

**2001 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-SB55)**

Received: 06/15/2001

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

This file may be shown to any legislator: NO

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Subject: **Environment - air quality**

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**Pre Topic:**

SDC:.....Keckhaver - CN1091,

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**Topic:**

Air management staff and fees

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 06/17/2001	wjackson 06/17/2001	kfollet 06/17/2001		lrb docadmin 06/17/2001		

FE Sent For:

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**Agency: Natural Resources**

**caucus number 1091**

duplicate flag:  
duplicate with:

Other reference numbers: Paper 690	LFB Sum #:
Alt 6	
bill number/amendment number:	
LRB draft #	LRB P-draft:

**description:** Adopt Alt 6 to this paper, which would approve the Governor's recommendation regarding Air Management Staff and Air Emissions Fees. Restore the CPI adjustment to \$0.86 per ton fee.

**other notes**

**Description2:** Adopt alternative 6 of paper 690 which would approve the Governor's recommendation regarding air management staff and air emissions fees. In addition, this alternative would restore the annual CPI adjustment of the emissions tonnage fee in 01-02 and retain the \$0.86 per ton fee, generating additional revenue of approximately \$339,300 PR in 01-02 and \$562,300 PR in 02-03. This amendment would also delete \$251,000 PR annually associated with the four air and waste division positions that are deleted under the bill. It would also restore the 8.0 positions that were deleted in alternative 2.

**drafting instructions:** Restore the 8.0 positions that were taken out in alternative 2, and provide \$458,600 PR annually.

**more instructions:**

Agency: **Natural Resources**

Number of Amendments: 1

*no attachment*

*RCT*

Adopt Alternative 6 to Paper 690, which would approve the Governor's recommendation regarding Air Management Staff and Air Emissions Fees. In addition, this alternative would restore the annual CPI adjustment of the emissions tonnage fee in 2001-2002 and retain the \$0.86 per ton fee, generating additional revenue of approximately \$339,300 PR in 200-2003 and \$562,300 PR in 2002-2003. This motion also would delete \$251,000 PR annually associated with the four Air and Waste Division positions that are deleted under the bill.

C101091

~~ACT~~  
ACT

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This Roll Call is unofficial.  
 The vote recorded by the Committee Clerk is the vote of record.

Date:	5/24/01							
Bill:	SB-55.							
Agency:	Natural Resources - Air, Waste and Contaminated Land							
Abbreviation:	DNR							
Topic:	Air Management Staff and Air Emissions Fees.							
Motion By:	Burke							
Second By:	Duff							
To:	Adopt Alternative 1							
Vote:	8-8							
Link To:	<a href="#">Paper 690.</a>							
Roll Call:								
Senators	Burke	Decker	Moore	Shibilski	Plache	Wirch	Darling	Welch
	Y	Y	Y	Y	Robson Y	Y	N	N
Representatives	Gard	Kaufert	Albers	Duff	Ward	Huebsch	Huber	Coggs
	N	N	N	N	N	N	Y	Y



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 24, 2001

Joint Committee on Finance

Paper #690

### **Air Management Staff and Air Emissions Fees (Natural Resources -- Air, Waste and Contaminated Land)**

[LFB 2001-03 Budget Summary: Page 497, #6 and Page 498, #7]

#### **CURRENT LAW**

The Department of Natural Resources (DNR) administers the requirements of the federal Clean Air Act Amendments of 1990 in Wisconsin. DNR issues operation permits for stationary sources of air emissions and construction (new source) permits for new and modified stationary sources, and conducts monitoring, compliance and enforcement, emission inventory, ozone control, modeling and planning activities. In 2000-01, DNR is authorized \$18,987,800 for 196.25 positions for air management activities. Approximately one-half of the staff work in the Madison central office and the other half work in the DNR regional offices in Eau Claire, Green Bay, Madison, Milwaukee, Rhineland and Spooner. Funding sources for the positions are: (a) 127.25 PR from stationary source emissions tonnage fees; (b) 19.5 PR from construction permit (new source review) fees; (c) 2.0 PR from asbestos abatement fees; (d) 2.0 PR from ozone-depleting refrigerants (CFCs) fees; (e) 38.0 FED from Environmental Protection Agency air program grants; (f) 0.5 FED from leaking underground storage tank program grants; (g) 6.5 SEG from the petroleum inspection fund; and (h) 1.0 GPR position. In addition, emissions tonnage fees collected by DNR are transferred to Commerce to fund 2.0 PR positions for administration of the small business clean air assistance program.

