

The statement of scope for this rule, SS 048-23 was approved by the Governor on July 28, 2023, published in Register No. 812A1 on August 7, 2023, and approved by the Natural Resources Board on September 27, 2023. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 410.03 (1) (c); to **amend** NR 439.03 (1) (a) 1., 2., 3., 4., 8., 9., and 10., (ae), (b) 1., 2., 3., 3m., and 4., (e), and (2); and to **create** NR 410.03 (2) (p) and (5) relating to revisions to fees for reviewing air pollution control construction permit applications and exemption determination requests and affecting small business.

**AM-10-23**

**Analysis Prepared by the Department of Natural Resources**

**1. Statute Interpreted:** Sections 227.11 (2) (a), 285.11 (1) and (6), 285.14 (1) and 285.69 (1), Stats.

**2. Statutory Authority:** Sections 227.11 (2) (a), 285.11 (1) and (6), 285.14 (1), and 285.69 (1), Stats.

**3. Explanation of Agency Authority:**

Section 227.11 (2) (a), Stats., confers rulemaking authority to an agency where such rules are necessary to effectuate the purpose of existing statutory authority. The department is required under s. 285.11 (1), Stats., to promulgate and implement rules consistent with state air pollution statutes in ch. 285, Stats.

Section 285.69 (1), Stats., authorizes the department to collect reasonable fees to fund the 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.

The State Implementation Plan (SIP) developed under s. 285.11 (6), Stats., is revised. A control measure or strategy for inclusion in the SIP is promulgated as a rule under s. 285.14 (1), Stats.

**4. Related Statutes or Rules:**

Pursuant to s. 285.69, Stats., ch. NR 410, Wis. Adm. Code, establishes requirements and procedures for the payment of fees by persons who are required to obtain construction permits for air contaminant sources or who request a determination of exemption from the requirement to obtain an air pollution control permit. Sections 285.61 and 285.66, Stats., and chs. NR 405, 406 and 408, Wis. Adm. Code, establish permit and permit review requirements and permit duration for construction permits.

**5. Plain Language Analysis:**

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, 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.<sup>1</sup> 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 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 Appendix A.

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.

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

## **6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

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. As described in #8, state approaches to funding construction permit programs vary widely.

## **7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:**

The Joint Committee for Review of Administrative Rules did not direct the department to hold a preliminary hearing or comment period on the statement of scope.

Following Natural Resources Board adoption of the statement of scope for this proposed rulemaking, the department held two informational sessions for stakeholders on November 9, 2023. The department also convened a technical advisory group (TAG) in accordance with s. 227.13, Stats., to serve in an advisory capacity on the proposed rulemaking. The TAG met twice during the department’s rule drafting phase to review and provide input on potential fee restructuring proposals. The proposed fee revisions in this rule reflect the discussions and feedback provided by TAG members.

## **8. Comparison with Similar Rules in Adjacent States:**

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

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 (FTE) staff.

To inform this comparison, the department contacted the Illinois Environmental Protection Agency (IEPA), the Michigan Department of Environment, Great Lakes, and Energy (EGLE), the Minnesota Pollution Control Agency (MPCA), the Iowa Department of Natural Resources (IDNR), and the Indiana Department of Environmental Management (IDEM). Based on the information received, a summary of which is provided below, 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 these nearby states.

The current construction permit fee schedules for Illinois, Minnesota, Iowa, and Indiana are included in Appendix B (Michigan does not charge fees). Fee structures in these states differ considerably, making direct comparisons challenging. For example, one state may offset a low “base fee” with additional fees that reflect the complexity of the permit, while another might charge a higher base fee. As a result, the exact fee a state might charge is highly project dependent.<sup>2</sup>

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<sup>2</sup> Iowa’s [2014 Air Quality Bureau Stakeholder Report](#) (section E, “Fee Structure Benchmarking”) provides a good overview of this issue, including an assessment of what permit fees might be charged in different states for specific types of projects.

### *Illinois*

The IEPA unit that handles construction permits for higher-emitting sources currently consists of 9 FTE (1 supervisor, 3 lead workers, and 5 permit writers). Illinois is in the process of increasing staffing in this unit to 19 FTE (1 supervisor, 3 lead workers, and 15 permit writers). A separate unit, which handles a mix of construction and operation permits for lower-emitting sources, employs 18 FTE (1 supervisor, 3 lead workers, and 14 permit writers). One additional permit writer hire to this unit is planned.

