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Olivia Salmon
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53551

Sent via email: olivia.salmon@wisconsin.gov

RE: Comments on Economic Impact Analysis (EIA) Relating to Fees for Reviewing Air Pollution Control Construction Permit Applications 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, with the output of paper manufactured products estimated to be over \$18 billion. Our members are dedicated to maintaining clean air in Wisconsin.

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 related fees are not excessive and do not unduly burden Wisconsin businesses.

Many WPC and WMC members are subject to both state and federal air construction permit requirements as well as air operation permit requirements. Moreover, our members would be subject to these proposed fees for construction permits and exemption determination requests. Consequently, WPC and WMC have a significant interest in this rulemaking.

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. **WPC and WMC oppose the substantial and unreasonable fee increases proposed by DNR staff under the draft NR 410. Prior to seeking fee increases, DNR should conduct a review of its processes to streamline permit approvals to reduce costs and the corresponding fee increases which would impose a major burden on Wisconsin manufacturers and industrial sources.** In these comments, our organizations suggest several potential reforms that DNR should consider.

II. Background

As an initial matter, as DNR had noted, sources are not allowed to construct a project unless it has received an air construction permit for the project. Consequently, it is important that these permits are issued in a timely manner and pursuant to a predictable timeframe. This is important for economic development, as well to allow Wisconsin manufacturers to remain competitive. In addition, many of the projects have environmental benefits associated with them as well, including positive impacts on air quality.

III. Average Fee Increase Exceeds 90%, or More Than Double Inflation Since Last Increase

In the draft EIA, DNR indicates that fees for air construction permit reviews have not been increased since January 2011, and the fees “have not kept pace with inflation and other costs.” The rule’s scope statement (SS 048-23) suggests 37% inflation since 2011. Later, during the last meeting of the DNR’s NR 410 Technical Advisory Group, DNR staff estimated 40% inflation occurred since the last fee increase.

However, regardless of which figure is utilized (37% or 40%), the DNR’s proposed fee increases under the proposed NR 410 are more than double an inflationary adjustment from 2011. The draft EIA evaluates 38 fees under NR 410; this includes 33 increases to existing fees, 3 new fees, one instance where a fee reduction was deleted, and only one instance where the fee is unchanged. Further, if we analyze only the 34 fees in which the fee was increased or stays the same, the average increase is 91%. These increases, as a percentage of the current fee, are further evaluated in *Appendix A* of these comments.

In addition, typical fee increases under the rule are 80% or 100%. One fee is tripled, and two other fees increase by 183% and 175%. Again, these adjustments far exceed any inflationary increase.

IV. DNR is Proposing Large, Dramatic Fee Increases That May Not be “Reasonable” under Wisconsin Law

Wis. Stat. § 285.69(1)(a) authorizes DNR to promulgate fees for “reviewing and acting upon any application for a construction permit...” The authority to charge fees, however, is restricted. Such fees must be “reasonable.” As outlined below, in FY27, **DNR estimates**

the cost for issuing six permits in FY26 (effective date of the rule is August 2025) is \$577,878. We question whether this amount, funded entirely from fee revenue, is reasonable.

As outlined above, DNR is proposing significant increases to 33 existing fees, and creating three new fees. DNR estimates **the cost of the fee increase will be \$2,007,418** for FY26 and FY27 combined. To reiterate, this does not include the cost associated with the current fees that are in place.

On an individual fee basis, many fees are being increased dramatically. For example, the base fee for construction of a PSD or nonattainment area major source or a major modification to a major source, is increasing from \$16,000 to \$32,000. This cost does not include additional add-on construction fees, which are listed on page 9 of the draft EIA.

The EIA also provides information relating to the total cost of major construction permits on an individual permit. In FY26, DNR estimates there will be six permits (table 2) issued, for a total cost of \$577,878 (table 3). **This equates to \$96,313 per permit.** In FY27, DNR also estimates there will be six permits issued, for a total cost of \$593,513. **This equals \$98,919 per permit.** Consistent with this amount, **DNR has estimated that the “average” cost of a major construction permit would be \$100,000.**

DNR has also provided some examples of costs associated with these fee increases. DNR indicated that the cost for construction of a paper machine, two boilers, digester, flare, cooling tower, storage silos, and emergency cooling towers would **increase to \$143,800, compared to a current cost of \$77,800.**

Even minor construction permits would be expensive. DNR estimates it will issue 59 minor source construction permits in FY27, at a cost of \$1,016,052, for a per permit cost of \$17,221. In addition, for small businesses, DNR estimates the average fee would increase from \$12,490 to \$26,574 in FY26.

