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Joint Committee on Finance

Paper #476

Air Permit Fees -- State-Regulated Sources (DNR -- Environmental Quality)

[LFB 2013-15 Budget Summary: Page 346, #2]

CURRENT LAW

Certain stationary sources that emit air pollutants are known as state-regulated sources for purposes of air operation permit requirements and state air permit fees paid. In general, these sources meet one of the following criteria as: (a) major sources regulated under the federal Clean Air Act Title V program that choose to accept permit limits that reduce emissions enough to instead be regulated under the state permit program, with federally-enforceable conditions (known as synthetic minor sources); or (b) minor sources that do not have the potential to emit air pollutants that exceed thresholds to be federally-regulated as major sources, but are required under state law to obtain an air operation permit (known as natural minor sources).

Facilities with state operation permits currently pay an annual fee of \$4,100 if the operation permit limits the source's potential to emit air pollutants so that the source is not a major source subject to stricter federal regulations, if the operation permit includes federally-enforceable conditions that allow air emissions to be at least 80 percent and less than 100 percent of the amount that results in the source being classified as a major source subject to the federally-regulated sources air emissions tonnage fee. Other state operation permit holders pay a \$300 annual fee, including facilities with a general operation permit or a registration operation permit, or minor sources that are required to obtain a state operation permit that is not a general operation permit or registration operation permit.

General operation permits have been issued for similar categories of stationary sources, including nonmetallic mineral processing facilities, printers, asphalt plants, and crushers. DNR promulgated administrative rules that allow stationary sources to apply for a registration operation permit if the source has less than 25 tons per year of actual air emissions of certain air pollutants, and slightly different thresholds for certain printing facilities. Minor sources are

exempt from the requirement to obtain an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare, or to the environment.

The fees are deposited in a program revenue appropriation for administration of operation permitting activities at state-regulated sources. DNR received \$1,034,000 in PR fee revenue in 2011-12, and will receive approximately \$1.1 million in 2012-13. The appropriation is authorized adjusted base funding of \$2,309,500 PR with 20.0 PR positions.

GOVERNOR

Increase from \$300 to \$725, the annual fee paid by most facilities that obtain an air operation permit to emit air pollutants as a state-regulated source rather than as a federally-regulated source. The administration estimated that the annual revenue increase would be \$705,500 from approximately 1,660 facilities, and that total revenue received from state-permitted sources would be approximately \$1,785,700 annually, as compared to \$1,080,200 under current law. No change would be made in the \$4,100 fee paid by approximately 142 sources.

DISCUSSION POINTS

1. Current revenue for state-regulated air permit sources is approximately \$1.1 million annually. Under current law, revenues would be insufficient for the \$2.3 million PR in authorized expenditures and the 20.0 PR authorized positions. DNR is currently filling approximately nine of the 20.0 positions and holding approximately 11.0 positions vacant to maintain expenditures below available revenues. The Department would need to continue to hold 11 positions vacant if no additional revenue is provided. Table 1 shows revenues and expenditures if current fee levels would be maintained and no fee increase provided in 2013-15. DNR did not request additional revenue in the Department's 2013-15 biennial budget request.

2. DNR reestimated total revenue under current law to \$1,094,600 annually and under the bill to \$1,820,500 annually, based on 1,708 permitted sources that would be subject to the fee increase as of the end of February, 2013. This increase of \$725,900 is \$20,400 greater annually than the initial estimate under the bill.

TABLE 1**State-Regulated Air Operation Permits
Revenues and Expenditures Under Current Law**

	2011-12 <u>Actual</u>	2012-13 <u>Estimated</u>	2013-14 <u>Current Law</u>	2014-15 <u>Current Law</u>
Opening Balance	\$361,600	\$498,200	\$506,500	\$326,600
Revenue				
Operation Permit - \$4,100 fee	\$547,000	\$582,200	\$582,200	\$582,200
Operation Permit - \$300 fee	<u>487,000</u>	<u>512,400</u>	<u>512,400</u>	<u>512,400</u>
Total Revenue	\$1,034,000	\$1,094,600	\$1,094,600	\$1,094,600
Total Available	\$1,395,600	\$1,592,800	\$1,601,100	\$1,421,200
Authorized Expenditures	\$2,386,300	\$2,386,300	\$2,309,800	\$2,309,800
Reserves	0	0	64,700	128,400
Expenditure Reductions	<u>-1,488,900</u>	<u>-1,300,000</u>	<u>-1,100,000</u>	<u>-1,100,000</u>
Total Expenditures	\$897,400	\$1,086,300	\$1,274,500	\$1,338,200
Closing Balance	\$498,200	\$506,500	\$326,600	\$83,000
Authorized Positions	20.0	20.0	20.0	20.0
Funded Positions	9.0	9.0	9.0	9.0

