

provided by the State, because Wisconsin has provided no actual fee billing or collection information for years after 2001.

Because Wisconsin has not demonstrated that it collects fees that cover the actual permit program costs, the State's program does not comply with the requirements of the Act and 40 CFR 70.9.

B. Wisconsin Has Not Demonstrated That It Is Adequately Administering Its Fees And Resources

40 CFR 70.10(b) provides that states must conduct approved state title V programs in accordance with the requirements of 40 CRF Part 70 and any agreement between the state and EPA concerning operation of the program. Information provided to EPA by Wisconsin in its 2001 title V proposed program revision submissions and its responses to EPA's December 6, 2002 fee demonstration request disclose significant internal fee management deficiencies that demonstrate that WDNR is not conducting its title V program in accordance with the requirements of Act and 40 CRF Part 70 and, therefore, is not adequately administering its title V program.

1. Use of Title V Funds For Non-Title V Purposes

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a) provide that state title V programs must ensure that all title V fees are used solely for permit program costs. The information provided by WDNR in response to EPA's December 6, 2002 fee demonstration request discloses that Wisconsin is not using all title V fees for permit program costs.

a. **Use of Title V Funds for Subsidization Of
Employees Performing Non-Title V Work**

Wisconsin is diverting title V fees to complete non-title V work. According to information submitted to EPA by Wisconsin, only 66 of 99 title V funded employees attributed activities on their timesheets in fiscal year 2002 to title V. In addition, many of those 99 employees work in areas such as mobile sources, which typically are not associated with title V. Furthermore, title V funded 13 positions located outside of Wisconsin's Air Division. WDNR did not provide EPA with any information regarding the activities of these positions. Accordingly, WDNR is not ensuring that all title V fees that it collects are used solely for title V permit program costs, contrary to 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

b. Use of Title V Funds For Non-Title V Grant
Matching

Information provided by Wisconsin establishes that when it applied for federal non-title V grant monies, WDNR satisfied the "matching funds" requirement by using the total balance of funds in the account that holds fees collected under title V and fees collected from non-title V sources. Thus, Wisconsin is using title V money for non-title V purposes. Accordingly, WDNR is not ensuring that all title V fees that it collects are used solely for title V permit program costs, contrary to 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

2. Insufficient Staffing

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4 provide that a state must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. EPA has determined that Wisconsin is not adequately staffing its title V program.

In Wisconsin's January 27, 1994, initial program submittal, Wisconsin estimated that it would need 300 agency staff to carry

out its title V program. Wisconsin has never revised that estimate. As discussed above, Wisconsin currently has 99 title V funded positions in the Air Division. Further, of that number, only 66 of those employees reported working on title V activities on their time sheets in fiscal year 2002, and many of those 99 positions work in areas not typically associated with title V. Finally, Wisconsin's 2004-2005 budget includes a \$1.1 million reduction in fee spending authority (not a reduction in fees collected) and a reduction of 11.5 title V positions. Accordingly, because it is not employing staff sufficient, by its own estimate, to carry out its program, Wisconsin is not complying with the requirements of the Act and 40 CFR 70.4.

C. Failure To Timely Issue Title V Permits

Section 503(c) of the Act, 42 U.S.C. 7661b(c), and 40 CFR 70.4 require that a permitting authority must act on all initial title V permit applications within three years of the effective date of the program.

EPA granted interim approval to Wisconsin's title V program on April 5, 1995. Pursuant to section 503 of the Act, Wisconsin was to have completed issuance of initial title V operating

permits to all of its part 70 sources by April 5, 1998. 42 U.S.C. 7661b(c). WDNR failed to meet this deadline and originally projected it would issue all operating permits by December 2005. In response to EPA's December 2002 fee demonstration request, WDNR stated that, due to the new budget reductions, it may not complete issuance of title V operating permits to all of its part 70 sources until 2009, eleven years after they were due. WDNR has operated its program for over eight years, but has issued only 73% of its permits. As of January 26, 2004, Wisconsin has issued 426 of 578 title V permits.

Recently, Wisconsin indicated that it is undertaking steps to complete issuance of title V operating permits to all of its part 70 sources by December 31, 2004. While EPA finds this intention encouraging, EPA is issuing this Notice based on the totality of facts and circumstances currently associated with the State's title V program.

D. Additional Program Issues

1. Expiration of NSR Permits

Each source subject to title V must have a permit to operate that assures compliance with all applicable requirements. 42 U.S.C. 7661c(a), 40 CFR 70.1. The regulations define "applicable requirement" to include, among other things, any term or condition of any preconstruction permit issued pursuant to programs approved or promulgated under title I, including parts C or D of the Act. 40 CFR 70.2. Generally, title V does not impose new substantive air quality control requirements. 40 CFR 70.1(b). Therefore, to be included in a title V permit, applicable requirements, such as permit conditions in previously issued permits, must exist independent of the title V permit. In addition, a state, through its Attorney General or other applicable counsel, must provide a legal opinion demonstrating that the state has adequate authority to carry out all aspects of the title V program, including authority to incorporate all applicable requirements into title V permits. 40 CFR 70.4(b)(3)(v).

Title I of the Act authorizes permitting authorities to establish in preconstruction permits source specific terms and conditions necessary for sources to comply with the requirements of the Prevention of Significant Deterioration and New Source Review programs. Wisconsin interprets its statutes, Wis. Stat 285.66(1), and regulations Wis. Admin code NR 405.12, to provide

that its preconstruction permits expire after 18 months. Because Wisconsin's rules do not ensure these source specific permit terms remain in effect and exist independently of a title V permit, it allows the basis for these conditions to expire and could cause Wisconsin to lose the authority to include such conditions in a renewed title V permit.

Title V does not provide the authority for the establishment and maintenance of State Implementation Plan (SIP) approved permit requirements. Therefore, Wisconsin's interpretation that its title V program, Wis. Stat. 285.63, provides authority to create source-specific limitations, such as Best Available Control Technology requirements, in title V permits, is inconsistent with EPA's regulations. Because Wisconsin's rules do not assure that construction permit conditions exist independently of title V permits and because its interpretation that its title V program provides the authority to create source specific limitations, the State's program does not meet the program approval requirements of title V and part 70. See 66 Fed. Reg. 64039, 64040 (12/11/01).

2. Combined NSR and Title V Permits

States have the option of integrating their pre-construction and title V programs. See 57 FR 32250, 32259 (July 21, 1992). 40 CFR Part 70 requires that to implement an integrated permit program, the state permitting authority must: (1) have in place procedures that substantially comply with all procedural requirements of part 70, 40 CFR 70.7(d)(1)(v); (2) comply with the permit content requirements in 40 CFR 70.6, including the requirement to specify the origin of and authority for each term or condition in a title V permit, 40 CFR 70.7(d)(1)(v); and (3) ensure that the NSR conditions do not expire to assure compliance with applicable requirements, 42 U.S.C. 7661c(a) and 40 CFR 70.1(b).

Wisconsin has been issuing combined pre-construction and title V permits for several years. Wisconsin does not identify NSR conditions or specify the origin and authority of the NSR conditions in combined permits. Furthermore, Wisconsin does not have any provisions to ensure that the NSR conditions are permanent. Wisconsin's integrated title V/pre-construction program does not meet the requirements of 40 CFR Part 70.

3. Federal Enforceability

40 CFR 70.6(b) provides that all terms and conditions in a title V permit are federally enforceable, that is, enforceable by EPA or citizens. However, the permitting authority can designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. 40 CFR 70.6(b)(2) and 40 CFR 70.2 (definition of applicable requirement).

All terms and conditions of a permit issued pursuant to a program approved into a state's SIP are federally enforceable. 40 CFR 52.23. Wisconsin, however, does not identify all terms and conditions of its construction permit as federally enforceable. Instead, Wisconsin currently identifies permit requirements in title V permits originating from Wisconsin's non-SIP toxics program (Wis. Admin. Code NR 445) as enforceable by the state only, even when the requirements were established in a permit issued pursuant to a SIP-approved program. Wisconsin's failure to include the terms established in a permit issued pursuant to a SIP-approved program into the federally enforceable side of its title V permits is contrary to 40 CFR 70.6.

4. Insignificant Emission Unit Requirements

40 CFR 70.5(c) authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels which need not be included in the permit application. An application may not omit, however, information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA approved schedule. Moreover, nothing in part 70 authorizes a state to exempt insignificant emission units (IEUs) from the permit content requirements of 40 CFR 70.6. Furthermore, the July 21, 1992 preamble to the part 70 regulations provides that the IEU exemption does not apply to permit content. 57 FR 32273 (July 21, 1992).

Wisconsin's regulations contain criteria for sources to identify IEUs in their applications, (Wis. Admin. Code NR 407), and require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. Although Wisconsin's regulations are consistent with EPA's regulations at 40 CFR Part 70, the State is not properly implementing its regulations because it is not including these applicable requirements in its title V permits. Therefore, Wisconsin's implementation of its regulations is inconsistent with part 70.

