Commerce Small Business Clean Air Assistance Program	204,600	210,600	220,100	220,100	2.00	2.00
Reserves and Prior Year Encumbrances	<u> </u>	<u>880,200</u>	<u>281,600</u>	<u>539,200</u>		
Total Expenditures and Reserves	\$8,911,000	\$9,905,900	\$10,190,100	\$8,821,000		
 Lapse to General Fund under 2003 Act 33	 18,700	 143,100	 0	 0		
Closing Balance	\$1,650,400	\$1,278,800	\$730,400	\$694,900	100.25	86.25

*Authorized positions in the Division of Air and Waste in 2004-05 include 87.5 in the Bureau of Air Management and 3.0 for divisionwide management. In 2005-06, the Bureau of Cooperative Environmental Assistance would be moved from the Division of Customer Assistance and External Relations to the Division of Air and Waste. In 2006-07, the 3.0 positions funded from emission fees in Cooperative Environmental Assistance are shown as moved to the Division of Air and Waste. The 2006-07 total positions reflects the transfer of 14.0 positions to the new state operation permit appropriation under the bill, as technically corrected.

**DNR anticipates that if draft administrative rules establishing criteria for registration and general operation permits take effect in approximately September, 2005, there could be a revenue reduction under AB 100 in 2005-06.

TABLE 5

State Air Operation Permit Fees Under AB 100 -- Revenues and Expenditures

	2005-06 <u>Estimated</u>	2006-07 <u>Estimated</u>
Opening Balance	\$0	\$0
Revenues Under AB 100*	<u>0</u>	<u>1,734,900</u>
Total Available	0	\$1,734,900
Expenditures and Reserves		
Expenditures	\$0	\$1,626,700
Reserves and Prior Year Encumbrances	<u>0</u>	<u>54,200</u>
Total Expenditures and Reserves	\$0	\$1,680,900
Closing Balance	\$0	\$54,000
Number of Authorized Positions**	0	14.00

*DNR anticipates that if draft administrative rules establishing criteria for registration and general operation permits are effective in approximately September, 2005, there could be new revenue under AB 100 in 2005-06.

**Assumes a technical correction is made to transfer 14 positions from the existing air emissions tonnage appropriation.

34. The effects of the fees under the bill may vary considerably by facility. Sources that might qualify for a registration operation permit might have 10 to 25 tons of regulated emissions that can commit to meeting specified emission limits in a permit. Examples of sources include smaller coating facilities, wood products facilities and smaller manufacturing facilities. General operation permits would be developed for specific industry types such as rock crushers, grain elevators, bulk gasoline plants, printers, and asphalt plants. These sources would usually have 10 to 25 tons of emissions. For both types of permit sources, DNR estimates that currently, if a facility is emitting 25 tons of emissions per year and obtains a construction permit on average every eight years with a fee of approximately \$9,200, the current emission tonnage fee (\$893) and average construction permit fee per year (\$1,150) would total approximately \$2,043. Under the bill, the registration operation permit or general operation permit would be \$1,500 per year, and the proposed rule would exempt the facility from having to obtain a construction permit. A facility with lower emissions, or that submits less frequent construction permit applications, would not realize this level of savings.

35. DNR anticipates that sources that may become eligible for an exemption from an operation permit will usually emit less than 10 tons of emissions per year and might include source

types such as small printers, small rock crushers, small wood products facilities (sawmills) and small manufacturing facilities. Currently, if such a source emits 10 tons per year, and obtains a construction permit on average every 10 years with an average construction permit fee of \$3,000, it would pay current emission tonnage fees (\$357) and construction permit fee per year (\$300 per year averaged over a 10 year period) that total approximately \$657. Under the bill, the exemption from a construction permit would include a \$300 annual fee, and the proposed rule would exempt the facility from having to obtain a construction permit. Again, based on emission levels and construction activity that an individual facility experiences, the effects of the fees would vary.

