



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 28
[2005 Assembly Bill 277]

**Air Pollution Permits and Report
on Regulatory Barriers**

2005 Wisconsin Act 28 relates to general air pollution control permits, the term of registration air pollution control permits, the effect of a challenge to an emission limitation in an air pollution operation permit, and a report on regulatory barriers affecting manufacturing.

Background Information

Act 28 includes changes to air pollution permit statutes created or modified by 2003 Wisconsin Act 118. Parts of Act 118 required the Department of Natural Resources (DNR) to streamline its air permitting program through expanded permit exemptions, use of registration and general permits, construction permit waivers, and permit consolidation. As set forth in Act 118, a registration permit may authorize the construction or operation or both for a stationary source of air pollution with “low actual or potential emissions.” That Act also specified that general permits may authorize the construction or operation or both for “similar stationary sources.”

Description of Act 28

2005 Wisconsin Act 28 does the following with respect to air pollution control permits:

- Authorizes the DNR by rule to exempt persons who qualify for a general permit from the requirement to obtain a construction permit.
- Prohibits DNR from specifying an expiration date for coverage under a registration permit unless one of any of the following three conditions occurs:
 - The owner or operator of the source subject to the permit requests an expiration date.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

- If the DNR finds that expiring coverage would significantly improve the likelihood of continuing compliance with applicable requirements compared to coverage that does not expire, the DNR may specify a term of five years or longer.
- If required by the Federal Clean Air Act, the DNR may specify a term of five years or less.
- Limits the statute which provides that an emission limitation contained in a construction or operation permit becomes effective, even if challenged by the owner, to emission limitations in construction permits. An exception to this requirement, that is not affected by the act, is that a challenged emission limitation is not effective if the owner obtains a stay of the emission limitation from the hearing examiner or court that is considering the challenge.

The first provision, identified above, is comparable to a provision on registration permits created by 2003 Wisconsin Act 118 at the end of s. 285.60 (2g), Stats., which states: “In the rules, the department may exempt persons who qualify for registration permits from the requirement to obtain a construction permit.” The treatment of the duration of registration permits under Act 28 is the same as the treatment of the duration of general permits under s. 285.66 (2) (b), as created by 2003 Wisconsin Act 118.

In addition to the above provisions relating to air pollution control permits, Act 28 also directs the Department of Administration (DOA) to prepare a report that identifies major regulatory barriers to the growth of the manufacturing sector in Wisconsin. The DOA must prepare this report in consultation with representatives of industry and others. In preparing the report, the DOA must examine state rules in areas that include employment, the environment, financial services, utilities, and transportation and must report on unnecessary barriers to growth and on consistency with the requirements of federal law and the laws of surrounding states. The DOA must submit this report to the Joint Committee for Review of Administrative Rules by September 1, 2006.

Additional Information

The DNR’s Air Permit Improvement Initiative includes implementation of the air pollution permit-related provisions in Act 28 and 2003 Wisconsin Act 118. For more information on this initiative, see <http://www.dnr.state.wi.us/org/dw/air/apii/index.html>.

Effective Date: Act 28 takes effect, in general, on August 27, 2005. The Act applies to challenges to emission limitations in operation permits that were issued on or after February 6, 2004, the effective date of 2003 Wisconsin Act 118.

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JES:ksm