

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date June 27, 2024</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter NR 410 - Air Permit, Emission And Inspection Fees</p>	
<p>4. Subject Revisions to fees for reviewing air pollution control construction permit applications and exemption determination requests under ch. NR 410 (AM-10-23)</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected s. 20.370(4)(bo), Wis. Stats</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). The implementation and compliance costs that are reasonably expected to be incurred by businesses as a result of the proposed rule is \$1,228,884 in the first year, \$1,311,161 in the second year, and a total of \$2,540,045 in the first two years. The estimates are described under #14.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule As required by the federal Clean Air Act (CAA), the department operates a new source review (NSR) construction permit program that applies to the construction, reconstruction, replacement, relocation, or modification of stationary sources that emit air contaminants. In most cases when a construction permit is required, a facility cannot construct or modify a source of air pollution before the construction permit is issued.</p> <p>Since economic development relies on industry's ability to quickly react to business opportunities and market changes, the department has long prioritized the timely issuance of construction permits and has introduced efficiencies whenever possible. For example, the department developed an online air pollution control permit database and implemented three registration permits, two general permits, several exemptions, and a plantwide applicability limit alternative for major sources. More recently, the department streamlined permit forms, created permit application checklists, automated certain applicable requirement determinations, standardized how federal standards are incorporated into permits, and introduced electronic signature and payment systems.</p> <p>For the past several years, the construction permit program has experienced a significant deficit between its revenues and the expenses needed to operate the program. Several factors have contributed to this shortfall. Fees for construction permit reviews were last increased in January 2011 and have not kept pace with inflation and other costs. New federal air pollution regulations have increased the complexity of permit reviews over time, resulting in more time-consuming reviews. Additionally, air permit streamlining rules promulgated by the department in 2015 and 2020 in response to stakeholder requests created additional permit exemptions and other flexibilities requiring department action for which inadequate fees are collected.</p>	

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Wisconsin's construction permit program relies entirely on construction permit fees for its funding. Despite department efforts to downsize the program, cut expenses, and implement efficiencies, the revenue generated by these fees is no longer sufficient for the department to administer an effective construction permit program. The program account balance, which has been used to cover annual deficits, is expected to be exhausted by the end of fiscal year (FY) 2025. Increases in fees, along with other changes in the fee structure, are therefore necessary to ensure adequate funding for this program.

The department's ability to accomplish core construction permitting activities is already significantly diminished, which is reflected in the permit program's performance metrics. For example, permit issuance times, historically 3 to 4 months, were 7 to 9 months as of June 2024 and are expected to exceed 12 months by the end of 2024. More critically, it is increasingly difficult for the department to take timely action on permit requests important to economic development, such as those needed by utilities as they transition to cleaner energy generation while simultaneously facing increased demand. These adverse trends will continue unless the permitting program's financial challenges are addressed.

To bring additional revenue to this account, this rule increases existing construction permit fees, creates several new fees, and adds an automatic adjustment factor to help revenues keep pace with increases in personnel costs over time. To mitigate the financial impact on permittees, the rule implements fee increases in two phases. The current and proposed fee amounts are shown in Appendix A.

This rule will reverse a decade-long decline in revenue, stabilize the construction permit account, and allow the department to gradually increase the construction permit program's critically low staffing levels. Once implemented, the rule will essentially allow the program to operate in FY29 at its FY21 budgetary level, but with fewer staff (due to increases in per-staff costs over that period). This is expected to support a construction permitting program that can meet basic expectations and act on the more pressing permit requests from the regulated community. However, even after the fees in this rule are fully implemented, the permit program will be small, compared both to other states and its historical size, and remain considerably below its spending authority.

Decisions made in this rule to lessen the impact of the fee increases on applicants will constrain the program's capacity to adapt, modernize and rebuild. The gradual increase in revenue following promulgation of this rule will allow staff to be added, but at a slow pace. This will limit the capacity of the program to undertake improvements, efficiencies, or activities like rulemakings that may be requested to streamline the program or address specific facility needs.

