

Report From Agency

REPORT TO LEGISLATURE

NR 410, Wis. Adm. Code

Asbestos project inspection and notification fees, and affecting small business

Board Order Number: AM-06-10

Clearinghouse Rule Number: CR 10-046

BASIS AND PURPOSE OF THE PROPOSED RULE

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 additional 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.

SUMMARY OF PUBLIC COMMENTS

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 Administrative Rules System web site. 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. No change was made to the proposed rule as a result of these comments. It is felt that it would be possible for contractors to 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.

MODIFICATIONS MADE

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, e.g., 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.

APPEARANCES AT THE PUBLIC HEARING

Five persons filed a hearing appearance as follows:

June 3, 2010 – Madison

In Support:

Jewel Olson, Milwaukee Lead & Asbestos Information Center, 2223 S Kinnickinnic Ave,
Milwaukee, WI 53207

In Opposition:

None

As interest may appear:

Doug Anderson, PO Box 7394, Madison, WI 53707

Sueid Rahmanpanuh, Pars Corporation, 12440 W Robin Ln, Brookfield WI 53005

Dan Day, WI DOA, Division of State Facilities, 101 E Wilson St, Madison WI 53707

June 4, 2010 – Wausau

No appearances

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

None were required.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

A comment was received from the Wisconsin Legislative Rules Clearinghouse regarding clarity of s. NR 410.05 (3) (f). Suggested language to clarify this provision was included in the rule.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rules do not have a significant economic impact on a substantial number of small businesses, and 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. The Department believes it is reasonable to expect that 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.