Of the authorized 196.25 DNR positions, the Bureau of Air Management is authorized 179.5 positions to conduct monitoring, permitting, planning and compliance activities. The Air and Waste Division is authorized 3.0 positions for divisionwide program management. The Division of Enforcement and Science is authorized 1.0 position for law enforcement and is also allocated \$120,000 in federal clean air grants. The Division of Administration and Technology is authorized 6.0 positions for legal, administrative and information technology services and is also allocated \$536,000 in federal clean air grants. The Division of Customer Assistance and

External Relations is authorized 6.75 positions for customer service and licensing, cooperative environmental assistance and communication and education strategy.

DNR assesses and collects emission tonnage fees for certain air pollutants emitted by operators of stationary sources of air pollution for which an operation permit is required. For calendar year emissions billed prior to 2002, stationary sources paid an emissions fee per ton that was adjusted annually according to changes in the consumer price index. 1999 Act 9 requires that, effective with fees assessed beginning in 2002 (billed in 2001-02 for calendar year 2001 emissions), a performance-based emission fee system be created. DNR is required to promulgate administrative rules that will: (a) use the fees billed in 2001 for calendar year 2000 emissions for each facility as the basis of the new fee system; (b) establish a fee system applicable to each facility based on a fee per unit of emissions, based on a five year rolling average of the amount of the emissions by the facility; (c) establish a performance-based approach, under which if an individual facility's amount of emissions increases from one year to the next, the amount of fees paid by the facility would increase proportionately, and if an individual facility's air emissions decreased from one year to the next, the amount of fees paid by the facility would decrease proportionately; (d) establish that the performance-based system will not include the use of multipliers or other similar measures to increase fees above the level based on actual emission levels; and (e) specify that the emission fee per ton set in the rule may not be changed. DNR is required to submit the proposed rule to the Legislative Council staff by July 1, 2001.

## GOVERNOR

Delete \$944,000 PR annually and 9.5 PR air management positions funded from air emissions tonnage fees, including 4.0 positions in the Air and Waste Division and 5.5 positions in the Division of Administration and Technology. Provide \$944,000 FED annually and 5.5 FED positions to convert funding for the 5.5 PR air management program staff in the Division of Administration and Technology to federal indirect revenues. Federal indirect revenues are the portions of federal grants received by the Department for general administrative or overhead costs. The Administration and Technology positions include 1.5 legal, 1.0 administrative and 3.0 information technology services positions. While the bill would delete four Air and Waste Division positions, it would not delete associated funding of \$251,000 PR annually. The DOA Budget Office indicates that the associated funding will not be expended and in addition, eight Air and Waste Division positions will be held vacant and associated funding of \$458,600 annually will not be expended in order to maintain air emissions funded expenditures within existing fee revenues.

Change the method of calculation of the annual air emissions fee paid to DNR by owners or operators of stationary sources of air pollution who must obtain an air pollution control permit from the Department. Under the bill, the fees assessed beginning in 2002 (fiscal year 2001-02) would be based on actual emissions of pollutants in the preceding year, instead of the preceding five years. The DOA Budget Office estimates that the formula change would result in no revenue change from current law.

## DISCUSSION POINTS

1. The DNR air management program is funded primarily from program revenues collected by DNR. Table 1 shows funding for DNR's air management program for 2000-01, and under the bill for 2001-02 and 2002-03. In 2000-01, program revenue provides 69% of expenditure authority and 77% of position authority. Federal funds provide 20% of expenditure authority and 19% of position authority. Stationary source emission tonnage fees provide the largest revenue source for the DNR air management programs. DNR assessed emissions tonnage fees totaling \$9.33 million in 1998-99 and \$9.77 million in 1999-00. DNR estimates it will assess emissions fees totaling \$10.5 million in each of 2000-01, 2001-02 and 2002-03. Appropriations from emission tonnage fees represent 58% of 2000-01 expenditure authority.