3. DNR officials indicate the revenue increase under the bill would allow the Department to fill an additional five to six of the currently vacant positions, for approximately 14.0 to 15.0 filled positions of the 20.0 authorized. DNR anticipates the additional filled positions would focus on: (a) reducing the backlog of over 700 state operation permit applications; (b) increased compliance assistance or inspections; and (c) at least one position dedicated to increasing the time spent working on promulgation of rules to streamline permit requirements. Table 2 shows revenues and expenditures under the bill.

4. Prior to calendar year 2005, all stationary sources that were required to obtain an air operation permit were required to pay an annual air emissions tonnage fee of \$35.71 per ton for billable emissions of at least five tons. In order to correct a Notice of Deficiency issued by the U.S. Environmental Protection Agency (EPA) for the Title V major source air operation program in 2004, Wisconsin 2005 Act 25 split the air emissions program revenue appropriation into two. Since then, one appropriation is for revenues from stationary sources that are required to obtain an operation permit under the federal Clean Air Act. A separate state permit sources appropriation was created for sources that are required to obtain an operation permit under state law, but not under the federal Clean Air Act, or are allowed under federal law to obtain a federally-enforceable state operation permit in lieu of a federal permit.

TABLE 2**State-Regulated Air Operation Permits
Revenues and Expenditures Under AB 40**

	2011-12 <u>Actual</u>	2012-13 <u>Estimated</u>	2013-14 <u>Bill</u>	2014-15 <u>Bill</u>
Opening Balance	\$361,600	\$498,200	\$506,500	\$352,500
Revenue				
Operation Permit - \$4,100 fee	\$547,000	\$582,200	\$582,200	\$582,200
Operation Permit - \$300 fee	<u>487,000</u>	<u>512,400</u>	<u>1,238,300</u>	<u>1,238,300</u>
Total Revenue	\$1,034,000	\$1,094,600	\$1,820,500	\$1,820,500
Total Available	\$1,395,600	\$1,592,800	\$2,327,000	\$2,173,000
Authorized Expenditures	\$2,386,300	\$2,386,300	\$2,309,800	\$2,309,800
Reserves	0	0	64,700	128,400
Expenditure Reductions	<u>-1,488,900</u>	<u>-1,300,000</u>	<u>-400,000</u>	<u>-400,000</u>
Total Expenditures	\$897,400	\$1,086,300	\$1,974,500	\$2,038,200
Closing Balance	\$498,200	\$506,500	\$352,500	\$134,800
Authorized Positions	20.0	20.0	20.0	20.0
Funded Positions	9.0	9.0	15.0	15.0

5. The statutes require that the fees deposited in each of the two appropriations be used for the following: (a) the costs of reviewing and acting on applications for operation permits; (b) implementing and enforcing operation permits except for court costs or other costs associated with an enforcement action; (c) monitoring emissions and ambient air quality; (d) preparing rules and materials to assist persons who are subject to the operation permit program; (e) ambient air quality modeling; (f) preparing and maintaining emission inventories; (g) any other direct and indirect costs of the operation permit program; and (h) costs of any other activities related to stationary sources of air contaminants.

6. Under 2005 Act 25, the \$35.71 per ton emission fee was continued for state-regulated sources, but also provided that: (a) general operation permit holders would pay \$2,300 in the first year, and \$35.71 per ton thereafter; (b) registration operation permit holders would pay \$1,100 in the first year, and \$35.71 per ton thereafter; and (c) sources exempt from an operation permit would pay \$300 annually. 2005 Act 25 also transferred 10.0 PR positions from the federally-regulated sources PR appropriation to the new state-regulated sources PR appropriation. In 2006-07, 844 state-regulated sources were assessed program revenue fees totaling \$656,300.