Illinois funds its construction permit program through a combination of fees and other sources. The IEPA was unable to provide complete funding or budget information for its construction permitting operations, but estimated the salary and fringe costs for its current 27 FTE would be around \$5.1 million. The agency collects approximately \$1.3-1.4 million in construction permit fees.

### *Michigan*

Michigan's construction permit program is comprised of two units that together employ 21 FTE (2 supervisors and 19 permit writers). These figures do not include support staff or administration. Michigan EGLE is in the process of adding one more permit writer for one of its existing units, as well as adding an additional construction permit unit comprised of 6 FTE (1 supervisor, 3 permit writers and 2 technical writers).

Michigan EGLE does not charge fees for construction permits, relying instead on various state funds (especially the state's general fund, but also other sources).<sup>3</sup> Michigan estimates the cost to support salaries for its current 21 FTE to be approximately \$3.4 million.

### *Minnesota*

The MPCA operates a combined air permitting program without a clear delineation between construction and other permitting. The MPCA employs 34 permit writers at an approximate cost of \$5.4 million. This cost does not include program managers and other support staff. The MPCA is in the process of hiring an additional 14 FTE to work on permits.

Minnesota funds its construction permit program through both fees and state general funds. The MPCA was unable to provide the amount of revenue provided by construction permit fees, but noted they have recently received additional general funding from the legislature to support construction permitting.

### *Iowa*

In fiscal year (FY) 2024 the IDNR's construction permit program employed a total of 15.5 FTE, including 13 permit writers, on a budget of \$2.1 million. These figures do not include support staff or administrative activities, which are covered by IDNR's core program funding. Also not included are most construction permitting actions undertaken in Des Moines and Cedar Rapids.<sup>4</sup>

The IDNR funds its construction permit program through a combination of fees and other sources, primarily state general funds. In FY24, construction permit fees and interest generated approximately \$1.1 million in revenue. State general funds and grants are especially important to minor source construction permitting, accounting for over 80% of total minor source construction permit program revenue.<sup>5</sup>

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<sup>3</sup> [Michigan EGLE Air Quality Division Annual Program Report – Fiscal Year 2022.](#)

<sup>4</sup> Polk and Linn counties, which contain Iowa's two largest cities (Des Moines and Cedar Rapids), implement their own minor source permit programs. Linn County also drafts major source permit applications, with the IDNR issuing the final permit. The IDNR budget figures described here do not address the cost of construction permitting managed by those counties.

<sup>5</sup> [IDNR Air Quality Fiscal Year 2025 Draft Budget memo.](#)

*Indiana*<sup>6</sup>

The IDEM has 42 air permit writer positions (handling all permit types, including construction permits), of which 2-3 positions may be vacant at any given time. The IDEM was unable to provide expense information, but based on data provided by other states, the department estimates that IDEM's 40 permit writers would cost between \$5.3-\$7.6 million.<sup>7</sup> Additional support staff and expenses would be on top of this figure.

Indiana funds its construction permit program through a combination of fees and other sources. The IDEM was unable to provide any additional details regarding construction permit program funding sources, fee revenue, or overall program budget.

*Wisconsin*

In FY23, Wisconsin's construction permit program employed 14.5 FTE at a cost of \$1.7 million. Of those 14.5 FTE, five are considered full-time permit writers, with the remainder being supervisors, permit processors, technology support, administration, and other allocable costs required to be covered by this account.<sup>8</sup> Wisconsin's construction permit fees brought in \$1.1 million, sufficient to cover 65% of expenses. Wisconsin's current program is smaller than nearly all of nearby states assessed in this comparison, in most cases considerably so.

The revenue from this proposed rule would allow the department to increase staffing to its authorized figure of 19.5 FTE. In practice, this would increase the number of permit writers from five to ten. Even with this rule, Wisconsin's construction permit program would 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.

**9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

The department's construction permit program has been running a deficit for several years, with the revenue generated by fees falling short of the amount needed to operate the program (see Table 1). Annual deficits have been covered by surpluses in the construction permit account, finding program efficiencies, and moving expenses to other funding sources when justifiable. This account is also expected to show a deficit in FY24.

The fee adjustment approach proposed by the department would result in revenues sufficient to fund the construction permit program at its ch. 20 spending authority levels starting in FY26 and continuing through at least FY29. This revenue level will also allow the program to increase staff until it reaches its authorized ch. 20 amount of 19.5 FTE.

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<sup>6</sup> 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.

<sup>7</sup> The per-FTE cost estimates obtained from other states ranged from \$132,000/year to \$190,000/year.

<sup>8</sup> Unless specifically noted, these types of costs are not included in the other state program summaries provided above.

