

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date February 28, 2024 - DRAFT
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter NR 410 - Air Permit, Emission And Inspection Fees	
4. Subject Revisions to fees for reviewing air pollution control construction permit applications and exemption determination requests under ch. NR 410 (AM-10-23)	
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	6. Chapter 20, Stats. Appropriations Affected s. 20.370(4)(bo), Wis. Stats
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	
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)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$1.42 million the first year the rule is in effect and \$1.48 million the second year the rule is in effect (two year total cost of \$2.9 million). The estimates are described under #14.	
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	
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 where a construction permit is required, a facility cannot construct or modify a source of air pollution before the construction permit is issued. 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. That commitment to timeliness is reflected in the fact that the department has historically achieved some of the best construction permit metrics in the country. The foundation of these excellent metrics has been the practice of continual innovation. Following the passage of Wisconsin Act 118 in 2003, which required the department to streamline its air permitting, the department implemented numerous efficiencies in its construction permit program. 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, automated certain applicable requirement determinations, and introduced permit electronic signature and payment systems. For the past several years, the construction permit program has experienced a significant deficit between its revenues and the spending levels needed to operate the program. Several factors have contributed to this shortfall. The fees that applicants pay 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,	

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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.

Wisconsin's construction permit program relies entirely on construction permit fees as its funding source. To ensure adequate revenue, increases in these fees are necessary. Furthermore, the increases must be sufficient to cover the costs associated with fully implementing the program and must be aligned with the program's ch. 20, Stats., (hereafter "ch. 20") spending authority. This revenue increase would allow the number of permit writers to double over time, from five to ten. This additional capacity will not only ensure the program can take timely action on customer permit requests, but also give the department the ability to undertake further permitting-related efficiencies, such as the increased automation of permit processes, consideration of additional permit flexibilities, or additional permit-related rule updates.¹ Without sufficient additional revenue, addressing these efficiency actions will not be possible.

To achieve this objective, this rule would increase existing construction permit fees, create several new fees, and add an annual inflationary adjustment factor that would allow fees to keep pace with inflation, thus ensuring that the Air Program can respond to economic development needs in a timely fashion into the future. The current and proposed fee amounts are shown in Attachment B.

Even after this rule is effective, Wisconsin will have the smallest and leanest construction permitting program relative to nearby states, both in terms of staffing and budget. Absent this rule, the program's ability to accomplish its core activities will be severely jeopardized, with a corresponding impact on already declining metrics. For example, permit issuance times, which were historically a nation-leading 3-4 months, are above 6 months as of January 2024 and are expected to exceed 12 months by the end of 2024. These adverse trends will continue without significant additional funding.

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 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 fully resolve 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 have an interest in the proposed rule include businesses, 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 may be affected by this rule. The department will contact all sources with air pollution control permits, as well as the following organizations, via email at the beginning of the 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
- Clean Wisconsin
- League of Wisconsin Municipalities
- NR 410 Technical Advisory Group (convened pursuant to s. 227.13, Stats.)
- Small Business Environmental Council

¹ The specific efficiency and program improvement activities to be undertaken would be determined in consultation with stakeholders as resources become available.

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- 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 will contact tribal governments approved for treatment as states, the Wisconsin Counties Association, and the League of Wisconsin Municipalities via email to notify tribes, counties and other local governmental units 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 solicitation of comment period.

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 \$2,909,921 for the first two fiscal years (FY) that the rule is expected to be in effect (FY26 and FY27). This estimate is based on projections of construction permit program activities, proposed construction permit program fee increases, and assumptions about future inflation.

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 construction permit actions the department might expect to act on in FY26 and FY27 (Table 2).

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

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Table 2. Projected Construction Permit Program 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, fully cover program expenses, and fund the program at levels authorized by statute. Attachment B of this document presents current and proposed construction permit program fees. These proposed fee amounts would apply in the first year the rule is effective (FY26).

