

Program Changes

The Air program should be held accountable for its performance.

Applicants believe that the Air permitting program itself should be held to performance standards. They feel that its performance would improve if it concentrated on issuing permits and improving the training and management of its staff.

Specific recommendations include:

- Focus the program on permit issuance, move away from the development of cutting edge regulations
- Create a permit clearing house
- Improve the training and supervision of permit staff
- Develop truly cooperative relationships with industry
- Develop performance standards and hold itself accountable
- Learn from the experience of other states

Focus the program on permits

Narrow the focus of the air program. Applicants think the program should give up the development of advanced regulations and concentrate on getting permits out.

I think the DNR had over committed themselves. By reducing their goals and aspirations in other areas (NR445) then they can allocate more resources to the permitting area.

Let's not bite off more than has already been bitten off as far as more things to review. They're looking at a hug expansion of NR445 and that's going to add time on for review of air permits as well.

Create a permit clearing house

I would like to see them develop a permit clearing house. So if industry wants to come into the state they understand what the latest permits have been issued for that process and what the requirements are. If we know what the requirements are maybe we don't have to go back and reinvent the wheel. I'm not sure if the DNR staff themselves knows that the latest permit has been issued in the relative to that process and that industry.

Staffing

They need more resources, with experienced people, in the areas that we deal with. Give them training so they can address some of these applicability requirements and understand the regulatory requirements. The DNR needs some mentors. For years we were dealing with Dale Zigge. He had an understanding of what was needed and he got moved to the water division.

Step up the supervision of the staff

If there is one thing I could change about the organization it's I wish they would have more consistent supervision and leadership in reining in [employees]. These individuals hurt the entire Department's reputation.

Cooperative relations with industry

Move in the direction of cooperative working relationships regulated industries.

Be a partner. If they were a partner I think you would see better communications. They would understand the process or the industry. They would see what monitoring requirements are necessary, the flexibility that's needed. I think there has to be a change in culture to be a partner with industry. That's the change I would like to see.

I think the big thing would be the partnership with the DNR. Let's not just have regulations for the sake of regulations. Let's have regulations that are actually going to protect the environment.

Allow for field visits

Get them out from behind their desks and see how the real world is working.

Accountability

Establish a firm time limit for the processing of permits

Getting realistic times for completion of permits from DNR staff. There's got to be some guidelines that say this is going to take so long and DNR needs to stick with it, to do it. They're going to do it in a month for a short permit and three or four months for a long permit. Then the staff would have to do it.

Hold the agency accountable for its management of permits

The DNR should be held to the standards of business: performance standards, metrics, goals, accountability. They're not.

Learn from other states

Applicants believe that Wisconsin's air program could learn from the way other states issue construction permits. Some ideas include:

- Start the 'clock' when the agency receives the application
- Create a single, consolidated permit for a facility and eliminate construction permits

Other states have tracking systems and schedules built on the date the application is received. They track it based on elapsed days since receipt and they suspend the period if they've submitted something formally in writing back to the client asking for information. If they don't pick it up for 30 days they've lost their own 30 days—not the client's 30 days.

Minnesota has what they call registration permits. There's like four different levels. Where WI makes you go through the whole thing even though actual emissions are X. In Minnesota you can apply for a permit considering both your actual maximum theoretical/potential to emit and actual emissions. If your actual are X you have this whole streamlined little process and it just goes right through. It's especially simple for fuel burning equipment.

The big advantage I see to the Minnesota process is that they have a single permit system. They don't have a construction permit and an operating permit. They'll just issue you an operating permit and you go back and modify it. It takes away many of the issues you have with Wisconsin's CONOP.

Reactions To Groups

Applicants were generally positive about the focus group discussions.

At the very close of the groups participants were asked, "How was today's discussion for you?" Typically they had three types of response:

- Positive comments about the discussion format
- Hope that their comments will sway the program
- Interest in participating in program changes

Positive reactions

It was a good day. I hope we get something out of it.

Very interesting. Very interesting people. I learned a lot.

I think the intentions are great. I think the idea—this kind of roundtable and look at what the concerns are—is great.

I hope it's been worthwhile. It was interesting to hear these other stories. I think you guys administered the meeting fairly, equitably. I didn't sense an agenda on your end. I think you heard what was being said. Hopefully it will get communicated to where it will make a difference.

It was good. Although I am cautiously optimistic. I hope that this will go beyond the recommendation phase and move towards actual change in the Department.