III. Federal Oversight and Sanctions

40 CFR 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70, EPA has notified the state of the noncompliance, and the permitting authority fails to take corrective action. 40 CFR 70.10(c) (1) lists a number of potential bases for program withdrawal, including inadequate fee collection, failure to comply with the requirements of part 70 in administering the program, and failure to timely issue permits.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that the EPA Administrator notify the permitting authority of any finding of deficiency by publishing a notice in the Federal Register. Today's notice satisfies this requirement and constitutes a finding of program deficiency. If Wisconsin has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after issuance of this notice of deficiency, EPA may, among other things, withdraw approval of the program using procedures consistent with 40 CFR 70.4(e) and/or promulgate, administer, and enforce a Federal title V program. See 40 CFR 70.10(b) (2). Additionally, 40 CFR 70.10(b) (3) provides that if the state has not corrected the

deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, then the state would be subject to the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act, 18 months after that notice. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this notice within 18 months after signature of this notice.¹ These sanctions would be applied in the same manner, and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under Section 179(a) of the Act.

In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Wisconsin's

¹ Section 179(a) provides that unless such deficiency has been corrected within 18 months after the finding, one of the sanctions in Section 179(b) of the Act shall apply as selected by the Administrator. If the Administrator has selected one of the sanctions and the deficiency has not been corrected within 6 months thereafter, then sanctions under both Sections 179(b)(1) and 179(b)(2) shall apply until the Administrator determines that the state has come into compliance.

title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will assess whether the state has taken significant action to correct the deficiencies outlined in this notice. See 40 CFR 70.10(b)(2) (providing that 90 days after issuance of NOD, EPA may take certain actions).

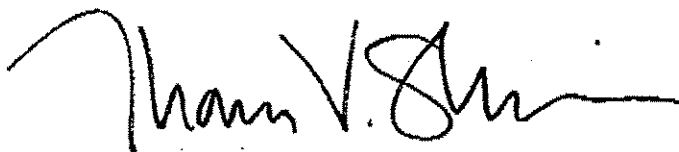
IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed with the United States Court of Appeals for the appropriate circuit within 60 days of [FEDERAL REGISTER OFFICE: INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

(AUTHORITY: 42 U.S.C. 7401 et seq.)

Dated:

2/22/04



Thomas V. Skinner
Regional Administrator, Region 5.

Title of Document: Notice of Deficiency of the Part 70 Operating Permit Program for the Wisconsin Department of Natural Resources.



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

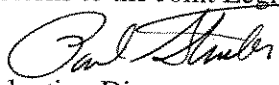
JANICE MUELLER
STATE AUDITOR

22 E. MIFFLIN ST., STE. 500
MADISON, WISCONSIN 53703
(608) 266-2818
FAX (608) 267-0410
Leg.Audit.Info@legis.state.wi.us

FEB 25 2004

DATE: February 25, 2004

TO: Karen Asbjornson and Pamela Matthews
Committee Clerks to the Joint Legislative Audit Committee

FROM: Paul Stuiber 
Program Evaluation Director

SUBJECT: Report 04-1: An Evaluation of Air Management Programs

Enclosed is our evaluation of the State's Air Management programs, which are administered by the Department of Natural Resources (DNR). These programs have been the subject of much interest on the part of regulated industries, which contend that complying with air pollution regulations is onerous and costly, and environmental groups, which contend that too little is being done to ensure compliance with state and federal air pollution laws. In fiscal year (FY) 2002-03, expenditures for all air management programs totaled \$17.9 million, which includes \$13.3 million in staff costs for 184 full-time equivalent employees.

Our review was hampered by incomplete and inaccurate data maintained by DNR. Consequently, we spent months improving the quality of DNR's data that was needed for our analyses. While delaying the audit process, our work was beneficial to DNR, which recognized our efforts in its response.

DNR administers two programs, an operation permit program for existing sources of pollution and a construction permit program for new or modified sources. Most of the concerns of regulated facilities deal with the construction permit program, which they believe causes delays and unnecessarily raises costs of their operations. 2003 Wisconsin Act 118 made a number of changes to these programs intended to streamline and simplify the permitting process.

Our review provides recommendations for additional areas in which the permitting process can be streamlined and evaluates DNR's program management. We found a pattern of significant deficiencies, including:

- billing irregularities;
- slow rates of issuing operation permits;
- backlogs in both construction and operation permits; and
- declining enforcement efforts (15 percent of facilities have never been inspected).

We recommend that the Joint Legislative Audit Committee hold a public hearing on the report and its findings. The report will be released on Thursday, February 26, at 2:00 p.m. Please contact me if you have any questions.

PS/bm

Enclosures

For Immediate Release

February 26, 2004

For More Information Contact:

Senator Carol Roessler

(608) 266-5300

Representative Suzanne Jeskewitz

(608) 266-3796

Air Management Program Audit is Critical

Audit finds numerous deficiencies in program management

(Madison) Today the nonpartisan Legislative Audit Bureau (LAB) released an Evaluation of the Department of Natural Resource's (DNR) Air Management Program. The LAB analyzed the Department of Natural Resources' air permitting programs, including operation and construction permits. The review assessed the timeliness and effectiveness of program operations. This critical evaluation highlights several areas for improvement, especially in program management.

Senator Robert Cowles (R-Green Bay) asked last year that the Legislative Audit Bureau conduct an evaluation of DNR's Air Management Program and the Joint Legislative Audit Committee approved that request in February 2003. "The Air Management Program needs to get its act together," said Cowles. "It is very troubling to find that Wisconsin is one of the slowest states in the country in issuing major operation permits." The report includes a number of recommendations to improve timeliness and overall program management.

Numerous deficiencies in the program were identified by the LAB, many of which stem from poor management practices. "The DNR's Air Management Program is so poorly managed that they couldn't even answer basic questions such as, how many permits were issued or how many should have been issued," remarked Joint Legislative Audit Committee Co-Chair Suzanne Jeskewitz (R-Menomonee Falls). "This program is neither effective nor efficient and close follow-up is key to making improvements." One of the audit's fifteen recommendations for improvement includes reporting back to the Joint Legislative Audit Committee for follow-up by September 1, 2004.

Audit Committee Co-Chair Carol Roessler (R-Oshkosh) noted, "The concerns raised by both business and environmental groups about the air management program were well founded and a good cause for this thorough and excellent review by the LAB. The federal government requires us to issue these permits and we just aren't getting the job done. We should have had our major operation permits completed by 1998, and the audit found that 210 major operation permits were backlogged, along with 881 other permits."

After much work by the LAB sorting through permit information, the auditors determined that only 50.8 percent of all operating permits applied for have been issued. "Southeastern Wisconsin has more than one quarter of all regulated facilities in Wisconsin, yet it has the lowest percentage of all regions for the number of permits issued," said Jeskewitz. "Rather than the DNR spending time determining what other pollutants merit monitoring, they should be spending time on monitoring pollutants

already identified as hazardous.” According to the audit report, Wisconsin regulates 293 more hazardous pollutants than required by federal law. “Coincidentally, the EPA announced yesterday that Wisconsin’s deficiencies in our Air Management Program must be remedied,” stated Jeskewitz.

“The passage of the 2003 Wisconsin Act 118 by the legislature in January will help to improve the approval process for permits,” said Roessler. “It is clear by the findings in this audit just how much we needed that legislation. Some of the components of Act 118 streamlined the permit process, indicated new criterion for exceeding federal standards, as well as a review process for State Implementation Plans and non-attainment recommendations. It’s also apparent that further changes in the permitting process will undoubtedly be considered by the Joint Legislative Audit Committee.”

Both Co-Chairs Roessler and Jeskewitz have agreed that a public hearing on audit findings related to DNR’s Air Management Program will be held sometime in late spring.

###



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

JANICE MUELLER
STATE AUDITOR

22 E. MIFFLIN ST., STE. 500
MADISON, WISCONSIN 53703
(608) 266-2818
FAX (608) 267-0410
Leg.Audit.Info@legis.state.wi.us

February 26, 2004

Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-Chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

As you requested, we have summarized information from *An Evaluation: Air Management Programs* (report 04-1) in order to more concisely provide you with information on:

- permitting requirements prior to the passage of 2003 Wisconsin Act 118;
- changes to air permitting requirements made by Act 118; and
- information on DNR's performance and the likely effects of Act 118 changes of DNR's permitting practices.

A chart delineating these points is enclosed. I hope you find this information helpful. Please contact me if you have any questions.

