

## Clearinghouse Rule 18-083

### WISCONSIN DEPARTMENT OF HEALTH SERVICES PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services proposes an order to repeal and recreate Ch. DHS 158, relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

#### RULE SUMMARY

**Statute interpreted**

The rules interpret s. 254.41, Stats.

**Statutory authority**

The Department's authority to amend and create these rules is found in s. 254.41, Stats.

**Explanation of agency authority**

Section 254.41, Stats. directs the Department to charge the owners of each nuclear power plant an annual fee of \$30,000. It also authorizes the Department to change the annual fee through administrative rule.

**Related statute or rule**

The Department knows of no related statutes or rules.

**Plain language analysis**

The Legislature requires the department to conduct environmental sampling in order to monitor radiation emissions in any area of the state within 20 miles of a nuclear power plant. The purpose of sampling is to determine whether radiological releases from nuclear power plants pose public health concerns to the state and its residents. Section 254.41, Stats., requires the department to charge an annual fee for sampling, which is assessed to owners of nuclear power plants. The statute also authorizes the department to adjust the fee by rule.

The current sampling requirements and fee structure are set forth in ch. DHS 158. The rule was created at a time when all three nuclear plants in Wisconsin (Point Beach Nuclear Power Plant, Kewaunee Nuclear Power Plant, La Crosse Boiling Water Reactor) were operational. Since that time, only the Point Beach plant remains operational. The Kewaunee plant has permanently ceased operation and moved spent reactor fuel to an adjacent spent fuel storage installation, and the LaCrosse plant has begun active decommissioning. Spent fuel is considered high-level radioactive waste.

Although the department is required to continue monitoring these sites by statute, ch. DHS 158 was formulated to apply only to nuclear power plants that "operate" in Wisconsin. This has had the unintended effect of constraining and jeopardizing the Department's ability to monitor plants that are permanently shutdown or that are being actively decommissioned, but which continue to pose risks of radiological release to the state and its residents.

The department has continued monitoring these sites by accepting reduced fees paid voluntarily by the shutdown sites. However, this funding is projected to decline and may terminate altogether. The department therefore proposes to correct ch. DHS 158 to ensure its sampling program adequately protects the state and its residents from risk of radiological release.

There are no reasonable alternatives to the proposed rulemaking. The proposed revisions are necessary to implement the sampling program established by the Legislature in s. 254.41, Stats. If DHS 158 is not corrected, the department may be unable to conduct sampling necessary to protect the state and its residents from risk of radiological releases.

### **Summary of, and comparison with, existing or proposed federal regulations**

This proposed rule does not conflict with any existing or proposed federal regulations. The Nuclear Regulatory Commission (NRC) is responsible for regulating nuclear power plants. NRC regulations require each nuclear plant to monitor the environment around their respective plant for radiation emissions. In addition to the NRC required monitoring, the Department independently monitors the environment around the nuclear plants affecting Wisconsin, as required by s. 254.41, Stats. The NRC has no authority or regulations governing or affecting the fees that states can charge and has no authority to prohibit a state from establishing independent monitoring around the nuclear plants, outside of the plant boundaries.

### **Comparison with rules in adjacent states**

#### **Illinois:**

The State of Illinois monitors the environment for radiation emissions around the nuclear plants affecting the state. Illinois law authorizes the state to assess each nuclear plant an annual fee to support state environmental radiation monitoring and radiological emergency preparedness activities. The fiscal year 2018 fee was \$1.903 million per operating reactor, or \$3.806 million for a typical, two reactor site. The fiscal year 2018 fee for a shutdown reactor was \$1.404 million per reactor.

#### **Iowa:**

There is no requirement in Iowa law for the state to independently monitor radiation emissions around nuclear plants.

#### **Michigan:**

Michigan law authorizes the state to monitor the environment for radiation emissions around the nuclear plants that affect Michigan. The nuclear utilities are required to reimburse the state for the actual costs of conducting environmental monitoring around their sites. In fiscal year 2018, the state of Michigan billed the three affected utilities a total of \$1,527,550 to support state environmental radiation monitoring and radiological emergency preparedness activities.