36. Table 2, (construction permit) Table 4 (federal operation permit emission fees) and Table 5 (state operation permit fees) show that the revenues and expenditures of each of the three air permit appropriations are affected by the budget bill, proposed administrative rule, or both. The 2005-07 biennium can be considered one of transition to a more fully separated system of accounting for fee revenues and expenditures for federal operation permits, state operation permits, and construction permits.

37. A review of the three appropriations shows that in 2006-07, estimated revenues would total \$11,698,800 and estimated expenditures would total \$13,380,200. The number of positions authorized from the three revenue sources would be 119.75 in 2006-07, which would be the same as in 2004-05. While it is expected that the revenues under the bill and available carry-in balances in the three appropriations would be sufficient to fund all expenditures under the bill during the 2005-07 biennium, there may need to be an adjustment of revenues or expenditures from the three appropriations in 2007-09. For example, Table 2 shows that in 2006-07, the combination of the increased expenditures for information technology under the bill and the reduced revenues under the proposed rule, would result in annualized expenditures (\$2,878,300) that substantially exceed annualized revenues (\$1,178,400). It is likely that in 2007-09 there would need to be some adjustment in the distribution of expenditures between the three appropriations.

38. DNR officials indicate that during 2005-07, they will continue to work towards a clearer separation of fees and costs for federal operation permits and state operation permits. For example, DNR will need to review whether the positions funded from emission tonnage fees and located outside of the Bureau of Air Management perform work activities only related to federal Title V activities, or whether some of those activities should be funded from state operation permit fees.

39. It can also be anticipated that the 2005-07 biennium will provide an opportunity to learn what the actual interest is from stationary sources in obtaining registration operation permits and general operation permits. This may allow a more accurate projection of ongoing revenues from the various fees and exemptions.

40. EPA's April 8, 2005, letter from Bharat Mathur, Acting Regional Administrator, to DNR Secretary Hassett in support of the budget bill provisions stated, "The proposed fee restructuring for stationary sources not subject to Title V should effectively separate funding and spending for state and federal air permitting programs, resolving the NOD accounting issue. In

addition, the State is required to demonstrate that its Title V fees collected are sufficient to cover the costs of the program. Given the resources available, we recognize the State's interest in utilizing the proposed streamlining effort to address this sufficiency issue and demonstrate adequacy over the longer term. I am hopeful that the Wisconsin Legislature will pass the proposed budget provisions related to the permit program which will provide the necessary framework for resolution of the sufficiency and accounting deficiencies."

41. DNR officials indicate that there could be an unintended consequence under the bill with the state operation permit fees if the proposed rule goes into effect before late in calendar year 2005. DNR hopes to obtain legislative approval of the proposed rule by approximately September, 2005, so that sources can begin to obtain registration operation permits or general operation permits before December 31, 2005. Sources that obtain these permits would pay the \$1,500 annual fee under the bill in the spring of 2006, and would be exempt from the emission tonnage fee. Under the bill, any FESOPs and SOPs that don't obtain an exemption from an operation permit (and become eligible for a \$300 fee), would pay the \$3,000 state operation permit for other sources. However, the topic of establishing criteria for eligibility for an exemption from an operation permit was removed from the proposed rule. DNR anticipates that a rule will be promulgated during 2006 that would provide eligibility criteria for facilities to become exempt from an operation permit by December 31, 2006, and those facilities would be assessed the \$300 exemption fee in 2006-07. DNR officials indicate that the Department did not intend for "other sources" to pay \$3,000 in 2005-06. However, the Department has not recommended alternative language to the language in the bill.

42. The Committee could consider adding a one-time provision to the bill to provide that if FESOPs and SOPs do not obtain an exemption from an operation permit by December 31, 2005, they would be assessed the \$300 exemption fee in 2005-06 instead of the \$3,000 for "other" state operation permit sources.

43. While EPA has not guaranteed that the provisions of the budget bill will satisfy the related concerns in the NOD, it has submitted written support and stressed the importance of the provisions in resolving issues in the federal notice of deficiency.

