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Legislative, Regulatory & Information Services

2005-07 Budget - Air Permit Fees Transitional Compromise Reached on Minor Source Air Permit Fees

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On May 18, 2005, the Joint Finance Committee adopted a compromise version of the Governor's proposal relating to minor source air operation permits. [Motion #179](#), introduced by Rep. Dean Kaufert (R-Neenah) and Sen. Robert Cowles (R-Green Bay), passed in committee on a unanimous 16-0 vote. The motion was supported by the Administration and industry groups that negotiated modifications to the original bill with the Department of Natural Resources (DNR).

The Governor's budget proposal on air permits included funding for development of an air permit database, funding for private contractors to assist DNR in getting air permits issued, and the establishment of a new fee system for minor source air operation permits. In separate action on [Fiscal Bureau Paper #565](#), the Committee approved the Governor's recommendation on the permit database but provided the funding for the first two years of an expected four to six year project, as opposed to providing ongoing funding. (Project status and associated remaining costs will be reviewed next budget.) The Committee also approved funding for private contractors to issue air permits as proposed by the Governor. Motion #179 dealt with the establishment of a new fee system for minor source operation permits.

Background – FOPs, FESOPs, and SOPs

In general, the Governor's proposal was advanced to address issues raised by the U.S EPA with regard to deficiencies in Wisconsin's Air Program. Under Title V of the federal Clean Air Act, Wisconsin has certain responsibilities as a delegated state in ensuring an adequate program to permit and oversee major sources. A major source is one that operates under a state issued Federal Operation Permit (FOP) because it has the potential to emit regulated levels of air contaminants above federally established major source thresholds.

The federal program also pertains to Federally Enforceable State Operation Permits (FESOPs). These sources, also referred to as synthetic minors, are ones that are theoretically capable of emitting above a major source threshold but have agreed to operate under permit limitations to stay below major source levels. As a general rule, these sources are considered minor sources once they have been issued a permit. However, the federal program retains an interest in state compliance enforcement and monitoring of FESOPs operating at levels approaching the major source threshold. The rest of the permitted sources in Wisconsin are subject to State Operation Permits (SOPs). These sources are not capable of emitting at major source levels and are not required to be permitted by the Clean Air Act but are regulated under state permit requirements.

Budget Goal – Fix EPA NOD

The Governor's budget proposal specifically addressed the Notice of Deficiency (NOD) as follows:

1. Provided for private contractors and funding to assist the department in getting a backlog of FESOP permits issued by the EPA imposed deadline of March 2006;
2. Created separate accounts for the major source operation permit program and the minor source operation permit program - to address noted deficiencies in ensuring that fees imposed on major sources (Title V fees) only be used for major source activity as required by federal law (currently Wisconsin commingles its major source and minor source air operation permit fees in the same budgeted account); and,
3. Provided funding for the development of a permit database that EPA has recognized would result in efficiencies to address federal concerns that major source permit fees generate adequate revenue to operate an effective major source program.

The action taken by the Joint Finance Committee on the Governor's proposal similarly addresses each of these specific NOD issues.

At issue in Motion #179 is the creation of fees associated with operation of a segregated *minor source* permit program. These are state issues and have no bearing on the Notice of Deficiency, provided that major source fees are not used in the minor program and the major source program remains solvent to operate an effective major source program.

A comparison of current law, the Governor's proposal and the compromise adopted by the Joint Finance Committee under Motion #179:

Construction Permits: Major and Minor

Under current law, major and minor sources are assessed a construction permit fee under NR 410, WI Administrative Code. Construction permits must be obtained before a source can begin operation and are generally in effect for the first 18 months of operating a new source, at which time operation permit requirements kick in to regulate and assess annual emissions from that source or facility. DNR reports that major sources pay an average \$40,000 for a construction permit, while less complex minor source permits average \$9,200. Fees charged for construction permits are currently, and will continue to be, deposited in a separate account from air operation permit fees.

The Governor's proposal did not affect construction permit fees or requirements. However, the DNR has developed, and the Board of Natural Resources has recently approved, a rule in response to 2003 WI Act 118. The rule, which is pending legislative review and expected to be approved, will provide qualified registration operation permit and general operation permit holders an exemption from having to obtain a construction permit. Under Motion #179, additional opportunities to become exempt from having to pay future construction permit fees to expand a facility are included and will be noted under the various minor source permit categories described below.

Minor Source Operation Permit Account

Both the Governor's proposal and Motion #179 respond to the NOD by separating the major source operation permit program from the minor source program. Under the Governor's proposal, 14 of the 100 current positions in the commingled account would be transferred to the new minor source account in FY 07 with a corresponding annual appropriation of \$1,626,700.