7. 2009 Act 28 deleted the fees established for state-regulated sources in 2005 Act 25 and established the current annual fees of \$4,100 or \$300. 2009 Act 28 transferred an additional 10.0 positions from the federally-regulated sources PR appropriation to the state-regulated sources

PR appropriation, to provide the currently-authorized total of 20.0 positions for administration of the permitting program for state-regulated sources. In 2011-12, 1,833 state regulated sources were assessed program revenue fees totaling \$1,097,100. The increase in the number of sources assessed state operation permit fees was due, in large part, to the fact that sources with actual emissions of less than five tons were exempt from fees under the prior emissions tonnage fee structure, but became subject to the \$4,100 or \$300 annual fee in 2009 Act 28.

8. In general, major sources have maximum theoretical emissions that exceed certain thresholds. Generally, the maximum theoretical emissions means the amount of pollutants that a source has the potential to emit if all business processes were running at full capacity without the operation of any emission control devices. The thresholds include: (a) more than 100 tons per year of federally-designated criteria pollutants (ozone, sulfur dioxide, nitrogen dioxide, particulate matter, carbon monoxide, and lead), or 25 tons per year of volatile organic compounds in severe nonattainment areas; (b) ten tons per year of any federal hazardous air pollutant (HAP); or (c) 25 tons per year of all combined federal HAPs.

9. 2009 Act 28 established the \$4,100 fee amount for federally-enforceable state operation permits (FESOPs) for sources that choose to limit the allowable emissions in their operation permit to between 80 and 100 percent of the threshold for sources that would otherwise be federally-regulated as Title V major sources. These sources are also called synthetic minor 80 or "SM80." The voluntary permit limitations allow SM80s to be subject to state regulation instead of federal regulation as major sources. The state operation permits for FESOPs / SM80s have federally-enforceable permit conditions. DNR officials indicate that these permits can be as complicated as permits issued for some federally-regulated major sources because the permits are custom designed to meet the needs of the individual facility and can be reviewed by EPA as closely as permits for major sources. Some examples of these sources are some ethanol plants, paper mills and state-owned power plants.

10. The current \$300 annual fee established in 2009 Act 28 (increased to \$725 under the bill), is paid by certain synthetic minor or natural minor sources. Synthetic minor sources, or "SM" are sources that would otherwise be major sources subject to federal regulation under Title V, but accept voluntary emissions limitations to less than 80 percent of the thresholds for major sources. DNR officials indicate permit requirements are federally-enforceable, but the permits are generally less complicated and less customized than SM80s. Natural minor sources do not have the potential to emit above the thresholds that would make them major sources subject to federal regulation. Synthetic minor or natural minor sources obtain either a general operation permit, a registration operation permit, or a state operation (individual) permit. General operation permits are industry specific, and have been issued for many nonmetallic mineral processing facilities, printers, asphalt plants, and rock crushing facilities. The general permit includes all limits and requirements. Registration operation permits are available to sources with less than 25 tons per year of actual air emissions of certain air pollutants, and slightly different thresholds for certain printing facilities. Registration operation permits can be obtained by a variety of industries, and include emission limits and requirements for monitoring, recordkeeping, and reporting. Other state operation permits, or individual permits, are specific to a particular facility and its operations that do not qualify for a registration permit or general permit.

11. Table 3 shows DNR's estimates, as of the end of February, 2013, of the numbers of sources of various categories and the fees they pay under current law and under the bill. Table 3 shows there are currently an estimated 1,850 state-regulated sources, including 142 SM80s paying the \$4,100 fee and 1,708 sources paying \$300 annually. Of the 1,708 sources paying the \$300 fee, 902 are synthetic minor sources. This means DNR data shows 1,044, or 56%, of the 1,850 sources paying fees as state-regulated sources, would be consider major sources subject to federal regulation if they did not voluntarily limit their emissions to accept state regulation.