Furthermore, construction permit applications are only issued in a timely manner if an “expedited review fee” is attached for processing a permit that was to be processed anyway. These fees are increasing to \$13,500 from \$7,500, 45% for a permit to be issued in 60 days. If staff is increased all permits should be issued within 60 days, and the expedited permit fee should be eliminated if staffing is increased.

In addition to the extensive list of fee increases and new fees, DNR is also proposing an annual fee adjustment based on the consumer price index, beginning the year after the effective date of the proposed rule. DNR makes the following claim on page 5 of the draft EIA:

The annual adjustment factor would delay or eliminate the need for the department to undertake future rulemaking to revise construction permit program fees and would also minimize the impact to businesses and increase predictability by incrementally adjusting fees annually, rather than continuing the department’s practice of promulgating substantial fee increases approximately every 10 years.

However, as noted in the previous section, DNR is proposing an average fee increase of 91% (not including new fees), or more than double an inflationary adjustment from the last fee increase in 2011. This suggests that DNR does not consider inflationary increases to be sufficient, and may seek new, draconian fee increases in the future even with an inflationary adjustment.

V. Other States Rely Less on Construction Fees to Fund their Programs

DNR attempted to get a comparison of how other states' total construction permitting program costs compare to Wisconsin's costs. It is difficult to compare states based on this information because of the differences in state programs' funding sources, missing information, and no information regarding the number of permits issued. The data clearly reflects, however, that Wisconsin relies more heavily on fees than other states. The information demonstrates:

- Michigan charges no construction permit fees.
- Minnesota uses both construction fees and general funding but DNR was unable to specify what amount of revenue was from fees.
- Iowa relies on construction permit fees and other sources, primarily general revenues.
- Indiana uses a combination of fees and other sources of revenue. Indiana was unable to provide funding details.

In contrast to the states referenced above and other states not referenced above, Wisconsin relies entirely on construction permit fees to fund its air construction permit program.

In short, the estimated costs set forth below for construction permits are excessive.

DNR further claims on page 6 of the draft EIA that "it is evident that the revenue and staffing levels the proposed rule is intended to support are comparable to, or substantially lower than, the levels in other states." However, this claim is impossible to verify based on the information compiled by DNR, because DNR was unable to obtain apples-to-apples comparisons between the air construction permit program in Wisconsin versus neighboring states.

For example, as noted above, DNR is unable to assess what is spent by Indiana for air construction permits. Instead, DNR estimates that Indiana employs 40 permit writers (handling "all permit types") and spends \$5.3 M - \$7.6 M annually. For Wisconsin's analysis, DNR indicates that the agency spent \$1.7 million in support of 14.5 FTEs in FY 2023, including 5 permit writers.

However, DNR did not note how many permit writers handling "all permit types" are employed in Wisconsin, nor what the agency spends. According to the [Legislative Fiscal Bureau \(LFB\) Informational Paper #71 \(January 2023\)](#), for FY23 DNR was authorized \$17.3 M and 140.75 positions for air management activities. It is not clear how many of

these positions were filled in FY23, how many should be considered permit writers handling “all permit types,” and the DNR’s expense for such positions.

In the final EIA, DNR should provide additional information to provide a clearer comparison of Wisconsin’s air permit program versus programs operated by our neighbors. If it cannot obtain additional information, it should remove the claim that the DNR air program is operating at a lower cost and more efficiently than neighboring states, as that claim cannot be verified.

VI. DNR Should Expand EIA to Analyze Fees and Permit Review Times from Neighboring States

In the draft EIA, DNR notes that “economic development relies on industry’s ability to quickly react to business opportunities and market changes,” and asserts the fee increases will lead to improved permit processing times for industry. WPC and WMC agree that timely and predictable permit processing times are important. However, economic development is also dependent on regulatory compliance costs; businesses have limited resources and must make economic development decisions based on timely approvals and overall costs to a business. A state that fails to excel at both timely approvals *and* affordable costs risks losing such investments to other states.