**TABLE 1**

**DNR Air Management Program -- Expenditure and Position Authority  
Adjusted Base Funding for 2000-01  
Governor's Recommendations for 2001-02 and 2002-03**

Source	Fund Source	2000-01 Funding (Adjusted Base)	2000-01 Positions	2001-02 Funding	2001-02 Positions	2002-03 Funding	2002-03 Positions
<b>Bureau of Air Management</b>							
<b>Program Fees</b>							
Stationary Source Emission Fees	PR	\$9,129,100	112.00	\$9,494,200	107.00	\$9,494,200	107.00
New Source Construction Permit Fees	PR	1,532,000	19.50	1,498,200	19.50	1,498,200	19.50
Asbestos Abatement Fees	PR	292,100	2.00	344,400	2.00	344,400	2.00
Ozone-Depleting Substance Fees	PR	131,400	2.00	133,100	2.00	133,100	2.00
Other Program Fees	PR	100,000	0.00	100,000	0.00	100,000	0.00
<b>Federal Grants</b>							
Clean Air	FED	3,164,500	37.50	3,164,500	38.50	3,164,500	38.50
Leaking Underground Storage Tank	FED	23,300	0.50	23,600	0.50	23,600	0.50
Petroleum Inspection Fund	SEG	1,366,700	5.00	1,373,900	5.00	1,373,900	5.00
General Fund	GPR	<u>67,400</u>	<u>1.00</u>	<u>68,200</u>	<u>1.00</u>	<u>68,200</u>	<u>1.00</u>
<b>Subtotal Bureau of Air Management</b>		<b>\$15,806,500</b>	<b>179.50</b>	<b>\$16,200,100</b>	<b>175.50</b>	<b>\$16,200,100</b>	<b>175.50</b>
<b>Air and Waste Division Management</b>							
Stationary Source Emission Fees	PR	357,200	3.00	355,600	3.00	355,600	3.00
<b>Division of Enforcement and Science</b>							
Stationary Source Emission Fees	PR	73,000	1.00	81,800	1.00	81,800	1.00
Federal Clean Air Grants	FED	120,000	NA	120,000	NA	120,000	NA
<b>Division of Administration and Technology</b>							
Stationary Source Emission Fees	PR	957,100	5.50	0	0.00	0	0.00
Federal Indirect Cost Reimbursement	FED	536,000	NA	944,000	5.50	944,000	5.50
Petroleum Inspection Fund	SEG	466,600	0.50	493,500	0.50	493,000	0.50
<b>Division of Customer Assistance and External Relations</b>							
Stationary Source Emission Fees	PR	509,200	5.75	593,800	6.75	593,800	6.75
Petroleum Inspection Fund	SEG	<u>162,200</u>	<u>1.00</u>	<u>163,900</u>	<u>1.00</u>	<u>163,900</u>	<u>1.00</u>
<b>Total DNR Air Management Funding</b>		<b>\$18,987,800</b>	<b>196.25</b>	<b>\$18,952,700</b>	<b>193.25</b>	<b>\$18,952,200</b>	<b>193.25</b>



NA = Not Available.

Notes:

(1) DNR is able to identify the estimated 2000-01 federal air grant funds that are allocated to enforcement and to administration and technology but is not able to identify the number of air-related positions in those programs that are funded from the federal air grants. Federal air grants in the Bureau of Air Management are estimated. It is probable that in 2001-02 and 2002-03, DNR would use federal clean air grants and other federal revenue to pay for the \$944,000 in expenditure authority converted from emissions fee revenues to federal indirect cost reimbursement under the bill.

(2) In addition to DNR air management funding, DNR will transfer additional emissions fee revenues to the Department of Commerce for administration of the small business clean air assistance program totaling \$174,200 in 2000-01, \$199,700 in 2001-02 and \$199,700 in 2002-03 for 2.0 positions.

(3) The bill would transfer 1.0 PR position from the Bureau of Air Management to the Division of Customer Assistance and External Relations in 2001-02.

2. The Clean Air Act Amendments require states to assess fees based on the tonnage of emissions generated by a facility and established an emissions tonnage fee of \$25 per ton plus an annual adjustment based on the consumer price index (CPI) as a presumptive minimum. Wisconsin adopted an air emissions tonnage fee system consistent with the Clean Air Act Amendments, beginning with 1992 emissions, and first collected emission fees in 1992-93. Wisconsin originally adopted an annual cap of 4,000 tons per pollutant per facility, which is optional under Clean Air Act Amendments.

3. In 1999 Act 9, the annual cap was increased to 5,000 tons, the CPI adjustment was deleted after 2000-01, a \$0.86 per ton fee was added beginning in 2000-01, and a performance-based fee system was established effective with fees assessed in 2001-02 for 2001 emissions, based on a five-year rolling average of the emissions by the facility. 1999 Act 9 also deleted 8.0 unfunded federal positions and created 5.0 PR positions funded from emission fees. Some industry representatives sought a performance-based fee system under which fees would decrease as emissions decrease and would increase as emissions increase.

