

An Evaluation:

## Air Management Programs

Department of Natural Resources

February 2004

# Report Highlights ■

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***Wisconsin is among the slowest states in the nation to issue major operation permits.***

***The process for issuing construction permits could be further streamlined.***

***DNR does not consistently follow federal and state enforcement guidelines.***

***Program management needs improvement.***

The Department of Natural Resources (DNR) administers state and federal air management programs that regulate the emission of pollutants that have been linked to health problems in humans, as well as to smog and acid rain. As part of this responsibility, DNR is required to ensure that the 2,219 utilities, factories, and other stationary facilities it regulates are complying with the terms of their permits, and to monitor air quality throughout Wisconsin.

Representatives of regulated facilities contend that complying with Wisconsin's air pollution regulations is onerous and expensive, while representatives of environmental groups believe too little is being done to ensure compliance with state and federal air pollution laws. In response to concerns about the time DNR takes to issue permits, the fees regulated facilities are charged, the extent to which the State regulates air pollution beyond federal requirements, and DNR's approach to regulating sources of air pollution—and at the request of the Joint Legislative Audit Committee—we analyzed:

- permit backlogs, including the amount of time taken to issue operation and construction permits;
- the amount of time other states require to issue operation and construction permits;
- the equitableness of fees assessed to regulated facilities emitting varying amounts of pollutants;
- the extent to which Wisconsin has expanded upon regulatory requirements prescribed by federal law;
- air quality monitoring efforts by DNR staff; and
- compliance and enforcement efforts.

## Key Facts and Findings

*Wisconsin regulates more hazardous air pollutants than federal law requires.*

*Air quality has improved in 17 former non-attainment areas.*

*Expenditures have increased from \$14.9 million in FY 1996-97 to \$17.9 million in FY 2002-03.*

*As of June 30, 2003, DNR had issued 1,128 operation permits; 1,091 were backlogged*

*As of June 30, 2003, 29.2 percent of pending construction permits had been backlogged for at least two years.*

*DNR's median processing time for construction permits was 103.5 days from the date an application was received.*

*Records indicate that DNR has never inspected 10.0 percent of major facilities and 19.7 percent of synthetic minor facilities.*

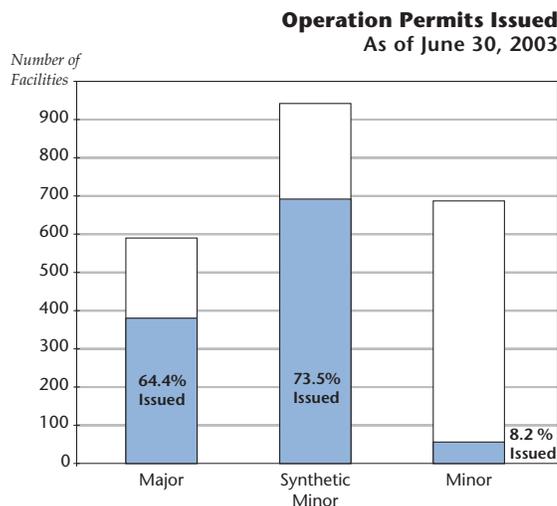
*DNR does not have the basic, accurate data needed for effective program management.*

## Operation Permits

As of June 30, 2003, DNR had issued operation permits to 50.8 percent of the 2,219 facilities that had applied for them, including:

- 64.4 percent of federally required "major" permits, which have the highest potential air pollution emissions;
- 73.5 percent of federally required "synthetic minor" permits, which have lower potential air pollution emissions; and
- 8.2 percent of state-required "minor" permits, which have the lowest potential air pollution emissions.

In total, 1,128 permits were issued but 1,091 were backlogged.



Under the federal Clean Air Act, Wisconsin was required to issue operation permits to all major facilities by March 1998. However,

Wisconsin issued only 64.4 percent of its major operation permits by June 30, 2003, the lowest percentage in the Midwest. By comparison, 80.9 percent of major permits had been issued nationally.

2003 Wisconsin Act 118, which took effect February 6, 2004, streamlines DNR's operation permit program and may help to address the permit backlog. DNR has also made several revisions to its plan for issuing operation permits and now anticipates issuing all federally required major permits by January 2005.

No deadlines have been established for issuing either synthetic minor operation permits or minor operation permits. We make several recommendations to further streamline the operation permitting process.

