

2003 Joint Committee on Audit

Air Management Programs

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INSIGHT

Volume 23, Number 17

August 14, 2001

What's on Page Two

■ Budget Battle Culminates in Veto Requests

Worker's Compensation Audit Alert

The Wisconsin Compensation Rating Bureau (WCRB) wishes to announce the following:

As previously reported in *Insight*, the July 1, 2001 worker's compensation insurance rates are in effect. Also, any changes to insurance class codes can be found on the WCRB website (www.wcrb.org) under Circulars, at no charge.

Finally, please note also that the WCRB is on time in releasing experience modification calculations (mods). In fact, the WCRB reports that it is currently releasing mods to be effective December, 2001.

This announcement from the WCRB is to clarify any contrary information that may be circulating. Questions regarding an insured's rates, classification or modification factor can be addressed by their insurance carrier.

Also any questions regarding a change in classification should be directed to the WCRB. Contact is available through their website, or by calling 414/476-6440.



Air Toxics Revisions: Threat or Opportunity?

Jeff Schoepke, Director, Environmental Policy

The DNR is proposing to designate close to 200 new substances as toxic air contaminants in a sweeping rewrite of Wisconsin's Air Toxics Program, NR 445. The proposal would regulate such common substances as asphalt fumes, crystalline silica, diesel exhaust, wood dust and even flour dust, as air toxics.

This initiative — the most significant regulatory issue facing Wisconsin industry — is a top priority for WMC.

Under NR 445, DNR reviews third-party designations to determine if a substance should be listed and regulated. There is no independent scientific review by DNR, no determination if the substance is present in Wisconsin or poses actual risk to citizens.

The proposal would take Wisconsin's list of regulated substances to over 650. By comparison, the federal program finds it necessary to regulate only 189 substances. The proposal also lowers thresholds on hundreds of already listed substances, which has similar regulatory ramifications. As more and more substances are inevitably designated toxic, industry faces the prospect of having the air toxics program become a regulatory portal through which all businesses must pass.

While expensive emission controls are expected to be triggered by the changes, the most significant burden may be paperwork exercises that produce no environmental benefits. For example, DNR expects companies to perform a "reasonable search and inquiry" to determine if it has or emits any of 650 substances above overly conservative regulatory thresholds. What's the environmental benefit of this paper shuffle for substances not likely to be present? In most cases, zero.

Despite the threat this initiative poses to Wisconsin's regulatory climate, there is reason for optimism. The DNR has expanded its statutorily required small business impact analysis to a review of the impacts on the broader business community. DNR has agreed to what might be the most extensive cost study it has ever undertaken.

WMC has retained Kestrel Management Services, a firm experienced in measuring the cost of environmental regulations. With the blessing of the DNR, this process will generate a cost estimate using Kestrel's "Real Cost" protocols. In addition to producing a powerful advocacy tool for NR 445, application of Kestrel's protocols could fundamentally change the way DNR addresses economic costs in the future.

The process is already paying dividends. DNR has for the first time recognized that simply listing a substance results in substantial compliance costs and has been willing to discuss compliance alternatives industry never thought would be on the table. Progress is being made in small increments, but both DNR and industry appear committed to develop a rule that produces real environmental benefits at a reduced cost.

If you have questions about NR 445 or are interested in participating in the business impact analysis, I can be reached at 608/258-3400 or jschoepke@wmc.org.

"This initiative — the most significant regulatory issue facing Wisconsin industry — is a top priority for WMC."



■ Budget Battle Culminates in Veto Requests

Highlights of WMC State Budget veto requests include:

Local Service Fee: Allows municipalities to impose a local "service fee" on real property owners to pay for municipal services regardless of whether they receive the services. Industrial and commercial property will be likely targets for service fee increases, although non-profits and residential property could also be included under the extraordinarily broad language.

Revenue Limit Exception/Property Tax Increase: Allows school districts to exceed the current revenue caps by .78% per year (on average) without a referendum. This change will increase state spending by \$45 million over the biennium and significantly increase property taxes.

Garbage Tax: Increases the state-imposed garbage tax (tipping fee) by 1000% to increase spending on Wisconsin's recycling program. Given the programmatic and financial concerns raised in the 2001 Legislative Audit of the recycling program, not only are additional garbage taxes inappropriate, Wisconsin would be better served by a smaller, less costly and more efficient recycling program.

Estate Tax Increases: Currently, the state can impose an estate tax equal to the federal credit for death taxes paid to state government, which translates into a dollar for dollar reduction of the federal estate tax liability in Wisconsin. The federal Economic Growth and Tax Reconciliation Act completely phases out the estate tax over a number of years. The state budget bill references the federal act only until October 1, 2002, then reverts back to federal law as of December 31, 2000, increasing Wisconsin's death taxes, rather than phasing them out.

LLC Tax Increase: Specifies that owning a limited liability company (LLC) would be considered doing business in the state if the LLC is treated as a partnership for federal income tax purposes. Additional taxes on any business, in light of the slowing economy and Wisconsin leading the nation in manufacturing layoffs, will kill jobs.

Qualified Economic Offer/Property Tax Increase: Change to the qualified economic offer (QEO) law that binds school boards as well as increases property taxes. The budget requires that in order for a school district's offer to be deemed "qualified" there can be no changes to the other "permissive subjects of collective bargaining." In the absence of a "qualified" offer, "contract disputes" would be subject to binding arbitration. This change virtually eliminates the effect of the QEO in holding down school costs.

State Spending Caps: The budget includes a new cap on state government spending limited to the growth in personal income. However, K-12 and higher education spending are exempt from the caps. Thus, more than two-thirds of the GPR budget would be exempt from the caps. A partial veto of the exceptions is necessary so that ALL state government spending increases would be tied to the growth in personal income.

Chiropractic "Prompt Pay": Dealing with the timely payment of chiropractic treatment insurance claims. This proposal conflicts with provisions of the Wisconsin Worker's Compensation Act.

Telemarketing Regulation: Create a state "do not call" list administered by the Department of Agriculture, Trade and Consumer Protection, funded through a fee charged to telemarketing businesses. Creating a separate state operated "do not call" list is both redundant and costly, since it replicates the national "do not call" list already in place.

Small Group Insurance Rate Bands: A "rate band" provision would prohibit health insurance premiums for small groups (2-50 employees) from varying by +/- 10% from the average rate, based upon certain underwriting criteria. Under current law, the rate variation can be +/- 30%. This provision is well intended and offered as a means to reduce health care costs, but its impact could provide the opposite. Shrinking rate bands will simply shift claims costs from one group to be shared with other groups.

"Hi-Cap" Wells: Requiring an environmental impact statement for any high capacity well permit application intended for a water bottling facility. This issue deserves discussion, and industry is as interested in groundwater supplies as any other party. However, the budget provision is an overreaction to local opposition to a proposed bottling facility in Adams County.

Great Lakes Drilling: Prohibiting directional drilling for oil and gas under the Great Lakes. Drilling technology is highly advanced and done safely elsewhere. For example, Michigan has had over 2000 such operations since the 1970's with no environmental issues arising. Drilling proposals should be evaluated on the merits and permitted or rejected accordingly, *agreed* not dismissed without regulatory review.

Wood Treated with Arsenic: Regarding arsenic treated wood and requiring the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Commerce (DOC) to submit to the Joint Finance Committee a plan to prohibit use of wood treated with arsenic. The provision requiring DATCP and DOC to review scientific evidence to determine whether there is a substantial likelihood that wood treated with copper, chromium and arsenic is harmful to the environment or to human health is sensible. However, it is premature to judge the outcome of this review and require agencies to recommend a plan to eliminate the use of such products.

Prevailing Wage Rate Calculation: Allowing the reporting of wages paid on public works projects even if the rate paid on the project is more than the prevailing wage rate established for the project, based upon labor market wage rates in the area. Including these higher wages in the calculation will have the effect of skewing prevailing wage rates upward, substantially increasing the cost of any public works project.

Prevailing Wage Rate Reporting: Requiring all contractors and subcontractors working on projects covered by the prevailing wage laws to allow the public to inspect payroll records of covered employees. Opening private employer personnel records to public scrutiny will discourage many contractors from engaging in public sector work.

Property Tax Exemption on ATM Machines: Extending the property tax to currently exempt ATM machines, effective with property assessed as of January 1, 2002. Wisconsin simply should not be raising ANY taxes given the fact that we already have among the highest taxes in the nation.

agreed **Transportation Investment Planning Committee:** Creating a new Long-Range Surface Transportation Investment Planning Committee with prescribed duties and membership. The duties of this committee duplicate many of the functions carried out by the Department of Transportation, and would therefore be redundant and a waste taxpayer dollars.

Crane Operator Certification: Regulating the training and certification of construction site crane operators in Wisconsin. Workplace health and safety laws and regulations in general, should be exclusively a matter of federal OSHA regulation.

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Tougher air pollution controls a must

More counties may be included under stricter rules

By LEE BERGQUIST of the Journal Sentinel staff

Last Updated: March 26, 2002

Wisconsin will have to impose tougher controls on air pollution in southeastern Wisconsin and, for the first time, could include other counties to meet new federal limits that received the go-ahead Tuesday from a federal appeals court.

In Washington, the court gave the U.S. Environmental Protection Agency approval to issue more stringent air quality health standards after a five-year legal fight that went all the way to the Supreme Court.

The decision essentially allows the EPA a few years from now to require reduced emissions at factories, utilities and from vehicles at a time when Wisconsin's air is actually getting cleaner and some restrictions on the state could be relaxed.

Scores of counties across the country that have been in compliance with the old standard will no longer meet the new federal air quality requirements, federal officials and environmentalists acknowledge.

"The bar is being raised again," said Lloyd Eagan, the top air quality official with the state Department of Natural Resources.

Air Pollution New Air Standards

A federal appeals court gave the EPA approval to issue more stringent air quality health standards. Under them:

- ▣ The limit for ozone, a major component of smog, is **85 parts per billion** instead of **125 parts per billion** under the old requirement.
- ▣ The monitoring period goes from **12 hours** to **eight hours** to better reflect actual air quality.
- ▣ For the first time, states and local governments are required to **limit microscopic soot** output from power plants, cars and other sources. Particles 2.5 microns in diameter, or 28 times smaller than the width of a human hair, cannot exceed an annual primary standard of 15 microns per cubic meter.

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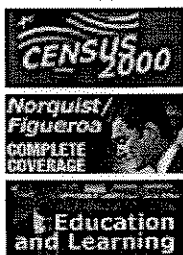
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Neighboring counties

For the first time, Jefferson and Rock counties, and possibly Dane and Walworth counties, could join southeastern Wisconsin, where programs such as reformulated gas and vehicle emissions testing are in place.

