



**Senator Moulton testimony on SB 144  
Senate Committee on Natural Resources and Energy  
May 13, 2015**

Mr. Chairman and committee members, thank you for the opportunity to speak to you today regarding Senate Bill 144.

The Department of Natural Resources administrative code currently requires facilities and projects that have the potential to emit greenhouse gases above certain thresholds to obtain air permits, as well as comply with “best available control technology” limitations on emissions.

On June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group v. Environmental Protection Agency*, invalidated this rule, holding that the Environmental Protection Agency regulations requiring facilities to obtain air permits or comply with limitations solely on the basis of potential greenhouse gas emissions were illegal. By order dated April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit vacated these federal regulations.

Therefore, the current Department of Natural Resources administrative code is not compliant with federal regulations, and is therefore unenforceable. This bill repeals the unenforceable portion of the DNR rules, ensuring that the rules remain consistent with the federal Clean Air Act.

This bipartisan bill does not turn back air quality standards. Instead, SB 144 provides the state with an enforceable air quality regulation that is federally compliant. This bill provides clarity to businesses who are looking to our state for potential investment by ensuring that our administrative rules are clear.

SB 144 ensures that Wisconsin’s administrative code is federally compliant, allowing for regulatory certainty of our administrative code. By ensuring federal compliance, this bill also ensures that Wisconsin will not be faced with a potential costly lawsuit regarding the enforcement of their air pollution regulations.

Thank you again for the opportunity to testify before you and for considering Senate Bill 144.

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**Testimony to the Wisconsin Senate Committee on Natural Resources and Energy  
Senate Bill (SB) 144**

**By Kristin Hart – Air Permit Section Chief  
Bureau of Air Management  
May 13, 2015**

Thank you, Chairman Cowles and Committee members for the opportunity to provide testimony today. I am Kristin Hart, the Chief of the Air Permits and Stationary Source Modeling Section in the Bureau of Air Management for the Department of Natural Resources, and I am testifying, for information only, regarding SB 144. This bill would eliminate an invalid requirement regarding major source construction permits for stationary sources that emit greenhouse gases.

On June 23, 2014, the US Supreme Court made an important decision in Utility Air Regulatory Group (UARG) v. EPA. This decision concerned the regulation of greenhouse gases. In summary, the Court said that greenhouse gases may not be treated as an air pollutant for purposes of determining whether a source is major under the major source new source review air permit programs. This means that construction of new equipment or changes to existing equipment that increase the emissions of greenhouse gases above the major source thresholds may not, by themselves, trigger review under the more rigorous major source construction permitting rules.

This bill repeals the portion of air permit rules that required major new source review for new construction or modification where only greenhouse gases exceed the review thresholds. The rule changes do not affect DNR's authority to continue regulating greenhouse gases for construction or modification where a different pollutant exceeds the review threshold. This rule change is consistent with EPA's guidance to states on implementing the Supreme Court's Decision.

Thank you for the opportunity to provide information on SB 144. I would be happy to answer any questions you have at this time.



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## MEMORANDUM

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**TO:** Members of the Senate Committee on Natural Resources and Energy  
**FROM:** Katherine B. White  
**DATE:** May 13, 2015  
**SUBJECT:** *Support of Senate Bill 144*

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Michael Best Strategies, on behalf of our client, Graymont Western Lime Inc., would like to express support for Senate Bill 144 (SB 144). Graymont is in the early stages of potentially expanding one of its manufacturing facilities in Wisconsin, and the passage of SB 144 would provide certainty and clarity as they continue to investigate growing their business in our state.

In 2014 the U. S. Supreme Court partially upheld a U.S. Environmental Protection Agency (EPA) rule which generally requires facilities that otherwise need an air permit based on their emission of conventional pollutants to also comply with "best available control technology" for greenhouse gases. However, the Court held to be illegal that portion of the rule which required facilities to obtain an air permit solely on the basis of potential greenhouse gas emissions. Wisconsin Administrative Rule Ch. NR 405.07(9)(a)2. mirrors that portion of the EPA rule which the U.S. Supreme Court invalidated and must be amended to ensure that state law is consistent with this holding of the U.S. Supreme Court.