4. While industry advisory groups to the DNR did not discuss a five-year rolling average as part of their 1998 discussions of potential revisions in the emission fee system, some industry representatives advocated use of a five-year rolling average as a way of lessening significant fee increases or decreases from year to year if emissions increase or decrease significantly in a given year. During 1999-01 biennial budget deliberations, some regulated air emission sources argued that fees should be linked to the performance of the facility rather than the amount necessary to fund DNR staff, and that any difference between performance-based fees and program costs should be paid from general purpose revenues.

5. States must demonstrate to EPA that the aggregate fees collected on emissions are adequate to cover the state's program costs associated with reducing the emissions of facilities being assessed the fees. If states charge less than \$25 plus the CPI adjustment, they must demonstrate that program funding is adequate to fund a state program that complies with federal requirements. States must charge more than the \$25 plus CPI adjustment if necessary to fund the direct and indirect costs of the operation permit program, including activities such as air quality monitoring, compliance and enforcement. States may also choose to use other funding sources such as general

purpose revenues, gas taxes and facility fees.

6. If EPA finds that state emission fees are inadequate to implement an operation permit program that complies with federal regulations, EPA may take action to implement the operation permit program in the state and charge fees to cover EPA program administration costs. EPA granted Wisconsin interim operation program delegation approval in March, 1995. EPA allowed all states to postpone submitting approval for permanent approval of the operation permit program while the states addressed any deficiencies cited by EPA in the interim approval. However, in early 2001, a settlement agreement in a federal lawsuit required states to obtain full approval of the operation permit by December, 2001, and EPA established a June 1, 2001, deadline for states to submit requests for full approval of the operation permit program.

7. On March 28, 2001, Governor McCallum submitted a request to EPA for approval of permanent program delegation to DNR for administration of the operation permit program. The request stated that resources are available to administer an adequate program. The request to EPA included supporting documentation prepared by DNR in January, 2001, that described DNR's budget request for a facility fee based on the level of emissions and adjusted annually based on the CPI and that indicated the additional revenues of \$2,007,100 in 2001-02 and \$2,047,200 in 2002-03 would improve funding of the program for the next four years. (DNR's proposed facility fee would have been at 150% of levels recommended by Governor Thompson in the 1999-01 biennial budget bill.) The Governor's submission also included a January 5, 2001, Attorney General's opinion indicating that DNR's program would meet EPA requirements based, in part, on the inclusion of DNR's budget request for additional resources generated through an annual facility fee. However, Governor McCallum's submission did not explain to EPA that the Governor's budget bill submitted to the Legislature the previous month did not include DNR's request for the creation of a facility fee or any additional revenues for the air management program. DOA indicates that if the state had not submitted the March request for permanent program delegation approval, EPA could have taken over the operation permit program in the state. (However, the EPA deadline for submission of requests is June 1, 2001.)

8. DOA indicates that the Governor's rationale for submitting a budget that includes no new air management revenues, reduces expenditures and moves program revenue expenditures to federal indirect revenues is that it remains unclear what level of funding will be needed to ensure Wisconsin's compliance with EPA regulations; thus, establishing new revenues for the program would be premature until the necessary funding level is determined.

9. When the state established emission tonnage fees, DNR anticipated that billable tons of emissions would total approximately 315,000 tons per year and that revenues collected would be sufficient to fund the air operating permit program activities. However, billable emissions have averaged approximately 282,000 tons per year and revenues have been insufficient to fully fund a level of staff that DNR believes may be needed to comply with federal requirements.

10. The actual and estimated emission fee revenues and expenditures are shown in Table 2. The assessed emission tonnage fees were \$9.3 million in 1998-99 for 281,000 billable tons of emissions in calendar year 1998, at a rate of \$33.19 per ton, and were \$9.8 million in 1999-00 for

289,200 billable tons of emissions in calendar year 1999, at a rate of \$33.80 per ton. Actual reported tons were 571,200. Most of the non-billable tons in excess of the cap were sulfur dioxide or nitrogen oxides. (A portion of the increase in estimated tons subject to the fee relates to increasing the cap from 4,000 to 5,000 tons.) Under the 1999 Act 9 provisions, the 2000-01 fee is \$35.71 per ton and will be assessed on approximately 295,000 tons. Fees would be assessed for a total of approximately \$10.5 million in 2000-01 (7% higher than the 1999-00 assessment). Table 2 shows actual and estimated fiscal year collections, which vary from the amount assessed because some revenues are received in the fiscal year after the fees are assessed. Under the bill, the emission tonnage fees assessed are expected to remain constant at an estimated \$10.5 million in each of 2001-02 and 2002-03.

