



Wisconsin Department of Natural Resources
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RE: Comments on Proposed Rule AM-10-23, to Revise NR 410, Relating to Fees for Reviewing Air Pollution Control Construction Permit Application and Exemption Determination Requests Under Ch. NR 410

I. Introduction

These comments are submitted on behalf of the Wisconsin Paper Council (WPC) and Wisconsin Manufacturers & Commerce (WMC). WPC is the premier trade association that advocates for the papermaking industry before regulatory bodies, and state and federal legislatures to achieve positive policy outcomes. WPC also works to educate the public about the social, environmental, and economic importance of paper, pulp, and forestry production in Wisconsin and throughout the Midwest.

The pulp and paper sector employs over 30,000 people in Wisconsin and has an annual payroll of \$2.5 billion. Wisconsin is the number one paper-producing state in the United States.

WMC is the combined state chamber of commerce and manufacturers' association, representing over 3,800 member companies spanning all sectors of the economy. Our mission is to make Wisconsin the best state in the country to do business. This mission includes ensuring permitting requirements are no more stringent than necessary to protect the environment, and do not unduly burden Wisconsin businesses.

Many WPC and WMC members are subject to both state and federal air construction permit requirements. Consequently, our members would be subject to these proposed fee increases and expansions for construction permits and exemption determination requests. Moreover, it is important that our members are able to obtain construction permits on a timely basis in order to make improvements to their facilities and remain competitive. Consequently, WPC and WMC have a significant interest in this rulemaking.

II. WMC/WPC Comments on Economic Impact Analysis

As an initial matter, please note that WMC and WPC submitted comments on the economic impact analysis (EIA) for this rule proposal. Because this rule deals almost exclusively with fee increases, many of our concerns with the proposed rule were described in detail those EIA comments. Consequently, WPC and WMC hereby incorporate those comments by reference. Our EIA comments are available here: [WPC-WMC+NR+410+EIA+Comments+-+2024.4.2.pdf \(squarespace.com\)](#).

According to DNR's estimates, revenue from air construction permits has not kept pace with agency expenses, necessitating fee increases that are—in many cases—two to three times the amount sources currently pay. For example, the fee for the “construction permit basic direct source fee” for a “major modification under the PSD or nonattainment area permitting,” would be increased from \$12,000 to \$26,000, not including “additional” direct source” fees.

DNR is proposing to implement this fee increase in two phases, with the first increase occurring in FY26 (70% of the fee), and the remaining 30% occurring in FY28.

The key concerns expressed in our EIA comments included:

- The amount (DNR estimated a cost for a permit for large project at a paper facility would increase to **\$143,800, compared to a current cost of \$77,800**) and the number of fee increases (**34 increases and three new fees**) proposed. These fee increases do not appear “reasonable,” as required by state law.
- Perpetual automatic fee increases, which as proposed in the rule would increase every four years “by a percentage equal to the total percent increase in nonrepresented general wage adjustments included in the two most recently approved biannual state compensation plans.” **This approach avoids the legislative oversight of fees that are modified through the administrative rulemaking process. WPC and WMC do not support perpetual, automatic fee increases.**
- The need for DNR to streamline the permitting process **prior to seeking fee increases**. Our EIA comments contained several suggestions to consider for potentially reducing workloads and associated costs through streamlining.

III. Revenue Sources for Construction Permits

Beginning on page three of the Rule Analysis, DNR provided a comparison of Wisconsin's construction permitting to adjacent states, including Iowa, Illinois, Michigan, Minnesota, and Indiana. DNR notes:

Sources of construction permit program funding vary significantly between states. Most states rely on a combination of fees and general funding or state grants to support their construction permit programs. Of the nearby states assessed for comparison, Michigan and Wisconsin are exceptions. **Michigan does not charge construction permit fees, whereas Wisconsin relies entirely on fees.** (emphasis added).

This analysis indicates Wisconsin is unique in that it relies solely on sources to fund its programs. Moreover, imposing such significant increases may hinder economic growth by encouraging expansions in other areas. To address this disparity, DNR should consider requesting other revenue to reduce the large and extensive fee increases it has proposed in this rulemaking.

Furthermore, as DNR is no doubt aware, the number and size of construction permit applications can vary from year to year. In particular, the number of applications may depend on the economic conditions that dictate whether businesses will establish and/or expand operations in Wisconsin. Due to this potential volatility, it would make good sense for DNR to seek a stable “baseline” of non-fee funding for a fee-dependent regulatory program such as this.

We appreciate DNR’s commitment to preparing a report on the condition of the construction permit fee account. We would also welcome increased communication between DNR and stakeholders across the air program, to find cost-effective solutions that ensure the program is viable in the long-term, while also providing the most responsive, efficient service possible to the regulated community.

IV. Process Improvements to Minimize Costs

As referenced above, and as outlined in our EIA comments, we believe DNR needs to look for ways to minimize costs before adopting the substantial fee increases it is seeking. In that regard, DNR states in the rule:

This rule will also not provide sufficient resources to undertake major changes in rules, work on streamlining efforts, or explore the application of new technologies or other efficiencies. Department efforts here would be selective, strategic, and heavily contingent on revenue being larger than this rule predicts. (p.14 of the Rule Analysis)

We note, however, that proposed NR 410.03(b) provides: “By September 30, 2026, the department shall prepare and make public a report describing the actions the department tends to undertake to streamline activities supported by fees assessed under this section.” The goal of any streamlining effort should be to provide permits in a timely fashion, and to reduce staff time taken to issue permits, resulting in lower program costs.

While we support streamlining, we are concerned regarding the potential timeline associated with this effort. This report would not even be completed for two years, with any implementation of recommendations occurring later. Moreover, the time lag for implementation could be extensive if there was any rulemaking needed, which generally takes at least three years, or additional financial resources for technological improvements. Moreover, DNR would need additional time to implement improvements into the construction permitting process.

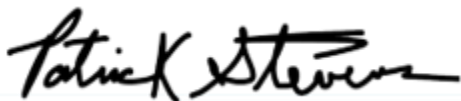
In addition, there are other issues with DNR's proposed language for a streamlining report. More specifically, any streamlining report language should be modified to include:

- The establishment of a streamlining committee, including DNR representatives, representatives of permittees (e.g., individual permittees and/or organizations that represent permittees) and consultants;
- Goals for the committee to streamline construction permitting requirements and/or permit reviews to maintain a specifically agreed-to average permit issuance time from complete application, and to reduce associated DNR and permittee costs;
- A shorter deadline for completing the report and a deadline for implementing recommendations. The current language only references streamline activities DNR "intends to undertake."


There may be other ways that are less time-consuming to reduce the staff effort needed to conduct permit reviews and the corresponding revenue needs. Any streamlining or flexibility that can be achieved sooner will help to proactively address the program's shortage of funding and staffing. Because DNR acknowledges that it will be unable to immediately realize the financial benefit of increased fees until future construction permits are completed, we are concerned that our members also may not see real improvements in the permitting process for years. DNR could reduce the pressure on itself and the regulated community by considering some of the proposals in our EIA comments as referenced and incorporated above, as well as other time/cost saving measures.

Thank you for your consideration of these comments and please contact us if you have any questions.

Sincerely,



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