Eagan, the DNR's director of air management, said it is too soon to say how - and to what extent - people will be affected by the new limits.

She emphasized, however, that the DNR has no plans to re-examine an initiative from a decade ago that tried to force companies to prod employees into car pools. The proposal was eventually dropped, although Eagan said about 400 companies have voluntary programs in place.

Eagan estimated the new regulations from Tuesday's court action would go into effect in 2004 or 2005.

Relaxing standards possible

Earlier this year, the DNR talked about relaxing some clean air standards - for example, by exempting more cars from the vehicle emissions testing program in Milwaukee, Waukesha, Ozaukee, Washington, Sheboygan, Racine and Kenosha counties. The program now exempts the latest two model years from testing.

The DNR is still considering having fewer cars tested. But Eagan said it would happen only after computer modeling shows how it would affect air quality.

Also, late last year the DNR announced that air quality had improved in southeastern Wisconsin, no longer violating federal standards for ozone when using a one-hour test to measure its presence.

Ozone is a gas that is a prime component of smog and is created by the mixture of sunlight, nitrogen oxide and volatile organic compounds.

The DNR still plans to ask the EPA to reclassify southeastern Wisconsin as a region that is in compliance with the law - a so-called ozone attainment region. The DNR says the process could take nine months.

Helpful to industry

The benefits to businesses: New companies that move to southeastern Wisconsin and emit large amounts of pollution would no longer be required to buy costly pollution credits from other businesses.

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Also, more companies that emit smaller amounts of pollution would not be required to obtain permits from the DNR.

But as the benefits from cleaner air occur, Wisconsin and other states will be forced to move to the EPA's new stricter standards. The reason the DNR could ease some air emissions regulations while stricter limits are on the horizon is this:

Wisconsin continues to ratchet down air pollution because of voluntary efforts by companies, cleaner-burning gasoline in cars and new control technologies installed at factories and utilities, Eagan said.

Also, the weakened economy has slowed industrial output and cut pollution in the past year.

Appeared in the Milwaukee Journal Sentinel on March 27, 2002.

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Milwaukee Business Journal October 4, 2002

DNR proposes tripling air toxics list

Manufacturers, utilities would bear brunt of cost

BY PETE MILLARD
pmillard@bizjournals.com

The Wisconsin Department of Natural Resources proposes new air pollution regulations on manufacturers and utilities that a statewide business association predicts will cost companies throughout the state \$200 million.

The DNR wants to expand the number of toxic substances that manufacturing firms must monitor and clean up from 189 to 578, a more than three-fold increase. The agency says it is adding 389 substances to the toxics list to reduce health risks to Wisconsin residents.

Examples of common pollutants already on the

DNR list include formaldehyde, chlorine, phosphorous, benzene, cadmium and other volatile organic compounds. The agency would like to add substances including coal dust and wood dust.

"We think they are way too aggressive in what they are including as toxic substances," said Jeffrey Schoepke, director of environmental policy for Wisconsin Manufacturers & Commerce, a Madison-based organization with more than 4,300 members. "These expanded rules will affect every layer and level of manufacturing in Wisconsin."

Expanding the list of toxic substances covered by the rules will force many small businesses to moni-



Schoepke

DETAILS

Airing out toxics

Development: State DNR agency proposes to tighten air pollution regulations that apply to manufacturers and utilities.

Scope: Number of toxic substances covered would triple, from 189 to 578. In addition to regulating formaldehyde, chlorine and benzene, the DNR wants companies to control coal dust and wood dust.

Timeline: DNR decision will be made in March 2003; rules could be in effect before next summer.

Impact: More than 1,200 facilities could spend \$200 million just to determine what they need to do, according to a study from Wisconsin Manufacturers & Commerce. Pollution-control technology could cost millions more.

Next step: DNR is reviewing public comments from companies and trade groups.

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Milwaukee Business Journal October 4, 2002
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...cont. from prev. page

tor and control air pollutants for the first time, said Schoepke.

Wisconsin Manufacturers & Commerce estimates that 1,223 facilities owned by Wisconsin companies will spend an average of \$163,700 per facility to comply with the new rules, which adds up to a one-time cost of \$200 million.

The estimate covers only the administrative costs for hiring consultants and lawyers to help companies determine whether they are required to install new pollution-control devices. Companies with emissions high enough to fall under the new rules will have to spend millions more to acquire control technologies to comply with the pollution standards.

"This is a rule change that carries a cost burden that far outstrips the environmental benefit," said Ed Willis, environmental director for the Wisconsin Paper Council.

DNR officials believe the Wisconsin Manufacturers & Commerce's cost projections have been embellished and disagree with WMC's prognosis, said Dennis Koepcke, a DNR air pollution specialist.

"The cost estimates are out of line," said Koepcke.

The DNR is reviewing public comments from companies and trade groups on the economic impact of increasing regulations on toxic air emissions. It plans to forward its rule-change proposal to the DNR board of directors in March.

Once the DNR board approves the plan, the rule changes would take effect before the end of summer 2003, although the state Senate

and Assembly environmental committees can request changes in the rules. The Legislature also can draft legislation to repeal a DNR administrative rule.

"The reality is the Legislature rarely changes or repeals a DNR rule because of the complexity of the issues," said Schoepke of Wisconsin Manufacturers & Commerce.

Rep. Neal Kedzie (R-Elkhorn), chairman of the Assembly environmental committee, promises the proposed rule changes will be closely reviewed when they go before the Assembly environmental committee for approval.

"This is a rule change that carries a cost burden that far outstrips the environmental benefit."

Ed Willis
Wisconsin Paper Council

businesses \$358.7 million, a 253 percent increase over existing rules.

Business groups have been negotiating with the DNR for five years on the toxic-substance rules and have managed to pare back the economic impact to businesses to the disputed \$200 million figure.

"The DNR has been very accommodating

about listening to our position, but in the end, this is still a massive expansion of the agency's rule package," said Patrick Stevens, a vice president of the Wisconsin Transportation Builders Association, a highway construction trade group.

Paper companies and energy utilities would be affected the most by the rule changes. One of the substances causing the biggest problem is coal dust that blows off the piles of coal outside power plants and paper mills, said Willis.

UTILITIES CONCERNED

Wisconsin Energy Corp., Milwaukee, is following the proposed DNR rule changes and is concerned about increased regulatory costs, said a utility spokeswoman. The company's environmental specialists were unavailable for comment.

Wisconsin Manufacturers & Commerce hired Kestrel Management Services of Madison to develop the estimated cost of the new air pollution regulations, which it did by conducting a two-day workshop in November 2001. More than 20 companies took part, and the DNR also sent air pollution specialists to help study the costs.

As a result of discussions with Wisconsin Manufacturers & Commerce, the DNR has agreed to trim from 650 to 578 the number of toxics that would have to be monitored and controlled, Koepcke said.

Jim Pugh, communications director for Wisconsin Manufacturers & Commerce, compares the new regulations to an unacceptable tax increase.

"If any administration would impose a one-time tax increase of \$200 million, they

would be thrown out of office," he said.

Indeed, some Republican supporters in the business community wonder why Gov. Scott McCallum could not fend off this kind of expensive regulatory policy early on, said Schoepke.

The problem for McCallum, said a GOP strategist who did not want to be identified, is that the timing of the general election forces the governor and his administration to maintain a low profile on controversial environmental issues.

Milwaukee Journal Sentinel December 16, 2002

Air pollution permits lacking, groups say

Environmentalists to sue EPA, saying oversight of DNR lax

By LEE BERGQUIST

lbergquist@journalsentinel.com

Environmental groups will announce today that nearly 300 major sources of air pollution in Wisconsin do not have valid air permits — a shortcoming in the state's regulatory system that they say has enabled many of these sources to pollute more.

The environmental groups say they will file a lawsuit against the U.S. Environmental Protection Agency for failing to adequately oversee the state Department of Natural Resources' enforcement of clean air laws in Wisconsin.

On a percentage basis, more Wisconsin companies and other pollution sources are operating with invalid permits than any other state, the environmental organizations say. Permits specify how much pollution a source can emit without exceeding government limits.

"What we discovered was shocking," said Bruce Nilles, an attorney for the Sierra Club in Wisconsin.

Nilles said researchers found a "systematic" reduction in the DNR air emissions budget that has made it harder for the agency to enforce clean air laws and easier for some companies to pollute.

The DNR did not dispute the characterization of its budget situation.

"It is true that we do not have enough resources to produce per-

mits as fast as we would like them," said Lloyd Eagan, Wisconsin's top emissions regulator.

She said that other states are facing the same problem.

In Wisconsin's case, the DNR lost a mechanism that allowed the agency to raise fees for processing air permits, Eagan said. The DNR is working with the EPA to get the permit review process caught up by 2005.

Even without valid pollution permits, however, companies are still required to meet standards for clean air, Eagan said.

"But I think that the answer is, yes, there is probably more pollution because of this," she said.

Overall, however, Wisconsin's air has become cleaner over the past 30 years because of stricter emissions standards for factories and vehicles, Eagan said.

The number of days in which Wisconsin has exceeded acceptable ozone levels has plummeted from a high of about 50 days in 1983 to 10 days this year, DNR figures show. Unhealthy ozone concentrations make breathing hard for children, the elderly and a growing number of people with respiratory problems.

But Wisconsin and federal regulators are pushing for stricter air limits on unregulated pollutants such as mercury and soot.

In addition to the Sierra Club, other organizations that are involved in the case include Midwest Environmental Advocates, a Madison law firm; Wisconsin's Environmental Decade; Citizens for a Better Environment; and the Wisconsin Public Interest Research Group.

The Capital Times December 16, 2002

State air pollution sparks legal action

By Matt Pommer

The Capital Times

Clean air advocates today petitioned the federal government for action to fix Wisconsin's air operating permits program.

The coalition requested the U.S. Environmental Protection Agency to intervene and order the state to fix the program or impose sanctions, such as reducing federal highway aid to the state.

At a morning press conference the coalition said Wisconsin was required to issue operating permits to the state's 610 largest sources of air pollution by April 1998. By Oct. 1, 2002, some 180 of the 610 pollution sources were operating without state permits, the coalition said.

"EPA must order the state to fix the program and protect public health in Wisconsin," said Caryl Terrell of the Sierra Club. "For eight years the governor and the Legislature have hobbled the Department of Natural Resources' ability to write permits, conduct inspec-

tions and take enforcement actions against the state's largest sources of air pollution."