**TABLE 2**  
**Air Emission Fees -- Revenues and Expenditures**  
**(\$ Millions)**

	1999-00 <u>Actual</u>	2000-01 <u>Estimated</u>	2001-02 <u>Estimated</u>	2002-03 <u>Estimated</u>
<b>Revenues</b>				
Opening Balance	-\$6.55	-\$1.99	-\$0.10	\$0.09
Emission Fees	<u>14.44</u> *	<u>13.49</u> *	<u>10.53</u>	<u>10.53</u>
Total Available	\$7.89	\$11.50	\$10.43	\$10.62
<b>Expenditures</b>				
DNR Division of Air and Waste	\$8.37	\$9.25	\$9.85	\$9.85
DNR Division of Enforcement and Science	0.07	0.07	0.08	0.08
DNR Division of Administration and Technology	0.81	0.97	0.00	0.00
DNR Division of Customer Assistance and External Relations	0.49	0.51	0.59	0.59
Commerce Small Business Clean Air Assistance Program	0.14	0.17	0.20	0.20
Reserves	0.00	0.38	0.33	0.52
Lapses	<u>0.00</u>	<u>0.00</u>	<u>-0.71</u> **	<u>-0.71</u> **
Total Expenditures and Reserves	\$9.88	\$11.35	\$10.34	\$10.53
Encumbrances	<u>0.00</u>	<u>0.25</u>	<u>0.00</u>	<u>0.00</u>
Closing Balance	-\$1.99	-\$0.10	\$0.09	\$0.09

\*In 1999-00, includes \$7.7 million from fees assessed in 1998-99 and excludes \$3.0 million assessed in 1999-00 and collected in 2000-01. In 2000-01, includes \$3.0 million assessed in 1999-00.

\*\* Assumes that \$251,000 annual funding associated with 4.0 deleted Air and Waste positions will not be expended and assumes an additional 8.0 Air and Waste positions will be held vacant and associated funding of \$458,600 annually will not be expended.

11. Under the bill, emissions fees would no longer fund activities in the Division of Administration and Technology but would instead convert \$944,000 PR annually and 5.5 PR positions to federal indirect revenues. In addition to the 5.5 positions, expenditures would include \$198,600 for facility rent costs and \$333,700 related to non-staff program supplies and permanent property costs. DOA indicates that the intent of the funding conversion is to minimize expenditures from existing emissions fees.

12. In 2000-01, DNR is allocating \$536,000 in federal clean air grants, or 14% of the total \$3.8 million awarded to DNR by EPA, as federal indirect revenues to fund activities in the Division of Administration and Technology. While DNR believes that it is currently receiving

\$536,000 in air program-related services from the Division of Administration and Technology, the Department is not able to quantify the level of air-related support or positions provided by the Division. The Department indicates that the Division of Administration and Technology provides services to the air program such as human resources, information technology, legal services, finance, budget and rent costs.

13. If DNR continues to allocate the current \$536,000 in federal clean air grants towards existing air-related support, under the bill it could fund some or all of the converted \$944,000 in expenditure authority by: (a) recalculating the portion of federal clean air grants that is allocated to the Division of Administration and Technology instead of the Division of Air and Waste (this might reduce the federal resources available to the Division of Air and Waste); or (b) reallocating federal indirect revenues from other program grants to the Division of Administration and Technology activities currently funded from emissions fees. Alternatively, the Department could reduce expenditures in the Division of Administration and Technology. DOA indicates that DNR would have to make a decision about how to allocate federal revenues to meet the Department's programmatic and administrative needs.