Sincerely,

Paul J. Stuibler
Program Evaluation Director

PS/bm

Enclosure

Changes Made by 2003 Wisconsin Act 118 Addressed in Legislative Audit Bureau Report 04-01

Issue	Pre-Act 118 Requirement/Standard	Act 118 Changes	DNR Performance and Effect of Change	Page(s) of LAB Report
Hazardous air pollutants	Authorized DNR to adopt a standard for hazardous air contaminants different from federal law if DNR demonstrated a new standard needed to adequately protect public health and welfare.	Restricts DNR to establishing only those standards that conform to federal law, unless DNR: 1) conducts a risk assessment of at-risk populations; 2) demonstrates that population groups will be exposed to hazardous pollutant at levels above the standard, 3) evaluates alternatives for managing the risks including costs, economic impacts, and feasibility; 4) finds that the standard is the most cost-effective method to managing risk; and 5) compares the proposed standard to surrounding states.	Wisconsin currently regulates 293 more hazardous air pollutants than are required by federal law. In addition, DNR has more stringent standards for at least 56 of the 188 hazardous air pollutants regulated by federal law. The likely effect of the law change is to make future proposed hazardous pollutant regulations conform more closely to federal regulations.	15
Exemptions from permits	Existing law allows DNR to exempt sources from its permit programs, either because they do not meet the emissions thresholds that require a permit or because of a categorical exemption. Any person could request a hearing on a permit.	Act 118 requires DNR to exempt from permitting requirements those facilities that do not present a significant threat to public health or the environment, and to identify other exemptions	DNR issued operation permits to only 56 of 687 minor sources. Some of these minor sources may now be exempted from permitting requirements under the new law.	31, 38, and 50
Requests for public hearings		Act 118 limits public hearing requests to only those who may be affected by issuance of the permit, including EPA or other states.	DNR was unable to provide information showing the number of public hearings that have been held; therefore we were unable to determine the effect of the change.	43
Operation permit renewal	Operation permits expire 5 years after issuance. Facilities were required to apply for renewal operation permits at least 12 months, but not more than 18 months, before the permit expired.	Act 118 allows facilities to apply for renewal operation permits no less than six months before their current permit's expiration.	Our evaluation found that DNR did not identify 49 facilities that failed to apply for renewal permits within the required timeline, including 12 with expired permits. The effect of Act 118 is that facilities can wait longer before they need to apply for renewal permit.	47

Issue	Pre-Act 118 Requirement/Standard	Act 118 Changes	DNR Performance and Effect of Change	Page(s) of LAB Report
General permit expiration	General permits expired 5 years after issuance, similar to individual permits.	Under Act 118, general permits will typically have no expiration date unless requested by the facility owner.	DNR did not renew any of the general operation permits, although all expired by June 30, 2003. As of that date, DNR reported 221 active facilities held general operation permits. Only 131 of these facilities had applied to renew their general operation permits, while 90 facilities had not reapplied. The effect of Act 118 is that these facilities will not need to reapply and DNR's workload will be reduced.	48
Permit Waivers and Registration Permits	None	Act 118 requires DNR to promulgate rules to waive pre-construction permit requirements if a facility demonstrates undue hardship, and it requires DNR to establish a new, simplified registration permit for facilities with low emissions.	The effect of Act 118 is that DNR will need to issue fewer permits to minor sources. These changes will not affect permitting requirements for federally-required major permits. DNR issued an average of 190 minor construction permits each year, but has only issued 56 of 687 minor operation permits.	50
Construction permit timeliness	Statutes allowed up to 210 days to process major construction permits without a public hearing, and 270 days to process a major construction permit when a public hearing was held. For minor construction permits, DNR was required to complete work within 120 days if no public hearing was held and within 180 days if a hearing was held.	Act 118 reduced by 30 days the amount of time permitted for processing major construction permits. DNR now has 240 days for processing a major permit when a hearing is held, and 180 days if no hearing is held. No change to minor permit processing time was made.	We found that DNR met processing timelines for 76 of a sample of 88 applications (86.4 percent). DNR met criteria for 88.9 percent of major permits, and 86.1 percent of minor permits. The median time to process all construction permits from the time they were received until they were issued was 103.5 days. DNR issues an average of 16 major construction permits each year. The effect of Act 118 will be to shorten time periods for issuing these types of permits.	55 and 58

Issue	Pre-Act 118 Requirement/Standard	Act 118 Changes	DNR Performance and Effect of Change	Page(s) of LAB Report
Construction permit application completeness	Application processing times did not start until DNR deemed applications complete. DNR had 20 days from the date an application was received to notify the applicant whether its application was complete or to request additional information.	Act 118 now requires DNR to request additional information in writing within 20 days after receiving an application. After receiving additional information, DNR must notify a facility within 15 days of receiving that additional information whether the response satisfies DNR's request. If DNR does not request specific additional information, the application is automatically deemed complete and the clock starts for DNR processing time.	We found that DNR often did not request additional information in writing, making it difficult to verify compliance with this deadline. Furthermore, DNR lacked clear guidelines for determining when an application was complete. The effect of Act 118 will be to clarify application requirements and potentially shorten processing time.	55 and 56
Permit streamlining	None	Act 118 requires DNR to continually assess permit obligations and implement streamlining measures, including more exemptions.	DNR formed an advisory group to address permit streamlining in June 2003. DNR previously reviewed streamlining in 1998, but did not implement many of its committee's recommendations. In addition, our report makes a number of recommendations, such as streamlining permitting requirements for those minor air pollution sources that will continue to be required to obtain permits under Act 188, assess options to reduce the amount of DNR staff time spent on modeling, and make efforts to reduce the amount of duplicate or unnecessary information contained in permits.	61, 62, and 63 41, 44, 45, and 61

Milwaukee Journal Sentinel February 27, 2004

Audit finds failures in DNR's air program

Serious backlog, lack of oversight of major industrial polluters noted

By TOM HELD
theld@journalsentinel.com

Environmentalists point to a lack of inspections at major industrial polluters in Wisconsin and call the state's air quality management program a failure.

Business operators come to the same conclusion by pointing to a backlog on operating and construction permits that slows business growth and expansion.

The Legislative Audit Bureau gave both groups plenty of ammunition to bolster their criticism Thursday, in an analysis that found serious failures in the Air Management Program.

Problems in several key areas of the air pollution control program, managed by the state Department of Natural Resources, raise doubts about the state's ability to protect residents from pollutants or to provide a regulatory environment in which businesses can thrive, even at a cost of nearly \$18 million per year.

"I think the audit supports and reinforces what the federal (Environmental Protection Agency) said earlier this week — that our air quality program in Wisconsin, which is essential to our good health and economy, is suffering because of a lack of resources," said state Rep. Spencer Black (D-Madison).

State Sen. Carol Roessler (R-Oshkosh) agreed with Black that the program has major deficiencies, but pointed to a different cause. It's not a lack of resources but a lack of proper management and priorities that has made the air quality program the bane of environmentalists and industrialists, she said.

"There's a lot of wasted energy applied to systems that don't work," said Roessler, a co-chairman of the committee that authorized the audit.

Much of the audit's findings reinforced what critics have been saying in recent years: that businesses wait too long to receive required air pollution permits from the DNR, and that a lack of inspections and oversight leaves questions about just how much pollution threatens residents' health.

With changes in its own operations and new guidelines in the Job Creation Act of 2003, the DNR officials say they have begun to fix the problems.

Al Shea, administrator for the DNR's air and waste management division, said the permit backlog has been reduced since June and would be eliminated by the end of the year. In addition, the division has begun to implement new databases and technology to make its operations more efficient.

That will address one of the audit's most damning findings: "DNR does not have the basic, accurate data needed for effective program management."

The audit found that 71 businesses required to obtain permits had not done so and were operating with no oversight of their emissions.

"DNR officials could neither explain why these facilities had apparently never applied for permits or why DNR was unaware of this issue prior to our inquiries," the audit says.

Bruce Nilles, an attorney with the Sierra Club's Midwest chapter, said the lack of oversight allows industries to violate federal and state pollution limits with impunity, placing residents at greater risk of heart disease, cancer and respiratory problems.

"There's no one protecting our clean air," Nilles said. "We have fallen so far, so fast through a targeted effort by the business lobby to cut fees that here we are today with a bankrupt program unable to protect us."

The audit reports that 15% of the 2,219 sources of air pollution regulated by the DNR have never been inspected. That includes 10% of the 57 coal-burning power plants, paper mills, foundries and other businesses designated as major polluters.

Nearly 20% of the 942 sources in the next tier of lesser polluters also have never been inspected, according to the audit findings.

Overall, the number of inspections to ensure that businesses are complying with their emission limits has decreased from 470 in 1994-'95 to 276 in 2002-'03. The DNR plans to conduct 245 inspections in the current fiscal year, one of the lowest amounts in the past decade.

The audit found that the number of full-time equivalent employees assigned to the air quality program decreased from 180 in 1996-'97 to 157 in 2002-'03, but the total dollars spent increased 20% over the same time span, to \$17.8 million.

Jeff Schoepke, the environmental policy director for the Wisconsin Manufacturers & Commerce, challenged Nilles' assertion that businesses are to blame for the air program's problems. The WMC's members pay roughly the same amount for their pollution permits as those in neighboring states, he said.

Echoing Roessler, Schoepke said priorities have been the problem.

The staff in the air quality program has not devoted enough effort to issuing construction and operating permits to businesses, creating a backlog, Schoepke said.

The audit detailed the same backlog issues raised earlier: As of June 30, the backlog of operation permits stood at 1,091, including 210 permits for the major sources of pollution.

Only five states have a more serious permit backlog than Wisconsin, which had processed just 64.4% of permit applications as of June 30 of the ones for 2002-'03.