TABLE 3
DNR Estimates of Numbers of State-Regulated Sources
By Source and Permit Type

<u>Source / Permit Type</u>	<u>Number of Sources</u>	<u>Fee Current Law</u>	<u>Revenue Current Law</u>	<u>Fee Bill</u>	<u>Revenue Bill</u>
Synthetic Minor					
Registration Operation Permit	203	\$300	\$60,900	\$725	\$147,175
General Operation Permit	340	300	102,000	725	246,500
Other State Operation Permit	<u>359</u>	<u>300</u>	<u>107,700</u>	<u>725</u>	<u>260,275</u>
Subtotal Synthetic Minor	902	\$300	\$270,600	\$725	\$653,950
Natural Minor					
Registration Operation Permit	324	\$300	\$97,200	\$725	\$234,900
General Operation Permit	3	300	900	725	2,175
Other State Operation Permit	<u>471</u>	<u>300</u>	<u>141,300</u>	<u>725</u>	<u>341,475</u>
Subtotal Natural Minor	798	\$300	\$239,400	\$725	\$578,550
SM80 with pending permit (billed \$300 until permit issued)	8	300	2,400	725	5,800
Total Sources Paying \$300 Fee	1,708	\$300	\$512,400	\$725	\$1,238,300
Synthetic Minor 80 (SM80) paying \$4,100 fee	142	\$4,100	\$582,200	\$4,100	\$582,200
Total State-Regulated Sources	1,850		\$1,094,600		\$ 1,820,500

12. During 2009-11 biennial budget deliberations, DNR reviewed workload for state-regulated sources, and determined it needed 20.0 positions for the program, with annual costs of \$2.4 million to \$2.6 million per year, for permit issuance, permit revision, compliance, enforcement, assistance to permit holders, emission inventory, complaint investigation, and policy and program development. DNR officials estimated that FESOPs / SM80s represented approximately 80% of the program workload (16 of 20 positions) because EPA requires DNR to do certain compliance and inspection work for these sources that is not required for solely state-regulated sources. In 2009, DNR estimated there would be approximately 640 sources that would choose to take permit limitations as SM80s. Further, the Department also estimated there would be a total of 1,400

sources subject to state operation permit fees and requirements.

13. The actual number of permitted SM80s is 142 rather than the 640 estimated by DNR in 2009. Many sources were able to accept emissions limitations in permits that would limit them to below 80 percent of the federal thresholds, rather than between 80 and 100 percent of the federal thresholds, and pay \$300 per year rather than \$4,100. It can be expected that the lower number of SM80s means that workload for these sources is lower than anticipated by DNR four years ago. However, as shown in Table 3, there are currently 902 synthetic minor sources that are not SM80s, and both types are subject to federally-enforceable permit conditions. In addition, there are currently 1,850 sources assessed state-regulated permit fees, rather than the 1,400 estimated by DNR in 2009. However, since there are significantly less sources paying the \$4,100 fee than estimated in 2009, and more sources paying \$300 instead of \$4,100, the revenue being deposited in the appropriation is approximately \$1.1 million annually instead of the \$2.8 million estimated by DNR during 2009-11 biennial budget deliberations.

14. DNR officials indicate that federal Title V provisions require DNR to perform full compliance evaluations at federally-regulated sources every two years. Inspections are required at SM80 facilities every five years. There are no specific inspection frequency requirements for other state operation permits. DNR indicates that the program experiences significant workload for other state-regulated sources relating to permit development, monitoring, and enforcement, even if they have low actual emissions.

15. There have been ongoing discussions over several years about what extent of state permitting regulations should apply to sources that are not required to obtain a permit under federal Title V, or that voluntarily limit emissions to be subject to state regulation rather than federal regulation. Current state law prohibits DNR from promulgating a rule or taking any other action under air pollution control permit requirements that conflicts with the federal Clean Air Act. The appropriate level of fees paid by sources has also been a subject of debate.

16. The level of fee increase provided in the bill could be viewed as burdensome to some sources with small actual amounts of air emissions. Alternatively, some level of fee increase could be viewed as necessary to fund the workload of regulating state sources of air emissions.