The coalition urged Governor-elect Jim Doyle to increase permit fees to fully fund the air permits programs.

"By doing so, he will help protect public health and avoid federal intervention," said Marc Looze of Wisconsin's Environmental Decade.

The coalition criticized the state for a backlog of unresolved enforcement issues, the failure to start any criminal enforcement action in the seven-year history of the program and not resolving an administrative case with a consent order in the last 22 months.

Members of the coalition are the Sierra Club, Wisconsin's Environmental Decade, Clean Water Action Council of Northeastern Wisconsin, Citizens for Safe Water, Citizens for a Better Environment, Wisconsin Interfaith Climate Change Coalition, and the Wisconsin Public Interest Research Group.



JAN 23 2003

January 20, 2003

Senator Carol Roessler
PO Box 7882
Madison, WI 53707-7882

Representative Suzanne Jeskewitz
PO Box 8952
Madison, WI 53708

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Dear Senator Roessler and Representative Jeskewitz:

As you may be aware, recent news articles outlined concerns expressed by the environmental community in regard to Wisconsin's air permit program. While we may disagree with some of their conclusions as to the source of the problems at DNR's Air Bureau, WMC and the business community share their concerns over DNR's inability to issue timely permits.

The purpose of the letter is to request a legislative audit of the Air Bureau and its permitting programs to better quantify the issues and enlist the Audit Bureau's expertise in recommending potential solutions. This request is not new, nor limited to environmental groups or industry's concerns. As part of the 1999-01 Budget (1999 Act 9), the Legislature, in bipartisan fashion, requested "the Joint Committee on Audit to request the Legislative Audit Bureau to review the DNR's Air Management programs, including a comparison of federally required aspects of the program and aspects required only by state law." Due to various factors (none relating to underlying grounds for the request), that request was never made of the Audit Bureau.

DNR's poor performance on Title V operating permit issuance is indeed unfortunate. No company or community should be forced to wait the better part of a decade for a permit to be issued. Probably more important to our members, however, is DNR's inability to issue construction permits in a timely manner.

As you may know, a business emitting air pollutants must often have a construction permit in hand before they can expand in or move operations to Wisconsin. Any delay in the issuance of such construction permits becomes a serious disincentive to build in Wisconsin. Moreover, the mere perception that such permits are difficult to obtain has and will continue to create a significant barrier to economic development in Wisconsin. This problem is well documented.

DNR recently issued a report on a satisfaction survey of the air operating permit program.¹ While we were disappointed construction permits were not included in the survey, one key conclusion is consistent with the above noted concern:

¹ The full report entitled 2002 Air Operating Permit Satisfaction Survey (Survey Report) can be found on DNR's Web site at:
http://www.dnr.state.wi.us/org/es/science/pubs/tr/SS_978_2002.pdf

Respondents were less satisfied with the application process. Some are concerned that the process takes too long and costs too much. Indeed, years can elapse between the initiation of an application and the final receipt of a permit. Such a drawn-out process means that both agency and applicant can lose key staff members who prepare or review the permit. The fitful nature of the process means that applicants must continually go back and review and relearn their permit. (Survey Report, pp. ES-1)

The report goes on to note that:

Applicants are also concerned about air permit application costs. The survey did not ask respondents' satisfaction with application costs, however many said that costs were a problem later in the survey (see section II.D). Dispersion modeling, consultant fees, and overall application processing time drive up the costs. (Survey Report, pp. 13)

On that point, one of those surveyed noted that:

We spent probably over a year going through modeling exercises, well over \$50,000 in consulting fees. That cost us \$7,000 back in the early 90's. I don't know if it's changed a lot. Right now I have a renewal of that permit which wasn't too bad. That cost \$3,500 just to renew. Somebody starting up a new business and has to go through that—I'd tell them to go to a different state or something because that was a nightmare. (Survey Report, pp. 13-14)

We don't believe this problem is isolated as we are aware that certain companies are, in fact, being advised to locate elsewhere due to permitting delays. With the critical need to jump start and grow Wisconsin's economy, such a bureaucratic impediment is unacceptable.

WMC believes that throwing more money at DNR is not the solution. Many believe DNR simply spends too much time on permit provisions of little importance. EPA raised similar concerns. In a report from March of last year, Jeffrey Holmstead, assistant administrator for air and radiation at EPA, said that "a big part of the problem is that states are spending far too much time on things that are of little benefit to the environment, such as developing monitoring protocols for very small and insignificant emission units." (BNA Environment Report, Mar. 15, 2002)

Thus, our permit issuance rate could be markedly improved through efficiencies in the review process. Successes in other states support this assertion. For example, Title V permit issuance rates at the end of 2001 found Wisconsin at 48 percent, and similarly sized Missouri at 74 percent. At the same time, Wisconsin's air fee is \$35.70/ton while Missouri

charges \$25.70/ton. Clearly, there is no direct correlation between issuance rates and program funding.

We believe that the air program can be better managed. Opportunities for performance efficiencies should be first exhausted before fee hikes are endorsed. For example, the 1999-2001 budget required the DNR to develop "Objective Performance measures" to gauge efficiencies within the permitting program. This mandate has been ignored.

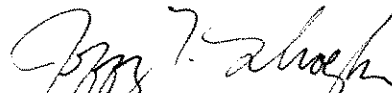
Finally, while WMC supports a state-run program, we are not convinced the threat of EPA pulling the state's permit delegation should frighten policy-makers into capitulating to DNR's continued request for more ingmoney. Other states appear to be doing fine with EPA.

Despite our well grounded views on DNR's air permit program, we would welcome a fresh, independent analysis of the relevant issues. The Audit Bureau could provide such an analysis. We suggest an audit of the air program should include, but not necessarily be limited to, several key issues:

- Air Bureau resources and fees compared to other states, and corresponding status of EPA permit program delegation in those states
- Permit issuance rates compared to all other states
- General efficiency of air permit writers
- The degree to which DNR includes state-only requirements (substantive or administrative) in federally enforceable permits
- Delineation and accounting of Air Bureau resources dedicated to implement direct federal mandates, indirect federal requirements, and state-only activities.

We look forward to your response to this request, and offer our participation and the insight of our members in completing this important review.

Sincerely,



Jeffrey Schoepke, Director
Environmental Policy

cc: Governor Jim Doyle
Secretary Scott Hassett
Joint Legislative Audit Committee

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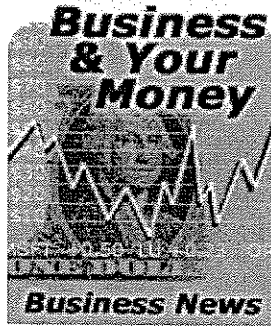
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Business group wants to speed up state's clean-air permits

By LEE HAWKINS JR. lhawkins@journalsonline.com

Last Updated: Jan. 20, 2003

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Wisconsin Manufacturers & Commerce, the state's largest business association, is seeking a legislative audit of the Department of Natural Resources bureau that issues air permits to businesses, according to a letter sent Monday to two lawmakers.

Special Features:



Jeff Schoepke, WMC director of environmental policy for the group that represents about 4,300 business members, sent a letter to Sen. Carol Roessler (R-Oshkosh) and Rep. Suzanne Jeskewitz (R-Menomonee Falls) on Monday, expressing concern over the DNR's inability to issue timely air quality permits.

"No company or community should be forced to wait the better part of a decade for a permit to be issued," Schoepke said in the letter. "Probably more important to our members, however, is DNR's inability to issue construction permits in a timely manner."

The WMC request is the latest attempt to have the audit bureau review the DNR's Bureau of Air Management programs, including a comparison of federal and state aspects of the law.

The DNR agrees it has a problem and said its work has been slowed by budget cuts.

"We would welcome an audit," said Lloyd Eagan, director of air management for the DNR. "Our program has lost resources over the last six years. We can't write as many permits or conduct as many inspections because don't have the staff to do it."

Eagan estimated in December that the DNR would need to add 52 jobs

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to catch up with old permits and begin timely processing of new permits - at an annual cost of \$2.7 million.

Federal law for permits specifies that polluting entities, not taxpayers, have to pay for the cost of getting a permit. By state law, a business emitting air pollutants must often have a construction permit in hand before it can expand in, or move operations to, Wisconsin.

In its own survey of the satisfaction of businesses and others toward the permit program, the DNR received a 99% approval rating, Eagan said. However, the survey also found that some were concerned that the process can be too time-consuming and expensive.

"We spent probably over a year going through modeling exercises, well over \$50,000 in consulting fees," said one respondent in the survey. "Somebody starting up a new business and has to go through that - I'd tell them to go to a different state . . . because that was a nightmare."

Such sentiments prompted WMC's concern, Schoepke said.

"Any delay in the issuance of such construction permits becomes a serious disincentive to build in Wisconsin," Schoepke said in the letter. "Moreover, the mere perception that such permits are difficult to obtain has and will continue to create a significant barrier to economic development in Wisconsin."

The WMC plans to meet with members of the Joint Audit Committee, which is led by Jeskewitz and Roessler, Schoepke said.

"This is not a mystery," said Bruce Nilles, an attorney with the environmental group, the Sierra Club. "The program is broken because doesn't have enough resources."

A version of this story appeared in the Milwaukee Journal Sentinel on Jan. 21, 2003.

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State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

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Leg.Audit.info@legis.state.wi.us

DATE: January 27, 2003

TO: Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee

FROM: Janice Mueller *Janice Mueller*
State Auditor

SUBJECT: Proposed Audit of the Department of Natural Resources' Air Management
Programs—Background Information

At your request, we have gathered some background information the Joint Legislative Audit Committee may find useful in considering an audit of the Department of Natural Resources' air management programs. A number of questions have been raised by legislators, the business community, and other groups about the Department's administration of these programs, especially about the length of time it takes to issue air pollution control and construction permits.

The Department is responsible for ensuring compliance with the federal Clean Air Act. Chapter 285, Wis. Stats., and administrative rules promulgated under the NR 400 series provide the Department with authority to conduct air quality programs, regulate operators that produce air emissions, and enforce air quality standards. In general, state law prohibits the Department from adopting air quality standards that are more restrictive than federal standards. However, stricter standards, or the development of standards not regulated under federal law, are permitted if the Department determines that such restrictions are needed to protect the public health or welfare. Most standards are related to six main pollutants: ozone, sulfur dioxide, nitrogen dioxide, particulate matter suspended in the atmosphere, carbon monoxide, and lead.