Under Motion #179, 10 positions would be transferred to the minor source account in FY 07, with an annual appropriation of \$1,142,000. DNR work plans envision that as many as 32 of the current 100 positions may ultimately be proposed to be transferred from the major to the minor source air operation permit program. This is an issue to be addressed in the 2007-09 biennial budget and will be influenced by IT development, implementation of Act 118 streamlining initiatives, and a host of other factors. The

budget action this session essentially sets the stage for a more complete debate on the appropriate level of staff allocation among the major and minor source programs and the appropriate funding sources necessary to support respective program costs.

Annual Emission Fees

Under current law, all regulated sources are assessed an annual emissions fee of \$35.71 per ton of emissions. Under the Governor's proposal, minor sources would not pay an emission fee and instead would be charged an annual flat fee as described below. Under Motion #179, the traditional system of billing on annual emissions at the current law rate is generally retained, with certain one-time fees as described below.

Permit Program Exemption

Under current law, a source that emits less than five tons of total emissions is exempt from paying emission fees. Under both the Governor's proposal and Motion #179, any source that emits more than three tons of a single pollutant and is exempt from the permit requirements would be assessed a \$300 annual flat fee. The provision is intended to correspond with rules being developed by DNR, which are expected to provide an exemption from the permit requirements for sources that emit less than 10 percent of the major source threshold.

Registration Operation Permit

Under current law, as authorized by Act 118 and to be implemented under pending DNR rules, a minor source may qualify for a new category of air operation permit referred to as a registration permit. This type of permit is designed for a source that anticipates actual annual emissions of less than 25 percent of the major source threshold. (Registration permit holders would be exempt from having to obtain construction permits within the parameters of the pending rule.)

Under the Governor's proposal, a registration permit holder would be assessed an annual flat fee of \$1,500. Under Motion #179, a one-time fee of \$1,100 would be assessed the first year. Thereafter, the source would pay the current law tonnage fee. In addition, the motion provides an outright exemption from having to pay construction permit fees under NR 410 for future expansion of a facility.

General Operation Permit

Under current law, DNR is authorized to develop general operation permits for industrial categories of sources that emit similar types of regulated pollutants. Under pending DNR rules, the holder of a general operation permit would be exempt from having to obtain construction permits, within the parameters of the pending rule. Under the Governor's proposal, a general operation permit holder would be assessed an annual flat fee of \$1,500. Under Motion #179, a one-time fee of \$2,300 would be assessed the first year. Thereafter, the source would pay the current law tonnage fee.

The motion provides that sources that have already qualified for a general operation permit would not be assessed the one-time fee and would continue to pay annual emission fees per current law. In addition, the motion provides an exemption from having to pay construction permit fees under NR 410 for future expansion of a facility.

Individual Operation Permit

Under current law, individual sources are required to obtain a construction permit under NR 410 and pay annual emission tonnage fees under an operation permit. Under the Governor's proposal, those sources not exempt from the permit requirements and that do not have a registration or general operation permit (i.e., holders of a "traditional" permit) would be assessed an annual flat fee of \$3,000. Construction permit requirements and fees would remain unchanged. Under Motion #179, a traditional operation permit holder has the option of either (1) paying annual emission tonnage fees per current law, or (2) paying a one-time fee of \$7,500 the first year and annual tonnage fees thereafter. Permit holders paying the one-time fee would be exempt from having to pay construction permit fees under NR 410 for future expansion of a facility, but not the requirement to obtain a construction permit.

Minor Source Operation Permit Revenue

Under the Governor's proposal, the annual flat fees assessed on minor source exemption, registration, general and individual permit holders was estimated by DNR to generate annual fee revenue of \$1,734,900 in FY 07 to support 14 positions. Under Motion #179, DNR estimates that minor source permit fees will generate fee revenue of \$1,085,100 in FY 07 to support 10 positions. (That figure includes some one-time fees estimated to be paid that year, so future annual base fee revenue from the same set of payers in future years will be less than the FY 07 figure and is estimated at \$885,000 annually).

Over the course of the next two years, the Air Bureau will be correcting the deficiencies identified in the U.S. EPA Notice of Deficiency, implementing streamlining initiatives and associated Act 118 rules, and developing an upgraded database to improve the operation of the permit program. The extent to which all of these efforts result in an effective and cost efficient major and minor source operation permit program remains to be seen. This session simply marks the beginning of the separation of the air operation permit programs. You can expect that the ultimate split between staffing and associated costs among the two programs will be revisited again next session.