A great opportunity to air some things. And get the topics on discussion. It was interesting that we validated each other's stories.

This is a great setting but I don't want staff people to look at it and say "Aw, they're just bitching."

I'd like to hear the permit writers' side of it too. What are their complaints? Is there something we can do to help them?

I hope it will be useful. I hope our opinions help the whole system run better.

I feel for me it was a great help to identify some of the issues. But from my perspective we'd like to be part of the solution. Not only identify the problem but go further and have a blend of staff and outside people as a work group on how to fix it. Good to have continuing interaction.

This has been good and I appreciate the forum here and you've done a nice job. I appreciate being able to share. I hope to see something from it.

It was good. I know my company's not willing to publicly go with any of the frustrations. So this is a good forum for you to hear how they're really thinking.

I think it very good for us to be able to feel comfortable enough to tell you from our point of view what the issues and problems are.

I appreciate the safe forum to basically hear detailed concerns. I personally would feel comfortable telling this to anyone in the DNR. That said, my company would not necessarily give me that latitude.

I thought you did an excellent job of listening and letting us vent to the extent that we needed to. And also keeping us on track and I really appreciate that and I want to thank you.

Appendix I

Results From Group With Economic Development Specialists

We held one discussion group with economic development specialists. Nine people attended including representatives from city and regional offices, and one from the State Department of Commerce. The purpose of this group was to learn about specialists' experiences and opinions related to environmental permitting. Their views may be especially valuable because they work with firms that want to develop a new site or to expand on an existing one. They provide assistance near the beginning of the process, offering information on labor, access and markets. They may offer help with financing, and/or walk businesses through planning and zoning processes. While not directly involved in environmental permitting they are privy to some of the problems firms encounter.

Economic development specialists described the same permit problems that applicants raised. They agree that it is a long and costly process. The DNR views industry as an adversary and does little to understand its needs. Nor does business trust the DNR. They doubt that the agency can be trusted to maintain the confidentiality of proposed projects. Finally, specialists note that the agency's reorganization, coupled with the retirement or reassignment of staff, disrupted established working relationships. They believe that Wisconsin's environmental regulations are a key factor that businesses consider when making decisions about siting or expanding a plant. Other factors include taxation, labor and access to markets and materials.

Specialists said that the DNR would do well to work with business as a partner instead of an adversary. They suggest that the DNR can better educate them and the business community on environmental regulations. Adequate education may lead to early entry into the permit process and may reduce the time it takes to get a permit. Specialists want fresh, useful information along with a list of reliable first contacts within the agency.

Time And Money

Specialists pointed to the delays and monetary costs imposed by the permitting process.

Specialists agree with business: it takes too long for the DNR to issue a permit. Some also discussed costs and difficulties associated with new technologies. Only a few seemed to think that the rules themselves are a problem.

Timing

What's really interesting, you've listened for an hour, and there's not been one problem with the standards. The standards are not an issue. It has been how to get the permits in a timely manner, efficiently and not feel like you're being raked over the coals.

Cost

We have a company [name] ... he's got \$75,000 in legal fees and research fees and hiring consultants in getting a permit that he needs. And he doesn't have his permit yet. And it's been 18 months. And he's a little frustrated.

The DNR neither understands nor supports business.

Specialists believe the DNR makes little effort to understand or respond to the needs of business. Some think Department staffers treat permit applicants as adversaries. Applicants themselves are reluctant to speak up for fear of reprisals.

DNR lacks understanding.

Time and money drives the business side of it. On the regulatory side of it, that's never really brought in.

Businesses don't speak about problems for fear of reprisals

We have some companies in [area of] Wisconsin that, there's a fear that they don't want to speak out to the DNR because the DNR holds a tremendous amount of power. And there's like, "we don't want to get on their bad side because Lord knows, it's going to take twice as long the next time I have to submit a permit."

DNR has not maintained confidentiality on nascent projects

When we're working with clients, a lot of times the projects are really confidential. And in the past I've had companies that have contacted DNR and their projects have become public. That is a problem. And so that can make people very reluctant early on to make those contacts.

Investment and Expansion

Delay hinders investment and industrial expansion in Wisconsin.

