



## 2011 SENATE BILL 404

January 26, 2012 - Introduced by Senator GALLOWAY, cosponsored by Representatives KLENKE, BROOKS, LITJENS, STEINEKE, KRUG, A. OTT, ENDSLEY, BALLWEG, MOLEPSKE JR and JACQUE. Referred to Committee on Natural Resources and Environment.

- 1     **AN ACT to create** 285.60 (3m) and 285.63 (3m) of the statutes; **relating to:**  
2             consideration of certain greenhouse gas emissions in determining  
3             requirements applicable to a stationary source of air pollution.

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### *Analysis by the Legislative Reference Bureau*

The federal Clean Air Act allows the Environmental Protection Agency (EPA) to authorize a state to administer the act if the state's air pollution control program is at least as stringent as the act. Currently, EPA delegates the authority to administer the federal Clean Air Act in this state to the Department of Natural Resources (DNR).

Current federal law and state law require construction permits and operation permits for certain stationary sources of air pollution, based on the amount of specified air contaminants emitted by the sources. Current law also requires certain stationary sources for which an air pollution permit is required to use what is called best available control technology (BACT) to control emissions of certain air pollutants. BACT requires the maximum degree of emission reduction achievable as specified by the permitting agency on a case-by-case basis, considering energy, economic, and environmental impacts.

EPA promulgated regulations, effective in 2011, requiring stationary sources that emit over threshold amounts of greenhouse gases to obtain construction and operation permits and requiring those sources to use BACT for greenhouse gas emissions. Greenhouse gases are gases, including carbon dioxide, that trap heat in the atmosphere. DNR promulgated corresponding rules. More recently, EPA

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modified its regulations by providing that, before July 21, 2014, carbon dioxide emissions from the burning or decomposition of organic material, other than fossil fuels, will not be counted toward the threshold for permitting because of greenhouse gas emissions or toward the requirement to use BACT. The modified federal regulation excludes from counting toward the threshold, for example, carbon dioxide emissions resulting from the decomposition of waste in a landfill, from burning gas derived from a landfill or manure digester, and from burning wood, wood waste, and other biomass.

This bill prohibits DNR from considering carbon dioxide emissions from the burning or decomposition of organic material, other than fossil fuels, in determining whether an air pollution construction permit or operation permit is required because of greenhouse gas emissions and in determining whether a stationary source is required to use BACT for greenhouse gas emissions, as long as this prohibition is consistent with federal law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 285.60 (3m) of the statutes is created to read:

2           285.60 **(3m)** CONSIDERATION OF CERTAIN GREENHOUSE GAS EMISSIONS. Unless  
3 required under the federal clean air act, in determining whether a person is required  
4 to obtain a construction permit or an operation permit for a stationary source under  
5 this section based on emissions of greenhouse gases, the department may not  
6 consider carbon dioxide emissions resulting from the combustion or decomposition  
7 of nonfossilized and biodegradable organic material originating from plants,  
8 animals, or microorganisms, consistent with 40 CFR 51.166 (b) (48) and the  
9 definition of "subject to regulation" in 40 CFR 70.2.

10           **SECTION 2.** 285.63 (3m) of the statutes is created to read:

11           285.63 **(3m)** CONSIDERATION OF CERTAIN GREENHOUSE GAS EMISSIONS. Unless  
12 required under the federal clean air act, in determining whether a major source is  
13 subject to best available control technology under sub. (3) (a) for greenhouse gas

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1 emissions, the department may not consider carbon dioxide emissions resulting from  
2 the combustion or decomposition of nonfossilized and biodegradable organic  
3 material originating from plants, animals, or microorganisms, consistent with 40  
4 CFR 51.166 (b) (48) and the definition of “subject to regulation” in 40 CFR 70.2.

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(END)