The size of the construction permit program deficit does not offer any alternatives to increases in permit fees. The department has implemented all available efficiencies to decrease program expenses without sacrificing the services most critical to the regulated community. No alternatives to the proposed fee changes are available for the department to address the construction permit program's revenue deficit.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Entities that may be affected by the proposed rule include businesses (including small businesses) that propose to construct, reconstruct, replace, relocate or modify a stationary source or that request a determination of exemption from permit requirements. The department contacted all sources with air pollution control permits, as well as the following organizations, via email at the beginning of the economic impact solicitation period to notify them of the opportunity to comment:

- Air Management Advisory Group (comprised of representatives from various stakeholder groups, including environmental law attorneys, academia, utilities, and representatives of large and small businesses)
 - American Council of Engineering Companies of Wisconsin
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- Clean Wisconsin
- League of Wisconsin Municipalities
- NR 410 Technical Advisory Group (convened pursuant to s. 227.13, Stats.)
- Small Business Environmental Council
- Tribal governments approved for treatment as states
- Wisconsin Cast Metals Association
- Wisconsin Counties Association
- Wisconsin Manufacturers and Commerce
- Wisconsin Paper Council
- Wisconsin Transportation Builders Association
- Wisconsin Utilities Association

Many of these stakeholders are aware of the department's efforts to revise ch. NR 410, Wis. Adm. Code, because they were notified of and/or participated in informational sessions held after adoption of the statement of scope.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The department contacted tribal governments approved for treatment in a manner similar to states, the Wisconsin Counties Association, and the League of Wisconsin Municipalities via email to notify them of the opportunity to participate in development of the EIA and provide comments on the economic impact of the proposed rule changes during the department's economic impact solicitation period. No local governments units commented on the EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Specific Businesses and Business Sector (Private Businesses)

The department estimates the economic impact of the proposed rule on the business sector to be \$2,549,909 for the first two FYs that the rule is expected to be in effect (FY26 and FY27). This estimate is based on projections of the number of applications for construction permit actions and the proposed construction permit program fee increases.

To estimate the department's future construction permit program activities, the department reviewed actual construction permit actions (i.e., minor construction permits, major construction permits, permit revisions, exemptions) from FY12-23 (Table 1) and used those figures to linearly project the number and type of applications for construction permit actions the department might expect to receive in FY26 and FY27 (Table 2).

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Table 1. Actual construction permit program actions (FY12-23)

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23
Minor Construction Permits	*	80	86	89	82	104	68	78	56	72	62	56
Major Construction Permits	*	8	5	5	5	7	11	11	8	12	6	8
Exemptions	30	41	44	51	56	59	53	44	45	54	72	42
Revisions	10	14	12	6	15	20	10	26	23	24	30	31

* Data unavailable

Table 2. Projected applications for construction permit actions (FY26-27)

	FY26	FY27
Minor Construction Permits	60	59
Major Construction Permits	6	6
Exemptions	62	64
Revisions	35	37

AM-10-23 Board Order #9 describes the department’s methods and approach used to develop the fee increases necessary to address the construction permit program’s revenue shortfall and fully cover program expenses. Attachment B of this document presents current and proposed construction permit program fees. The proposed rule would phase in the proposed fee increases, with 70% of the increase occurring in the first year the rule is effective (FY26) and the remaining 30% of the increase occurring at the start of FY28.

To help construction permit program revenue keep pace with personnel-related expenses over time, the proposed rule includes a provision to adjust fees every four years to reflect any non-represented general wage adjustments (GWAs) made by the Department of Administration in an approved state compensation plan. The first adjustment would occur at the start of FY31 (i.e., July 1, 2030) to reflect any GWAs approved in the 2027-2029 and 2029-2031 state compensation plans. This adjustment would occur again in FY35 and every four fiscal years thereafter.

To evaluate the impact of the proposed rule on businesses, the department multiplied the number of FY26 and FY27 permit actions in Table 2 by the average fee amount for each permit action type under the current and proposed fee schedules. The proposed rule’s 2-year economic impact on businesses is equal to the difference between the cost of construction permit actions in FY26 and FY27 with and without the proposed rule (Table 3). This methodology is conservative as the department does not anticipate being able to issue all of the permit actions for which applications are received in FY26 and FY27 due to low staffing levels. Therefore, a portion of the fees for these permit actions would not actually be collected until future fiscal years. Table 2 of the board order contains estimates of the revenue anticipated to be collected under the rule, which is considerably less than the economic impact figures described in Table 3

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Table 3. Comparison of estimated economic impact with and without proposed rule