Specialists talked at length about the need for a rapid start to construction in order for businesses to compete. Delays weaken a firm's competitive position. Many things can delay a project: local politics, zoning disputes, controversies over annexation, inadequate infrastructure. Specialists feel that they have some understanding and control of these issues. Air permits, however, are a complete unknown. They believe that when a permitting process drags on, the public becomes fearful that the proposed project is a threat to the community.

Importance of timely expansion

Businesses need the ability to respond to rapidly changing markets.

Especially right now when a lot of the companies are dealing with clients that want the product a lot faster, and they're expanding to meet the needs of the increased demand. It's a window of opportunity. Can they get the site, can they get a building and can they get it in fast enough to meet the client's needs? I've seen industries having to walk from expanding because they can't do it fast enough for the client.

Air permit delays are unique to Wisconsin

One of the things that I ran into is in Wisconsin, you cannot start a project till you have pre-approval. In other places, you can start your project, of course at your own risk.

A unique perception. I mean, you talk to businesses. They may or may not know first hand, but they'll say "It's easier somewhere else".

Consequences of problems with air permitting

Businesses may not consider Wisconsin for future investment.

[A manufacturer in a participant's community previously had a bad experience with permitting]. It took two years. Two years to get the permitting process for this company. ... [The president] said that they're convinced that their next expansion will not be in the state of Wisconsin. And they're looking at acquiring other companies through acquisition outside of the state.

Air permitting delays may lead the public to suspect something is wrong.

Sometimes when an industry is coming in and there's an environmental stigma that goes with it, and it has to go to the DNR and it takes a lot of time for the approval process, the perception is, there must be a problem. There must be an environmental problem. We don't want this industry.

Information

DNR should provide industry with useful information.

Specialists said that it would be helpful to offer businesses a short summary of permitting steps that includes up-to-date contact information and WEB address containing more detailed assistance. A few suggested the environmental equivalent to the WHEDA Business Wizard. The existence of this information should be promoted.

Promote information

People existing and paper existing to exist doesn't solve the problem, unless it's active, visible and meaningful.

Business Wizard

On the economic development side, a tool called the Business Wizard provides information about financing, planning and zoning.

It comes back with a one page list of all the places you should go. It doesn't tell you all the ins and outs of the permits, but it tells you where you should go to get these things after [you start]. And it does the other part of it except the environmental regulations.

Short summary

Do you anticipate maybe a one page that says these are the industry [permits] see our WEB site? I guess the question is, if we're putting together packets, we don't want to say just go see a WEB site.

Provide an environmental specialist

Some specialists suggested that the state should provide environmental specialists to help businesses through the environmental regulatory process in the same way that economic development specialists help business through the other aspects of the development.

We're basically business advocates. We're not on the regulatory side. But what might be missing on the permit side is a similar person at the state level that is the advocate for the applicants and helps them through the process.

Educate economic development specialists and DNR staff

Economic development specialists are often among business' first contacts as they explore expansion or siting a plant and they could provide environmental information early in the process. Participants also suggested that the DNR work with WHEDA to educate specialists, the business community, and others involved in the process. Finally, specialists suggested that the DNR should educate it's own staff on how they can work in partnership with business.

Educate specialists

What kind of information we hand out to perspective businesses. You could prepare material and help us to walk through that so we understand what we're sharing with people, so it's not just, you know, "here's a piece of paper that says, check out this WEB site." But we need to know what we're really telling people.

Try to educate us more in the process, in the permitting process and what it entails. So we can understand their plight as well. DNR's plight. Which, we can help them. We can help them communicate with our companies and businesses to maybe erode some of those negative perceptions as they go through the process. Right now, we're not there.

Educate through WHEDA

Other educational opportunities are the WHEDA organization. We do three conferences a year with economic development folks. There's a lot of engineering, consulting firms and all that in the group, so that's another opportunity. Secondly, we have the constituency of businesses in our own communities. So if you want to come in to a community and talk about storm water management or talk about an issue, we can bring a business audience to you and say, you know, "OK let's educate this group of businesses about a specific issue."

Educate DNR staff

I would also like to suggest another educational opportunity. And that would be with the staff at DNR. In that economic development is not the enemy. That we are not out to destroy the environment. That we really want to work in partnership. And that what we're trying to do is stimulate the economy of Wisconsin. And to have an understanding of what economic development is.

Appendix II Results from Group with Environmental Interests

We held one small discussion with environmental interests. Four people attended: two environmental attorneys and two representatives of environmental organizations. A fifth person submitted comments via email. We conducted this group to learn about the environmental community's experiences with and opinion of the air permitting program.