More troubling to Schoepke was that 40 construction permits had been pending approval for more than two years. The businesses seeking those permits are forced to delay capital investments and expansion, he said.

In its response to the audit, the DNR administration promised to assign more staff to permit applications in the southeast region, where the largest backlog exists.

The Capital Times February 28, 2004

DNR air management audit finds big errors

By Anita Weier

The Capital Times

A state audit of the Department of Natural Resources' air management program has found huge backlogs in air pollution control programs and some astounding record-keeping and billing errors.

The report issued by the Legislative Audit Bureau on Thursday follows a notice of deficiency issued by the U.S. Environmental Protection Agency earlier this week that hit the DNR for permit backlogs, insufficient staffing and fees too low to finance enforcement.

Al Shea, administrator for the DNR's Division of Air and Waste Management since September, agreed with the criticisms, though he said much has been done in the past year to correct problems.

"We have made a lot of adjustments and corrections and redirection of the program," Shea said. "We are well on our way to addressing the issues they've raised. We are viewing this audit as an important part of our continuous quality improvement efforts. We will take the recommendations to heart."

Sen. Carol Roessler, R-Oshkosh, co-chair of the Legislative Audit Committee that requested the audit, praised the quality of the audit. "The concerns raised by both business and environmental groups about the air management program were well founded and a good cause for this thorough and excellent review," she said.

What she didn't mention was that state budget limits and staff cuts have hit the DNR's Bureau of Air Management hard. The bureau had 180 full-time equivalent employees in 1996-97 and 157 during the current fiscal year.

"The audit unfortunately focused on the symptoms, not the causes," said Caryl Terrell, director of the John Muir Chapter of the Sierra Club. "The program has been underfunded for years. The program has lost 20 percent of its staff in 10 years. The Legislature is the only one that can solve this problem. They should, at a minimum, reinstitute inflationary CPI indexing of permit fees."

The DNR is required to ensure that the 2,219 utilities, factories and other stationary facilities it regulates are complying with the terms of their permits and to monitor air quality throughout Wisconsin.

The Audit Bureau found that as of last June 30, the DNR had issued operation permits to just over half of the facilities required to obtain them.

Although 1,128 permits had been issued since 1995, backlogged facilities totaled 1,091.

"Wisconsin is among the slowest states in the nation to issue operation permits, and it is the slowest among Midwestern states," State Auditor Janice Mueller said in a letter accompanying the audit.

"The Legislature recently passed 2003 Wisconsin Act 118 to streamline the permitting process and increase the number of permits issued in a timely manner. We have included additional recommendations for streamlining the operation permit process."

Regarding permits for new construction and facility modifications, the audit found that 40 permits — 29.2 percent of all pending applications — had been backlogged at least two years.

As for enforcement efforts, the number of facilities the agency inspects annually has declined from 470 in the 1994-95 fiscal year to 276 in the 2002-03 fiscal year. Fifteen percent of facilities have never been inspected, the audit found, and the DNR is not consistently enforcing a requirement that facilities submit annual compliance reports.

The agency also had failed to issue 113 operation permits even though they had completed a public comment period and could have been issued.

And the DNR had no explanation for why 232 facilities have not reported emissions or paid emission fees, why it billed 11 facilities that should not have been billed about \$21,000, and why it failed to bill 13 other facilities about \$27,000, the audit said.

"DNR program management will need to be improved if Wisconsin's air management goals are to be obtained," the audit said. "The DNR does not have the basic, accurate data needed for effective program management."

Shea said the DNR refunded the wrongly billed fees this week and has issued 90 of the 113 operating permits that the audit cited.

And the air program has reduced a backlog of major permits from 250 in January 2003 to 140 in January 2004. There will be no backlog by January 2005, he said.

A computer-based permitting program is being developed, in order to change from an old-fashioned paper-based system. Shea said the change could reduce permit issuance time by 45 percent.

E-mail: aweier@madison.com

JSOnline
MILWAUKEE JOURNAL SENTINEL

Journal Sentinel Services | Classifieds | On Wisconsin LIVE | AdFinder | Yellow Pages

LIMITED TIME OFFER
SUBSCRIBE TODAY
CLICK HERE


Subscribe to the Milwaukee Journal Sentinel online

News Articles: Search

JS Online Features List

ON WISCONSIN : NEWS : WISCONSIN :
E-MAIL | PRINT THIS STORY

RENTALS
Shop the city's largest lighting showroom

Jeffrey...


Audit finds failures in DNR's air program

Serious backlog, lack of oversight of major industrial polluters noted

By TOM HELD
theld@journal sentinel.com

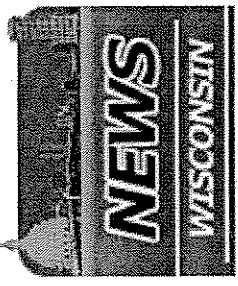
Posted: Feb. 26, 2004

Environmentalists point to a lack of inspections at major industrial polluters in Wisconsin and call the state's air quality management program a failure.

Business operators come to the same conclusion by pointing to a backlog on operating and construction permits that slows business growth and expansion.

The Legislative Audit Bureau gave both groups plenty of ammunition to bolster their criticism Thursday, in an analysis that found serious failures in the Air Management Program.

Problems in several key areas of the air pollution control program, managed by the state Department of Natural Resources, raise doubts



News

Wisconsin

Milwaukee

Waukesha

Ozaukee

Washington

Racine

Editorials

Crossroads

Columnists

Obituaries

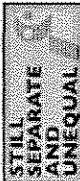
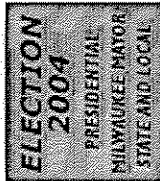
Letter to Editor

Weather

National Wire

State Wire

Special Features:



Archived

about the state's ability to protect residents from pollutants or to provide a regulatory environment in which businesses can thrive, even at a cost of nearly \$18 million per year.

"I think the audit supports and reinforces what the federal (Environmental Protection Agency) said earlier this week - that our air quality program in Wisconsin, which is essential to our good health and economy, is suffering because of a lack of resources," said state Rep. Spencer Black (D-Madison).

State Sen. Carol Roessler (R-Oshkosh) agreed with Black that the program has major deficiencies, but pointed to a different cause. It's not a lack of resources but a lack of proper management and priorities that has made the air quality program the bane of environmentalists and industrialists, she said.

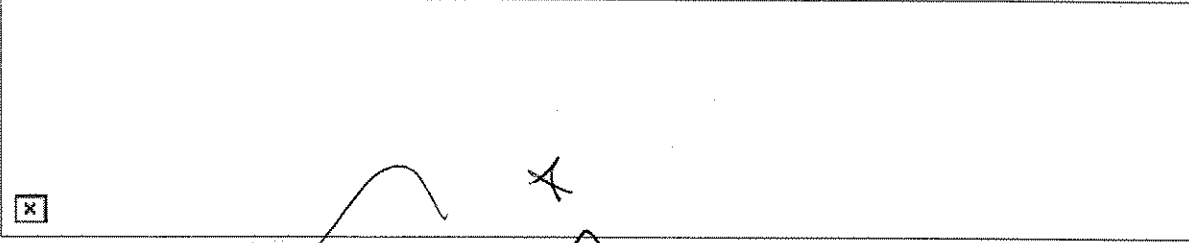
"There's a lot of wasted energy applied to systems that don't work," said Roessler, a co-chairman of the committee that authorized the audit.

Much of the audit's findings reinforced what critics have been saying in recent years: that businesses wait too long to receive required air pollution permits from the DNR, and that a lack of inspections and oversight leaves questions about just how much pollution threatens residents' health.

With changes in its own operations and new guidelines in the Job Creation Act of 2003, the DNR officials say they have begun to fix the problems.

Al Shea, administrator for the DNR's air and waste management division, said the permit backlog has been reduced since June and would be eliminated by the end of the year. In addition, the division has begun to implement new databases and technology to make its operations more efficient.

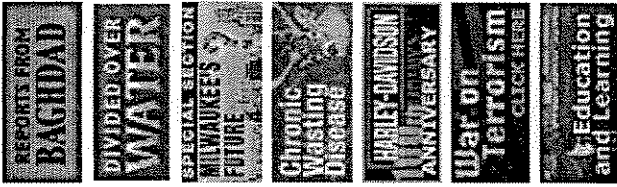
That will address one of the audit's most damning findings: "DNR



MARKETPLACE

AdFinder

Features:



- [Jobs](#)
- [Cars](#)
- [Real Estate](#)
- [Rentals](#)
- [Personals](#)
- [General Classifieds](#)
- [Buy & Sell Tickets](#)
- [Contests](#)

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

The audit found that 71 businesses required to obtain permits had not done so and were operating with no oversight of their emissions.

"DNR officials could neither explain why these facilities had apparently never applied for permits or why DNR was unaware of this issue prior to our inquiries," the audit said.

Bruce Nilles, an attorney with the Sierra Club's Midwest chapter, said the lack of oversight allows industries to violate federal and state pollution limits with impunity, placing residents at greater risk of heart disease, cancer and respiratory problems.