	Without rule (\$) in FY26	Without rule (\$) in FY27	With rule (\$) in FY26	With rule (\$) in FY27	Cost (\$) in year FY26	Cost (\$) in year FY27	Total FY26 + FY27 cost
	(a)	(b)	(c)	(d)	(e=c-a)	(f=d-b)	(e+f)
Minor Construction Permits	\$889,489	\$874,664	\$1,806,368	\$1,843,389	\$916,879	\$968,725	\$1,885,604
Major Construction Permits	\$352,876	\$352,876	\$514,041	\$527,318	\$161,165	\$174,442	\$335,607
Exemptions	\$60,760	\$62,720	\$103,158	\$110,464	\$42,398	\$47,744	\$90,142
Revisions	\$52,500	\$55,500	\$160,942	\$175,750	\$108,442	\$120,250	\$228,692
Total cost	\$1,355,625	\$1,345,760	\$2,584,509	\$2,656,921	\$1,228,884	\$1,311,161	\$2,540,045

*Permit and exemption \$ amounts are equal to average permit or exemption fee x number of permit or exemption actions.

Impacts on Public Utility Rate Payers

The department does not anticipate that utility rates will be impacted by the proposed rule.

Impacts on Local Governmental Units

The department does not anticipate that local government units will be economically impacted by the proposed rule.

Fiscal Impact and Impact on State Economy

The revised revenue associated with this proposed rule is necessary to help ensure that businesses receive the required construction permits expediently and on a timeframe that supports private sector business needs. With this rule, the program will be able to issue construction permits more consistently and in time for businesses to react quickly to economic opportunities. Without this rule, permit review and issuance times will continue to increase significantly, which will hinder business expansion and development.

The proposed fee increases would marginally increase the direct cost associated with business development and expansion. However, construction permit fees are just one of many considerations associated with business development, and are significantly less than the potential economic loss due to businesses missing out on opportunities because of delays in receiving the required construction permits.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Economic development relies on industry's ability to quickly react to business opportunities and market changes. With a few exceptions, a facility cannot begin to construct or modify a source of air pollution before a construction permit is issued. The proposed rule will serve customers by ensuring the department is appropriately staffed and funded to issue construction permits in a timely manner and undertake additional efficiency-related program improvements.

Wisconsin's construction permit program relies entirely on permit fees as its funding source. As a matter of practice and in the face of declining revenues, over the last decade the department has sought efficiencies, such as by promulgating

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air permit streamlining rules, instituting internal process changes, and increasing utilization of technology. The department has implemented all available efficiencies to decrease the construction permit program's expenses without sacrificing services critical to permitted customers. No alternatives to the proposed fee changes are available to the department to address the construction permit program's sizable structural deficit and ensure the program is funded in a sustainable manner.

16. Long Range Implications of Implementing the Rule

In addition to the services noted in #15 that a fully funded construction permit program provides to the permitted community, the proposed rule would help construction permit program revenues keep pace with personnel-related expenses over time. The department is proposing to adjust construction permit fees every four fiscal years to reflect any non-represented GWA made by the Department of Administration in an approved compensation plan. Incorporation of this GWA-based fee adjustment would help maintain program revenues over time and lessen the need for future fee adjustments through rule. The GWA-based fee adjustment would also minimize the impact to businesses and increase predictability by incrementally adjusting fees every four years, rather than continuing the department's practice of promulgating substantial fee increases approximately every 10 years.

17. Compare With Approaches Being Used by Federal Government

Section 110(a)(2)(E) of the CAA requires that each State has "adequate personnel, funding, and authority under State law" to carry out its State Implementation Plan, which includes the construction permit program. There are no existing or proposed federal regulations that mandate how states must fund their construction permit programs.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Sources of construction permit program funding vary significantly among states. Wisconsin's program is funded entirely by fees. Most of the nearby states assessed for comparison rely on a combination of fees and general funding or grants to support their construction permit programs. The exception is Michigan, which does not charge construction permit fees at all, but rather relies on various state funds.

Because states use different mechanisms to fund their construction permit programs, a comparison of Wisconsin's construction permit program fees with nearby states needs to consider not only the fees themselves, but the amount states spend on construction permitting, how much is covered by fee-generated revenue, and the overall size of the construction permit program, including the number of full-time equivalent staff. To inform this comparison of nearby states, the department contacted its partner agencies in Illinois, Michigan, Minnesota, Iowa, and Indiana.¹ Board Order AM-10-23 #8 provides a detailed summary of each state's construction permit program, including budget and number of full-time equivalent staff and permit writers. Appendix B of the AM-10-23 Board Order contains the current construction permit fee schedules for Illinois, Minnesota, Iowa, and Indiana (Michigan does not charge fees).