For air management activities in fiscal year (FY) 2002-03, the Department was authorized 186.5 full-time equivalent positions and a budget of \$18.3 million. Air management activities are funded primarily from program revenues, which are generated by emission and other fees charged to regulated businesses. In late 1994, the Department began issuing operation permits under new federal and state rules for pollution control. As of November 1, 2002, it had issued 795 operation permits for the 1,301 operators considered to be major sources of pollution.

An audit of the Department of Natural Resources' air management programs could include a review of:

- workload issues, including trends in the amount of time taken to issue and renew air permits;
- comparisons with other states, including air management staffing levels over time and permit backlogs;

- the effectiveness of strategies the Department uses to address workload issues associated with overseeing its air management programs;
- the extent to which fees collected from regulated entities cover program costs;
- the equitableness of the fees assessed on regulated entities of varying sizes, including comparisons with similar fees charged by other states;
- the Department's air quality monitoring efforts to determine air quality trends;
- relevant research about the effects of air pollution on human health; and
- the extent to which the State has expanded upon regulatory requirements prescribed by federal law.

If you have any questions regarding this request, please contact me.

JM/PS/bm

cc: Senator Robert Cowles
Senator Alberta Darling
Senator Gary George
Senator Dave Hansen

Representative Samantha Kerkman
Representative Dean Kaufert
Representative David Cullen
Representative Mark Pocan

Scott Hassett, Secretary
Department of Natural Resources

NEWS RELEASE
FOR IMMEDIATE RELEASE
January 28, 2003

For More Information Contact:
Senator Cowles or Jennifer
Halbur at 1-800-334-1465

COWLES CALLS FOR AIR MANAGEMENT AUDIT

MADISON-- State Senator Robert Cowles (R-Green Bay), Vice Chair of the Joint Audit Committee, has requested an audit of the Department of Natural Resources' Air Management programs. "A concern of mine centers around Title V of the 1990 amendments to the Clean Air Act, which requires polluters to obtain an operating permit from the state Department of Natural Resources. Hundreds upon hundreds of air polluters in this state are operating without one," explained Cowles. "There are a lot of questions in these programs that need answers before we can move forward with a solution."

Cowles sees the need for a clear, unbiased, factual account of the issues surrounding the backlog of the permits. He has worked with Senator Carol Roessler and Representative Jeskewitz, the Co-Chairpersons of the Committee, in determining the need for an audit. The following issues may be addressed:

- Workload issues.
- Changes in air management staffing levels over time, including comparisons with staffing levels in other states.
- The effectiveness in strategies the Department uses to address workload issues associated with overseeing its air management programs.
- The extent to which fees collected from regulated entities cover program costs.
- The equitableness of the fees assessed on regulated entities of varying sizes,

(more)

including comparisons with similar fees charged by other states.

- The extent to which the state has expanded upon regulatory requirements prescribed by federal law.

“It is important for us to have an understanding of the cause of the permit backlog but also any effects it may have. Health and economic factors are two significant issues. For example, to what extent is pollution from these sources contributing to health conditions such as asthma? Is the backlog process impeding business expansion?”

“I am confident an audit of the DNR Air Management programs will serve as a valuable resource in determining the extent to which changes are made to improve upon the current permitting process.”

The Co-Chairs of the Committee will have to bring this issue to a vote at the February 5, 2003 Joint Audit Committee public hearing before work on the audit can move forward.

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Region & State

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Permit backlog could raise fees

State air quality suffers as DNR looks to boost staff

By Ben Jones
 P-C Madison bureau chief

MADISON — The Wisconsin Department of Natural Resources says higher fees would help it meet a backlog of unfilled permits for air polluters, but industry is fighting the proposal.

As the two sides figure out how to catch up on more than 500 unfilled permit requests, environmentalists — and the DNR itself — say air quality in the state is suffering.

"There are probably more pollutants going into the air because we haven't issued permits," said Lloyd Eagan, director of the agency's Bureau of Air Management.

The DNR has struggled for years to keep up with a 1990 federal requirement to issue air permits for companies that pollute.

The permits ensure that firms are complying with

state and federal laws and require polluters to disclose details about their emissions.

Of 1,287 federally enforceable state permits and federal air permits that Wisconsin companies have applied for, Eagan said her agency has issued just 785.

That leaves 502 companies still waiting for a permit, most in southeastern Wisconsin. Six Fox Valley

firms are on the waiting list as well.

The DNR says higher fees on industry are needed to hire more permitting staff.

"The fees are supposed to be coming from polluters," Eagan said. "The whole issue is, are we charging the polluters enough?"

It's a prospect industry doesn't embrace.

"It would be problematic," said Jeff Schoepke, director of environmental policy for Wisconsin Manufacturers and Commerce. "We are already in one of the worst tax and regulatory climates in the country, and not only would it not solve the problems, but it's not an additional barrier that we want businesses to take."

The Sierra Club, a na-

AREA COMPANIES SEEKING PERMITS

- Brillion Iron Works
- ThyssenKrupp Wauapaca Inc.
- Fox Energy Kaukauna
- Fox Energy Freedom
- SCA Tissue North America
- Industrial Towel and Uniform, Neenah
- tional environmental group whose Midwest office is based in Madison, says the

See FEES, C-9

BIG SHOWS LIGHTING UP COLLEGE AVENUE WITH NEW CUSTOMERS



Shared heritage anchors LU event

Black history celebrated, honored by 200

FEES: Firms may be violating several laws

From C-1

current situation results in pollutants going into the air without the public's knowledge.

"Why are we are worse than anyone in the Midwest?" said Bruce Niles, the club's senior Midwest representative. "We used to be a leader (in the environment). It all comes back to resources."

From the perspective of companies, the backlog on operating permits doesn't mean they can't operate. They are shielded by their application, Egan said, and are still required to meet emissions standards.

But the backlog can result in companies unknowingly being out of compliance with the law.

"The trouble is, they don't know everything they are supposed to be in compliance with," Egan said.

Outagamie County also is on the applicant backlog list for pollutants emitted by an electrical generating facility at the county landfill. The facility turns methane into electricity.

Philip Stecker, solid waste supervisor for the landfill, said he is not terribly concerned with the backlog.

"We have had the proper permitting all along," he said. "Now they have some new permitting we have filed for."

Egan said the department's problems are "totally a matter of staff." She said the 167 people who work in the program — in-

cluding 99 people who work with emissions fees — can't handle the caseload.

But Schoepke said other states do fine with smaller staffs, and he questions Egan's call for more people.

"We don't think the facts bear that out," he said. "The DNR has plenty of staff."

The permitting staff is paid for entirely by fees charged to the companies that pollute. The fee currently equals \$35.71 per ton of pollutants released into the air for the first 5,000 tons, so a company that released 500 tons of pollutants in the air would have to pay a fee of \$17,855.

There is no fee for pollutants that exceed the first 5,000 tons.

Niles suggests eliminating the 5,000-ton cap on fees and increasing the fee by \$1.48 per ton. Alternatively, he said, the cap could remain and fees overall could be increased by \$26 a ton.

Eric Uram, a representative of the Sierra Club Midwest, said pollution has an overall cost to society in terms of public health.

"The costs are borne out by everyone in the long run," he said.

The DNR has requested a fee increase in the last three state budgets that would have raised more money for more permit workers. Each time, the request was denied through the budgeting process.

Egan is optimistic the new administration will be open to a fee increase.

Gov. Jim Doyle, while not

commenting specifically on permit fees, has said fees should cover the programs they're intended to pay for.

A couple of pending actions could lead to changes in the permitting program.

State Sen. Rob Cowles, R-Green Bay, vice chairman of the Joint Legislative Audit Committee, recently requested an audit of the DNR's Air Management program.

The committee will decide Wednesday whether to proceed.

"Hundreds upon hundreds of air polluters in this state are operating without (a permit)," Cowles said. "There are a lot of questions in these programs that need answers before we can move forward with a solution."

The Sierra Club has asked the U.S. Environmental Protection Agency to ensure Wisconsin's compliance, threatening the EPA with legal action if Wisconsin doesn't comply with the law.

Niles said the EPA has the enforcement power to take over the state-administered program and could withhold more than \$567 million in federal highway dollars if the state does not carry out its permitting duties.

"We are looking into and evaluating the Sierra Club's claims," said EPA spokesman Bill Omohundro. He declined to comment further.

Ben Jones can be reached at 608-255-9256 or by e-mail at bjones@postcrescent.com.

FIRE: Family offered temporary quarters

From C-1

them," Lindsay said.

Eccles, 48, a former electrician and carpenter, has been on Social Security since 1990 when he broke his back at work. He also has heart problems.

Lori's business, a maintenance company, has been very slow recently and the family had to scrape to pay its bills.

Also in the home at the time of the fire were 17-year-old

daughter Dawn; 20-year-old daughter Elizabeth and her 5-month old son, Dylan; 25-year-old son Adam, who had moved back in with the family after he was unable to find work; and Lori's father, Marvin Bursiek.

Eccles said the response from the community to his family's plight has been "unbelievable."

"I would recommend this community to anybody on God's green earth," he said.

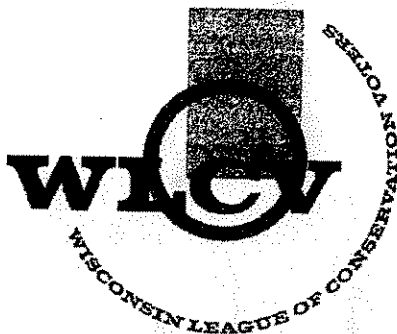
He is especially thankful to

Stockbridge firefighter Ed Kuhn, who offered to let the family stay in a vacant rental home he owns.

"He came up to me and said, 'I got a house right downtown. It's real small, but you guys are welcome to stay there until you get back on your feet.' He has been very nice."

"If not, we'd be God knows where," Eccles said.

Greg Bump can be reached at 920-993-1000, ext. 426, or by e-mail at gbump@postcrescent.com.



February 3, 2003

Senator Carol Roessler
Co-Chairperson Joint Audit Committee
P.O. Box 7882,
Madison, Wisconsin 53707

Representative Suzanne Jeskewitz
Co-Chairperson Joint Audit Committee
P.O. Box 8952,
Madison, Wisconsin 53708

Dear Senator Roessler and Representative Jeskewitz:

We are writing in support of the request by Senator Cowles for an audit of the Department of Natural Resources, Air Management programs.

The Wisconsin League of Conservation Voters feels that such an audit would serve as dependable preventative measure to assure that the air quality in Wisconsin is not jeopardized by a shortfall in the fees needed to cover the costs of this program.