**Table 1. Construction permit program revenue and expenses, FY19 - FY23**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>FY21</b>	<b>FY23</b>
Revenue	\$ 1,483,350	\$ 1,736,750	\$ 1,806,800	\$ 1,278,000	\$ 1,127,250
Expenses	\$ 1,633,895	\$ 1,781,556	\$ 2,079,501	\$ 2,019,497	\$ 1,747,083
Difference ( <i>deficit in parentheses</i> )	(\$ 150,545)	(\$ 44,806)	(\$ 272,701)	(\$ 741,497)	(\$ 619,833)

*Revenue projections and impacts*

For FY24, the ch. 20 authority for the construction permit program is \$2,412,700. The proposed rule is projected to result in revenues sufficient to fund the construction permit program at its ch. 20 spending authority starting in FY26 and continuing at least through FY29 (see Table 2). FY29 was selected as the planning year because, based on how ch. 20 amounts are calculated, it will take several years after the rule is effective (in FY26) for the program to be assured a stable funding level that will support increased hiring and other permitting activities supported by this account.

**Table 2. Projected impact of rule on construction permit program revenue**

	<b>Actual</b>	<b>Projected</b>			
	<b>FY23</b>	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>	<b>FY29</b>
Revenue	\$ 1,127,250				
<i>Without rule</i>		\$ 1,355,625	\$ 1,345,760	\$ 1,321,070	\$ 1,295,401
<i>With rule</i>		\$ 2,780,240	\$ 2,831,066	\$ 2,850,779	\$ 2,868,358
Chapter 20*	\$ 2,292,800	\$ 2,724,100	\$ 2,724,100	\$ 2,842,500	\$ 2,842,500

\*Ch. 20 for FY24-25 is \$2,412,700 (not shown in table). FY26-29 amounts are estimated.

Construction permit program revenue was estimated using projections of the number and type of future construction permit actions (i.e., minor construction permits, major construction permits, permit revisions, exemptions), the average frequency with which each construction permit fee is expected to be charged per permit action, and the current and proposed fee amounts. For purposes of revenue projections under the rule, it was assumed that an inflationary adjustment based on the consumer price index will first be applied in FY27. The projected number and type of construction permit actions for future years were based on trends in the number of permit actions for FY12-23. The average frequency with which each construction permit fee is expected to be charged per permit action was based on the actual average frequency with which these fees were charged per permit action for FY12-22.

*FTE projections and impacts*

The current ch. 20 position authority for the construction permit program is 19.5 FTE. Recent program revenue has only supported 14.5 FTE, a figure that includes not only permit writers, but other required construction permit-related support, such as supervisors, permit processors, technology support, administration, and other allocable costs required to be covered by this account. Without substantial additional revenue, the current 14.5 FTE cannot be sustained, and the program will be forced to eliminate permit writer positions.

As shown in Table 3, the revenue generated by this rule will allow the department to incrementally hire additional staff through FY29, eventually reaching the 19.5 FTE authorized under ch. 20. All staff hired through the additional revenue generated by this rule will be permit writers, increasing the number from five to ten. This will directly support permit reviews and other program activities important to regulated sources.

**Table 3. Projected impact of rule on construction permit program staffing**

	Actual	Projected			
	FY23	FY26	FY27	FY28	FY29
Construction permit program FTE	14.5	16.5	17.5	18.5	19.5
Chapter 20 FTE*	19.5	19.5	19.5	19.5	19.5

\*Actual ch. 20 for FY24-25 is 19.5 FTE. This is assumed constant through FY29.

*Workload analysis*

In support of this rule, the department conducted a workload analysis for the construction permit program. The results of this analysis support that the ch. 20 spending and position authority is the appropriate level at which the construction permit program should be funded.

For this analysis, the workload directly associated with the review and issuance of construction permits, revisions and exemptions, was estimated based on projections of the number and type of future permit actions and the estimated effort level (hours per action) for each permit action. The effort level per permit action was based on time coding data and permit issuance rates for FY18-22. The workload associated with support activities (e.g., permit processing, technology support) is expected to be relatively static and was estimated based on the historical number of FTE associated with these activities.

The department also estimated the effort level associated with completing the activities associated with each construction permit fee. During this exercise, a number of fees were identified for which the cost of the activities associated with the fee is significantly higher than the current fee amount, even if the fee amount was to be increased to account for inflation and other increases in costs. The department also identified a number of construction permit-related activities for which no fees are currently collected. The proposed fees for these activities are based on the estimated cost to complete these activities.