A variety of factors affect the public's ability to influence the air permit process in a meaningful way. Notices for public comment on draft permits, for example, do not contain useful information, and are difficult to read – very small font and “boilerplate” legal language. When the public attempts to participate in the public comment period they often find they have less than the legally required 30 days to comment. They find out about the period after it has commenced, and they often must spend time tracking down hard-to-gather documentation related to the permit.

The public is able to participate only late in the permit process. Environmentalists say that once a permit draft has reached public comment, it is as good as final. DNR staff have already spent substantial time developing the permit, and give the impression that they are defending the permit against adversaries who would comment against it.

Environmentalists say that their ability to meaningfully participate in the permit process would be greatly enhanced if they had better access to information about pending air permits. They suggest that information such as current and proposed emissions be included on public notices, and that preliminary determinations, permit applications, permit drafts and accompanying documentation be made easily available to the public. The WEB is a potentially useful tool if the documents are clearly labeled and posted where easily found. Environmentalists also suggest that the DNR notify the public of pending applications earlier in the process.

Public Involvement

While environmentalists believe the public should be involved in permitting, they say the public has little influence on the process.

Environmentalists say that the public should be involved in the permitting process. Public participation provides balance, offers additional expertise, and lends legitimacy to the process. Additionally, permits are meant to protect the public, therefore, who better to participate than those protected.

Public participation provides balance

It balances the information that the agency is getting. The handful of air permits and water permits that I've commented on and had people comment on, have pointed out, I think, significant oversights by the agency. And without it [public participation] those would have gone unnoticed by the agency and would have resulted in a bad permit.

Public participation offers expertise

We assume the public just means lay people. But the public actually means experts as well that can offer the DNR some assistance and expertise, not to say that the staff aren't experts themselves, but, it's not a brain trust if it's only one brain.

Public participation lends legitimacy

From a political perspective, the agency is dependent upon public support to continue to carry out its activities. And if you have a strong public support and an engaged public in DNR decisions, that is going to leverage a lot of DNR decisions that get made. And also public comments means transparency, which means a certain degree of public confidence in the agency.

Sense of powerlessness

Despite opportunities for public comment, the public is not confident they can influence the permit process in a meaningful way. Some participants think the public's late entry into the process hinders their influence, while others suggest that their inability to get adequate information is a problem.

The feedback I get from our members and citizens that we help is that they feel pretty powerless. You know, you get comments such as ... "I sure would like to spend my Saturdays and Sundays writing comments on these but why? Why should I?"

It's very difficult to convince the agency to waiver one way or the other. Convincing an agency to deny the permit or to force the facility to withdraw the permit application is almost out of the question. That will never happen.

Barriers to Participation

The public has little actual opportunity to participate.

Public notices are the DNR's primary means of notifying the public of a pending permit. However, environmentalists say they do not provide useful information. The notice does not specify what the proposed permit is for, nor its effect on emissions. Actively gathering more information is the only way the public can find out proposed permit details. Those who receive mailed notices say they are inundated with stacks of paper that do not inform. Finally, public notices use small font and legal boilerplate language which discourages reading.

Notices do not provide useful information

I think notices are actually supposed to be addressing that [informing the public about permits], the problem is that they're not. You end up with huge stacks of them. ... it's really hard to even find the facility name on there. You don't know, really, the nature of the application. The pollutants that they're talking about are not listed.

The public notice documents, whether they're published in the newspaper or whether, I'm sure most people here get the mailings, too. It's just boiler plate. It looks like the name of the company is stuck into a Word document and printed. It doesn't give even the pollutants, it doesn't give even the name of the pollutants much less the theoretical or potential pollutants coming out.

Notices are difficult to read.

That language [in mailed notice] is the same language that's going to go in the newspaper in probably smaller than 8 point font. If that's the only notice that people in the community have ... it doesn't tell them anything. It might as well be a notice that someone's estate ...

Inaccessible information

Several participants said that because information needed for meaningful comment is not easily accessible, they regularly spend time looking for it. Desired information includes compliance histories, documentation used in developing permits, and clearer access to preliminary determinations, permit applications and drafts.

There's nothing more aggravating to me than finding out afterwards that the agency was looking at specific studies and documents. They're not necessarily put into the documentation. There's kind of a public record, then there's the DNR's record. They're not always the same.