We agree with Senator Cowles that such an audit would be an essential tool in determining the extent to which changes can be made to improve the current permitting process. It is an important step in assuring the effectiveness of a program threatened by an increasing backlog in permits.

It is our opinion that program fees for emitters should be linked directly to increases needed to meet cost-of living salary increases for DNR staff responsible for these programs. These increasing personnel expenses are eroding the funds needed to administer this important program.

For the sake of our citizens' health, sufficient fees should be collected from emitters to assure that Wisconsin can properly issue permits under Title V of the 1990 amendments to the Clean Air Act.

Sincerely,


Kathy F. Presticker
Executive Director


George E. Meyer
President

Cc: Sen. Robert Cowles, Vice Chair Joint Audit Committee, P.O. Box 7882

Clean Air - Clean Water - Clear Choices

George Meyer



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
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FAX 608-267-3579
TTY 608-267-6897

FEB 03 2003

February 3, 2003

Senator Carol Roessler
Co-chairperson
Joint Legislative Audit Committee
PO Box 7882
Madison, WI 53707-7882

Representative Suzanne Jeskewitz
Co-chairperson
Joint Legislative Audit Committee
PO Box 8952
Madison, WI 53707-8952

Subject: Air Emission Permits

Dear Senator ^{Carol} Roessler and Representative ^{Suzanne} Jeskewitz:

I would like to offer some additional insights on the letter that Wisconsin Manufacturers and Commerce (WMC) sent to you on January 20, 2003. This letter requests an audit of Air Emission Permitting Programs administered by the Department of Natural Resources. The Department welcomes an audit of these programs. To facilitate that process, I'd like to provide you more information on several important topics discussed in WMC's recent letter.

For example, there are two separate and distinct air permitting programs. They are the construction permit program and the operation permit program. The construction permit program applies to new air emission sources, while the operation permit program regulates emissions from existing sources. Each program has been fully approved by the United States Environmental Protection Agency (EPA). When these programs were approved by EPA they met all relevant requirements of the federal Clean Air Act.

The construction permit program is funded by fees that are established by an administrative rule. The fees are paid when the permit is issued. Under this program, potential air emission sources must apply for and obtain a permit prior to commencing construction of the source. During the Department's review of the application, we evaluate the specifications of the project to ensure it will not result in emissions that exceed allowable levels.

WMC would like to see a reduction in the processing time for construction permits so new projects can be implemented more quickly. The Department is aware of this consideration and is always looking for ways to reduce the time it takes to issue construction permits. For example, this process relies heavily upon the timely submittal of information from the permit applicant to function efficiently. With effective communication between the applicant and the Department, construction permits are issued in an average of 85 days from the date that the application is considered to be complete. Of these 85 days, almost half are necessary to meet statutory requirements relating to public review of the Department's draft determination on the project.

The operation permit program is authorized by Title V of the federal Clean Air Act. Title V requires owners of air emission sources to obtain permits to operate their facilities. This program was designed to be implemented through State and local air pollution agencies under federally stipulated guidelines. The Department has received 1,287 permit applications since Wisconsin's Title V Program received interim approval from EPA in 1995. We have been able to issue 802 permits thus far. Currently, there is a backlog of 485 permits that still need to be processed. Over the past 3 years we have implemented several projects to reduce the time it takes to issue operation permits, and continue to look for additional opportunities in this

regard. For instance, we have developed computer software that streamlines permit reviews, prepared standardized permit conditions, and created internet based tools to provide permitting staff easy access to air quality regulations and guidance.

Due to the permit backlog, on December 16, 2002, the Sierra Club and Midwest Environmental Advocates filed a petition with EPA that: 1) raises concerns over the Department's ability to issue operation permits for all of the pending applications in a timely fashion, 2) questions the Department's ability to adequately enforce applicable air pollution control requirements for facilities in the state, and 3) contends that the current method of funding the Title V Program does not provide sufficient resources to manage that program effectively.

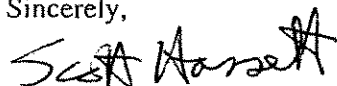
When Wisconsin's Title V Program was initially approved by EPA in 1995, it was funded by emission fees consistent with the model contained in the Clean Air Act that dictates the minimum requirements of the program. This model includes using the Consumer Price Index (CPI) multiplier to adjust for the changing costs of managing the program. In 1999, Wisconsin Act 9 eliminated the CPI adjustment, resulting in a funding base that is completely dependent on emission increases to meet the rising costs of implementing the Title V Program. On December 6, 2002, EPA questioned the Department's ability to implement the Title V Program without the benefit of the CPI adjustment. The petition filed by the Sierra Club and Midwest Environmental Advocates on December 16, 2002, asks EPA to issue Wisconsin a Notice Deficiency over the funding issue.

While the solution to the funding issues surrounding the Title V Permit Program may include reinstating the CPI adjustment, such an increase would in no way effect the construction permit program, since the construction permit program and the operation permit program are funded by two separate revenue sources. EPA regulations are very specific in regard to Title V Program fees in that they can only be spent on Title V related activities. WMC's recent letter seems to imply that: 1) an increase in Title V fees would assist in securing more rapid turnaround times for issuing construction permits, and 2) such an increase would be unnecessary if the Department's process for reviewing construction permits was more efficient. The basic premise of the first implication is incorrect because Title V fees do not fund the construction permit program.

Regarding the second implication, DNR's construction permit program ranks among the best in the United States in terms of permit approval turnaround times. Construction permits for major new sources are processed in an average of 7 months in Wisconsin whereas the national average for similar projects is well over a year. We are not aware of any states with construction permit programs approved by EPA that have better turnaround times. Nevertheless, the Department realizes the importance of further reducing the time it takes to issue construction permits and is currently engaged in a process streamlining project to secure that outcome. In addition, the Department is exploring the option of seeking approval of several new positions to be funded by the program revenue account to which construction permit fees are deposited.

I appreciate this opportunity to clarify several issues related to WMC's recent request for an audit of the construction permit program and the operation permit program administered by DNR. I would also like to offer the Department's full assistance and cooperation with the course of action you choose to take to deal with this matter. I'm confident the issues that have surfaced with these 2 programs can be resolved to the satisfaction of all stakeholder groups by creative thinking and open, frequent dialogue.

Sincerely,



Scott Hassett
Secretary

cc: Joint Audit Committee Members
Natural Resources Board Members
Janice Mueller – Director, Legislative Audit Bureau
Jeffrey Schoepke – WMC
Harold Jordahl – Governor Doyle's Office



John Muir Chapter

Sierra Club - John Muir Chapter
222 South Hamilton Street, Suite 1, Madison, Wisconsin 53703-3201
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cterrell@execpc.com; wisconsin.sierraclub.org

Statement on Proposed Audit of DNR Air Management Title V Program
Before the Joint Committee of Audit
By Caryl Terrell, Director
February 5, 2003

Thank you for the opportunity to speak on the proposed audit of the DNR Air Management Title V Program. You are addressing an issue that can improve the health and quality of life for families throughout the state.

EPA is Now Investigating and Wisconsin Faces Serious Consequences

The Sierra Club and other environmental and public interest groups on December 16, 2002 petitioned the Environmental Protection Agency to protect Wisconsin's families from air pollution by issuing the state a notice of deficiency for failing to adequately administer its Title V Permit Program and ordering prompt remedial action.

Even before we filed, the EPA, on December 6, 2002, wrote DNR questioning their ability to implement the Title V program without the Consumer Price Index (CPI) adjustment eliminated in 1999. EPA is now investigating the DNR program and requesting information similar to that suggested for this audit.

Unless Wisconsin acts to improve the program and its funding, we face serious consequences. Within 18 months, EPA must act to withhold all federal highway funding, estimated \$500-600 million per year. Six months later, EPA must take over the Title V program. Wisconsin can fix this problem and avoid the embarrassment.

The 1970 Clean Air Act promise of clean and healthy air for our residents is already decades over due. Part of this delay in achieving clean air can be traced to the failure to fully fund the DNR's Air Permits Program. This situation is the subject of the May 24, 2001 Legislative Fiscal Bureau report on DNR Air Management Programs. Correcting program funding is our first priority and this solution need not be delayed if the Committee proceeds with an audit.

Lack of Air Regulation Harms Taxpayers

The federal Clean Air Act requires that all fees be paid by air pollution sources and that fees are set to cover the entire cost of programs. By ensuring that the entities needing regulation in order to protect the public are paying for that regulation, the cost doesn't fall on taxpayers.

Because of a historic lack of funding, Wisconsin has the worst permit issuance rate of any state in the Midwest. Federal law required Wisconsin to issue all permits by April 1998. As of December 1, 2002, two hundred and eighty (46 percent) major sources of air pollution in Wisconsin still lacked operating permits.

Lack of Air Permits and Inspections Harms Public Health and the Environment

A significant portion of the air pollution that threatens millions of Wisconsin residents is from risk from paper mills, power plants, incinerators and foundries that emit hundreds of thousands of pounds of dangerous air pollution and that don't have the necessary permits. These industries emit mercury, sulfur dioxide, dioxin and many other hazardous chemicals into the air we breath,

causing thousands of Wisconsinites to suffer the effects, from asthma and other respiratory illnesses to cancer and heart disease.

Properly issued permits protect public health and ensure companies are complying with the safeguards promised by the Clean Air Act. Without permits, it is practically impossible to ensure our largest pollution sources are complying with their clean air obligations or take enforcement actions when they violate the law. There are so few inspectors that inspections are only occurring every three years, rather than annually as EPA policy requires.

Lack of Adequate Air Fees Harms Productivity and Creates Backlogs

The federal Clean Air Act focuses priority attention to major sources of air pollution because they are large, complex and have multiple points of emissions. Permits for these facilities are likewise complex and time consuming to prepare and review.

Properly issued permits provide facility managers with clear performance expectations. When these permits up for review, the facility is more able to provide needed data and expedite the re-issuance.

Beginning in 1996 the DNR has requested higher permits fees to remedy its permit backlog and hire more inspectors. Each year prior Governors and Legislatures rejected the requests.

The Solution is a More Equitable Fee Structure

Today, Wisconsin's major air pollution sources are paying a fee of \$35.71 per ton of certain pollutants up to 5,000 tons per source. This funding stagnated in 1999 when the Legislature eliminated the automatic annual per ton increase that had been linked to the Consumer Price Index ("CPI"). So not only is the fee set too low, but the funding is decreasing in real dollars every year.