"There's no one protecting our clean air," Nilles said. "We have fallen so far, so fast through a targeted effort by the business lobby to cut fees that here we are today with a bankrupt program unable to protect us."

The audit reported that 15% of the 2,219 sources of air pollution regulated by the DNR have never been inspected. That includes 10% of the 57 coal-burning power plants, paper mills, foundries and other businesses designated as major polluters.

Nearly 20% of the 942 sources in the next tier of lesser polluters also have never been inspected, according to the audit findings.

Overall, the number of inspections to ensure that businesses are complying with their emission limits has decreased from 470 in 1994-'95 to 276 in 2002-'03. The DNR plans to conduct 245 inspections in the current fiscal year, one of the lowest amounts in the past decade.

The audit found that the number of full-time equivalent employees assigned to the air quality program decreased from 180 in 1996-'97 to 157 in 2002-'03, but the total dollars spent increased 20% over the same time span, to \$17.8 million.

Need Help?

- [Searching Archives](#)
- [Wireless Access](#)
- [Site Topics](#)
- [Table of Contents](#)
- [Contact Staff](#)
- [Subscriptions](#)

Jeff Schoepke, the environmental policy director for the Wisconsin Manufacturers & Commerce, challenged Nilles' assertion that businesses are to blame for the air program's problems. The WMC's members pay roughly the same amount for their pollution permits as those in neighboring states, he said.

Echoing Roesler, Schoepke said priorities have been the problem.

The staff in the air quality program has not devoted enough effort to issuing construction and operating permits to businesses, creating a backlog, Schoepke said.

The audit detailed the same backlog issues raised earlier: As of June 30, the backlog of operation permits stood at 1,091, including 210 permits for the major sources of pollution.

Only five states have a more serious permit backlog than Wisconsin, which had processed just 64.4% of permit applications as of June 30 of the ones for 2002-'03.

More troubling to Schoepke was that 40 construction permits had been pending approval for more than two years. The businesses seeking those permits are forced to delay capital investments and expansion, he said.

In its response to the audit, the DNR administration promised to assign more staff to permit applications in the southeast region, where the largest backlog exists.

From the Feb. 27, 2004 editions of the Milwaukee Journal Sentinel

[BACK TO TOP](#)

News Articles:
Advanced Searches



Subscribe to the
Milwaukee Journal
Sentinel Online

JS Online Features List

JS Online: Audit finds failures in DNR's air program

© Copyright 2004, Journal Sentinel Inc. All rights reserved.
Produced by [Journal Interactive](#) | [Privacy Policy](#)

Journal Sentinel Inc. is a subsidiary of [Journal Communications](#), an employee-owned company.



WISCONSIN STATE LEGISLATURE

Joint Audit Committee

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

For Immediate Release

April 26, 2004

For More Information Contact:

Senator Carol Roessler
Representative Suzanne Jeskewitz

(608) 266-5300
(608) 266-3796

Audit Committee Reviews Air Management Audit and Potential Audit of State Fleet
The Joint Legislative Audit Committee will meet on May 4, 2004

(Madison) Today -- The Co-Chairs of the Joint Legislative Audit Committee announced that a public hearing on both the nonpartisan Legislative Audit Bureau's (LAB's) evaluation of Air Management Programs in the Department of Natural Resources, as well as a potential audit of the State's vehicle fleet will be held on Tuesday, May 4, 2004. Both Co-Chairs agree these two issues need review and follow-up to assure that programs are run effectively and taxpayer dollars are spent wisely.

In February 2004, the LAB released an audit that analyzed the Department of Natural Resources' air permitting programs, including the issuance of both operation and construction permits. The review assessed the timeliness and effectiveness of program operations. This critical evaluation highlighted several areas for improvement, especially in program management.

Audit Committee Co-Chair Carol Roessler (R-Oshkosh) reacted, "The concerns raised by both business and environmental groups about the air management program were well founded. This thorough and excellent review by the LAB confirmed their concerns. The federal government requires us to issue these permits and we just aren't getting the job done. We should have had our major operation permits completed by 1998, and the audit found that 210 major operation permits are still backlogged, along with 881 other permits."

"More than one quarter of all regulated facilities in Wisconsin are located in Southeastern Wisconsin," remarked Co-Chair Suzanne Jeskewitz (R-Menomonee Falls), "yet it has the lowest percentage of permits issued for any region in the State." Southeast Wisconsin has 32.7 percent of the larger permitted facilities, but has issued permits to only 45.4 percent of these 427 facilities. Statewide, the auditors determined that only 50.8 percent of all operating permits applied for have been issued and that Wisconsin has the lowest percentage of major operating permits issued in the Midwest. The national average is 80.9 percent.

The Co-Chairs received an audit request from Senator Rob Cowles earlier this month after an article appeared in the *The Lakeland Times* criticizing the DNR's management of its fleet of vehicles. Last week an additional request to audit the DNR's fleet came from Representative Dan Meyer. While Roessler and Jeskewitz agree that an audit is merited, they believe it should be expanded and have worked with the LAB to draft an audit scope memo to bring before the Joint Audit Committee that is as broad as possible to encompass all issues surrounding the State's vehicle fleet.

"I believe there are legitimate concerns with the organization and authorization of the state car fleet and we need to get to the bottom of this issue. I want to ensure that all these cars are needed, energy efficient, appropriate for the type of state employee user, and ultimately that taxpayer dollars are not being inappropriately expended on cars for state employees," Roessler stated.

"If we are going to do an audit I want it to be a thorough inventory and assessment of the entire state car fleet, not just the DNR's," added Jeskewitz. "We cannot afford to be providing unnecessary cars to state employees and we must assure taxpayers that they are not subsidizing the personal use of state vehicles."

The audit of the state fleet would include:

- an analysis of the number of vehicles owned and leased;
- a review of the specific types of vehicles, such as sedans, sport utility vehicles, and trucks;
- an assessment of how the total number of vehicles needed is determined;
- a review of bidding procedures used in purchasing and disposing of vehicles;
- a review of how decisions to personally assign vehicles are made and monitored, including how agencies determine whether it is less costly to pay employees mileage for use of their own personal vehicles rather than to purchase state vehicles;
- a determination of the extent to which state employees have reimbursed the State for personal mileage on state vehicles and whether existing policies appropriately limit the personal use of state vehicles;
- a review of the cost effectiveness of current maintenance processes, both those performed in-house and those contracted to outside vendors; and
- a review of best practices for fleet management used by other Midwestern states.

The public hearing before the Joint Legislative Audit Committee will start at 8:30 a.m. on Tuesday, May 4, 2004. The LAB audit of DNR's Air Management Programs will be first on the agenda followed by Committee consideration of the request to audit the State's vehicle fleet.

###



WISCONSIN STATE LEGISLATURE

Joint Audit Committee

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

April 26, 2004

Mr. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street, 5th Floor
Madison, Wisconsin 53703

Dear Mr. Hassett:

The Joint Legislative Audit Committee will hold a public hearing on Legislative Audit Bureau report 04-1, *An Evaluation: Air Management Programs* on Tuesday, May 4, 2004, at 8:30 a.m. in Room 411 South of the State Capitol.

As this report relates to the activities of the Department of Natural Resources, we ask that you and appropriate members of your staff be present at the hearing to offer testimony in response to the evaluation findings and to address questions from committee members. Please plan to provide each committee member with a written copy of your testimony at the hearing.

To confirm your participation in the hearing, please contact Ms. Karen Asbjornson in the office of Senator Carol Roessler at 266-5300.

Sincerely,

Senator Carol A. Roessler, Co-chair
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

Enclosure

cc: Janice Mueller
State Auditor

Air Management Programs

Legislative Audit Bureau
May 2004

1

Overview

- ◆ DNR administers air management programs to regulate the emission of pollutants
- ◆ 2,219 utilities, factories, and other stationary sources are regulated by DNR
- ◆ There are two separate permitting programs
 - operation permit program
 - construction permit program

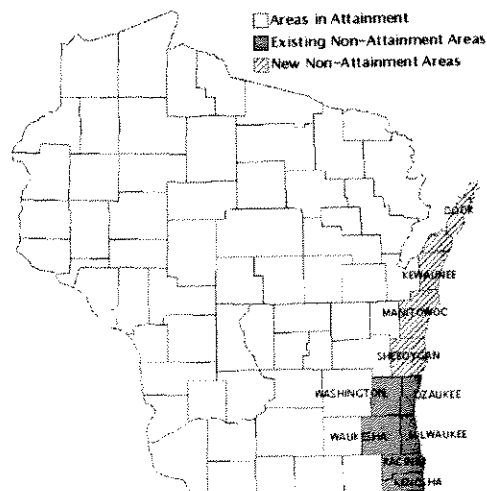
2

Changes in Air Quality

- ◆ There are six criteria pollutants regulated under federal law: sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen oxides, and lead
- ◆ EPA determines areas failing to meet federal standards to be in “non-attainment”
- ◆ Over time, 10 areas of the state have come into compliance for various pollutants