A lack of information inhibits public comment

Giving the public enough information to know what kind of questions to ask. Right now, this [notice] doesn't give you anything in which to even ask questions, or the questions would be so basic, that you would almost be embarrassed to ask them.

Time for commenting is truncated

Environmentalists say that the 30 day period has generally begun before they find out about a public comment period. Once they find out, they must spend time gathering information on the pending permit so that they may offer informed comments. This limits comment.

You get the notice on day five, call the staff person, get a call back two days later, ask for certain documents, several days for the mail or email, and then find out that you don't have all of them. Call back again. That's the process I've gone through every time. It's not the exception.

Late entry into permit process

Environmentalists say that by the time they are able to comment on a permit draft, the draft is as good as finished. They believe that because DNR staff has already invested considerable time in the process, they are more inclined to defend the permit than to consider comments. Environmentalists say that permit applicants have the opportunity to work with DNR staff while staff is developing the permit, but that the public is not afforded the same opportunity.

Usually, what I suspect is that it's an agency staffer that's sunk quite a bit of time into evaluating a permit application and has a certain degree of professional and personal investment in the quality of permit, and doesn't think that they've done anything wrong, or anything that needs to be changed.

Having gone through several public hearings, that's the feeling of the public when they show up, is that the industry and DNR are defending the permit at that point, and don't seem to be very receptive to public comments.

Complex permits

Environmentalists say that the permit is difficult to understand, especially for lay-people. They suggest that the permit very simply specify the conditions. Some suggested that the permit should include other information such as context and health effects.

Simplify permit

It couldn't be too simple for members of the public. ... I think what people want to see when they look at a permit is, this is what's going out this facility right now. It's in my community. Given new permit, this is what will be coming out of the facility after, if the permit's issued.

Context of the permit is important

Context of permit is important. Given that there may be other facilities in the area, what does the increase/change mean to overall air quality in the area.

Public Hearings

Public hearings are a useful tool for learning about draft permits.

Environmentalists say that public hearings can provide opportunities for learning more about the proposed permit. Additionally, public hearings provide a venue for the public to hear each other's views. Because they can learn new information, environmentalists think they should have an opportunity to make comments subsequent to the period.

Hearings provide information

You learn new things at the public hearing. For example, the permittee may show up and say, actually, we decided to change things in our permit application, and this is the way we are going to do it.

The need for comment after a public hearing

So allowing them that seven days afterwards, after they learn this information, sometimes for the first time, to have comments invites more meaningful comments.

I think it would be ideal to have it come earlier in the comment process where, make sure that we have a window for additional public comment after the public hearing. Because if the hearing is the only place where you get a dialogue going and people are hearing other people's concerns and you've got new things ... it can't just be the close of the comment period.

The public's use of hearings to express concerns not related to permit may be address by better information.

But I think ways to fix that, though are to solve the information deficit issue up front. And then we'll see whether or not we can influence or do a better job of influencing the process. And create a better working relationship between, you know, the public and the permit writers.

Sharing public perspectives

A public hearing ... ideally what that tool is for is for members of the public to sit there and hear what each other think. And that is the dialogue. The talk's about, all right we've got industry, we're going to need industry for the jobs, but how do we keep it as clean as we possibly can. And let's make decisions together about what the pollution in our community looks like, and what we can accept and what we can't. A public hearing, to me, that's a very important part of the dialogue.

Suggested Changes

Improved access to information and earlier entry to the process would enhance participation.

Environmentalists say the public would be better served if the public notices contained enough pertinent information to understand the effects of the proposed permit and if notices were easier to read. They also offered suggestions for using the Internet to make basic documentation more accessible.

Including more information, and making public notices easier to read

Give me meaningful, useful public notices, and clear permits. ... So that we know what to care about

Question and answer format

Or a question and answer format [for public notice]. ... "Who is this facility? What are they emitting? How much more are they emitting than they were before? What are they modifying at the facility?" Answer all those questions. "How can you comment?"

Plain language

You could put a lot of the plain language stuff in the public notice and in the PDA, preliminary analysis. And then have the permit be as technical as it needs to be precise.

Ideally notices would include information on existing and proposed emissions

For us, honestly, it's the baseline emissions and the volume increase [in] emissions. That would be one of the first things that I would look at.