During a Technical Advisory Group meeting in December, DNR presented three examples of potential fee increases for air construction permitting under the new rule: A minor modification at a printing press, a minor modification at an aluminum foundry, and a PSD major modification at a large paper mill (as noted above in Section IV). All three modifications would increase dramatically under the new fee structure. The results are summarized in the table below:

Table 1: Examples of Impacts of Fee Increases on Specific NSR Projects

NSR Fee Example	Total Current Fees	Total Proposed Fees
<u>Minor modification of part 70 minor flexographic printing facility:</u> Construction of a flexographic printing press, a coater and a parts washer	\$11,400	\$22,600
<u>Minor modification of part 70 major aluminum foundry:</u> Construction of four aluminum melting furnaces and a pouring and cooling operation	\$19,150	\$39,650
<u>PSD modification at a large paper mill:</u> Construction of paper machine, two boilers, digester, flare, cooling tower, storage silos and emergency generators	\$77,800	\$143,800

As noted previously, these are substantial fee increases that may not be “reasonable” under state statute. However, in conversations with our members, this analysis may still underestimate the cost of a project. Specifically, a project may need to undergo multiple rounds of permitting if project specifications change (i.e. – the stack height may need to be adjusted, etc.). Such additional permitting further increases costs for industrial sources, and such costs should be included in the final EIA.

In the preparation of this draft rule and draft EIA, DNR compiled fee tables from Wisconsin versus Illinois, Indiana, Iowa, and Minnesota (Michigan does not assess air construction fees). However, DNR did not analyze or otherwise attempt to compare fees assessed for actual projects in Wisconsin versus neighboring states.

In addition, the draft EIA notes that the fee increases are needed to avoid permit issuance times from increasing dramatically. Per page 2 of the draft EIA, Wisconsin is “historically a nation-leading 3-4 months,” but permit issuance is now above 6 months and, according to DNR, may exceed 12 months by the end of 2024. WPC and WMC agree with DNR that 12 months is far too long of a period for a source to wait for a permit. As outlined below, DNR should look at other approaches to decrease workloads and corresponding timeframes for permit issuance before considering fee increases.

Finally, Section 227.137(3)(a) requires DNR to compare the approaches taken by Wisconsin versus neighboring states. This would include a comparison of the fees actually assessed for projects by Wisconsin versus neighboring states, as well as a comparison of the approaches that those states take to address the policy problem. The policy problem in this instance is issuing timely permits that meet regulatory requirements in a cost-effective manner. DNR should expand its analysis in section 18 of the EIA to compare policy approaches to addressing the problem, including policy approaches to minimize program costs and permit issuance times. It is not enough for DNR to simply state that “Wisconsin will have the smallest and leanest construction permitting program relative to nearby states.”

VII. DNR Should Explain What Happened to \$1.5 Million Surplus in Air Construction Program

According to the aforementioned LFB Informational Paper #71, DNR entered FY23 with a cash balance of \$1.53 million in the air construction permit program. Recent revenues and expenditures are summarized below, which is found on page 14 of the LFB analysis.

Table 2: LFB Analysis of Air Construction Permit Revenue and Expenditures

Year	Revenue	Expenditures
2012-13	\$2,205,800	\$1,507,200
2013-14	1,961,200	2,103,500
2014-15	2,382,000	2,024,900
2015-16	1,849,600	1,713,000
2016-17	1,841,700	1,955,800
2017-18	2,128,500	1,401,600
2018-19	1,483,400	1,421,100
2019-20	1,736,800	1,781,600
2020-21	1,806,800	2,079,500
2021-22	1,278,000	1,713,200

On page 5 of the DNR draft rule analysis, in FY23 DNR's construction permit program incurred expenses of \$1.7 million with only \$1.1 million in revenues. This would result in an approximate deficit of \$600,000, with approximately \$900,000 remaining to cover any future shortfalls. DNR further expects the account to show a deficit again in FY24.

However, it is unclear how DNR intends to allocate the remaining \$900,000 surplus. DNR should provide a clear accounting as to how it intends to utilize its remaining account balance in order to minimize the impact to sources to the greatest extent practicable. Alternatively, if the current account balance is now \$0, DNR should provide a detailed accounting as to how the previous \$1.53 million balance (as of FY23) was spent in the final EIA.

VIII. DNR's Plan Imposes Fees Immediately Upon Enactment, but Takes Years to Resolve Permit Backlog

DNR intends to have fees take effect immediately upon enactment of its proposed rule. In the draft EIA, DNR estimates the impact of the fee increase beginning in FY26. Assuming it would take effect at the beginning of the fiscal year, this would mean the fee increase would start on July 1, 2025. DNR estimates new revenues of \$1.42 M in the first fiscal year as a result of the myriad of fee increases.

As noted previously, DNR currently only has filled 14.5 of 19.5 authorized positions, including just 5 permit writers. DNR estimates it may further reduce permit writers prior to the fee increase taking effect, to further address a perceived shortfall.