To fix this problem means raising permit fees and restoring the annual CPI-adjusted increase. The DNR estimates that in order to finish issuing all permits by December 2004 (six years after the statutory deadline) and conduct annual inspections, fees should be increased from \$9,868,601 to \$17,181,743. Because federal law appropriately requires that the program be funded solely by permit fees (and not other state/federal funding sources) there are at least two ways to do this:

- 1) Increase permit fees by \$26.46 per ton of pollution to a level of \$62.17 per ton while maintaining the 5,000 ton cap per source, or
- 2) Eliminate the 5,000 ton cap and increase permit fees by \$1.48 per ton.

We believe the fairest option is to remove the 5,000 ton cap and make all pollution sources pay the same price per ton of pollutant. This will eliminate the special deal that currently exists for the State's seventeen largest sources of air pollution that emit more than 5,000 tons of pollution. This solution is more equitable for the over 600 facilities.

We urge legislators to raise the permit fees for the Department of Natural Resource Clean Air Permits Program as proposed by Governor Thompson three State Budgets ago. During these tight budget times, we believe this is the most important budget increase that can provide for clean and healthy air.

Thank you for this opportunity to share the viewpoint of the Sierra Club, representing 13,000 Wisconsinites.

Vote Record

Joint committee on Audit

Date: 2-5-03

Moved by: Cowles

Seconded by: Jeskewitz

Motion to DNR

Be recommended for:

- | | | | | |
|---------------------------------------|------------------------------------|---------------------------------------|---|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Adoption | <input type="checkbox"/> Confirmation | <input type="checkbox"/> Concurrence | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Rejection | <input type="checkbox"/> Tabling | <input type="checkbox"/> Nonconcurrence | |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Suzanne Jeskewitz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carol Roessler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Cowles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Alberta Darling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Gary George	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Dean Kaufert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Samantha Kerkman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative David Cullen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mark Pocan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>11</u>	<u>0</u>	<u>0</u>	<u>0</u>

Mr. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street
Madison, Wisconsin 53703

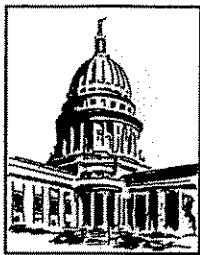
Ms. Melissa K. Scanlon
Midwest Environmental Advocates
702 East Johnson Street
Madison, WI 53703

US EPA Region 5
Mr. Steve Rothblatt, Director
Air and Radiation Division
77 West Jackson Blvd.
Chicago, IL 60604

Mr. Jim Haney
Wisconsin Manufacturers and Commerce
P.O. Box 352
Madison, WI 53701-0352

Ms. Caryl Terrell
Sierra Club, John Muir Chapter
222 South Hamilton Street, Suite #1
Madison, WI 53703-3201

Mr. Pat Schillinger, President
Wisconsin Paper Council
P.O. Box 718
Neenah, WI 54957-0718



WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

FEB 20 2003

February 19, 2003

Mr. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street
Madison, Wisconsin 53707

Dear Mr. Hassett:

At its public hearing on February 5, 2003, the Joint Legislative Audit Committee approved an audit of the Department of Natural Resources' air management program. During the discussion of this proposed audit, it was suggested that the Department should offer testimony regarding implementation of statutorily required benchmarks at the Committee's public hearing in March 2003. After consultation with the State Auditor, we have asked the Legislative Audit Bureau to incorporate the issue of benchmark implementation into the scope of its audit work and, consequently, we will not ask the Department to appear before the Committee in March.

We anticipate that you will offer testimony before the Committee once the audit report is released and a public hearing is scheduled. Should you have any questions or concerns, please contact our offices. Thank you for your assistance.

Sincerely,

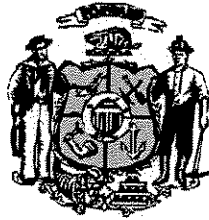
Senator Carol A. Roessler
Co-chairperson
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz
Co-chairperson
Joint Legislative Audit Committee

cc: Senator Robert Cowles
Senator Alberta Darling
Senator Gary George
Senator Dave Hansen

Representative Samantha Kerkman
Representative Dean Kaufert
Representative David Cullen
Representative Mark Pocan

Janice Mueller
State Auditor



February 27, 2003
Contact: Jessica Erickson, 608-261-2156

Governor Authorizes Attorney General to Fight Weakening of Clean Air Act

Governor Jim Doyle today authorized Attorney General Peg Lautenschlager to take action to protect Wisconsin's citizens by filing a legal challenge to a proposed weakening of federal Clean Air Act rules.

The Governor's action will allow the State of Wisconsin to intervene against the Bush Administration's plan to weaken pollution control requirements for power plants and manufacturers that make major modifications to their facilities. The lawsuit is aimed at preventing the federal Environmental Protection Agency from weakening the New Source Review (NSR) provisions of the Clean Air Act – provisions that regulate emission of sulfur dioxide, nitrogen oxide, lead, carbon monoxide, volatile organic compounds and soot.

"Weakening these federal environmental and health protections not only endangers Wisconsin's own, more stringent program to control air emissions, but also undermines our efforts to protect our citizens and our environment from the hazards associated with air pollution," Doyle said. "We cannot afford to let that happen."

According to a Department of Natural Resources' analysis, the proposed changes would likely increase air pollution from new or modified air pollution sources.

"Making sure we do not roll back these federal protections is especially important because weaker rules would lead to increased air pollution in Wisconsin from other states and hurt our efforts to protect and improve our air quality," Doyle said.

At yesterday's DNR Board meeting, the Board voted unanimously 7-0 to encourage the Governor to take this action to protect the health of Wisconsin's citizens and environment. At least 12 other states, including Illinois, California and several northeastern states, have also filed notice to prevent these weaker rules from taking effect.



NEWS RELEASE

Wisconsin Department of Natural Resources
101 S Webster, P.O. Box 7921, Madison, WI 53707
Phone: (608) 266-6790 TDD: (608) 267-6897
www.dnr.state.wi.us www.wisconsin.gov

DATE: September 15, 2003
CONTACT: Scott Hassett, (608) 266-2121
Al Shea, (608) 267-2759
SUBJECT: DNR appoints new air and waste program administrator

MADISON, Wis. – Al Shea, 50, was appointed administrator of the Air and Waste Division at the Department of Natural Resources today, Secretary Scott Hassett announced.

Shea, a 20-year DNR veteran, has directed the agency's Bureau of Watershed Management since 1997, where his responsibilities included urban and rural runoff management, wastewater facility permitting and water quality standard-setting for inland waters and the Great Lakes.

In his new position, Shea will guide the activities of 411 employees in three programs: Air Management, which is responsible for air quality and air emissions permitting; Waste Management, which handles disposal of solid and hazardous wastes; and Remediation and Redevelopment, which oversees the cleanup and beneficial re-use of contaminated land. Shea begins his new duties Sept. 22.

Shea will focus on streamlining the issuance of air quality permits to businesses, including "new source review" permits issued to businesses that wish to expand. Shea also will continue encouraging the restoration of contaminated land to create jobs and improve communities, and build on the recycling and waste reduction ethic and achievements of Wisconsin's residents, local governments and businesses, Hassett said.

"Al's previous experience in water program, policy and budget management will serve him well as air and waste administrator," Hassett said. "The water program has an excellent record issuing wastewater permits in a timely manner to industries and communities. Al also has successfully guided the development of comprehensive rules to control runoff pollution into Wisconsin's waterways, and in recent months has brought together people of widely different opinions to find common ground on changes to our state's shoreland zoning rules."

"My job is to uphold high environmental standards and find helpful and efficient ways for businesses and communities to achieve and maintain these standards," Shea said. "Making it

easier for people to understand and comply with environmental standards puts everyone's efforts in the right place and keeps both our environment and economy healthy."

Shea replaces Jay Hochmuth, 56, a chemical engineer and 33-year veteran employee who is being reassigned to customer and employee services leader for the agency's South Central Region in Fitchburg.

"Jay has been a strong and capable administrator of critical environmental programs for the State of Wisconsin for many years," Hassett said. "He helped create the foundation of today's environmental programs, and throughout his career has made countless contributions to ensure their success."

Shea began working for the department in 1984 as a water quality planner responsible for Great Lakes water quality issues, then became team leader for Great Lakes water quantity issues involving diversion of Great Lakes water to other states for drinking water and other purposes. He then served as assistant to the director of the former bureau of water resources management, handling a wide variety of administrative duties including budget, staffing, federal grant management and policy analysis.

From 1990 to 1997 he was the department's lead budget analyst in the agency's bureau of management and budget and was also responsible for preparing complex budgets for the DNR's former environmental quality division and current Water Division. In 1997, he was appointed chief of the fiscal and program evaluation section in the air and waste division's bureau of remediation and redevelopment.

Prior to joining the DNR, Shea was a policy analyst from 1980 to 1984 at the Wisconsin Department of Administration's former Bureau of Coastal Management, where he managed projects and policy issues on Great Lakes natural resources management. He holds a master of science in water resources management from the University of Wisconsin-Madison with a major in wildlife ecology and a bachelor of science in geography from the State University of New York-Brockport.

Shea is an avid walleye angler as well as an amateur ornithologist with extensive volunteer experience conducting breeding bird surveys and leading field trips. He is a past member of the Madison Audubon Board of Directors and past president of the Wisconsin Society for Ornithology. Shea was raised in upstate New York and currently lives in Sun Prairie, Wis. with his wife Gale and three children.

The Capital Times October 16, 2003

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DNR's air quality program gets restructured

11.5 positions, \$1.1M were cut

By Anita Weler
The Capital Times

The Department of Natural Resources' much-criticized air quality program has been slimmed down and reorganized.

Will it be better, stronger and faster? Or will the environment be worse, weaker and slower?

The cuts and reorganization had to occur, program leaders say, because the current state budget cut \$1.1 million from an emission fees account and eliminated 11.5 positions from the air management program. And prior to that time, the air program lost 40 positions during the past six years, according to Lloyd Eagan, director of the Bureau of Air Management.

"Restructuring the program will ensure that limited program resources are aligned with available funding sources and applied where they will most benefit efforts to maintain Wisconsin's air quality," Eagan said.

The air quality program still has a budget of about \$15 million and a statewide staff of 167.5 people.

The restructuring involves shifting emphasis to air emission permits that are aimed at controlling facilities that can pollute. The DNR is trying to keep pace with current demand and end backlogs in some areas.

Environmentalists, business owners and legislators have complained about backlogs in the past. Environmental groups have complained to the federal

Environmental Protection Agency and the state Audit Bureau is conducting an audit of the air quality program.