3

Ozone Non-attainment Areas



4

Hazardous Air Pollutants

- ◆ Federal law regulates 188 hazardous pollutants
- ◆ Sources must be regulated if they emit:
 - 10 tons of any single pollutant; or
 - 25 tons of a combination of pollutants
- ◆ Wisconsin exceeds federal law by regulating 293 additional hazardous pollutants

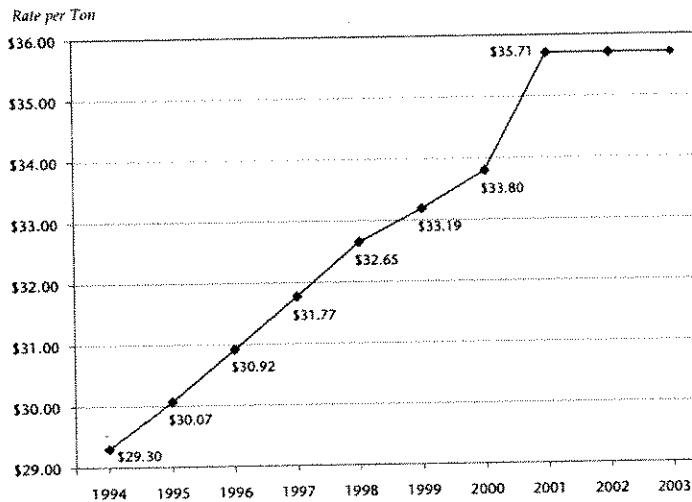
5

Program Funding

- ◆ Funded with three primary sources:
 - Emission fees
 - Federal grants
 - Construction permit fees
- ◆ Revenues increased from \$14.9 million in FY 1996-97 to \$19.3 million in FY 2002-03
- ◆ Authorized staffing levels decreased from 200 FTE to 184 FTE over this period

6

Emission Fees



7

Issuance of Operation Permits

- ◆ Through June 2003, DNR issued permits for 51 percent of 2,219 facilities:
 - 64 percent of federally required major permits
 - 74 percent of federally required synthetic minor permits
 - 8 percent of state-required minor permits
- ◆ Federal law required permits be issued to all major facilities by March 1998
- ◆ Through June 2003, only 64 percent were issued
- ◆ Southeast Region has the biggest backlog, with only 45 percent issued

8

Streamlining Operation Permits

- ◆ 2003 Wisconsin Act 118 made a number of changes to streamline the permitting process
- ◆ DNR has no deadlines for issuing synthetic minor or minor permits
- ◆ We recommend:
 - Streamlining permit requirements for minor sources
 - Assigning more staff to permits in the Southeast Region
 - Assessing options to reduce staff time spent on permit modeling
 - Encouraging electronic submission of permits

9

Construction Permit Program

- ◆ Time limits for issuance are specified in state law
- ◆ DNR does not adequately track the time taken to issue construction permits
- ◆ Deadlines were met in 86 percent of cases
- ◆ 29 percent backlogged for at least two years
- ◆ Act 118 reduced by 30 days the time allowed for DNR to issue permits

10

March 1998
lowest page among
midwestern states!

Enforcement Efforts

- ◆ Number of facilities inspected dropped from 470 in FY 1994-95 to 276 in FY 2002-03
- ◆ 15 percent of facilities have never been inspected
- ◆ DNR does not consistently follow its own or federal enforcement policies
- ◆ DNR met a 60-day policy in addressing violations in only 76 of 125 cases

11

Deficiencies in Program Management

- ◆ 71 facilities did not apply for operation permits
- ◆ Unclear why 175 facilities may be exempt from permitting requirements
- ◆ 113 completed operation permits were not issued
- ◆ 49 facilities did not apply for renewal permits
- ◆ 232 facilities did not report emissions or pay fees
- ◆ 11 facilities were incorrectly billed \$21,000
- ◆ 13 facilities were not billed \$27,000 they owed

12

TO: Joint Committee on Audit
FROM: James Buchen, Vice President, Government Affairs
RE: LAB Report on DNR Air Management Programs
DATE: May 4, 2004

Thank you for the opportunity to offer the comments on this important Legislative Audit Bureau report on state air management programs.

The manufacturing community has long been concerned about management of the DNR Air Bureau, its inability to issue timely permits, and the importance of permitting activities to economic growth of our Manufacturing economy. While this concern has existed for some time, a 2003 survey of Wisconsin CEOs showed regulatory climate, for the first time ever, surpassing tax climate as the top issue for Wisconsin business.

In particular, air construction permits have an important link to job creation. Because companies must secure construction permits before proceeding with project construction, before they can install a piece of equipment or even put a shovel in the ground, delays can and do cost jobs. Long delays encourage investment in facilities outside of Wisconsin. Simply put, timely air permits rank amongst the top public policy concerns for Wisconsin manufacturers.

A little more than a year ago WMC wrote the Joint Audit Committee Co-chairs recommending this audit. At that time, industry expressed a concern about Air Bureau priorities and policies, and recommended the non-partisan Legislative Audit Bureau conduct an objective third-party review. Unfortunately, the audit confirms many of the concerns Wisconsin industry has expressed for the better part of a decade:

- Wisconsin is the slowest state in the region at issuing permits and one of the slowest in the country.
- Construction permits, in particular, have not been issued in a timely manner; the audit sample shows 29.2 percent of permits were not issued after 2 years.
- Past Air Bureau priorities have been new, state-only rules and regulations instead of issuing permits.

- DNR resources are not the basis for lack of timely permits- Wisconsin emission fees are on par with, even if calculated differently than, emission fees in surrounding states.
- Lack of reasonable financial accounting lead to misapplied fees, commingled funds lack of an ability to adequately track funds.
- Lack of past program accountability lead to lost permits, completed permits not being issued and inappropriate permit requirements.

In the same week this audit was released, the U.S. Environmental Protection Agency (EPA) issued a Notice of Deficiency (NOD) for Wisconsin's title V federal operating permit program. The conclusions in the NOD mirrored those of the LAB in several ways. That is, EPA's concerns over operating permits are similar to industry's concerns about the construction program- lack of timely permits and title V fees going towards non-title V activities. While construction permits are more important from an economic development perspective, the NOD still raised significant concerns for industry. EPA indicates DNR has not yet answered EPA questions about funding levels. Given Wisconsin's comparable fee levels, DNR must better answer the question of how it manages resources before the question of additional funds should even be broached.

The Legislature and the Governor have shown great leadership in their passage and signature of 2003 Wisconsin Act 118, also known as the Job Creation Act. This new law modifies Chapter 285 to help assure timely permits, and otherwise streamline and consolidate administrative hurdles impeding business expansion. None of these components lower environmental standards – business must still meet all applicable emission standards – but they do reduce unnecessary red tape and related delay and costs companies face when trying to expand or locate in Wisconsin. WMC agrees with the conclusion of LAB that Act 118 will help address concerns raised in the audit report. Implementation of this Act is critical to the success of the air management program.

DNR Secretary Scott Hassett has also made streamlining the permitting process a top priority for his agency. We commend him for launching the DNR's Air Permit Improvement Initiative.

WMC has reviewed an early draft of the initiative's targets and objectives and they appear to be appropriate. WMC will participate in the implementation of DNR's work plan and will plug manufacturers into the key workgroups set up to address concerns and implement the streamlining objectives.

At Business Day in Madison this year, Governor Jim Doyle noted that the state needed a culture change that recognizes that "issuing a permit is a good thing". Industry agrees. Unfortunately, members who work with the DNR at a facility level indicate that despite the efforts of DNR leadership, that view is not shared by all within the agency. While we believe there is a commitment at the top of the agency to make this program work, it is time for the DNR to start showing results sooner rather than later.

To improve the permitting program, WMC recommends several important courses of action:

I. Act 118 must be implemented quickly and in the spirit with which it was written.

- The DNR should use the new tools of registration and general permits contained in the Act and develop these "off the shelf" permits quickly. The more companies that utilize these new permits the fewer the resources DNR must spend on negotiating permit minutiae.
- DNR should immediately act to implement Act 118 requirements exempting small emission sources from permitting altogether.
- DNR should utilize the construction ban waiver process provided for in Act 118 to avoid delays in employing capital that creates jobs. DNR has already established a process of waiver review that results in denial of nearly every request.
- DNR should show the committee and the public how it is meeting new deadlines for permit completeness determinations and major source operating permits.

II. Wisconsin needs to adopt sensible New Source Review (NSR) reforms.

These reforms should be consistent with the new federal program and allow companies to avoid cumbersome "paper permits" that cost companies time and resources but do nothing to improve air quality. Despite negotiations continuing for the better part of a year, there is no agreement yet between the DNR and industry on key components of NSR.

III. Wisconsin should develop a "facility-wide" permit program.

Under this permitting model, currently being implemented in Minnesota and other states, construction permits are issued as modifications to operating permits rather than separate permits altogether. This system cuts down on paperwork and administrative requirements. While there may be a Legislative solution to this issue, new law is not necessarily needed to develop such a program.

IV. DNR's Air Permit Improvement Initiative must show results and successes sooner rather than later.

Despite stated leadership at the top within DNR, DNR must show success, at the local, facility level in its attempts to streamline. DNR must not only send the message that permitting is a priority it must expect staff to produce results.

