

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3122/P1dn
RCT:hmh:jf

October 3, 2001

This is a preliminary version of the proposal for reducing emissions from power plants. The federal Clean Air Act and Wisconsin's air statutes and rules are complex and I am not certain that this draft meshes properly with the existing body of air law. It might be helpful to ask the DNR legal staff that specialize in air issues to review this draft.

Provisions related to old power plants (proposed s. 285.28)

The instructions indicated that "existing" power plants should comply with the sulfur dioxide and nitrogen oxide requirements (new source performance standards) applied to new power plants. The federal legislation requires compliance with all of the new source performance standards, which currently also include particulate matter requirements. This draft requires compliance with all of the new source performance standards. Please let me know if you want only the sulfur dioxide and nitrogen oxide requirements to apply.

I was uncertain whether the intent of the federal legislation was to apply the new source performance standards only to power plants that are 30 years old when the legislation is enacted or to those plants plus plants that "turn 30" after the legislation is enacted. This draft does the latter. I was also unsure whether the intent was to require compliance with the new source performance standards that are in place when the legislation is enacted or with any later standards that are in place when the legislation begins to apply to a particular power plant (that is, when the plant turns 30 or 5 years after the legislation is passed, whichever is later). Again, this draft does the latter.

The federal legislation requires old power plants to comply with "the requirements under parts C and D that are applicable to modified sources." This draft does not include that provision because I do not know what federal statutory requirements that language refers to.

Other provisions

The federal legislation requires each power plant to achieve the specified levels of emissions if EPA does not promulgate the regulations within two years after enactment. This draft has a similar provision in case DNR does not promulgate rules. However, it is unclear how a power plant that began operation after 1997, for nitrogen oxide limits, or after 1990, for carbon dioxide limits, would be affected.

Unless different penalties are specified, the penalties in s. 285.87 will apply to violations of the provisions in this draft.

Please let me know if you want to provide DNR with any funding to administer this proposal.

This draft does not include any requirements concerning mercury because the instructions indicated that the intent is to allow DNR's current rule-making to proceed.

I received instructions to also do a version of this proposal without the carbon dioxide requirements. It seems to me that the most efficient way to do that will be to get this draft into final form and then base a version without the carbon dioxide requirements on the final version of this draft. If you have decided that you do not want the carbon dioxide requirements, please let me know.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us