17. DNR officials have expressed concern that if the Department is not able to increase fees to a level sufficient to fund anticipated workload related to state-regulated sources, EPA could again decide to review whether the state's operation permit program meets federal Clean Air Act requirements. This would be of particular concern at the 142 SM80s and 902 other synthetic minor sources which receive some level of EPA review and oversight (because synthetic minor sources would be major sources subject to federal operation permit requirements if they did not voluntarily reduce their emissions). Some officials believe the current level of nine filled positions could raise EPA concerns relating to the adequacy of the program. They also indicate provision of revenue at a level sufficient to fill 14.0 to 15.0 positions should satisfy an EPA review of the state-regulated sources program.

18. Industry representatives advocate that DNR should promulgate rules with additional simplification and streamlining of permit requirements, and should exempt more sources with low emissions from the requirement to obtain a permit. It could be argued that less revenue would be

needed than provided under the bill if DNR would implement more administrative rule changes to simplify and streamline permit requirements for currently-permitted sources, and, potentially, to exempt additional sources from obtaining permits. Alternatively, it has been argued that current DNR staff resources are insufficient to spend the time needed to develop additional permit streamlining requirements.

19. It could be argued that the Governor's recommended fee increase is necessary in order to provide resources to maintain the state's compliance with federally-delegated air operation permit program requirements. If the Committee approves the Governor's recommendation, the revenue increase could be reestimated upward by \$20,400 annually (Alternative 1).

20. Under the bill, DNR would be able to fill up to 15.0 of the currently authorized 20.0 positions, rather than the nine filled under current law (an increase of up to six), and would have to continue to hold approximately five of 20.0 authorized positions vacant. If the Committee approves the Governor's recommended fee increase, it could choose to delete \$465,500 PR annually with 5.0 PR positions (Alternative 2) to more accurately align authorized expenditures with available revenue.

21. Consideration could be made of a fee increase that would provide more revenue than the \$1,094,600 estimated under current law, but less than the \$1,820,500 provided under the bill. For example, if the \$300 fee would be increased by \$200, to \$500 instead of to \$725 under the bill, additional revenue of \$341,600 annually would be estimated, as compared to the \$725,900 under the bill. This would be expected to be sufficient to fill approximately 12.5 of the 20.0 authorized positions, rather than the nine filled currently. The approximately 3.5 additional filled positions under this option would still allow DNR to increase the time it spends on permit issuance, monitoring, simplification and streamlining activities. On the other hand, it may be uncertain whether this would provide an adequate level of staff to satisfy potential EPA concerns about the program. If the Committee chooses this level of fee increase, it could also delete \$694,400 PR annually with 7.5 PR positions (Alternative 3).

22. If the Committee chooses to provide no fee increase, DNR will be able to continue the current staffing levels of approximately nine filled positions. The Department would need to continue to reduce expenditures below authorized levels by holding approximately 11.0 positions vacant. If current fee levels were maintained, the Committee could delete \$1,014,800 PR annually with 11.0 PR positions to more accurately align authorized expenditure levels with existing revenues (Alternative 4).

ALTERNATIVES

1. Approve the Governor's recommendation to increase the \$300 annual operation permit fee paid by state-regulated sources to \$725 annually. Reestimate the annual revenue increase to \$725,900 annually (instead of \$705,500 annually).

ALT 1	Change to Bill	
	Revenue	
PR	\$40,800	

2. Approve the Governor's recommendation as reestimated. In addition, delete \$465,500 PR with 5.0 PR positions annually. (The deletion of positions would align expenditure levels with the anticipated revenues under the bill.)

ALT 2	Change to Bill		
	Revenue	Funding	Positions
PR	\$40,800	- \$931,000	- 5.00

3. Increase the \$300 fee to \$500 annually, to provide an annual revenue increase of \$341,600 annually (instead of the \$705,500 estimated under the bill). In addition, delete \$694,400 PR with 7.5 PR positions annually. (The deletion of positions would align expenditure levels with the anticipated revenues under the alternative.)

ALT 3	Change to Bill		
	Revenue	Funding	Positions
PR	- \$727,800	- \$1,388,800	- 7.50

4. Delete the recommended fee increase (maintain current law fees). In addition, delete \$1,014,800 PR with 11.0 PR positions annually. (The deletion of positions would align expenditure levels with currently anticipated revenues.)

ALT 4	Change to Bill		
	Revenue	Funding	Positions
PR	- \$1,411,000	- \$2,029,600	- 11.00

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