The department is proposing an annual inflation adjustment factor that would first be applied to the proposed fees in FY27, the fiscal year after the rule becomes effective. The proposed adjustment is based on changes in the consumer price index and uses a methodology identical to the annual inflationary adjustment calculated in other NR 400 series air pollution control rules. For this analysis, the department assumed 3% change in the consumer price index to estimate fees that would apply in FY27.

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 FY26 + FY27 cost of the construction permit program with and without the proposed rule (Table 3).

Table 3. Comparison of Estimated Construction Permit Program Cost 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)	(f=c-a)	(g=d-b)	(f+g)
Minor Construction Permits	\$889,489	\$874,664	\$1,880,854	\$1,890,716	\$991,366	\$1,016,052	\$2,007,418
Major Construction Permits	\$352,876	\$352,876	\$577,878	\$593,513	\$225,002	\$240,637	\$465,639
Exemptions	\$60,760	\$62,720	\$126,418	\$134,411	\$65,658	\$71,691	\$137,349
Revisions	\$52,500	\$55,500	\$195,090	\$212,425	\$142,590	\$156,925	\$299,515
Total cost	\$1,355,625	\$1,345,760	\$2,780,240	\$2,831,066	\$1,424,615	\$1,485,306	\$2,909,921

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

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Impacts on Public Utility Rate Payers

The department anticipates that utility rate payers will not be economically impacted by the implementation of the proposed rule.

Impacts on Local Governmental Units

The department anticipates that local government units will not be economically impacted by the implementation of the proposed rule.

Fiscal Impact and Impact on State Economy

The revised revenue associated with this proposed rule is necessary to 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 a typical construction permit in approximately 3-4 months, in line with historical performance. This issuance period is among the fastest in the country, and allows businesses to react quickly to economic opportunities. Without this rule, permit review and issuance times will 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 they are awaiting 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. In the face of declining revenues, over the last decade the department has sought efficiencies, such as by promulgating 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 ensure construction permit fees keep pace with future inflation. The department is proposing to adjust construction permit fees annually according to the consumer price index. Incorporation of this annual adjustment factor would prevent the growth of a structural deficit in construction permit program revenues due to inflation. 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.

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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 (SIP), 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.² 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 comparable to, or substantially lower than, the levels in other states. 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 could still be smaller than those in nearby states, both in terms of budget and staffing, with the possible exception of Iowa, whose program would be roughly comparable in size.

19. Contact Name

Gail Good

20. Contact Phone Number

(608) 219-2690

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

² Although 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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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 \$92,000 of the rule's \$1,424,615 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
Construction permits	6	\$12,490	\$26,574	\$14,084	\$84,505
Permit revisions	1	\$1,500	\$5,574	\$4,074	\$4,074
Exemptions	4	\$825	\$1,768	\$943	\$3,772
				Total	\$92,351

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

The department queried 2022 and 2023 construction permit, construction permit exemption, construction permit revision issuance, and employee number data 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

Due to air pollutant emission amounts below applicable thresholds, many small businesses are able to qualify for coverage for a general or registration permit in lieu of needing to obtain a minor construction permit. Once a facility is covered under a general or registration permit, projects at the facility are exempt from construction permitting as long as the facility continues to qualify for coverage under the general or registration permit after the project. No changes are proposed that would either affect small business eligibility for coverage under general or 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
-

