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To: Ron Binzley
Wisconsin Dept. of Natural Resources

From: Bill Skewes, Executive Director
Wisconsin Utilities Association, Inc.

**Re: WUA/DPC Comments on the Wisconsin Department of Natural Resources’
Proposed Rule, AM-10-23, Titled “Revising Fees for Reviewing Air Pollution Control
Construction Permit Applications and Exemption Determination Requests”**

Submitted Electronically to Ronald.Binzley@wisconsin.gov

Date: September 3, 2024

On behalf of Wisconsin’s investor-owned gas and electric energy providers, the Wisconsin Utilities Association, Inc. (WUA) and Dairyland Power Cooperative (DPC) are pleased to provide the following comments to the Wisconsin Department of Natural Resources (Department) regarding the proposed revisions to ch. NR 410, Wis. Adm. Code, regarding fees for reviewing air pollution control construction permit applications and exemption determination requests (AM-10-23). WUA/DPC’s comments are as follows:

1. WUA/DPC appreciates the efforts the Department has made to provide timely construction permits and agrees that adequate funding for the construction permit program is critical to ensure ongoing timely issuance of permits that allow for projects to occur in the state that support economic growth. Moreover, beyond just the construction permit program, WUA/DPC, like the Department, wants to ensure full effectiveness of the Department’s Air Management Program as a whole. While the rule aims to address the current construction permit program funding deficiencies, WUA/DPC is concerned that it doesn’t fix the current issue for the next several years. As the Department states, *“the 13.25 FTE the program is projected to have in FY29 is **less than** the 14.5 FTE the program had in FY23, just before this rulemaking was initiated” (emphasis added)*. In addition, the Department states that it *“is unlikely to realize the full fiscal benefit of these fee revisions until the 2030s, with the major obstacle being the near-term shortage of permit staff to undertake revenue generating activities. Hiring more permit writers, and faster, is only possible if the department has access to additional revenue sooner.”* As a result, prospective permittees will be required to pay fees, increasing 68%, on average, starting in Fiscal Year 2026 (FY26) and 94% higher, on average, starting in FY28 and can expect to see no improvement in permit issuance timelines, which is expected to exceed 12 months. WUA/DPC strongly encourages the Department to pursue supplemental funding in the interim to increase program staffing quicker. This request is further supported by the fact that Wisconsin, unlike many other states, relies solely on program revenue (fees) to fund its program.

2. WUA/DPC encourages the Department to continue to pursue program staffing efficiencies. According to the draft rule analysis, in FY24, 12.5 full time equivalent (FTE) staff are supported by the construction program funding; however, only 5 are considered full-time permit writers, meaning 7.5 FTE are support staff (e.g., processing, supervision, policy coordination, technology support, financial administration, etc.). This ratio of permit writers to support staff does not seem balanced. While WUA/DPC understands the need to fund management and support staff for the program, WUA/DPC asks the Department to consider reallocating some staff to permit writing in the interim to manage permit turnaround times. The Department should also consider alternate funding sources for these 7.5 FTE support staff.
3. WUA/DPC supports the proposed reporting provisions in the draft rule; however, they should be further expanded. Under the proposal, the Department would be required to prepare and release an annual financial report on the state of the construction permit program account, including a five-year projection of future revenues, expenses, and account balance. In addition, the Department would be required to prepare and release a report, to be completed no later than September 30, 2026, describing the efforts the Department will take to streamline permitting processes and implement program efficiencies based on the additional revenue provided by this rule. WUA/DPC recommends the Department take this effort further and establish a program funding committee that explores efficiencies not just for the construction permit program, but for the Air Management Program as a whole. The focus should be on finding sustainable cost-effective solutions that provide long term adequate resources. In addition, the Department should hold an annual Air Management Program budget meeting to proactively review current and projected program revenue and permit program performance metrics. WUA/DPC appreciates the prior stakeholder meetings that the Department conducted as part of this rulemaking effort; however, representation from permitted sources seemed significantly limited. The number of participants was relatively low and had limited engagement given that the state has over 300 major sources, along with many other interested parties.
4. WUA/DPC is concerned that the Department may be overly reliant on major construction permits to support its overall program funding. In the Department's economic impact assessment (EIA), with the proposed rule in place in FY26, six assumed permits out of 163 permit actions ($\approx 4\%$) provide approximately 20% of the overall program funding. WUA/DPC recommends the Department reevaluate the amount of dependency that is placed on major construction projects, which has shown to be unpredictable and may lead to uncertain and unstable funding for the program. This further supports WUA/DPC's first comment that the Department should pursue supplemental funding mechanisms to address this potential budgeting uncertainty.
5. It's not clear that the proposed fees are necessarily always linked to the amount of work involved in each effort. For example, a best available control technology (BACT) fee is charged per unit, per pollutant, currently at a cost of \$4,500 and slated to increase to \$5,200 in Phase I and \$5,500 in Phase II. WUA/DPC contends that not all BACTs are created equal. For example, often for natural gas fired equipment, the resulting BACT determination is to ensure good combustion practices, with no add on control options available and little required evaluation by the Department. The Department should consider capping the per unit, per pollutant, BACT fee for each application, similar to the approach proposed for emission testing.