ALTERNATIVES

A. Air Permit Database

1. Approve the Governor's recommendation to provide \$484,900 PR in 2005-06 and \$780,300 PR in 2006-07 in ongoing funding from air construction permit fee revenue for air permit database system activities, including: (a) \$259,600 in 2005-06 and \$517,200 beginning in 2006-07 for master leases for private contractors for information technology development and maintenance, and to purchase computer hardware and software; and (b) \$225,300 in 2005-06 and \$263,100 in 2006-07 for DNR staff and limited-term employees to perform computer programming and database development activities.

2. Approve the Governor's recommendation, but provide the funding as one-time for the 2005-07 biennium.

3. Provide one-time funding from air construction permit fee revenue of \$966,900 PR in 2005-06 and \$999,100 PR in 2006-07 for air permit database system activities, including: (a) \$741,600 in 2005-06 and \$736,000 in 2006-07 for the contract amount (rather than master leases) for private contractors for information technology development and maintenance, and to purchase computer hardware and software; and (b) \$225,300 in 2005-06 and \$263,100 in 2006-07 for DNR staff and limited-term employees to perform computer programming and database development activities.

Alternative A3	PR
2005-07 FUNDING (Change to Bill)	\$700,800

4. Maintain current law.

Alternative A4	PR
2005-07 FUNDING (Change to Bill)	- \$1,265,200

B. Air Permit Issuance Contractors

1. Approve the Governor's recommendation to provide \$271,200 PR in 2005-06 and \$135,600 PR annually beginning in 2006-07 from air construction permit fee revenue to pay four private contractors to issue air permits in 2005-06 and two to issue permits beginning in 2006-07.

2. Provide \$203,400 PR in 2005-06 and \$135,600 PR annually beginning in 2006-07 from air construction permit fee revenue to pay three private contractors to issue air permits in 2005-06 and two to issue permits beginning in 2006-07.

Alternative B2	PR
2005-07 FUNDING (Change to Bill)	- \$67,800

3. Provide \$135,600 PR annually beginning in 2005-06 from air construction permit fee revenue to pay two private contractors to issue air permits beginning in 2005-06.

Alternative B3	PR
2005-07 FUNDING (Change to Bill)	- \$135,600

4. Approve Alternative B1, B2 or B3, but provide the funding as one-time during the 2005-07 biennium.

5. Maintain current law.

Alternative B5	PR
2005-07 FUNDING (Change to Bill)	- \$406,800

C. Air Operation Permit Fees and Staff

1. Approve the Governor's recommendation, as technically corrected, to: (a) transfer \$1,286,700 PR and 14.0 PR positions from the existing air emission operation permit appropriation to a new state sources permit appropriation; (b) specify the eight allowable types of costs that can be paid from the state sources permit appropriation; (c) create a \$300 fee for a waiver from the requirement to obtain an air construction permit prior to construction, and deposit the fee in the existing air construction permit appropriation; (d) create an annual \$300 state operation permit exemption fee, and deposit the fee in the new state permit sources appropriation; (e) create an annual \$1,500 registration operation fee, and deposit the fee in the new state permit sources appropriation; (f) create an annual \$1,500 general operation permit fee, and deposit the fee in the new state permit sources appropriation; (g) create an annual \$3,000 state operation fee for other sources; (h) specify that the current annual emission tonnage fees would be for persons required to have air operation permits under federal law; and (i) specify that persons who are not required to obtain operation permits under federal law would no longer have to pay emission tonnage fees but would instead pay one of the state operation permit fees. Reestimate the revenue as \$880,500 annually beginning in 2006-07 (a decrease of \$406,200 from the \$1,286,700 originally estimated in the bill).

Alternative C1	PR-REV
2005-07 REVENUE (Change to Bill)	- \$406,200

2. Approve Alternative C1. In addition, specify that for 2005-06, FESOPs and SOPs that don't obtain an exemption from an operation permit or a registration operation permit or a general operation permit by December 31, 2005, be assessed the \$300 exemption fee in 2005-06 instead of the \$3,000 for a state operation permit for "other" sources.