Attachment B – Current and Proposed Fees

Fee Description	Code Cite (NR)	Current Fee	Proposed Fee
Construction Permit Base Fees			
Minor source construction at a Part 70 minor source	410.03(1)(a)1.	\$3,000	\$5,800
Minor modification at a Part 70 major source	410.03(1)(a)2.	\$7,500	\$15,000
Major modification under PSD or nonattainment area permitting	410.03(1)(a)3.	\$12,000	\$24,000
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	\$32,000
Establishing a plant-wide applicability limit - fee charged per pollutant	410.03(1)(a)8.	\$12,000	\$21,600
Increase of a plant-wide applicability limitation (PAL)	410.03(1)(a)9.	\$6,000	\$10,800
Distribution of allowable limitations upon expiration of a PAL	410.03(1)(a)10.	\$6,000	\$10,800
Revision of a construction permit	410.03(1)(ae)	\$1,500	\$3,000
Waiver of construction permit requirements under NR 406.03(2)	410.03(1)(bm)	\$300	\$300
Construction Permit Additional Fees			
Basic emission unit fee - per unit for analysis of 2 or more basic units	410.03(2)(a)	\$800	\$2,200
Analysis of alternatives under s. NR 408.08(2)	410.03(2)(b)	\$2,500	\$4,500
Emission offset under NR 408 or netting emission increase under NR 405	410.03(2)(c)	\$5,000	\$9,000
MACT, BACT, LAER (case-by-case analysis) (per unit per pollutant)	410.03(2)(d)	\$4,500	\$5,500
Air quality modeling analysis at minor source or minor modification	410.03(2)(e)	\$1,000	\$3,000
Air quality modeling analysis for major source/modification	410.03(2)(f)	\$4,500	\$8,100
Toxic emission limitations established under chs. NR 446-449 or 445.07	410.03(2)(g)	\$1,000	\$1,800
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	Existing fee x 1.8
Environmental Analysis under NR 150	410.03(2)(i)	\$1,500	\$2,700
LACT determination under s. NR 424.03(2) per basic emissions unit	410.03(2)(k)	\$600	\$1,700
BACT or LAER under ch. NR 445 - each determination	410.03(2)(L)	\$2,000	\$3,600
PTE Limit to make the source/modification a minor source/modification	410.03(2)(m)	\$3,500	\$6,300
Public hearing requested by the applicant	410.03(2)(j)	\$1,500	\$2,700
NEW FEE - Apply additional fees listed in NR 410.03(2) to revisions	Proposed under 410.03(2)	--	See above
NEW FEE - Public hearing requested by someone other than applicant	Proposed under 410.03(2)(j)	--	\$2,700
NEW FEE - Incorporation of requirements of a consent decree	Proposed under 410.03(2)(p)	--	\$3,500
Construction Permit Exemption Fees			
Research and testing exemption (406.04(1)(i))	410.03(1)(b)1.	\$1,250	\$2,250
Modification to a PAL (NR 406.04(1f))	410.03(1)(b)2.	\$1,500	\$2,700
Modification to a PAL with modeling (NR 406.04(1f))	410.03(1)(b)2.	\$2,400	\$4,320
Modification exempt from major PSD or NNSR (406.04(1k))	410.03(1)(b)3.	\$5,500	\$9,900
Modification exempt from major PSD or NNSR (406.04(1k)) w/modeling	410.03(1)(b)3.	\$6,500	\$11,700
Controlled actual emissions 10 ton/yr exemption (406.04(1q))	410.03(1)(b)3m.	\$1,250	\$2,250
Any other construction permit exemption not listed above	410.03(1)(b)4.	\$500	\$1,400
Miscellaneous Construction Permit Fees/Credits			
Multiple application discount (same project at multiple possible locations)	410.03(1)(e)	\$1,000	\$1,800
Siting analysis under 285.63(10) for medical waste incinerator	410.03(2)(n)	\$3,500	\$6,300
Expedited review requested (non PSD-under 50 days)	410.03(2)(o)1.	\$5,000	\$9,000
Expedited review of a PSD or major NNSR source (under 60 days)	410.03(2)(o)2.	\$7,500	\$13,500
Expedited review of a PSD or major NNSR source (under 61-90 days)	410.03(2)(o)3.	\$4,000	\$7,200
Fee reduction if source publishes the newspaper notice (no longer used)	410.03(1)(c)	(\$150)	Remove