V. DNR Should respond to the EPA Notice of Deficiency in a manner that clarifies it has adequate resources to run the title V program.

The NOD clearly indicates DNR has not provided EPA with appropriate documentation to conclude it has adequate funding levels to fund the program. Because Wisconsin currently meets the federal presumptive minimum fee level, the question of adequacy should be answered easily.

VI. Implement Audit Report Recommendations

We believe that the recommendations contained with the audit are generally sound, and should be implemented by the department.

Further, WMC has several recommendations for the legislature to assist in its oversight responsibilities for this program

A. The Audit Committee should adopt Audit recommendation requiring DNR report to this committee in September on program progress.

The audit recommends DNR answer a series of nine questions in that September report. In addition, the committee should ask additional questions to be answered at that time:

- What is the status of the title V program, and how is the DNR meeting its goal of issuing title V permits by January 2005? How is the DNR assuring quality permits are being issued under this tight timeframe?
- How is the DNR implementing Ch. 285 provisions of Wisconsin Act 118? How many registration permits, new general permits and exemptions has it issued? How is it issuing construction ban waivers and is the DNR meeting new deadlines for completeness determinations and issuing major source permits?
- What is the status of implementing New Source Review reforms and a facility-wide permit program?

B. The committee should require the DNR to provide it with an advance copy of the agency's expected June 4 response to the EPA NOD.

The questions raised in the NOD include policy questions for the Legislature in addition to technical questions for the department. In particular, the question of the adequacy of fee levels should be answered in coordination with the Legislature. In addition to the written response, the committee should ask DNR to submit all of the supporting documentation DNR intends to provide at EPA in that submittal.

C. The Legislature should engage the DNR in a discussion of its Information Technology needs.

DNR is expected to request nearly \$2 million in expenditure authority from the construction permit account for a new electronic permitting system. The audit points out the need for DNR to improve its information systems. While WMC agrees that IT could be an important piece of the Air Bureau puzzle,

significant questions need to be answered before these funds- paid by manufacturers- should be spent in this way.

A particular concern is that the permitting program might not be "fixed" before the IT system is in place. Laying a good IT system over a bad permitting process is akin to putting a Mercedes Benz engine in a Yugo frame. So, before industry can support this expenditure, DNR will need to demonstrate clear progress in its streamlining efforts.

Thank you again to the Joint Audit Committee for directing this audit. We believe the findings will help the DNR and the Legislature develop strategies to improve Wisconsin's air management programs and therefore improve our economy.

Testimony for Secretary Hassett
Joint Legislative Audit Committee – Air Management Program Audit
May 4, 2004

Opening Comments:

Agree with Report Findings - The Department is in substantial agreement with the recommendations. We appreciate the level of effort by the Audit Bureau staff and the open communications we had with them during the process.

Permit Program Streamlining is Underway – Even before the completion of the audit we initiated a comprehensive streamlining project, the Air Permit Improvement Initiative (APII). This initiative, started in June 2003, will result in a streamlined air permit program being implemented in 2005. This initiative is a two pronged approach, including streamlining the permitting process for operation and construction permits in the Air Management Program, and retooling Wisconsin's new source review regulations in light of the federal changes in this area. This initiative positions us well to address recommendations in the audit report, implement the provisions of 2003 Wisconsin Act 118 and achieve the Governors' Grow Wisconsin vision for an efficient and effective air permit program.

Federal Operation Permit Backlog will Be Eliminated This Year – We are on target to eliminate the backlog of Federal Operation permits by December 2004. In October 2003, we redirected resources to address the operation permit backlog while maintaining an efficient construction permit program. Resources were made available by eliminating or reducing certain air management program activities and deploying them to this work. [Eliminated Activities– biomonitoring, 17 ambient monitoring sites, visible emissions school, climate change policy analysis (global warming & greenhouse gases) and forecasting particle pollution levels. **Reduced Level of Effort**– small source compliance and enforcement, non-Title V complaint follow-up, mercury modeling & policy analysis, ozone policy analysis, air toxics policy analysis, stack emission testing and asbestos].

Response to Recommendations - Actions have already been taken to address many of these recommendations and plans are underway to ensure we completely address all of the recommendations. We will report on our progress in the report to the Joint Audit Committee by September 1, 2004. Today, I can share an initial status report with the committee that provides details on our progress at addressing report recommendations.

Issues of Concern:

Audit Covered a Limited Review Period - The report focuses on a limited snapshot of time. Over the last ten-year period (1993 –2003), Wisconsin's Air Management Program has actually lost 20% of its staff resources (vs. the 8.1% decline documented in the period of time covered in the LAB report). This level of resource reduction has presented substantial management challenges for the program.

Program Priorities Favored Construction Permits – Previously, the program very consciously placed a high priority on construction permits versus operation permits in order to support industry and economic needs in the state. The Department attempted to balance issuance of the largest federal operation permits first, kept current with operation permit renewals and included federally enforceable state operation permits. In order to meet the need to eliminate the operating permit backlog, we have temporarily made a significant reduction in renewals, federally enforceable state operation permits and compliance activities.

The Construction Permit Program has Been Effective - Throughout this time, the Air Management Program has maintained a highly effective construction permit program. As noted in the audit report, Wisconsin's length of time in processing a new construction permit is less than half the time of the national average as measured by EPA. The Air Management Program has consistently given priority to its construction permit program to support industry growth and development. The long turnaround times for the 40 permits cited in this report are for reasons beyond the control of the air program and were often at the request of industry. The Air Management Program focused on being customer service oriented by putting applications on hold for industry, when requested. This was done consciously and the Department does not view this as a failure in management.

EPA's Notice of Deficiency is a Significant Related Issue – In February 2004, EPA issued Wisconsin a Notice of Deficiency for the implementation of the state's Title V permit program. EPA is also concerned with our rate of issuing federal operation permits and questions the adequacy of program funding. We will need to address EPA NOD in a timely manner to avoid sanctions that could include reduced highway funds, more barriers to industry growth in nonattainment areas and EPA assuming the federal permit program from Wisconsin. However, we have a detailed strategy to address the NOD and believe most, if not all, issues can be readily addressed.

Program Resources Have Been Depleted - Over the past 7 years, Air Management Program staff has decreased by 35 full-time positions. On October 6, 2003, the Air Management Program restructured its programs and reassigned staff as a result of budget cuts, Title V funding requirements, and the need to align our limited resources with the available funding sources.

Closing Comments:

- The Air Management Program staff, work activities and funding sources are now better aligned. Resources have been redeployed to address the federal operation permit backlog this year. Streamlining of the construction and operation permit programs is well underway. We are implementing streamlining improvements as we develop our comprehensive improvement plan.
- EPA's Notice of Deficiency must be addressed within 18 months to avoid potentially significant sanctions. Adequacy of funding to support the Title V Program and issuance rate of operation permits are the principal concerns in this notice. We have and will continue to work closely with stakeholders in addressing the solutions to these issues.
- Many of the audit recommendations speak to improving our management systems. The Department intends to submit a 16.515 request in the near future for funding to develop an IT-based permit system and upgrade our data management systems. This system will significantly: reduce permit processing time; improve the consistency of permitting decisions across the state, and increase facility's knowledge of permit requirements and permit status.

Lloyd
Eagdon
Director, Bureau
of Air Management

**Air Management Program Legislative Audit Report Recommendations
Status Report
May 4, 2004**

1. Correct annual emission fees billing errors.

- Determine which of the 232 facilities are required to report emissions and ensure that these facilities pay the appropriate fees.
- Refund emission fees to the 11 facilities that should not have been billed.
- Establish procedures to ensure that all facilities are billed appropriately in the future.

The Department plans to review the 232 facilities that applied for operation permits but had not reported or paid emission fees to verify they are exempt from reporting. When 2003 emission fee statements are prepared this spring we will verify which facilities need to report and pay fees.

Refund checks have been issued. A system has been developed to ensure the permits database and emission inventory database is cross-checked before sending out statements. As a result, all permit holders will receive correct billing information and we will not send bills to those whom don't need them.

2. Assign additional permit engineers to issue operation permits in the Southeast Region.

- Assign additional permit engineers from other regions to work on issuing permits in the Southeast Region to help eliminate the backlog.

The Department has assigned approximately half of the remaining operation permit reviews to staff that are located outside the Southeast Region to ensure that we eliminate the backlog by the end of 2004.

3. Further streamline the operation permit program.

- Streamline permitting requirements for those minor air pollution sources that will continue to be required to obtain permits under recent revisions to state law.
- Assess options that would reduce the amount of staff time spent on modeling, including allowing facilities to perform their own modeling, or eliminate requirements for minor permits.
- Evaluate the amount of information contained in permits and preliminary determinations, with the goal of eliminating duplicate calculations, reducing the repetition of administrative code language, and simplifying descriptive language that duplicates information found in the permit application.
- Encourage facilities to submit electronic permit applications to facilitate accurate data entry into DNR's information system.