Under Wis. Stat. §§ 285.11(16) and (17), DNR's rules in this regard must be consistent with the federal Clean Air Act. SB 144 would repeal NR 405.07(9)(a)2 and bring Wisconsin law into compliance with these state statutes and federal regulations. Additionally, it would provide certainty to the entities that are subject to this invalid regulation. The Wisconsin Department of Natural Resources (DNR) has indicated that, in recognition of the U.S. Supreme Court's decision, it will not enforce NR 405.07(9)(a)2. However, until it is officially repealed, the rule will continue to be published in the Administrative Code, creating a degree of uncertainty for regulated entities. This lack of clearness could give rise to potentially costly legal advice. This uncertainty hinders the efficient operation and growth of the state economy, for no strong policy reason and with no legal basis.

SB 144 would ensure that Wisconsin's regulations are consistent with the federal regulatory framework and, thereby, in compliance with state statute. The bill would also provide confidence for businesses, such as Graymont, that may be looking to invest within the State of Wisconsin. We urge you to support this legislation.

Thank you for your consideration.

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TO: Honorable Members of the Senate Committee on Natural Resources and Energy

FROM: Eric Bott, Director of Environmental and Energy Policy  
Wisconsin Manufacturers and Commerce

DATE: May 13<sup>th</sup>, 2015

RE: Support Senate Bill 128 and Senate Bill 144 – Repealing Unlawful and Antiquated Rules

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Wisconsin Manufacturers and Commerce (WMC) respectfully requests your support for two bills before the committee today – Senate Bill (SB) 128 and SB 144, legislation that efficiently removes obsolete and unenforceable administrative rules from Wisconsin's code. As Wisconsin's State Chamber of Commerce and Manufacturing Association, representing more than 3,800 member companies statewide, WMC is dedicated to ensuring that Wisconsin is the most competitive state in the nation to do business. Eliminating confusing red tape is a small but smart way to work toward this goal.

SB 128 repeals NR 128, a chapter of the administrative code that no longer serves any practical purpose other than to create potential confusion for the regulated community. The programs administered under NR 128 have either been transferred to other agencies or no longer operate.

SB 144 repeals an unlawful provision of Wisconsin's administrative code to maintain consistency with the federal Clean Air Act. In order to remain competitive, it is critical that Wisconsin avoid state requirements that are inconsistent or more stringent than those enforced by the U.S. Environmental Protection Agency (EPA). Such requirements drive up costs, add unnecessary confusion, and increase exposure to potential litigation.

In 2010, the EPA proposed a new series of regulations, including expansive new permitting requirements for power plants and large industrial facilities with the potential to emit greenhouse gases (GHGs) above certain thresholds. Wisconsin soon after adopted NR 405.07(9)(a)2 to maintain constancy with EPA's new regulation.

Last June, however, the U.S. Supreme Court rejected EPA's attempt to regulate GHGs emitted by stationary sources without the consent of Congress. As a party to the case heard by the U.S. Supreme Court, WMC commended the court for affirming the fact that we in America live in a nation of laws and not of bureaucratic whim. State and federal agencies must be held to the letter of the law just as citizens are each and every day.

Now that the U.S. Supreme Court has invalidated this portion of EPA's rule, Wis. Stat. §§ 285.11(16) and (17) compel the State to repeal its own unenforceable rule in NR 405. WMC commends the leadership of Rep. Jesse Kremer and Sen. Terry Moulton for seeking to resolve this problem through legislation, a considerably less time consuming and costly approach as compared to the administrative rule making process. WMC also thanks Rep. James Edming and Sen. Jerry Petrowski for championing SB 128.

Again, SB 128 and 144 will reduce confusion and potential costs for Wisconsin employers and strongly deserve your support.

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*Founded in 1911, WMC is Wisconsin's chamber of commerce and largest business trade association.*