*Annual inflationary adjustment*

The proposed rule includes an annual inflation adjustment factor that would first be applied in FY27. This adjustment is based on changes in the consumer price index and uses a methodology identical to the annual inflationary adjustment calculated for certain nonattainment area major source fees (s. NR 410.06(2)(c), Wis. Adm. Code) and the vehicle emission inspection program repair cost limit ((s. NR 485.045(1), Wis. Adm. Code).

Automatically adjusting fees for inflation is not uncommon in air permitting programs. For example, both Indiana and Minnesota rules adjust construction permit fees based on such a factor.<sup>9</sup> EPA similarly revises its Title V permit presumptive minimum per-ton fee each year based on changes in the consumer price index.

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<sup>9</sup> Indiana Admin. Code [Section 326 IAC 2-1.1-7.\(b\)](#) and Minnesota Admin. Rules [Part 7002.0017](#).

**10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

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.

**11. Effect on Small Business (initial regulatory flexibility analysis):**

Many small businesses are able to qualify for coverage under a general or registration permit in lieu of needing to obtain a minor construction permit because their air pollutant emissions are below applicable thresholds. Once a source is covered under a general or registration permit, future projects at the source are exempt from construction permitting so long as the source 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 an exemption from construction permitting. Most exemptions do not have a fee unless the source chooses to request an exemption determination from the department. For exemptions that do require a department determination and for exemptions where a source chooses to request an exemption determination, the exemption fee would increase under the rule as shown in Appendix A.

Table 4 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 per year in FY26.

**Table 4. Estimated impact of rule on small businesses (FY26)**

	<b>Number issued to small businesses</b>	<b>Current average fee</b>	<b>Proposed average fee</b>	<b>Difference per action</b>	<b>Total increase</b>
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
<b>Total</b>					\$92,351

**12. Agency Contact Person:** Gail Good; [Gail.Good@wisconsin.gov](mailto:Gail.Good@wisconsin.gov); (608) 219-2690

**13. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, or email to:

Olivia Salmon – AM/7  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
PO Box 7921  
Madison, WI 53703  
[Olivia.Salmon@wisconsin.gov](mailto:Olivia.Salmon@wisconsin.gov)

Comments may be submitted to the department contact person listed above or to [DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov) until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department’s website, at <https://dnr.wisconsin.gov/calendar>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

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**RULE TEXT**

**SECTION 1. NR 410.03 (1) (a) 1., 2., 3., 4., 8., 9., and 10., (ae), and (b) 1., 2., 3., 3m., and 4. are amended to read:**

**NR 410.03 (1) (a) 1.** ~~\$3,000~~\$5,800 if the application is not reviewed under ch. NR 405 or 408, and the application is for a new facility or for an emissions unit to be located at a minor source.

2. ~~\$7,500~~\$15,000, for a modification not defined as major in s. NR 405.02 (21) or 408.02 (20), when the application is for an emissions unit to be located at a major source as defined in s. NR 407.02 (4).

3. ~~\$12,000~~\$24,000, for a major modification as defined in s. NR 405.02 (21) or 408.02 (20), unless the emissions unit is a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

4. ~~\$16,000~~\$32,000, for a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

8. ~~\$12,000~~\$21,600, per air contaminant regulated under a plant-wide applicability limitation, when establishing a plant-wide applicability limitation under s. NR 406.035 (1).

9. ~~\$6,000~~\$10,800 for the increase of a plant-wide applicability limitation under s. NR 405.18 (11) or 408.11 (11).

10. ~~\$6,000~~\$10,800 for the distribution of allowable limits upon expiration of a plant-wide applicability limitation under s. NR 406.035 (2).

(ae) Each person requesting a revision of a construction permit shall pay a fee of ~~\$1,500~~\$3,000 which shall be submitted with the request, unless the only reason for the revision is to make the source eligible for a registration operation permit.

(b) 1. ~~\$1,250~~\$2,250, for a determination of exemption under s. NR 406.04 (1) (i).

2. ~~\$1,500~~\$2,700 for a determination of exemption under s. NR 406.04 (1f) for a modification to a stationary source which is regulated by a plant-wide applicability limitation, except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be ~~\$2,400~~\$4,320.

3. ~~\$5,500~~\$9,900 for a determination of exemption under s. NR 406.04 (1k), except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be ~~\$6,500~~\$11,700.

3m. Any person submitting a claim for a construction permit exemption under s. NR 406.04 (1q) shall pay a fee of ~~\$1,250~~\$2,250 which shall be submitted with the claim.