The program will now place more emphasis on compliance and enforcement activities associated with major industrial sources of emissions and less emphasis on smaller sources, officials said. Field staff will be increased in the Milwaukee area, where air quality concerns are greatest.

The air emission permit backlog for federal operation permits and federally enforceable state operating permits totaled 256 as of Sept. 30, down from close to 500 earlier this year.

The federal Clean Air Act required that such permits be issued.

"We are current with new source construction permits," which require action in 180 days, Eagan said.

"We are required to do more with less," she added. "We are trying to put our resources where they will make the most environmental difference. We can't tell what the exact impact will be."

But Melissa Scanlan, executive director of Midwest Environmental Advocates, is worried.

"The DNR is in a difficult position. The Legislature cut their air program and their staff. They have less resources to protect public resources. The result is this restructuring, which will take away the ability to monitor pollution and know when there is a problem," Scanlan said.

"When people start having respiratory illnesses there won't be monitors to check to determine whether there are

THE CHANGES

The reorganized state Department of Natural Resources' Bureau of Air Management:

■ \$1.1 million eliminated from an emission fees account.

■ 11.5 positions eliminated, in addition to 40 positions lost in the past six years.

■ Current budget of about \$15 million and a statewide staff of 167.5 people.

■ Emphasis shifted to compliance and enforcement activities associated with major industrial sources of emissions and less emphasis on smaller sources, officials said. Field staff will be increased in the Milwaukee area, where air quality concerns are greatest.

■ Permit backlog totaled 256 as of Sept. 30, down from close to 500 earlier this year.

■ Central office staff has been reorganized from eight sections to seven to improve efficiency. No direct layoffs have occurred, because of retirements, vacancies and shifting of personnel.

greater emissions. We have a health advisory for mercury on all of our lakes. The DNR can't just focus on permitting at the expense of failing to monitor air pollution and protect the people who live in Wisconsin from health threats from mercury or other air toxins. People want less government, but sooner or later they will realize that means less protection for public health and the air supply."

The cuts involve include:

■ Eliminating 18 ambient air monitoring sites, including eight ozone monitoring stations, one of which that was on the Badger Ferry crossing Lake Michigan, and nine particulate samplers.

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The Capital Times October 16, 2003

...cont. from prev. page

The other monitoring cut ended participation in a regional ozone study in which a DNR twin-engine aircraft flew south toward Chicago, then east and back across Lake Michigan, at various altitudes, said Jeff Hanson, permit section chief in the air quality program. Data from that seven-year test will now be analyzed.

■ Halting all biomonitoring activities, which involve using plants such as milkweed and aspen to check pollution downwind from pollution sources.

"Milkweed is subject to ozone pollution. They get black spots," she said. "We used to look at milkweed samples and did programs with kids. I hope they will continue on their own."

Lichen monitoring also was used because lichens act like a sponge.

"We set up lichen sampling stations downwind of sources. In one case some time ago we found mercury levels 17 times background levels downwind of an industrial facility outside Port Edwards," Eagan recalled.

■ Ending a free "smoke school" where employees of small factories and municipalities were taught how to read visible emissions.

■ Stopping policy analysis of climate change, including global warming and greenhouse gas issues.

■ Halting forecasting of particle pollution levels.

The department also will re-

duce to some extent asbestos abatement, stack testing, and policy analysis for mercury, ozone and air toxics.

Also, new pollution source review rules are being revised to make them simpler to interpret and implement, provide more flexibility for industry, and maintain protection of air quality. An advisory group is expected to request revised rule recommendations to the state Natural Resources Board in December, in a request for hearing authorization.

Central office staff also has been reorganized from eight sections to seven to improve efficiency. No direct layoffs have occurred, because of retirements, vacancies and shifting of personnel.

Wisconsin State Journal October 16, 2003

Doyle to sign meningitis vaccine bill

By Scott Milfred
State government reporter

Democratic Gov. Jim Doyle will sign legislation today encouraging University of Wisconsin System students — especially those living in dormitories — to get vaccines against meningitis and hepatitis B.

"This bill saves lives, plain and simple," said Sen. Dale Schultz, R-Richland Center, who sponsored Assembly Bill 344 with Rep. Robin Kreibich, R-Eau Claire.

The law will force all Wisconsin colleges and universities to

give students detailed information on the risks associated with the diseases and the availability and effectiveness of vaccines. Many schools already distribute pamphlets.

But students living in dorms will have to sign a form or otherwise indicate that they've received the materials. The university and colleges also must maintain a confidential record of which students say they've been vaccinated and when.

Some families of students who died from the diseases have strongly backed the bill. But Craig Roberts, an epidemi-

ologist for University Health Services at UW-Madison, has questioned the need. The meningitis vaccination is costly, doesn't always work and lasts for only a few years, he said. Deaths are rare.

Roberts suspected pressure from pharmaceutical companies helped push the bill forward.

But Schultz said no one will be required to accept and pay for a shot. Schultz added students in dorms are more at risk because of close quarters.

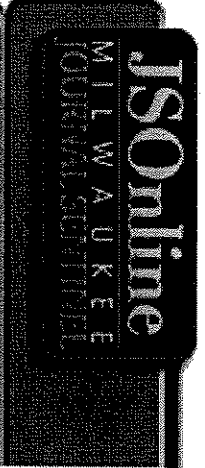
The law, similar to others in 19 states, will affect the spring 2004 semester.

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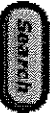
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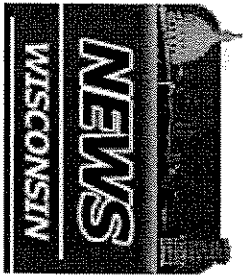
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DNR to go its own way on air pollution Approach to large firms differs from that of Bush administration

By LEE BERGQUIST

lbergquist@journal sentinel.com

Last Updated: Dec. 2, 2003

Madison - The Department of Natural Resources moved forward Tuesday with plans to regulate the air pollution of large manufacturers and utilities differently than the Bush administration.

Saying Bush's approach will increase emissions in Wisconsin, DNR officials outlined proposed rules they said will cut pollution while giving companies flexibility when changing their operations.

The Natural Resources Board voted, 6-0, to send the rule package, which affects the two dozen largest manufacturers and utilities in Wisconsin, to public hearings in January. The regulations will come back again to the board and then go to the Legislature by mid-2004.

The proposed air rules come at a time when sharp differences abound

on environmental regulation.

In March, Wisconsin joined 11 other states in a legal challenge to the Bush plan on air regulation, which the DNR on Tuesday opted to deal with in a different way.

The DNR said then, as well, that the Bush administration's approach to so-called "new source review" - giving companies more flexibility when they build new plants or expand operations - would make the air dirtier. The Bush administration disagrees.

From Wisconsin's perspective, the problem would be compounded when emissions from dirty plants in neighboring Illinois, Indiana and Ohio settle over the state, said Lloyd Eagan, director of the DNR's Bureau of Air Management.

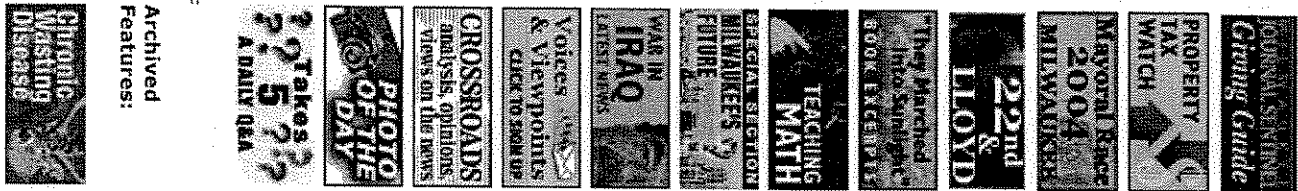
Eagan said she was not sure how the suit would affect Wisconsin's approach to new source review: It must eventually submit the plan to the U.S. Environmental Protection Agency for approval. The rules are scheduled to go into effect in December 2005.

To avoid a fight with Wisconsin's business community, the DNR has been meeting with representatives of the companies that would be regulated by the rules.

The DNR's plans allow companies to pick two years out of the previous 10 years to serve as their benchmark for air pollution. This change recognizes that companies go through business cycles, which can affect how much pollution they create.

Another change: Companies could wait longer before filing another pollution permit if they install the best pollution-fighting equipment that's available.

Wisconsin Manufacturers & Commerce, the state's biggest business group, said it wants to look at the rules more closely. But an official said he is generally pleased.



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"I think it is fair to say that we are happy the way things have gone with (new source review)," said Jeff Schoepke, director of environmental policy for the group.

DNR Secretary Scott Hassett said the proposed rules will make it easier for Wisconsin's large companies while still protecting the environment. He said the package is a key element of Gov. Jim Doyle's "Grow Wisconsin" plan that aims to reduce state regulation.

However, Republicans last month introduced a bill - the Job Creation Act of 2003 - that tries to cut red tape and, in some cases, weakens current state regulations affecting air and water. They want to pass the bill before the end of the year.

Republicans say they are answering the complaints of businesses that claim DNR regulations go too far and force companies to wait too long for approvals. But DNR and environmental groups say that bill has nothing to do with creating jobs and would hurt the environment.

On still another front, the DNR's proposed rules over the regulation of mercury from power plants and of dozens of other hazardous air pollutants remain stalled, as the heads of environmental committees in the Assembly and Senate continue to raise questions.

The mercury rules would require utilities to cut emissions by 40% in 2010 and by 80% in 2015, which would make Wisconsin one of the first states in the country to pass such a law.

Republicans in the Legislature said the DNR is moving too fast. The Bush administration, for example, is coming out with its own mercury rules later this month.

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Environmental NEWS RELEASE



CONTACT: William Omohundro, (312) 353-8254

FOR IMMEDIATE RELEASE

No. 04-OPA018

EPA ISSUES NOTICE TO WISCONSIN FOR DEFICIENCIES IN ITS AIR PERMITS PROGRAM

CHICAGO (Feb. 24, 2004) — U.S. Environmental Protection Agency Region 5 today notified the state of Wisconsin that the state must remedy deficiencies in its Clean Air Act Title 5 program. Title 5 operating permits are required for all major sources of air pollution. They contain all Clean Air Act requirements in a single, federally enforceable document.

While Wisconsin has made efforts to improve certain aspects of its Title 5 program, EPA is issuing this notice of deficiency to ensure that all existing problems are addressed. The notice will be published soon in the *Federal Register*.