6. WUA/DPC believes the “multiple application discount” is not high enough. If a permittee requests two permits, which are essentially the same permit, potentially with a different site layout or as part of an alternate site requirement for a Certificate of Public Convenience and Necessity (CPCN) process with the Public Service Commission of Wisconsin (PSCW), a \$1,750 discount for a permit that may cost in excess of \$100,000 does not seem to be enough.
7. WUA/DPC is not in favor of the new \$2,650 fee proposed to be paid by the applicant if someone other than the applicant requests a public hearing. WUA/DPC believes that if someone other than the applicant requests a hearing, the costs associated with the hearing be managed through other revenue mechanisms.
8. WUA/DPC believes that construction permit exemption determinations and construction permit revisions are a valuable program component offering that the Department provides and supports their inclusion. Lately, in order to prioritize workload, the Department has stated in Air Management Advisory Group meetings that it has not been able to process exemption and revision requests in most circumstances. Given that the Department does not expect to see any increase in staffing from this rule from FY23 to FY29 as discussed above, WUA/DPC is concerned that the Department will continue to have difficulty processing exemption determinations and revisions. In addition, the Department currently collects exemption and revision fees when the request is submitted, regardless of whether they are able to work on the request or not. WUA/DPC requests that exemption and revision fees only be collected after the exemption or revision is issued. A fee should not be collected at the time of submittal for a service the Department is not staffed to provide. The Department has justified the removal of the expedited permit review fee due to an inability to provide the service for the request through granting overtime pay, and the same concept applies here.
9. WUA/DPC supports the phasing in of the fee increases. Since many of the fee increases are intended to support a full complement of construction permit staff, which will take time to acquire, delaying fee increases until those dollars are needed to support the positions is prudent. Furthermore, should the Department implement a stakeholder budget/funding practice as suggested above as well as discover additional streamlining practices, it is likely that some of the anticipated fee increases could potentially be avoided.
10. The fees include basic direct source review fees for each permit of action being requested. These fees seem to escalate based on the major source status of the facility. It should be noted that there are several additional direct source fees that are based on features of the permit review such as for modeling, multiple emission units, NR 445 BACT review, etc. that are applied to permit reviews should they be necessary to complete the permitting process. While in some situations, these additional fees differ based on the major source status of the facility, the addition of a piece of equipment ultimately encompasses the same type of permit review regardless of the major source status of the facility and its location. As a result, the complexities of this work are addressed in the additional fees, and thus, they should not be further accounted for under a basic fee. WUA/DPC suggests one basic fee be applied for construction permits regardless of whether the source is major or minor, or the permit is for a major or minor source construction project.

WUA/DPC appreciates the opportunity to comment on the proposed rule and looks forward to future discussions regarding ways to ensure adequate Department funding.