Based on the comparison of Wisconsin's construction permit program to those of the nearby states, it is evident that the revenue and staffing levels the proposed rule is intended to support are lower than those of other states, in most cases considerably so. Even in FY29, the year the department expects construction permit program funding to stabilize after the proposed fee increases take effect (Board Order AM-10-23 #9), Wisconsin's construction permit program will remain smaller than those in nearby states, both in terms of budget and staffing.

¹Although not adjacent to Wisconsin, a summary of Indiana's construction permit program is provided because many businesses operate in both Wisconsin and Indiana. Indiana also is part of the tristate IL-IN-WI Chicago ozone nonattainment area, in which construction permitting requirements apply.

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19. Contact Name

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20. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The department reviewed the construction permits, revisions and exemptions issued in FY22-23 to identify the percentage of each type of permit action that was issued to small businesses. The department’s air database contains self-reported information on the number of employees for each facility, and this information was quality checked for this analysis.

The percentage of construction permits, revisions, and exemptions issued to small businesses was used in conjunction with projections of the number and type of permit actions expected for FY26 to estimate the number of each type of permit action that is expected to be issued to a small business.

The overall economic impact of the proposed fees on small businesses was then estimated using the number of each type of permit action expected to be issued to small businesses and the difference between the average fee for each permit action type under the current and proposed fee schedules.

The table below summarizes the projected number of permit actions for small businesses in FY26 and the estimated fee for each permit action under both the current and proposed fee schedules. Based on this analysis, the annual impact on small businesses as a whole is estimated to be about \$69,000 of the rule’s \$1,238,748 total cost estimate for FY26.

Estimated impact of rule on small businesses (FY26)

	Number issued to small businesses	Current average fee	Proposed average fee	Difference per action	Total difference
	(a)	(b)	(c)	(d = c-b)	(e = d x a)
Construction permits	6	\$12,490	\$23,020	\$10,530	\$63,180
Permit revisions	1	\$1,500	\$4,731	\$3,231	\$3,231
Exemptions	4	\$825	\$1,466	\$641	\$2,564
				Total	\$68,975

2. Summary of the data sources used to measure the Rule’s impact on Small Businesses

The department queried 2022 and 2023 data for construction permits, construction permit exemptions, construction permit revision issuances, and employee numbers from the air database to evaluate the impact of the proposed rule on small businesses.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Because many small businesses emit low amounts of air pollutants, they are often able to qualify for coverage under a registration permit in lieu of needing to obtain a minor construction permit. A facility covered under a registration permit is exempt from construction permitting. No changes are proposed that would either affect small business eligibility for coverage under registration permits or that would impose a fee for issuance of coverage.

Many projects at small businesses may qualify for exemptions from construction permitting. Most exemptions do not have associated fees unless a facility chooses to request an exemption determination from the department. For the specific exemptions that do require a determination or when a facility chooses to request an exemption determination from the department for a project, the fee would increase under the proposed rule.

5. Describe the Rule's Enforcement Provisions

Enforcement provisions related to construction permit fees are found under ss. 285.81, 285.83, and 285.87 Stats.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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ATTACHMENT B
Current and Proposed Fees

