

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: AM-10-23

Relating to: Revisions to fees for reviewing air pollution control construction permit applications and exemption determination requests under ch. NR 410

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

2. Detailed description of the objective of the proposed rule:

The Air Management Program proposes to increase the fees for reviewing construction permit applications and exemption determination requests. These proposed changes are necessary to ensure that the construction permit program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under the federal Clean Air Act and s. 285.61, Wis. Stats.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Air Management Program operates a construction permit program under Wisconsin's State Implementation Plan (SIP) for air quality approved by the U.S. Environmental Protection Agency (EPA). The federal Clean Air Act requires permitting authorities to adequately fund construction permitting programs as a condition of SIP approval. State statute under s. 285.69, authorizes the promulgation of rules to collect permit fees to meet the funding requirements. Construction permit fees fund review of applications for, and issuance of, construction permits for air pollution sources under this program as well as review of permit revisions and determinations of exemption from construction permitting requirements.

Increases in these fees are necessary in order to allow the construction permit program to continue to operate and meet its mandated obligations in a timely manner. The fees that applicants pay for construction permit reviews were last increased in January 2011. These fees have not kept pace with the approximately 37% increase in inflation since that time. In 2015 and 2020 the department promulgated air permit streamlining rules which created additional permit exemption actions and other operational flexibilities requiring department action for which no fees are currently collected.

Due to these factors, for a number of years the fees collected have been inadequate to fully support this program. This deficit has been covered by spending a revenue surplus that had been built up in earlier years. This surplus has been shrinking and is projected to be gone by the end of fiscal year 2024. The Air Management Program projects that the construction permit program will have a growing deficit starting next year even though numerous process changes and technology improvements have been successfully implemented to improve efficiencies.

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. Without adequate funding, timely permit issuance becomes more difficult leading to possible delays, potential loss of market shares and other negative economic impacts on regulated sources. No other alternatives to the proposed fee changes have been identified that will adequately address this projected funding deficit.

Additional rule changes or clarifications may be pursued which are reasonably related to those discussed here.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 285.69, Wis. Stats., allows the department to collect reasonable fees to fund review of applications for, and issuance of, a construction permit for air pollution sources and for the review of a request for an exemption from the requirement to obtain an air pollution control permit.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates that approximately 900 hours of staff time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule :

Owners of industrial facilities, including small businesses, that propose construction, reconstruction, replacement, relocation or modification of a stationary source or that request a determination of exemption from permit requirements will be affected by this rule.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

The construction permit program is required under Title I of the Clean Air Act. Section 110(a)(2)(L) of the Clean Air Act (42 USC s. 7410(a)(2)(L)) requires sources to pay the permitting authority, as a condition of any construction permit required, a fee sufficient to cover the reasonable costs of reviewing and acting upon any application for the permit. There are no specific federal regulations that mandate how rules to collect these fees must be written, or the specific content of these rules, only that adequate fees are collected to operate the program. This rule is necessary to ensure the program remains federally approved as part of Wisconsin's SIP.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The rule is anticipated to economically impact industrial facilities, including small businesses, proposing construction, reconstruction, replacement, relocation or modification of a stationary source that may require a permit or that request a determination of exemption from permit requirements. Although fees may increase, ensuring the department can complete timely permit reviews and issuances will allow industry to react to business opportunities and market changes in a timely and competitive manner. The department estimates that implementation of the revised rule will have a moderate economic impact.

9. Anticipated number, month and locations of public hearings :

The department anticipates holding a public hearing in March 2025. The hearing will be held in-person in Madison, WI, as well as virtually to allow for as many people to attend as possible. Comments may be provided by mail, phone and email as well as in-person.

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