#### **Minnesota:**

Minnesota law authorizes independent state monitoring for radiation emissions around interim spent (reactor) fuel storage installations (ISFSI). There are two nuclear plants in Minnesota with an ISFSI. The state assesses the owner of each nuclear plant an annual fee of \$35,000 to support monitoring activities around the ISFSI sites.

### **Summary of factual data and analytical methodologies**

The Department has projected revenue and expenditures for environmental monitoring for state fiscal year 2018 to 2032. Projections are based on fiscal year 2018 actual fiscal data. Projections indicate an environmental monitoring program deficit of (\$18,642) in fiscal year 2018 with a further deficit of (\$35,016) in SFY 19. The projections also indicate that a fee increase to \$128,000 for operational plants and \$70,000 for shutdown plants will ensure adequate program funding thru at least fiscal year 2032.

### **Analysis and supporting documents used to determine effect on small business**

The utilities with nuclear power plants located in Wisconsin are not small businesses.

### **Effect on small business**

These proposed rule changes will not affect small business.

**Agency contact person**

Paul Schmidt; 608 267-4792; paul.schmidt@dhs.wisconsin.gov

**Statement on quality of agency data**

The data used by the Department to prepare these proposed rules and analysis comply with s. 227.14 (2m), Wis. Stats.

**Place where comments are to be submitted and deadline for submission**

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

**RULE TEXT**

**SECTION 1.** ch. DHS 158 is repealed and recreated to read:

**FEE FOR MONITORING RADIATION EMISSIONS  
IN THE VICINITY OF NUCLEAR POWER PLANTS**

**DHS 158.01 Authority and purpose.** This chapter is promulgated under the authority of s. 254.41. Stats., for the purpose of implementing a radiation monitoring program to test for radiation emission in any area of the state within 20 miles of a nuclear power plant and for establishing an annual fee for monitoring.

**DHS 158.02 Applicability.** This chapter applies to the owners of nuclear power plants that are located in Wisconsin.

**DHS 158.03 Definitions.** In this chapter:

- (a) "Decommissioned facility" means a nuclear power plant which has been retired from service by following a Nuclear Regulatory Commission (NRC) approved process to reduce residual radioactivity so that the site can be safely released for other use other than the continuing use of an independent spent fuel storage installation at or near the facility.
- (b) "Decommissioning nuclear power plant" means a facility licensed by the NRC that has ceased operation and is in the process of safely closing to retire it from service. Decommissioning begins after the nuclear fuel, coolant and radioactive waste are removed from the reactor.
- (c) "Department" means the Wisconsin department of health services.
- (d) "Nuclear power plant" means a facility licensed by the Nuclear Regulatory Commission that utilizes or utilized a nuclear power reactor to generate electricity, and includes an operating nuclear power plant and a decommissioning nuclear power plant, but excludes a decommissioned facility.
- (e) "Operating nuclear power plant" means a facility licensed by the NRC that utilizes a nuclear power reactor to make electricity by the continuous splitting of atoms. An operating nuclear power plant may shut down temporarily for refueling or maintenance

activities.

(f) "Radiation monitoring" means the determination of the amount of radioactive materials present in the environment, including ambient radiation levels, by laboratory analysis of selected samples of fish, food, milk, air, water, vegetation, soil and ambient radiation readings taken from the area around a nuclear power plant.

(g) "State fiscal year" means the 12-month period beginning July 1.

**DHS 158.04 Fee.** Beginning with the state fiscal year 2019-20, the annual fee charged to the owner of an operating or decommissioning nuclear power plant that is located in the state shall be as follows:

<u>Category</u>	<u>Annual Fee</u>
Operating	\$128,000
Decommissioning	\$70,000

The annual fee is payable within 30 days after receipt of a statement. The fee may be increased each year at the annual rate of inflation as determined by movement in the consumer price index for all urban consumers (CPI-U), published each month in the *CPI Detailed Report* by the U.S. department of labor's bureau of labor statistics.

**SECTION 2. EFFECTIVE DATE:** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in § 227.22 (2), Wis. Stats.