However, even if the fee increase were to take effect on the timeline proposed by DNR, permit writer positions would not be filled until *FY29*. The table below was presented to the DNR TAG in January:

Table 3: Projected Impact of Rule on NSR Staffing

		Actual	Projected					
		FY23	FY24	FY25	FY26	FY27	FY28	FY29
With rule	Total FTE	14.5	14.5	**	16.5	17.5	18.5	19.5
	Non-permit writers*	9.5	9.5	**	9.5	9.5	9.5	9.5
	Permit writers	5.0	5.0	**	7.0	8.0	9.0	10.0

* “Non-permit writers” are other AM program staff associated with the NSR program (e.g., permit processing, NSR-related modeling and stack testing, supervision) along with external program support (e.g., IT and legal). This figure would remain relatively static as additional permit writers are added.

** Short term decreases in permit writers/total FTE in FY24-25 likely, depending on NSR revenue.

In other words, under the DNR’s plan, fees would increase on July 1, 2025, but permit writer positions would not be fully filled until July 1, 2028 at the *earliest*. It is not explained why DNR would wait three years and have collected nearly \$4.5 million in additional fees before achieving staffing levels that may help the agency return to a 3-4 month permit issuance timeline.

Finally, it must be noted that the construction permit program must continue to meet statutory permit review deadlines as prescribed under Wis. Stat. §. 285.61. Failing to act on an application can trigger a statutory refund requirement under Wis. Stat. § 285.61(11)(b), which would further delay applicants and further exacerbate DNR’s funding shortfall.

IX. DNR Should Review its Current Construction Permit Program to Identify Ways to Decrease Costs with Technology and Efficiencies

During the discussions regarding funding its construction permitting fees, DNR has focused entirely on obtaining the large fee increases referenced above. DNR’s proposed fee increases would appear to put fees at a significantly higher level than in many other states. Such an approach puts Wisconsin at a disadvantage compared to states such as Michigan, which DNR indicates does not charge construction permit fees. The increasing rate of cost is not a sustainable model for the DNR air permitting program.

While DNR has pointed to previous streamlining efforts, DNR has not offered any actions or ideas for decreasing the work efforts associated with permitting, or enacting policy changes that may help right-size and reduce costs, as an abatement effort to avert significant increases with process and program efficiencies. In addition, WPC and WMC hear from members that DNR’s program, unlike other states, does not have automatic approval time periods for pertinent operating permit revisions and determinations to improve state accountability on program effectiveness.

Prior to seeking fee increases, DNR should conduct a review of its processes and program requirements to identify ways to reduce costs and the corresponding proposed fee increases. Some items to consider include:

- Consult with EPA, the National Association of Clean Air Agencies, and other states to learn about best practices to streamline and minimize permit program costs and corresponding fees. Also, please note that the Minnesota Chamber of Commerce recently developed a report entitled “*Streamlining Minnesota’s Environmental Permitting Process : Recommendations for Improvement,*” which is available here: [Streamlining Minnesota’s environmental permitting process: Recommendations for improvement | Minnesota Chamber of Commerce \(mnchamber.com\)](https://www.mnchamber.com/Streamlining-Minnesota-s-environmental-permitting-process-Recommendations-for-improvement).
- Consider a certification program for consultants and allow permits that are prepared by certified consultants move forward with no or minimal review by DNR permit staff.
- Analyze a construction permit fee system based upon a per hour charge for work performed.
- Enhance upfront communication between permittees, including preapplication meetings when appropriate to avoid miscommunications resulting in delays.
- Divert more construction permit resources to construction permit writers, rather than other construction permit program staff with unspecified duties.
- Streamline staff reviews by focusing on critical issues identified by staff and permittees.
- Establish hourly time metrics for permit writers to help eliminate time gaps in permit reviews.
- Incorporate full federal requirements by reference and eliminate partial notations that piecemeal federal regulations. Partial notation is burdensome for the permit writers, and difficult to understand and implement.
- Maximize the use of permit template language. We understood that resources were previously allocated for a “template approach,” to share knowledge and to achieve consistency throughout the permitting program. This approach does not appear to be fully implemented.
- Consider and implement a more modernized business approach with the use of artificial intelligence technology and tools to optimize database resources and references and to replace repetitive and routine work tasks.
- Consider ways to minimize requests for additional information and the time required for completeness reviews.

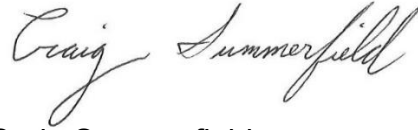
As an aside, DNR has indicated that it will also be seeking increases in air emissions fees to provide additional funding for the Title V permitting program. We understand that some other states have automatic approval time periods for some operating permit revisions and determinations. Such an approach could result in more timely approvals and allow DNR to focus on other more significant matters.

