

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

To amend s. HFS 158.04, relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

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 statutes or rules

The Department knows of no related statutes or rules.

Plain language analysis

Under section 254.41 of the Wisconsin statutes, the Department of Health and Family Services is responsible for monitoring radiation emissions around nuclear plants operating in or near Wisconsin. The Department assesses a fee to operating nuclear plants in Wisconsin that supports the Department's and local health agencies' collection of emissions and analysis activities. Chapter HFS 158 specifies the Department's annual base fee, which is currently \$47,500. Chapter HFS 158 also allows the Department to raise the fee each year based on changes in the consumer price index. Consequently, the current fee is \$55,940.

The Department's monitoring costs over the past 13 years have risen at a rate exceeding that of the consumer price index. In addition, federal and other funding sources that also supported monitoring activities have either been eliminated or reduced. Consequently, the fee has become the primary funding source for monitoring activities. In response to these revenue losses, the Department reduced the scope of monitoring activities rather than raise the base fee in ch. HFS 158. However, the Department cannot further reduce monitoring activities without compromising minimal national standards. Therefore, to continue to monitor activities at a minimum level consistent with national standards, the Department is proposing to increase the base fee in ch. HFS 158 to \$95,000.

Summary of, and comparison with, existing or proposed federal regulation

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 five 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. In past years, the NRC paid states (including Wisconsin) to perform independent monitoring for NRC, piggy-backing off state environmental programs.

Comparison with rules in adjacent states

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

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 2003, the state of Michigan billed the four affected utilities a total of \$1,100,000.

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 2004 fee was \$1,757,727 per reactor, or \$3,515,454 for a typical, two reactor site.

Summary of factual data and analytical methodologies

The Department has projected revenue and expenditures for environmental monitoring for state fiscal year 2004 to 2010. Projections are based on fiscal year 2003 actual fiscal data. Projections indicate an environmental monitoring program deficit of \$30,774 in fiscal year 2004. The projections also indicate that a fee increase to \$95,000 will ensure adequate program funding through at least fiscal year 2010.

Analysis and supporting documents used to determine effect on small business

As the other entities affected are not small businesses, this rule will not affect small businesses.

Anticipated costs incurred by private sector

These proposed rules will increase the annual environmental monitoring fee paid by the two utilities operating a nuclear plant in Wisconsin from \$55,940 to \$95,000.

Effect on small business

These proposed rule changes will not effect small business.

Agency contact person

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Place where comments are to be submitted and deadline for submission

A public hearing on this proposed rule was held on June 22nd in Madison. No one attended. The comment period ended on June 25th. The Department received no comments on this proposed rule amendment.

Rule text

SECTION 1. HFS 158.04 is amended to read:

HFS 158.04 Fee. Beginning with the state fiscal year ~~1991-92~~ 2004 - 05, the annual fee charged to the owner of a nuclear power plant that is operating in the state shall be ~~\$47,500~~ \$95,000, 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.

Effective date

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and
Family Services

Dated: August 18, 2004

By: _____
Helene Nelson
Secretary

SEAL: