

DRAFT rule revisions for 11/6/2019 Rule Development Meeting

Subject matter (group/subgroup): Other / NR 749 Fees

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Changes (include treatment, list in order of rules):

NR 749.03 is repealed.

NR 749.04 (1) is amended to read:

NR 749.04 (1) When a person requests the department to review a document listed in Table 1, the person requesting this assistance shall pay in advance to the department the applicable fees in Table 1 plus annual adjustments as described in sub. (1m). A person may request that department assistance be provided in either written form or in the form of oral comments. Appropriate fees shall accompany all requests for specific department assistance. Department assistance will not be provided unless the applicable fee accompanies the request for assistance. These fees are not proratable or refundable. The department may require that fees be submitted electronically. Processing charges incurred by the department due to the payor's selected method of payment shall be passed on to the payor.

Note: If the NR 700 series rules require that a document be submitted to the department, such as in s. NR 716.09 (1), but the person does not specifically request a department review of the document, then a review fee is not required, unless the department review is required pursuant to an enforcement-related requirement under ch. NR 728, such as an enforceable order, agreement or enforcement action.

Note: Additional information and guidance for implementing this rule including how to make a payment when a review is requested can be found at: <http://dnr.wi.gov/topic/Brownfields/Fees.html>.

NR 749.04 (1m) and Note are created to read:

NR 749.04 (1m) Beginning on January 1, 2022, fees collected under this chapter shall include the amount stated in Table 1, plus an annual compounding increase of 5% for every third calendar year beyond January 1, 2022, rounded to the nearest whole dollar.

Note: The fee schedule and updates shall be posted to the department web site.

NR 749.04 (2) is amended to read:

NR 749.04 (2) If the department determines that a request for assistance does not contain enough information to render an opinion, or that the request is incomplete or inaccurate in some other manner, the department will notify the applicant of the reasons for this decision.

Note: Under NR 726.05 (5), the department may apply a fee for an incomplete closure request to a site investigation on a case-by-case basis, and the department may then require that a new closure request and closure fee to be submitted.

NR 749.04, Table 1, is repealed and recreated to read:

TABLE 1 -- FEE SCHEDULE		
TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
(a) <i>Agreements.</i>		
1. Tax assignment agreement.	ss. 75.106 (2) (f) and 292.55	\$715
2. Tax cancellation agreement.	ss. 75.105 (2) (d) and 292.55	\$715

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3. Negotiated agreements. ^a	s. 292.11 (7) (d) 2.	\$1425
4. Environmental repair contracts	s. 292.31 (3) and (7)	\$1425
5. Enforcement actions. ^a	s. 292.94 (d)	a
6. Negotiation and cost recovery. ^a	s. 292.35 (13) (a)	a
<p>Note: For Negotiated Agreements, the \$1425 fee is for department time associated with reviewing the document. If the Negotiated Agreement identifies other reports or activities that require department review, there would be a separate review fee for each specified.</p>		
<i>(b) Liability clarification letters.</i>		
1. Off-site exemption letters.	s. 292.13 (3)	\$715
2. Lease letters — single properties.	s. 292.55	\$715
3. Lease letters — multiple properties.	s. 292.55	\$1425
4. General liability clarification letters.	s. 292.55	\$715
5. Lender assessments.	s. 292.21 (1) (c) 1. d.	\$715
<i>(c) Technical assistance.</i>		
1. ch. NR 708 No further action letter. ^b		\$355
2. ch. NR 708 Interim action plan.		\$1070
3. ch. NR 708 Interim action report.		\$1070
4. ch. NR 716 No further investigation.		\$715
5. ch. NR 716 Site investigation work plan.		\$715
6. ch. NR 716 Site investigation report.		\$1070
7. ch. NR 720 Soil cleanup standards/reports.		\$1070
8. ch. NR 722 Remedial action options report.		\$1070
9. ch. NR 724 Remedial design report.		\$1070
10. ch. NR 724 Operation and maintenance report.		\$425
11. ch. NR 724 Construction documentation report.		\$715
12. ch. NR 724 Long-term monitoring plans.		\$435
13. ch. NR 726 Case closure action.		\$1070
14. ch. NR 506 Exemption for building on a historic waste site.		\$715
15. ch. NR 756 Plan and compliance schedule.		\$1070
16. ch. NR 756 Inspection report.		\$715
17. Other technical assistance.		\$715
<i>(d) Department database fees.</i>		
1. Listing sites on the database.	ss. 292.12 (3) (b) and 292.57	\$355
2. Modifying sites or properties listed on the database.		\$1070
<p>(a) Persons subject to or entered into such orders, agreements, or processes shall pay fees for each service requested or required by the department. If approved by the department, responsible parties may agree to pay the department an hourly fee for project oversight as determined by the provisions set forth in ch. NR 750.</p>		
<p>(b) Immediate actions associated with emergency spill cleanup activities, including department signoff on the Notification for Hazardous Substance Discharge form, do not require a review fee.</p>		