4. ~~\$500~~\$1,400 for a determination of exemption under s. NR 406.04 not included in subd. 1. to 3m.

**SECTION 2. NR 410.03 (1) (c) is repealed.**

**SECTION 3. NR 410.03 (1) (e) and (2) are amended to read:**

**NR 410.03 (1) (e)** When a construction permit application is received for a source where the basic emissions unit, which is not a portable source, is to be installed at one specified facility and, in the same application, a request is also made to issue construction permits to allow installation of the same basic emissions unit at other facilities at different locations and all the facilities for which construction permits are requested are under common ownership or control, the permit applicant shall pay the basic fee specified in par. (a) plus the additional fees in sub. (2). The fee for each additional construction permit at

different locations shall be ~~\$1,000~~\$1,800 each, plus the fees in sub. (2) except when the action specified in sub. (2) has been completed for one location and a separate action as set forth in sub. (2) is not required for each additional permit at each different location. When an action covered under sub. (2) must be completed for applications at more than one location, the fee in sub. (2) shall be charged for each time the action is completed.

**(2) ADDITIONAL DIRECT SOURCE FEES.** Each person submitting an application for an individual construction permit or construction permit revision for a direct source shall pay all the following additional fees which apply:

**(a)** ~~\$800~~\$2,200 per basic emissions unit if review and analysis of 2 or more basic emissions units is required.

**(b)** ~~\$2,500~~\$4,500, if an analysis of alternatives under s. NR 408.08 (2) is required.

**(c)** ~~\$5,000~~\$9,000, if an emission offset under ch. NR 408 or the determination of a net emissions increase under ch. NR 405 is required.

**(d)** ~~\$4,500~~\$5,500, for each case-by-case determination of ~~maximum achievable control technology (MACT), best available control technology (BACT), or lowest achievable emission rate (LAER)~~. This does not apply to BACT or LAER determinations made under ch. NR 445.

**(e)** ~~\$1,000~~\$3,000, for a minor source or minor modification to a major source whose projected air quality impact requires a detailed air quality modeling analysis.

**(f)** ~~\$4,500~~\$8,100, for any source, other than a minor source or minor modification to a major source, whose projected air quality impact requires a detailed air quality modeling analysis.

**(g)** ~~\$1,000~~\$1,800, if the source is subject to an emission limitation under chs. NR 446 to 469, or if the permit establishes an emission limit for a hazardous air contaminant listed in Table A, B or C of s. NR 445.07.

**(h)** If the construction permit requires emission testing, ~~\$2,500~~\$4,500 for the first air contaminant tested and ~~\$1,250~~\$2,250 for each additional air contaminant tested up to a maximum of ~~\$6,000~~\$10,800. If

the department later finds that some or all of the tests are not required, the corresponding fees shall be refunded.

(i) ~~\$1,500~~\$2,700, if an environmental analysis under ch. NR 150 is required.

(j) ~~\$1,500~~\$2,700, if a public hearing is held ~~at the request of the applicant or the applicant's agent.~~

(k) ~~\$600~~\$1,700 for each basic emissions unit at a source which requires an emission limit determination under s. NR 424.03 (2) (c).

(L) ~~\$2,000~~\$3,600 for each case-by-case determination of ~~best available control technology (BACT) or lowest achievable emission rate (LAER)~~ required under ch. NR 445. If the department makes a single BACT or LAER determination addressing the control of multiple air contaminants, the source shall be billed for only one BACT or LAER determination under this paragraph.

(m) ~~\$3,500~~\$6,300, if specific permit conditions limiting the potential to emit are required to make the source a minor source or to make the modification a minor modification.

(n) ~~\$3,500~~\$6,300, for a medical waste incinerator requiring review of a needs and siting analysis under s. 285.63 (10), Stats.

(o) 1. ~~\$5,000~~\$9,000, for an application not subject to review under ch. NR 405 or 408 if the permit is issued within 50 days of receipt of a complete application.

2. ~~\$7,500~~\$13,500, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 60 days of receipt of a complete application.

3. ~~\$4,000~~\$7,200, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 61 to 90 days of receipt of a complete application.

**SECTION 4. NR 410.03 (2) (p) and (5) are created to read:**

**NR 410.03 (2) (p)** \$3,500, for the requirements of a consent decree to be incorporated into a construction permit or construction permit revision.