Make information related to proposed permits more readily available

Keep all documentation related to proposed permit together

When the DNR decides to issue a permit, put permit draft, put into a folder, so that it's in one place, to be accessed, everything that went into that decision. And that creates, maybe either explicit or a presumed rule is that that is the record, and the only way it's going to be modified is through public comment or public participation. If it's possible, put on the WEB, so it's easier to access. So you're not having to track down everything.

Make WEB site more useful

Currently, information on the WEB is difficult to find.

Another idea for the WEB, offer information gathered through a GPS system

These are the sources in my area. Here are the fact reports for all of them. Here are the emissions that are coming out of them. Oh gee this one has a permit coming up, and then be able to get to that information and have it all packaged right there, helps not only the public, but I would think even regulated entities.



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The Capital Times May 5, 2004

DNR ripped over permits

WMC says approval is too slow

By Matt Pommer

The Capital Times

The "culture and attitude" of Department of Natural Resources workers came under fire Tuesday at a legislative hearing.

At issue is the speed with which the DNR's Air Bureau issues permits for construction and operation of manufacturing facilities in Wisconsin. The criticism came from Republican lawmakers and a spokesman for Wisconsin Manufacturers & Commerce as a joint committee reviewed a report by the Legislative Audit Bureau.

Sen. Carol Roessler, R-Oshkosh, said the top management of the agency deserves praise for efforts to streamline the permit process, "but I do not have the same confidence in the culture and attitude of all of the department."

Sen. Alberta Darling, R-River Hills, said the DNR needed to focus on the permit process.

A 2003 survey of chief executive officers of Wisconsin companies shows that permitting activities are a bigger issue than the tax climate.

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The Capital Times May 5, 2004

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DNR Secretary Scott Hassett defended the agency, citing its reduced work force and permit process streamlining. In a written statement, he also promised the agency would eliminate a federal operation permit backlog by December.

In a written statement to the committee, WMC Vice President James Buchen noted that Gov. Jim Doyle, a Democrat, had told a Business Day audience that "the state needed a culture change" that recognizes that "issuing a permit is a good thing."

"Industry agrees," Buchen continued. "Unfortunately, members who work with the DNR at a facility level indicate that despite the efforts of the 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, results must be seen sooner than later," said Buchen.

The 2003 survey of chief executive officers of Wisconsin companies shows that permitting activities are a bigger issue than the tax climate, Buchen reported. "Air construction permits have an important link to job creation," he added.

Hassett said his agency is in "substantial agreement" with changes suggested by the state audit report, and promised the agency would eliminate a backlog of federal operation per-

mits by December.

Last October the DNR eliminated some activities and reduced the level of effort in others to help tackle the backlog, according to Hassett. But he also noted that the Air Management Program has lost 20 percent of its staff resources in the last decade.

"This level of reduction has presented substantial management challenges for the program," said Hassett. He also defended the DNR's record in issuing construction permits.

"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 the EPA (the U.S. Environmental Protection Agency)."

The audit report noted that there had been long turnaround times for 40 permits. Hassett said that these "were often at the request of industry." That was a "customer service-orientated" approach, he said.

"This was done consciously and the department does not view this as a failure," added Hassett.

Another problem surfaced in February when the EPA issued a Notice of Deficiency linked to the rate at which the DNR, which administers federal rules, was issuing operation permits and whether the program was being funded adequately by industry fees.

Failure to resolve the Notice of Deficiency could result in the loss of some federal highway funds, he said. The EPA has given the DNR 18 months to resolve the NOD.

State Rep. Suzanne Jeske-witz, R-Menomonee Falls, asked why Wisconsin doesn't just let the EPA administer the federal air permit process.

Hassett and Lloyd Eagan, director of the Bureau of Air Management, responded that the fees would be higher and Wisconsin firms may not want to go to Chicago (the EPA's Midwest office) to deal with air management issues.

Hassett promised to update the committee before Oct. 1 on the implementation of changes recommended by the audit report.

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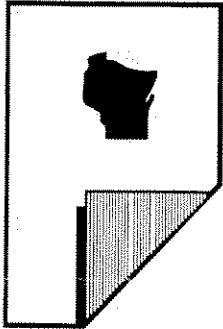
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May 7, 2004

MEMORANDUM TO: Joint Legislative Audit Committee

FROM:  Edward J. Wilusz
Director, Government Relations

SUBJECT: Testimony Regarding the Audit of DNR Air
Management Programs



The following is the testimony that I delivered to the Committee on May 4 regarding the audit of DNR air management programs.