NR 749.05 is amended to read:

NR 749.05 Alternative fees for ~~negotiated contracts and~~ agreements. As part of a contract, negotiated agreement, or environmental agreement as defined under ch. NR 728, responsible parties may agree to pay the department an hourly fee for project oversight as determined by the provisions set forth in ch. NR 750.

NR 749.06 is created to read:

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NR 749.06 Enforcement fees. Per s. 292.94, Stats., the department may assess and collect fees from a person who is subject to an order or other enforcement action. Fees applicable to enforcement actions shall be assessed pursuant to Table 1, beginning with those submittals identified in the enforcement conference summary that is developed after the department issues a notice of violation until enforcement action is formally resolved by the state. If approved by the department, responsible parties may agree to pay the department an hourly fee for project oversight as determined by the provisions set forth in ch. NR 750.

NR 749.07 is created to read:

NR 749.07 Database fees. (1) For sites or facilities meeting the criteria of s. NR 725.05 (2) or 726.13 (1) (c), the responsible party shall pay a fee for listing continuing obligations at a site or facility on the database.

(a) A single database fee is required for listing continuing obligations at a site or facility for all continuing obligations that address residual soil contamination.

(b) A single database fee is required for listing continuing obligations at a site or facility for all continuing obligations that address residual groundwater contamination, residual vapor contamination, or both.

(2) The department shall not charge database listing fees in excess of a total amount of \$710 for any single site or facility.

** Note to readers: the draft rules titled, "A second draft of miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes," contain a revision that increases fees in ch. NR 750. These rules will be presented along with this draft at the Nov. 6, 2019, Rule Development Meeting.*

Plain language explanation/analysis:

The rule changes above are discussed in a [white paper](#) titled, *Updates and clarifications to Wis. Admin. Code ch. NR 749 regarding fees*, which was presented at the July 9, 2019, Rule Development Meeting.

Comparable state or federal rules or policies:

Not applicable.

Economic impact comments:

Adding fees for agreements under Wis. Stat. § 292.31 may have an economic impact. Based on the number of these agreements executed per year, this impact is not likely to exceed \$3,000 per year in total; impact borne by any single person is not likely to exceed \$1,500.

Raising the fee for construction documentation report review by \$365 may have an economic impact of \$365 per site.

Raising the amount of the fees within s. NR 749.04, Table 1, by about 2% per fee to adjust partially to inflation occurring since the last set of rule revisions took place in 2013 may be deemed to have an economic impact. The impact would range from about \$10 to \$30 per request and the impact on any single site is not likely to exceed \$200. Please note that the impact of these fees is likely mitigated or negated by overall inflation occurring since 2013 (*e.g.*, a business that is subject to fees under this

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chapter is likely to have capital that has been impacted by inflation) – which is significantly greater than the 2% increase.

The future increases created under the new provision s. NR 749.04 (1m) may have an economic impact in the year that the 5% increase occurs. The impact would range from about \$18 to \$71 per request and the impact on any single site is not likely to exceed \$450 per site (e.g., the impact on a site that requests a liability assistance letter and review the eight items from the site investigation work plan at Table 1 (c) (5) through to case closure at Table 1 (c) (13) would be impacted by a total of \$418 by the increase in fee amounts). Please note that the impact of these fees is likely mitigated or negated by overall inflation. An increase in fee amounts by 5% every three years is likely to result in an increase that does not exceed inflation. Using the average annual rate of inflation occurring from 2008 to 2018, the 5% increase at three years is less than the total impact of the sum of annual inflation for three years (5.4%).