Fee Description	Code Cite (NR)	Current Fee	Proposed Fee: Phase I	Proposed Fee: Phase II
Construction Permit Basic Direct Source Fees				
Initial fee submitted with application (credited towards final fee)	410.03(1)(a)	\$7,500	\$15,000	\$15,000
Minor source construction at a Part 70 minor source	410.03(1)(a)1.	\$3,000	\$5,450	\$6,500
Minor modification at a Part 70 major source	410.03(1)(a)2.	\$7,500	\$14,850	\$18,000
Major modification under PSD or nonattainment area permitting	410.03(1)(a)3.	\$12,000	\$21,800	\$26,000
Construction of a PSD or nonattainment area major source or a major modification where the modification itself is a major source	410.03(1)(a)4.	\$16,000	\$29,300	\$35,000
Establishing a plant-wide applicability limit - fee charged per pollutant	410.03(1)(a)8.	\$12,000	\$18,300	\$21,000
Increase of a plant-wide applicability limitation (PAL)	410.03(1)(a)9.	\$6,000	\$9,150	\$10,500
Distribution of allowable limitations upon expiration of a PAL	410.03(1)(a)10.	\$6,000	\$9,150	\$10,500
Revision of a construction permit	410.03(1)(ae)	\$1,500	\$2,550	\$3,000
Waiver of construction permit requirements under NR 406.03(2)	410.03(1)(bm)	\$300	\$300	\$300
Construction Permit Additional Direct Source Fees				
Basic emission unit fee - per unit for analysis of 2 or more basic units	410.03(2)(a)	\$800	\$1,990	\$2,500
Analysis of alternatives under s. NR 408.08(2)	410.03(2)(b)	\$2,500	\$3,850	\$4,400
Emission offset under NR 408 or netting emission increase under NR 405	410.03(2)(c)	\$5,000	\$7,650	\$8,750
MACT, BACT, LAER (case-by-case analysis) (per unit per pollutant)	410.03(2)(d)	\$4,500	\$5,200	\$5,500
Air quality modeling analysis at minor source or minor modification	410.03(2)(e)	\$1,000	\$2,400	\$3,000
Air quality modeling analysis for major source/modification	410.03(2)(f)	\$4,500	\$6,900	\$7,900
Toxic emission limitations established under chs. NR 446-449 or 445.07	410.03(2)(g)	\$1,000	\$1,550	\$1,750
Emission testing (\$2,500 for first air contaminant plus \$1,250 for each additional air contaminant up to a maximum of \$6,000)	410.03(2)(h)	See Fee Description	See Note 1	See Note 2
Environmental Analysis under NR 150	410.03(2)(i)	\$1,500	\$2,300	\$2,650
LACT determination under s. NR 424.03(2) per basic emissions unit	410.03(2)(k)	\$600	\$1,400	\$1,700
BACT or LAER under ch. NR 445 - each determination	410.03(2)(L)	\$2,000	\$3,050	\$3,500
PTE Limit to make the source/modification a minor source/modification	410.03(2)(m)	\$3,500	\$5,350	\$6,150
Public hearing requested by the applicant	410.03(2)(j)	\$1,500	\$2,300	\$2,650
NEW FEE - Apply additional fees listed in NR 410.03(2) to revisions	Proposed under 410.03(2)	--	See above	See above
NEW FEE - Public hearing requested by someone other than applicant	Proposed under 410.03(2)(j)	--	\$2,300	\$2,650
NEW FEE - Incorporation of requirements of a consent decree	Proposed under 410.03(2)(p)	--	\$2,450	\$3,500
Construction Permit Exemption Fees				
Research and testing exemption (406.04(1)(i))	410.03(1)(b)1.	\$1,250	\$1,950	\$2,200
Modification to a PAL (NR 406.04(1f))	410.03(1)(b)2.	\$1,500	\$2,300	\$2,650
Modification to a PAL with modeling (NR 406.04(1f))	410.03(1)(b)2.	\$2,400	\$3,700	\$4,200
Modification exempt from major PSD or NNSR (406.04(1k))	410.03(1)(b)3.	\$5,500	\$8,400	\$9,650
Modification exempt from major PSD or NNSR (406.04(1k)) w/modeling	410.03(1)(b)3.	\$6,500	\$9,950	\$11,400
Controlled actual emissions 10 ton/yr exemption (406.04(1q))	410.03(1)(b)3m.	\$1,250	\$1,950	\$2,200
Any other construction permit exemption not listed above	410.03(1)(b)4.	\$500	\$1,150	\$1,400
Miscellaneous Construction Permit Fees/Credits				
Multiple application discount (same project at multiple possible locations)	410.03(1)(e)	\$1,000	\$1,550	\$1,750
Siting analysis under 285.63(10) for medical waste incinerator	410.03(2)(n)	\$3,500	\$5,350	\$6,150
Expedited review requested (non PSD-under 50 days)	410.03(2)(o)1.	\$5,000	Remove	Remove
Expedited review of a PSD or major NNSR source (under 60 days)	410.03(2)(o)2.	\$7,500	Remove	Remove
Expedited review of a PSD or major NNSR source (under 61-90 days)	410.03(2)(o)3.	\$4,000	Remove	Remove
Fee reduction if source publishes the newspaper notice (no longer used)	410.03(1)(c)	(\$150)	Remove	Remove

Note 1 - \$3,850 for first air contaminant plus \$1,950 for each additional air contaminant up to a maximum of \$9,200.

Note 2 - \$4,400 for first air contaminant plus \$2,200 for each additional air contaminant up to a maximum of \$10,500.