3. Maintain current law.

Alternative C3	PR-REV
2005-07 REVENUE (Change to Bill)	- \$1,286,700

Prepared by: Kendra Bonderud
Attachment

ATTACHMENT

Estimated Air Permit Revenue Changes

A. State Operation Permit Revenue - AB 100

<u>Fee Type</u>	<u>Annual Fee Amount</u>	<u>Estimated Number of Sources</u>	<u>Annual Revenue</u>
Registration Operation Permit			
FESOP	\$1,500	243	\$364,500
SOP	1,500	<u>41</u>	<u>61,500</u>
Subtotal		284	\$426,000
General Operation Permit			
FESOP	\$1,500	220	\$330,000
SOP	1,500	<u>48</u>	<u>72,000</u>
Subtotal		268	\$402,000
Exemption from Operation Permit			
FESOP	\$300	114	\$34,200
SOP	300	<u>589</u>	<u>176,700</u>
Subtotal		703	\$210,900
State Operation Permit for Other Sources			
FESOP	\$3,000	215	\$645,000
SOP	3,000	<u>17</u>	<u>51,000</u>
Subtotal		232	\$696,000
Total State Operation Permit Revenue		1,487	\$1,734,900

Registration = Source with low actual or potential emissions, generally with emissions less than 25 tons.

General = Source that meets criteria for categories of similar sources, generally with emissions less than 25 tons.

Exemption = Generally a source with emissions over three tons and less than ten tons that meets criteria to be promulgated in rule.

Other Sources = State source not covered by registration or general operation permit, and not exempt from operation permit.

FOP = Federal Operation Permit.

FESOP = Federally-Enforceable State Operation Permit, for major sources that choose to reduce emissions enough to become a minor source.

SOP = State Operation Permit, for minor sources not subject to federal permit requirements.

B. Federal Operation Permit (Emission Tonnage Fee) Revenue Reduction - AB 100

	Estimated Number of Facilities Subject to Fee	Estimated Percent of Current Billable Tons	Estimated Current Tons	Estimated Current Emission Fee (\$35.71 Per Ton)
Total Current Emission Tonnage Fees	1,275	100.00%	270,000	\$9,641,700
AB 100 Revenue Reduction				
FESOPs	503	4.18%	11,286	- \$403,000
SOPs or unknown	<u>293</u>	4.70%	12,690	<u>- 453,200</u>
Subtotal Non-Federal Operation Permit Fee (Exempt from Emission Tonnage Fee under AB 100)	796	8.88%	23,976	- \$856,200
Remaining Emission Tonnage Fees - FOPs	479	91.12%	246,024	\$8,785,500

C. Construction Permit Revenue Change -- AB 100

	<u>Fee Amount</u>	<u>Estimated Number of Sources</u>	<u>Annual Revenue</u>
Waiver of requirement to obtain a construction permit before beginning construction	\$300	6	\$1,800

D. Construction Permit Revenue Reduction Under Draft Administrative Rule

<u>Permit Type</u>	<u>Estimated Number of Facilities</u>	<u>Estimated Average Construction Permit (Per Year)</u>	<u>Estimated Construction Permit Fee Reduction</u>
FESOPs			
Registration Operation Permit	243	\$1,151	\$279,574
General Operation Permit	220	1,151	253,112
Exempt from Operation Permit	86	300	25,650
SOPs			
Registration Operation Permit	41	1,151	47,171
General Operation Permit	48	1,151	55,224
Exempt from Operation Permit	442	300	132,525
General Construction Permit	20	9,204	184,080
Registration Construction Permit	<u>10</u>	9,204	<u>92,040</u>
Subtotal Construction Permit Fee Reduction	1,110		-\$1,069,377
New General Construction Permit Revenue	20	2,300	46,000
Net Reduction in Construction Permit Revenue Under Proposed Rule	1,090		-\$1,023,377

DNR Assumptions:

- Average minor source current construction permit cost for sources potentially eligible for registration operation permit or general operation permit = \$9,204, one permit per eight years, annual cost = \$1,150.51.
- Average minor source current construction permit cost for sources potentially eligible for exemption from operation permit = \$3,000, one permit per ten years, annual cost = \$300.
- Approximately 75% of sources that would become exempt from an operation permit would be exempt from a construction permit.