The Department launched the Air Permit Improvement Initiative (APII) in June 2003 to simplify and streamline both the operation and construction permit programs including exploring alternatives to traditional permit approaches. This work is underway with a final completion date of December 2005 for implementation of all improvements. APII will include the following key elements:

- a. Clarification of when, where and who should do air quality modeling.***
- b. Simplifying the language and detail required in preliminary determinations and permits.***
- c. Development of an IT system that will support (pending funding approval):***
 - 1. Electronic submittal of permit applications***
 - 2. More accurate and timely tracking of who submits or should submit applications and the progress of each review.***

3. **Determination of which facilities and projects should be exempt from permits.**
4. **Timely notification and follow through of permit renewals.**

4. Ensure facilities have properly applied for permits.

- Verify which facilities have failed to submit permit applications as required and take appropriate action.
- Determine which facilities have appropriately submitted applications but were not placed into the permitting process or assigned to a permit engineer.
- Document which facilities are exempt from permitting requirements and the specific reasons for an exemption.

Using approaches developed in consultation with the Legislative Audit Bureau; the Air Management Program can now consolidate data from its separate and distinct databases to verify whether facilities that submit application fees have applied for operation permits. These new approaches will also exclude from the Department's billing procedures those facilities that are exempt from operation permit requirements. The Department plans to integrate the data in these systems in the future, making it even more automated and more efficient.

The Department is already in the process of verifying the application status of each of the 71 facilities that the Legislative Audit Bureau identified as needing to apply for an operation permit. Responding to another audit finding, the Department is verifying the application status for additional 175 facilities that the Department had identified as exempt from operation permit requirements but had not documented. The Department will fully document its findings.

5. Issue completed permits.

- Review the 113 facilities whose permits have been through the public comment process, to determine whether the permits can be issued or whether additional work is needed because of the delay in issuing the final permit.
- Develop a procedure to track permits throughout the process to ensure that permit engineers are held accountable for finalizing permits.

For federal operation permits that have previously gone through a public comment process we have made staff assignments to get these permits issued by December 2004. We will establish a priority for completing those that remain.

6. Ensure facilities apply for renewal operation permits.

- Review the facilities that have not applied for renewal permits to determine whether they are required to submit renewal applications.
- Implement a procedure to ensure permit engineers notify facilities whose permits are due to expire so facilities can submit appropriate renewal permit applications in a timely manner.

Correspondence will be going out to each delinquent permit holder in May 2004. This will allow us to develop an up-to-date list of renewals needed that includes sources that the Legislative Audit Bureau identified and those that may have become delinquent since the close of the audit period. We will also have a notification system in place in June 2004 that will inform permit holders that have a permit expiring in the near future and that a timely renewal application is needed.

7. Revise the expedited review process for construction permits.

- We recommend that the Department of Natural Resources revise its expedited review process in order to avoid situations where delays caused by the applicant hinder DNR's ability to meet expedited review deadlines.

The Department plans to promulgate a rule revision to provide that the time taken for an applicant to publish the notice of the Department's determination is not included in the review time for an expedited permit. In the interim, we will be notifying sources that have requested expedited review that the clock is considered to stop while we wait for them to have the noticed published.

8. Further streamline the construction permit program.

- We recommend, as part of the current air permit improvement initiative, the Department of Natural Resources re-evaluate the potential of implementing streamlining recommendations made by its 1998 workgroup.

The Air Permit Improvement Initiation (APII) will evaluate both the operation and construction permit programs. This effort has completed its data gathering activities and is now engaged in developing process improvement approaches. The Department is looking at the entire construction permit program, in light of the changes made by 2003 Wisconsin Act 118, and will implement changes to be more efficient and effective.

9. Improve the facility inspection process.

- Develop a plan to ensure all facilities that have never been inspected are given a higher priority in future years.
- Require changes in the list of facilities to be inspected in each region to be reviewed and approved by central office personnel, to better ensure that statewide priority facilities are inspected in a timely fashion.
- Regularly monitor and report progress of each regional office in completing its specific facility inspection goals throughout the fiscal year.

We have an effort under way (and nearly complete) to reconcile all air management program databases to improve our list of facilities subject to the EPA inspection policy, and to identify facilities that have closed. This list will then be used as the basis for targeting those facilities that need inspection. Work plans for regions in the coming fiscal year will be established based on this updated list. We have improved our inspection tracking system to assist in monitoring progress and changes to the agreed inspection list. Quarterly review by managers will be conducted to allow us to meet inspection goals.

10. Improve compliance with federal policy for high-priority violations.

- We recommend the Department of Natural Resources comply with federal policy and develop procedures to track, on a case-by-case basis, compliance with the 60-day notice of violation and 270-day resolution standards.

We have begun investigating how to track conformance with the EPA 60-day NOV and 270-day case resolution standards. This requires interaction with an EPA database and will require further work. We anticipate being able to improve tracking beginning in July 2004.

11. Improve the compliance certification process.

- We recommend the Department of Natural Resources implement procedures to more accurately track compliance certification submission dates and that it consistently follows its enforcement policy regarding timeliness of compliance certification reports.

In July 2003, Air Management compliance staff in the regions began entering compliance certification data directly into the central compliance database to improve the timeliness of data entry. A policy for dealing with portable sources (which may move from region to region) is currently under development. We have identified structural problems within the database that are causing problems in tracking delinquent compliance certifications, but we will likely not be able to correct this until sometime in FY '05. We have implemented a temporary "work around" until the database can be modified, and have begun providing data on delinquent certifications to regional supervisors on a quarterly basis. The need to track and respond to compliance certification submittals has been highlighted via e-mail to regional supervisors and compliance staff, and the existing program guidance on enforcing delinquent compliance certifications was redistributed to reinforce its importance.

12. Identify after-the-fact permits and take appropriate enforcement action.

- We recommend the Department of Natural Resources develop procedures to accurately identify all after-the-fact permits issued, determine if regional permitting staff are informing compliance staff of these permits, and determine if compliance and enforcement personnel are following DNR's guidelines for enforcement of after-the-fact permits.

We have added a provision to our tracking system to identify after-the-fact construction permits so now they can be easily identified for compliance follow-up.

13. Establish additional performance measures.

- We recommend the Department of Natural Resources establish additional performance measures that facilitate the assessment of program outcomes, such as improvements in air quality, program efficiency, and timeliness of permit issuance, including measures of the extent to which:
 - ✓ Statutorily mandated construction permit time lines have been met;
 - ✓ The 20-day and 15-day deadlines for information requests for construction permits have been met;
 - ✓ DNR refunds application fees when it fails to meet construction permit timeliness deadlines;
 - ✓ The proper facilities have been billed for emission fees annually;
 - ✓ Construction permit expedited review deadlines have been met;
 - ✓ The amount of pollution emitted into the air has been reduced;
 - ✓ Wisconsin's air quality has improved;
 - ✓ Compliance inspections have been completed with appropriate frequency;
 - ✓ Appropriate enforcement actions have been taken against facilities that fail to meet compliance certification deadlines; and
 - ✓ High-priority violation timeliness standards have been met.

For the majority of these measures we have systems in place to capture the information requested and will incorporate these measures into a quarterly review. We will take steps to have all the recommended measures in place by September 1, 2004.

14. Improve its data system.

- Develop a manual for its database that clearly explains staff responsibilities for entering and maintaining database information.
- Provide training to staff who are responsible for entering information.
- Implement procedures to improve data quality, including limiting the number of staff who have authority to enter and modify information and implementing procedures to ensure consistent data entry.
- Develop procedures for regularly reviewing information contained in the database to identify data problems.

- Work toward eliminating duplicate and unnecessary fields to simplify database use.
- Improve integration of existing data systems.

An effort is currently underway to develop plans and cost estimates for integrating the various Air Management Program data systems. Assuming funding is approved, the data integration project in the APII will provide staff and supervisors with the tools needed to better manage compliance and enforcement responsibilities.

We wholeheartedly concur with the audit report's recommendation to improve our data systems. Our data systems were designed over a decade ago as stand-alone systems. They have been incrementally modified over time, as funding has allowed to meet Department hardware and software standards. Recent budget reductions will impact information technology staff Department-wide. This may impact our ability to implement the audit report data systems recommendation.

15. Report to the Joint Audit Committee by September 1, 2004, for follow-up.

- The number and type of facilities that should have been reporting emissions data to DNR but were not.
- The procedures it has developed to ensure that all facilities will be billed appropriately in the future.
- The number and location of facilities that have not applied for initial or renewal operation permits, as required.
- The number of applications for operation permits that were not properly recorded or assigned for review, as well as the reasons for these oversights.
- The status of permits that completed the public comment period that were never issued.
- The number and type of enforcement actions it plans to take against regulated facilities it finds have failed to submit required applications or emissions data.
- Its plans to reallocate staffing resources to address backlogged permits, as well as the anticipated effects of these changes.
- The extent to which it plans to implement the permit streamlining recommendations made by its 1998 workgroup.
- How it will ensure that inspection frequency goals are met, and all facilities inspected.

Data collection and tracking systems are in place to capture this information to include in our September 1, 2004 report.