**(5) ANNUAL ADJUSTMENT. (a)** The fee amounts required under subs. (1) (a), (ae), (b), and (e) and (2) shall be adjusted annually, beginning in [LRB inserts year after proposed rule's effective date], by

the percentage, if any, by which the consumer price index, as defined under section 502 (b) (3) (B) (v) of the act (42 USC 7661a (b) (3) (B) (v)), has been adjusted.

(b) Beginning in [LRB inserts year after proposed rule’s effective date], the adjusted fees calculated under par. (a), will be in effect for the subsequent 12-month period of July 1 through June 30.

**SECTION 5. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats. OR This rule shall take effect on [DATE].

**SECTION 6. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

Steven Little, Deputy Secretary

## Appendix A – Wisconsin’s Current and Proposed Construction Permit Fees

Fee Description	Code Cite (NR)	Current Fee	Proposed Fee
<b>Construction Permit Base Fees</b>			
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
<b>Construction Permit Additional Fees</b>			
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
<b>NEW FEE</b> - Apply additional fees listed in NR 410.03(2) to revisions	Proposed under 410.03(2)	--	See above
<b>NEW FEE</b> - Public hearing requested by someone other than applicant	Proposed under 410.03(2)(j)	--	\$2,700
<b>NEW FEE</b> - Incorporation of requirements of a consent decree	Proposed under 410.03(2)(p)	--	\$3,500
<b>Construction Permit Exemption Fees</b>			
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
<b>Miscellaneous Construction Permit Fees/Credits</b>			
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)	<b>(\$150)</b>	Remove

## Appendix B

### Construction Permit Fee Schedules for Illinois, Minnesota, Iowa, and Indiana

### Construction Permit Fees – Illinois Environmental Protection Agency (IEPA)

Sources: IEPA staff and <https://epa.illinois.gov/topics/forms/fees/construction.html> (Jan. 2024)

Fee	Fee Amount	Note
<b>CAAPP/FESOP Sources</b>		
Base Fee – New Emission Unit	\$4,000 first new emission unit, \$1,000/additional new or modified emission unit, max \$10,000	
Base Fee – Modified Emission Unit	\$2,000 first modified emission unit, \$1,000/additional modified emission unit, max \$5,000	
Supplemental Fees – CAAPP Entry Fee	\$5,000	
Supplemental Fees –Complex Sources	\$25,000	1
Supplemental Fees – Netting/Contemporaneous Decrease	\$3,000/pollutant	
Supplemental Fees – New Major PSD Source Fee	\$12,000	
Supplemental Fees – New Major NANSR Source Fee	\$20,000	
Supplemental Fees – Major PSD Modification Fee	\$6,000	
Supplemental Fees – Major NANSR Modification Fee	\$12,000	
Supplemental Fees – MACT Determination Fee	\$5,000/unit	2
Supplemental Fees – Public Hearing Administrative Fee	\$10,000	
Supplemental Fees - No Other Applicable Fee Filing Fee	\$500	3
<b>Source Not Subject to CAAPP/FESOP</b>		
Base Fee – New Emission Unit	\$500 single new emission unit	
Base Fee – New Emission Unit	\$1,000 more than one new emission unit	
Base Fee – Modified Emission Unit	\$500 no more than two modified emission units	
Base Fee – Modified Emission Unit	\$1,000 more than two modified emission units	
Supplemental Fees – New Source (unpermitted) Entry Fee	\$500	
Supplemental Fees – Complex Sources	\$15,000	1
Supplemental Fees – Public Hearing Administrative Fee	\$10,000	
Supplemental Fees - No Other Applicable Fee Filing Fee	\$500	3
<b>Permit By Rule (PBR)</b>		
Base Fee – CAAPP New Boiler	\$4,000/boiler	
Base Fee – CAAPP Modified Boiler	\$2,000/boiler	
<b>Other</b>		
Expedited Permit Fee	4 times the standard fee, max \$100,000	

Note 1 - If the construction permit application involves (i) a new source or emission unit subject to siting requirements of Section 39.2 of the Act, (ii) a commercial incinerator or a municipal waste, hazardous waste, or waste tire incinerator, (iii) a commercial power generator, or (iv) one or more other emission units designated as a complex source by Agency rulemaking.

Note 2 - The project is not otherwise subject to BACT or LAER for a related pollutant under PSD or NANSR.

Note 3 - Applies to: (1) A construction permit application to add or replace a control device on a permitted emission unit; (2) A construction permit application to conduct a pilot project or trial burn for a permitted emission unit; (3) A construction permit application for a land remediation project; (4) A construction permit application for an insignificant activity as described in 35 IAC 201.210; (5) A construction permit application to revise an emissions testing methodology or the timing of required emissions testing; (6) A construction permit application that provides for a change in the name, address, or phone number of any person identified in the permit, or for a change in the stated ownership or control, or for a similar minor administrative permit change at the source.