## Construction Permits

Wisconsin statutes and administrative rules require DNR to issue permits for new construction and facility modifications within specified time limits.

DNR does not adequately track the time it takes to issue permits, but we found that, based on a random sample of 88 construction permit applications, DNR met statutory deadlines for 86.4 percent of construction permits issued. However, 29.2 percent of all construction permits pending as of June 30, 2003, had been backlogged for at least two years.

DNR officials indicate that construction permits can become backlogged because some projects will be undertaken in the future, and permits for electrical generating facilities require approval from other regulatory bodies.

Because DNR has substantial flexibility in determining when an application is deemed complete and the statutory clock begins, we analyzed the time taken to issue permits from the dates applications were received. For the 88 permits in our sample, the median time was 103.5 days, including 52 permits issued within 120 days and 9 that took longer than one year.

2003 Wisconsin Act 118 reduces the time DNR is allowed for issuing construction permits. We make several recommendations to further streamline the construction permitting process.

## **Additional State Requirements**

Wisconsin has expanded on federal air management requirements in two primary areas. First, Wisconsin regulates 293 more hazardous air pollutants than required by federal law. Of these, 94 were reported emitted by Wisconsin facilities in 2002. Three of five other midwestern states also exceed federal requirements for regulating hazardous air pollutants.

Second, Wisconsin facilities with potential emissions below federal requirements are generally

required to obtain state-mandated minor operation permits. As of June 30, 2003, 687 facilities had applied for minor operation permits, but only 56 of these permits had been issued.

## **Enforcement Efforts**

The number of facilities DNR inspects annually has generally declined over time, from 470 in fiscal year (FY) 1994-95 to 276 in FY 2002-03. DNR's records indicate that 15.0 percent of facilities have never been inspected.

In addition, DNR has failed to follow its own policies regarding enforcement against facilities that apply for construction permits after work is already complete, or against facilities that do not submit timely compliance certifications. We also found that DNR does not consistently follow federal policy in taking enforcement actions for high-priority violations. We make several recommendations to improve DNR's enforcement efforts.

## **Program Management**

We identified a pattern of significant deficiencies in DNR program management, including:

- failing to identify 71 facilities that were required to apply for operation permits although DNR records indicate they did not, and failing to have documentation for why an additional 175 facilities may be exempt from permitting;

- failing to issue 113 operation permits even though they had already completed a public comment period and could have been issued, including 106 that could have been issued before June 30, 2002;
- failing to ensure that 49 facilities applied for renewal operation permits when required; and
- having no explanation for why 232 facilities have not reported emissions or paid emission fees, billing 11 facilities approximately \$21,000 when they should not have been billed, and failing to bill 13 other facilities approximately \$27,000.

In addition to the program and policy changes that recently took effect under 2003 Wisconsin Act 118, a number of proposed changes in federal law could also significantly affect the State's air management programs. Regardless of changes already enacted at the state level and additional changes that may result from efforts to modify federal requirements, DNR program management will need to be improved if Wisconsin's air management goals are to be accomplished.

## **Recommendations**

Our recommendations address the need for DNR to:

- correct annual emission fees billing errors ([p. 25](#));

- ☑ assign additional permit engineers to issue operation permits in the Southeast Region ([p. 41](#));
- ☑ further streamline the operation permit program ([pp. 41 and 44](#));
- ☑ ensure facilities have properly applied for permits ([p. 46](#));
- ☑ issue completed permits ([p. 46](#));
- ☑ ensure facilities apply for renewal operation permits ([p. 48](#));
- ☑ revise the expedited review process for construction permits ([p. 61](#));
- ☑ further streamline the construction permit program ([p. 63](#));
- ☑ improve the facility inspection process ([p. 70](#));
- ☑ improve compliance with federal policy for high-priority violations ([p. 72](#));
- ☑ improve the compliance certification process ([p. 73](#));
- ☑ identify after-the-fact permits and take appropriate enforcement action ([p. 74](#));
- ☑ establish additional performance measures ([p. 79](#));
- ☑ improve its data systems ([p. 80](#)); and
- ☑ report to the Joint Audit Committee by September 1, 2004, for follow-up ([p. 81](#)).

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## Additional Information

[Report 04-1](#) includes a response from the Department of Natural Resources, call **(608) 266-2818** or visit our Web site:



**[www.legis.state.wi.us/lab](http://www.legis.state.wi.us/lab)**

Address questions regarding this report to:

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