Thank you for your consideration of these comments.

Sincerely,



Patrick Stevens
Vice President,
Environmental & Regulatory Affairs
General Counsel
Wisconsin Paper Council



Craig Summerfield
Senior Director,
Environmental & Energy Policy
Wisconsin Manufacturers & Commerce

Appendix A: Percentage Increase of Fees under Proposed NR 410

*Adapted from "Attachment B" from DNR's draft EIA. Cells highlighted in red exceed inflationary adjustment.

Fee Description	Current Fee	Proposed Fee	Percentage Increase
Construction Permit Base Fees			
Minor source construction at a Part 70 minor source	\$3,000	\$5,800	93.3%
Minor modification at a Part 70 major source	\$7,500	\$15,000	100%
Major modification under PSD or nonattainment area permitting	\$12,000	\$24,000	100%
Construction of a PSD or nonattainment area major source or a major modification where the modification itself is a major source	\$16,000	\$32,000	100%
Establishing a plant-wide applicability limit - fee charged per pollutant	\$12,000	\$21,600	80%
Increase of a plant-wide applicability limitation (PAL)	\$6,000	\$10,800	80%
Distribution of allowable limitations upon expiration of a PAL	\$6,000	\$10,800	80%
Revision of a construction permit	\$1,500	\$3,000	100%
Waiver of construction permit requirements under NR 406.03(2)	\$300	\$300	0%
Construction Permit Additional Fees			
Basic emission unit fee - per unit for analysis of 2 or more basic units	\$800	\$2,200	175%
Analysis of alternatives under s. NR 408.08(2)	\$2,500	\$4,500	80%
Emission offset under NR 408 or netting emission increase under NR 405	\$5,000	\$9,000	80%
MACT, BACT, LAER (case-by-case analysis) (per unit per pollutant)	\$4,500	\$5,500	22.2%
Air quality modeling analysis at minor source or minor modification	\$1,000	\$3,000	200%
Air quality modeling analysis for major source/modification	\$4,500	\$8,100	80%
Toxic emission limitations established under chs. NR 446-449 or 445.07	\$1,000	\$1,800	80%
Emission testing (\$2,500 for first air contaminant plus \$1,250 for each additional air contaminant up to a maximum of \$6,000)	See Fee Description	Existing fee x 1.8	80%
Environmental Analysis under NR 150	\$1,500	\$2,700	80%
LACT determination under s. NR 424.03(2) per basic emissions unit	\$600	\$1,700	183.3%
BACT or LAER under ch. NR 445 - each determination	\$2,000	\$3,600	80%
PTE Limit to make the source/modification a minor source/modification	\$3,500	\$6,300	80%
Public hearing requested by the applicant	\$1,500	\$2,700	80%
NEW FEE - Apply additional fees listed in NR 410.03(2) to revisions	--	See above	N/A
NEW FEE - Public hearing requested by someone other than applicant	--	\$2,700	N/A
NEW FEE - Incorporation of requirements of a consent decree	--	\$3,500	N/A
Construction Permit Exemption Fees			
Research and testing exemption (406.04(1)(i))	\$1,250	\$2,250	80%
Modification to a PAL (NR 406.04(1f))	\$1,500	\$2,700	80%
Modification to a PAL with modeling (NR 406.04(1f))	\$2,400	\$4,320	80%
Modification exempt from major PSD or NNSR (406.04(1k))	\$5,500	\$9,900	80%
Modification exempt from major PSD or NNSR (406.04(1k)) w/modeling	\$6,500	\$11,700	80%
Controlled actual emissions 10 ton/yr exemption (406.04(1q))	\$1,250	\$2,250	80%
Any other construction permit exemption not listed above	\$500	\$1,400	180%

Miscellaneous Construction Permit Fees/Credits			
Multiple application discount (same project at multiple possible locations)	\$1,000	\$1,800	80%
Siting analysis under 285.63(10) for medical waste incinerator	\$3,500	\$6,300	80%
Expedited review requested (non PSD-under 50 days)	\$5,000	\$9,000	80%
Expedited review of a PSD or major NNSR source (under 60 days)	\$7,500	\$13,500	80%
Expedited review of a PSD or major NNSR source (under 61-90 days)	\$4,000	\$7,200	80%
Fee reduction if source publishes the newspaper notice (no longer used)	(\$150)	Remove	N/A