### Permit Fees – Minnesota Pollution Control Agency (MPCA)

Sources: MPCA staff, <https://www.pca.state.mn.us/business-with-us/air-permit-fees>, and <https://www.revisor.mn.gov/rules/7002.0019/> (Jan. 2024)

Minnesota uses a points system to determine permit fees. The points assessed for permit application types and specific additional activities are multiplied by the dollar per point value as determined in part [7002.0018](#) to calculate the application fee. As of January 2024, this per point value is \$285.

#### Application points

Application Type		Points
A.	Administrative amendment or administrative change of name, ownership, or control	1
B.	Registration permit	2
C.	State general permit	3
D.	Part 70 general permit	4
E.	Minor amendment	4
F.	Capped permit	4
G.	Applicability requests. <i>These points are applied to each request received for determining the applicability of rules in advance of receiving a permit application. If multiple requests for reviews are submitted to the Pollution Control Agency over time, each request is subject to the fee.</i>	10
H.	Moderate amendment	15
I.	Major amendment	25
J.	Individual state permit	50
K.	Individual Part 70 permit	75

#### Additional points

Activity		Points
A.	Modeling review. <i>The points for modeling review are not assessed for screening modeling or CAPS modeling.</i>	15
B.	Best available control technology (BACT) review. <i>BACT points are applied for each prevention of significant deterioration (PSD) pollutant analyzed.</i>	15
C.	Lowest achievable emission rate (LAER) review. <i>LAER points are applied for each nonattainment new source review (NSR) pollutant analyzed.</i>	15
D.	Clean Air Act, section 110(a)(2)(D)(i)(I) review. <i>Points are applied for a review of any standard or other requirement related to interstate transport of pollutants established under section 110(a)(2)(D)(i)(I).</i>	10
E.	Part 75 continuous emission monitoring analysis	10
F.	New source performance standard (NSPS) review. <i>Points are applied for each applicable standard but do not apply to registration, capped, or general permit applications.</i>	10

G.	National emission standards for hazardous air pollutants (NESHAP) review. <i>Points are applied for each applicable standard but do not apply to registration, capped, or general permit applications.</i>	10
H.	Case-by-case maximum achievable control technology (MACT) review. <i>Points are applied for each applicable source category reviewed.</i>	20
I.	Netting. <i>Points are applied for each prevention of significant deterioration (PSD) pollutant for which a netting analysis is performed.</i>	10
J.	Limit to remain below programmatic regulatory threshold. <i>Points are applied, if applicable, to each of the following regulatory programs: Part 70, NESHAP, EAW, AERA, NSPS, PSD, and nonattainment NSR.</i>	10
K.	Plantwide applicability limit (PAL). <i>Points are applied for each prevention of significant deterioration (PSD) pollutant for which a plantwide applicability limit is established.</i>	20
L.	Air emission risk analysis (AERA) review	15
M.	Variance request under part <a href="#">7000.7000</a>	35
N.	Confidentiality request under part <a href="#">7000.1300</a>	2
O.	Environmental assessment worksheet (EAW) review. Points are assigned as follows:	
	Part <a href="#">4410.4300</a> , subparts 18, items A and B; and 29	15
	Part <a href="#">4410.4300</a> , subparts 8, items A and B; 10, items A, B, C, and D; 16, items A and D; 17, items A to C and E to G; and 18, items C, D, E, and F	35
	Part <a href="#">4410.4300</a> , subparts 4; 5, item A, subitems (1) and (2); 13; 15; 16, items B and C; and 17, item D	70
	<i>A fee for EAW review is charged only if the project falls into a mandatory category specified in part <a href="#">4410.4300</a>, the agency is the designated responsible governmental unit (RGU), and an air or water permit is required for the project. If a facility requires both an air and water permit, the points for an EAW review are charged only once and multiplied by the lower of the dollar per point value for an air or water permit.</i>	

**Construction Permit Fees – Iowa Department of Natural Resources (IDNR)**

Sources: IDNR staff and [Air Quality Fees \(iowadnr.gov\)](http://iowadnr.gov) (Jan. 2024).