EPA said the state's problems include not demonstrating that it is collecting enough fees to cover the costs of running the permit program, not adequately administering program funds and not issuing permits to all of its sources in the time allowed by the Clean Air Act. In addition, the state has several programmatic issues that it needs to correct, such as not ensuring that all permit conditions are federally enforceable and not including all appropriate applicable requirements in permits.

EPA will continue to work with Wisconsin to strengthen its program. If the deficiencies are not addressed within two years, Wisconsin will lose the opportunity to run the program and the federal government will take responsibility for issuing permits to Title 5 sources.

More information on the CAA Title 5 program is at www.epa.gov/oar/oaqps/permits/index.html.

###

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI 118-1; FRL-]

Notice of Deficiency For Clean Air Act Operating Permit Program
in Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deficiency.

SUMMARY: Pursuant to its authority under Section 502(i) of the Clean Air Act and 40 CFR 70.10(b), EPA is publishing this Notice of Deficiency (NOD) for the State of Wisconsin's Clean Air Act title V operating permit program. EPA has examined the facts and circumstances associated with the State's title V operating permit program and based on the totality of those facts and circumstances before the Agency, hereby issues this NOD. As explained more fully below, EPA has determined that the State's title V program does not comply with the requirements of the Clean Air Act (Act) or with the implementing regulations at 40 CFR Part 70, in the following respects: (1) Wisconsin has failed to demonstrate that its title V program requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR Part 70 and the Act; (2) Wisconsin is not adequately ensuring that its title V program funds are

used solely for title V permit program costs and, thus, is not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin has not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin has failed to implement properly its title V program in several respects, including its issuance of title V permits that contain terms that do not have certain underlying applicable requirements, that do not contain all applicable requirements, and that do not make certain requirements federally enforceable. Publication of this Notice is a prerequisite for withdrawal of the State's title V program approval, but EPA is not withdrawing this program through this action.

EFFECTIVE DATE: [DATE OF SIGNATURE]. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, EPA Region 5 (AR-18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, siepkowski.susan@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background
- II. Description of Action
- III. Federal Oversight and Sanctions
- IV. Administrative Requirements

I. Background

On January 27, 1994, the Wisconsin Department of Natural Resources (WDNR) submitted to the Administrator for approval its proposed title V program. EPA granted interim approval of Wisconsin's program on April 5, 1995. WDNR submitted corrections on March 28, 2001, September 5, 2001, and September 17, 2001 to address the issues identified in the interim approval. EPA approved the corrections submitted by WDNR, finding that they adequately addressed the conditions of the April 1995 interim approval. EPA gave Wisconsin final full approval of its title V program effective on November 30, 2001.

In addition to submitting corrections to EPA in 2001 in accordance with EPA's interim approval, Wisconsin submitted certain other proposed revisions to its title V program. One of

Wisconsin's proposed program revisions concerns its fee schedule. Although EPA has not taken action on this proposed program revision, Wisconsin has nonetheless implemented the change, which includes elimination of the inflation adjustment factor from its title V fee schedule. In a December 6, 2002 letter, EPA informed WDNR that EPA was reviewing the permit fee component of Wisconsin's title V permit program, and requested that Wisconsin provide information regarding its fees. Specifically, EPA requested that WDNR submit a description of the State's title V fee structure, a demonstration that Wisconsin's fee schedule resulted in the collection of revenues sufficient to cover the title V permit program costs, a description of the title V permit program activities and costs, and a description of the activities funded by part 70 fees, including personnel. Wisconsin provided some, but not all, of the requested information in a series of three written submissions to EPA dated March 3, 2003, April 18, 2003, and June 5, 2003.

On or about December 16, 2002, Sierra Club and a coalition of Wisconsin environmental groups submitted to EPA their "Petition Seeking The U.S. EPA To Protect Wisconsin Families From Air Pollution By Issuing The State A Notice Of Deficiency For Failing To Adequately Administer Its Title V Permit Program"

(Sierra Club Petition). The Sierra Club Petition raised fee issues similar to those identified by EPA in its December 6, 2002 letter to WDNR, including, for example, WDNR's failure to charge title V fees sufficient to cover permit program costs, and WDNR's illegal use of title V monies to fund portions of non-title V program and staff. The Sierra Club Petition also raised WDNR's failure to act timely on applications for title V permits.

EPA has enforcement discretion under the Act to determine whether to issue a NOD under Section 502(i) of the Act. See Public Citizen, Inc. v. EPA, 343 F.3d 449, 463-65 (5th Cir. 2003). In this case, EPA has fully examined the facts and circumstances associated with Wisconsin's title V operating permit program and based on the totality of those facts and circumstances determined that issuance of a NOD is appropriate. The deficiencies associated with Wisconsin's title V permit program are described below.

II. Description of Action

EPA is publishing this NOD to notify the State of Wisconsin and the public that, based on the totality of facts and circumstances, EPA has found deficiencies in the Wisconsin title

V operating permit program. Publication of this document in the Federal Register satisfies 40 CFR 70.10(b)(1), which provides that EPA shall publish in the Federal Register a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR Part 70 and the Act. The deficiencies being noticed today are described more fully below, but include Wisconsin's failure to demonstrate that it requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V permit program; Wisconsin's failure to ensure that its title V program funds are used solely for title V permit program costs; Wisconsin's failure to issue initial title V permits to all of its part 70 sources within the time allowed by the Act; and Wisconsin's failure to implement properly several aspects of its title V permit program, including its issuance of title V permits that contain terms that do not have certain underlying applicable requirements, that do not contain all applicable requirements, and that do not make certain requirements federally enforceable.

A. Title V Fee Schedule

1. Inadequate Fee Schedule Demonstration

Pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a state title V program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, and the State must ensure that any fee collected be used solely for title V permit program costs. Although 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) require that a state's title V permit program include a fee schedule that results in the collection of sufficient fees to cover all title V permit program costs, states have flexibility in developing the components of that fee schedule. See 40 CFR 70.9(b)(3).

In one of its 2001 title V proposed program revisions, Wisconsin disclosed that it had removed the inflation adjustment factor from its title V fee schedule. Although EPA has not yet taken action on this proposed program revision, Wisconsin has implemented the change. Based on this information and consistent with 40 CFR 70.9(b)(5), EPA in December 2002 requested from Wisconsin a detailed fee demonstration, showing that the State's collection of fees is sufficient to cover the title V permit program costs. As discussed more fully below, the information subsequently provided by Wisconsin in response to EPA's request does not demonstrate that the revised fee schedule results in the

collection of fees in an amount sufficient to cover its actual permit program costs, as required by 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b)(1).

a. The Costs of Wisconsin's Title V Program Are Unknown.

In response to EPA's December 2002 request, WDNR specifically declined to provide information regarding the actual costs of implementing its title V program and, thus, Wisconsin has not shown that the fees it is collecting are adequate to cover its actual title V permit program costs. WDNR's response does assert, however, that the State is collecting the presumptive minimum fee amount as described at 40 CFR 70.9(b)(2). As explained further below, EPA disagrees with Wisconsin's characterization that it is meeting the presumptive minimum fee requirements of 40 CFR 70.9(b)(2), and finds that Wisconsin has failed to demonstrate that its title V fees are sufficient to cover actual permit program costs.

b. Wisconsin Has Not Demonstrated That It Collects Fees Sufficient to Fund its Permit Program

1. Commingled Funds

EPA will presume that a state's fee schedule satisfies the requirements of 40 CFR 70.9(b)(1), if the fee schedule meets the requirements of 40 CFR 70.9(b)(2) (the presumptive minimum fee requirements). 40 CFR 70.9(b)(2) provides, in pertinent part, that a fee schedule is presumed to be sufficient to cover title V permit program costs if it would result in the collection and retention of an amount not less than \$25 per ton, adjusted for inflation, times the total tons of actual emissions of each regulated pollutant emitted from each part 70 source. The regulations allow the state to exclude from this calculation the amount per source that exceeds 4,000 tons per year. 40 CFR 70.9(b)(2)(ii). EPA finds that WDNR has not demonstrated that it is using a fee schedule that results in the collection of the presumptive minimum fee amount, as required by 40 CFR 70.9(b)(2).

Specifically, the fee revenue information Wisconsin provided on March 3, 2003, shows that the State is not distinguishing between fees collected from sources operating under different Clean Air Act programs. The information provided shows that Wisconsin does not account separately for or maintain separate accounts for fees collected under title V and other non-title V

fee-based programs. Thus, the State cannot provide an accurate picture of its title V fee collections. By including non-title V fee revenues in its calculation of "Emission Fee Revenue 1992-2001," WDNR has overstated the amount of fees it is collecting as part of the title V permit program. The degree of the overstatement cannot be determined from the information provided by Wisconsin. Accordingly, Wisconsin has not demonstrated that it is collecting an amount equal to or in excess of the presumptive minimum fee, as required by 40 CFR 70.9(b)(2).

2. No Adjustment For Inflation

As explained above, 40 CFR 70.9(b)(2) sets forth specific requirements for calculating the presumptive minimum amount of fees that must be collected to cover title V permit program costs. One of those requirements is that states must adjust annually for inflation the \$25 figure used in the presumptive fee calculation. 40 CFR 70.9(b)(2)(i) & (b)(2)(iv).

Wisconsin's fee schedule, as currently being implemented by the state, does not allow for adjustments to reflect inflation; it relies instead on billing for emissions in excess of the 4,000 ton per year amount that states may exclude from the presumptive

fee calculation. See 40 CFR 70.9(b)(2)(ii)(B). In particular, Wisconsin's fee schedule requires the state to bill sources for each 1,000 tons of emissions beyond the 4,000 ton per year amount provided by 40 CFR 70.9(b)(2)(ii)(B). Wisconsin claims, without appropriate record support, that, by billing for emissions in excess of the tons to be billed under the presumptive fee schedule, it is collecting more revenue than it would by merely adjusting for inflation.

Wisconsin's original fee structure approved in 1995 followed the presumptive minimum fee schedule formula described in 40 CFR 70.9(b)(2). However, the Wisconsin legislature removed the provision for annual adjustments for inflation for fees billed after 2002. The State bills for emission fees in arrears; its fee bills are for the prior year's emissions. The effect of freezing the fees in 2001 is that the amounts billed in 2001 for the year 2000 also are calculated at the rate established in 2001. Wisconsin has not adjusted its emission fee rates to reflect the effects of inflation since 2000. By effectively freezing its fees at the 2000 level, Wisconsin has departed from the presumptive fee formula set forth in 40 CFR 70.9(b)(2). EPA cannot evaluate Wisconsin's claim that it is still collecting an amount greater than the amount it would collect using the presumptive minimum rate formula based on the information