I want to give you a short summary of our interest in DNR air management programs, a general reaction to the audit report, and a few specific comments on report recommendations.

Paper mills are highly regulated and air quality programs can have a significant impact on costs. Mills spend millions of dollars annually to comply with a variety of state and federal rules. We have been critical in the past about air program compliance costs, the permitting process, and the impacts that these issues have on investment decisions – Wisconsin companies simply face more hurdles than companies in most other states.

We want to emphasize that, for the most part, our concerns relating to air management programs are not about the standards that companies must meet. The paper industry is committed to protecting the environment and has a long track record of environmental stewardship.

Our concerns relate primarily to the process and procedures that companies must follow to obtain needed approvals and comply with the standards. A regulatory system that is adversarial, or slow to respond to proposed capital projects and that causes companies to incur disproportionately large permitting and compliance costs, directly affects the willingness of companies to invest needed capital in Wisconsin. The regulation of air quality is particularly important because of its ability to affect almost any capital project, no matter how small.

In general, the audit raises fundamental concerns about the management of air quality programs. Basic information about programs – emissions, billings, permit issuance, compliance, enforcement – appears to either not be effectively tracked or, if tracked, isn't used to manage programs. Performance appears to not be tracked on a regular basis and there is an apparent lack of interest in performance measures, in general. Overall, the audit raises issues that appear to point to a lack of accountability.

The audit raises some specific issues and we want to address a few of these. First, much is made of the Legislature's removal of the automatic consumer price adjustment to the air emission tonnage fee that funds the operation permit program. As the audit points out, the legislature shifted to a "performance-based" fee system for air emissions as part of the 1999-2001 state budget. The same change was made for wastewater discharge fees.

Previously, both fee programs included automatic fee increase mechanisms. The result of these automatic fee increase mechanisms was that, very often, facilities would reduce emissions or discharges, only to see fees increase. The legislature recognized that this created a financial disincentive for reducing emissions and discharges and eliminated the automatic increase mechanisms for both the air and water programs. As a result, when companies reduce emissions or discharges, fees will decrease, creating a direct financial incentive for better environmental performance. This is a sound policy that must be maintained.

Second, as the audit also points out, the 1999-2001 budget bill directed the DNR to establish objective performance measures for air management programs. This provision was adopted because there was no connection between funding levels and Air Bureau performance. More funding was always assumed to be the solution and the performance of the Air Bureau was never systematically reviewed or questioned. While the audit indicates that the DNR uses measures that it considers to be performance measures, the audit also says that these measures really do not address the underlying factors that influence program effectiveness or timeliness. The audit points out that it was October of 2003, well after this audit was requested and over four years after the Legislature mandated objective performance measures, that the DNR implemented new performance measures that attempt to measure outcomes. Even then, the department continued to ignore the requirement from the 1999 budget bill to form an advisory committee to assist in the development of these measures. In these difficult times – for both the State and its manufacturers – serious questions must be asked about a program that is reluctant to examine its own performance.

Third, the audit, in discussing operation permits, mentions two issues that are symptomatic of a broader problem – excessive time spent negotiating modeling results and excessive information requirements in certain determinations. The broader issue, which applies to both operation and construction permits, is the generally excessive level of detail and review associated with virtually every regulatory decision. This, in our opinion, stems from a culture that is highly distrustful of industry and a regulatory framework that imposes unnecessary burdens on all companies for fear that some company might actually violate a legal requirement.

It has long been the view of the paper industry, and others, that regulatory processes and procedures should be simplified. If violations occur, appropriate enforcement action should be taken. Shifting to this type of system will not be easy – it will require a cultural sea change at the DNR – but the shift must take place.



WISCONSIN STATE LEGISLATURE

Joint Audit Committee

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

May 26, 2004

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

Dear Mr. Hassett:

Thank you for your testimony at the public hearing on the Legislative Audit Bureau's evaluation of *Air Management Programs* (report 04-1) on May 4, 2004. We also wish to acknowledge receipt of your letter of May 5 and thank you for forwarding the various follow-up materials requested by the Committee at the hearing. We look forward to reviewing these documents in preparation for the follow-up hearing on air management anticipated this fall.

Thank you for your prompt response to our inquiries. We will contact you with more specific information concerning plans for the follow-up hearing when a date is determined.

Sincerely,

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

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

cc: Janice Mueller
State Auditor