<b>Minor Source Construction Permit Application Fees (567 IAC 30.2)</b>	
	<b>Fee Per Application</b>
Each application for a construction permit*	\$385
Each application for a registration permit	\$100
Each application for a permit by rule	\$100
Each application for a permit template	\$100

<b>Major Source Construction Permit and Prevention of Significant Deterioration (PSD) Application Fees (567 IAC 30.2)</b>		
<i>Applicants will be billed for the actual hours worked to complete the issued permit</i>		
	<b>Hourly Fee</b>	<b>Estimated Time</b>
Review of each new source review permit application - Typically reviewed by Environmental Engineer, with final review by an Environmental Engineer Senior.	\$115	8 - 200 hours
Review of each Prevention of Significant Deterioration (PSD) permit application. - Typically reviewed by an Environmental Engineer Senior.	\$115	40 - 600 hours
Review of each plant-wide applicability limit request, renewal, or reopening - Typically reviewed by an Environmental Engineer Senior.	\$115	50 - 250 hours
Review of each regulatory applicability determination - Engineer assignment depends on complexity of request.	\$115	2 - 20 hours
Reviewing or conducting of air quality modeling - Typically reviewed by an Environmental Specialist, with final review by an Environmental Specialist Senior.	\$90	16 - 200 hours

\*Application fees (minus \$100 to cover department administrative costs) may be refunded for minor source construction permit applications that are withdrawn before commencement of technical review.

**Construction Permit Fees – Indiana Department of Environmental Management (IDEM)**

Sources: IDEM staff and [IDEM: Air Permitting: Timeframes and Fees](#) (Jan. 2024)

IDEM’s operates an integrated NSR/Title V program; as such, the construction permit fee schedule is in part organized based on a source’s operating permit type.

<b>Title V program</b>	
New Source Minor PSD or Emission Offset	\$5,556
New Source Major PSD or Emission Offset	\$9,525
Significant Source Modification Minor PSD or Emission Offset	\$5,556
Significant Source Modification Major PSD or Emission Offset	\$9,525
Minor Source Modification	\$793
Interim Minor Source Modification Minor PSD or Emission Offset	\$793
Interim Significant Source Modification Minor PSD or Emission Offset	\$793

<b>FESOP program</b>	
FESOP with Significant New Source Review	\$5,556
FESOP with Minor New Source Review	\$793
New Source FESOP Minor PSD or Emission Offset	\$5,556
New Source FESOP Major PSD or Emission Offset	\$9,525
Significant Permit Revision Minor PSD or Emission Offset	\$5,556
Significant Permit Revision Major PSD or Emission Offset	\$9,525
Minor Permit Revision	\$793
Renewal with Significant New Source Review	\$5,556
Renewal with Minor New Source Review	\$793
Interim Minor Source Modification Minor PSD or Emission Offset	\$793
Interim Significant Source Modification Minor PSD or Emission Offset	\$793

<b>MSOP (natural minor source operating permit) program</b>	
MSOP with Significant New Source Review	\$3,500
MSOP with Minor New Source Review	\$600
New Construction MSOP Minor PSD or Emission Offset	\$3,500
New Construction MSOP Major PSD or Emission Offset	\$6,000
Significant Permit Revision Minor PSD or Emission Offset	\$3,500
Significant Permit Revision Major PSD or Emission Offset	\$6,000
Minor Permit Revision	\$600
Renewal with Significant New Source Review	\$3,500

Renewal with Minor New Source Review	\$600
Interim Minor Permit Revision Minor PSD or Emission Offset	\$500
Interim Significant Permit Revision Minor PSD or Emission Offset	\$500

<b>SSOA (source specific operating agreement) program</b>	
SSOA New Source Review	\$5,556

<b>Other application fees*</b>	
Experimental Trial Approval	\$100 – \$158
Public hearing	\$500 - \$793
For each NSPS Review	\$500 - \$793
For each NESHAP Review	\$500 - \$793
For each 326 IAC 8-1-6 BACT Review	\$600 - \$952
For each 326 IAC 2-4.1 MACT Review	\$600 - \$952

<b>PSD BACT or LAER review*</b>	
2 to 5 Review Analyses	\$3,000 - \$4,762
6 to 10 Review Analyses	\$6,000 - \$9,525
11 or more Review Analyses	\$10,000 - \$15,875

<b>Air Quality Impact Study review*</b>	
If applicant does analysis	\$3,500 - \$5,556
Per pollutant if OAQ does analysis	\$6,000 - \$9,525

<b>PAL (plantwide applicability limit)*</b>	
Fee per ton of allowable emissions per PAL pollutant	\$40 - \$63
Maximum combined for all PAL pollutants	\$63,500

\*The assessed fee varies depending on the type of applicable operating permit.