14. DNR is currently holding 11.5 of 179.5 Air Management Bureau positions vacant that are funded from stationary sources emission fees because revenues are insufficient to fund the authorized positions. Further, DNR is holding 1.0 position vacant that would be transferred under the bill to the Division of Customer Assistance and External Relations, and has 3.5 other Air Management Bureau vacancies. This means that 16 (9%) of the authorized 179.5 Bureau positions are vacant, when a vacancy level of approximately 5.5 positions might be expected due to a normal 3% turnover. Table 3 shows staffing levels in 1999, in 2001 under current law and in the 2001-03 biennium under the bill. The staffing levels in the 2001-03 biennium assume that the Air Management Bureau would hold eight emissions fees-funded positions vacant and would have normal turnover of approximately 5.5 positions. Currently, the Air Management Bureau has more positions filled than in May of 1999. Under the bill, the Air Management Bureau would have less positions filled than currently but more positions filled than in May of 1999. However, this would be accomplished by converting expenditures in the Division of Administration and Technology from emissions fees to federal indirect revenues.

**TABLE 3**

**Air Management Bureau Staffing Levels**

	<u>May, 1999</u>	<u>May, 2001</u>	<u>SB 55</u>	
			<u>2001-02</u>	<u>2002-03</u>
Filled Positions	157.5	163.5	162.0*	162.0*
Authorized Positions	180.5	179.5	175.5	175.5

\* Assumes an average of 5.5 vacancies due to normal turnover.

15. DNR officials have expressed concern that the current air management program may

have insufficient resources and staff levels to administer an adequate program to comply with federal requirements. DNR has also expressed concern that if EPA determines the DNR program to be inadequate, that EPA could act to take over the state program and directly administer Clean Air Act permitting and compliance activities. DNR officials believe the Department can provide quicker response than EPA to emission sources that are required to obtain operation permits. If EPA takes over the operation permit program in Wisconsin, it would collect fees to cover its administrative costs. Many regulated air emission sources in Wisconsin may prefer to be directly regulated by DNR rather than EPA.

16. EPA has increased federal enforcement, inspection and oversight activities in Wisconsin in the last four years, particularly in southeastern Wisconsin. In the current year, EPA and DNR agreed that EPA would conduct up to 40 inspections using approximately 2.3 EPA staff to address DNR's inspection shortfall. EPA and DNR have also agreed to have an EPA Region 5 employee work in Madison writing operation permit renewals on a temporary basis.

17. DNR has issued 744 federal operation permits and federally enforceable state operation permits as of April 1, 2001, plus 145 renewals or revisions. It has approximately 460 permits remaining to be completed. The Department estimates that there are 220 renewals or revisions that should be completed annually. The federal deadline for issuance of these permits was April, 1998, three years after EPA approval of the program. No state has met the EPA deadline.

18. EPA has not taken action to determine that the current DNR program is inadequate. However, it is probable that EPA will review state revenues provided for the operation permit program during its consideration of the state's request for permanent approval of the operation permit program. The EPA Office of the Inspector General has discussed funding resources with the DNR Air Management program. The Inspector General notified the Department on May 8, 2001, that the Wisconsin program will be audited as part of a nationwide evaluation of the operation permit program, with the intent of providing EPA and the states with suggestions for improving the process for issuing operating permits. While neither EPA nor DNR has identified the specific level of staff that would be required to demonstrate that DNR is administering an "adequate" program, EPA has placed increased attention on the issue of the availability of resources for the programs operated by DNR and other states.

19. 1999 Act 9 requested the Legislative Joint Committee on Audit to request the Legislative Audit Bureau to review DNR's air management programs, including a comparison of federally required aspects of the program and aspects required only by state law. To date, the Committee has not acted on the request.

20. As mentioned earlier, EPA is required, as a result of a recent legal settlement, to approve or reject the requests of all states for permanent delegation of authority to administer the operation permit program. EPA will have to take action on the submittal by Wisconsin and other states by December, 2001. It could approve full delegation of the program to the state, or deny the delegation and take over the operation permit program, or issue full delegation with a deficiency notice for portions of the submittal that are not acceptable to EPA. In the latter situation, the state would have one year to correct deficiencies. DOA indicates that if EPA objects to Wisconsin's

submittal, a review of the requirements needed to bring the state into compliance will be conducted and addressed based on the results of the review. DOA further indicates that the Governor and DNR will continue to work in cooperation with EPA to ensure that Wisconsin will meet permanent program delegation requirements.

21. DNR recently indicated that if the Division of Administration and Technology funding and 5.5 positions are converted to federal indirect revenues under the bill, the Department expects EPA may not approve the permanent delegation of the operation permit program to Wisconsin if EPA determines that Wisconsin is converting expenditures from emission fee revenues to federal indirect revenues to avoid paying for 100% of the costs of the operation permit program. However, DOA indicates that the budget bill should support the ongoing requirements of the operation permit program until a more thorough review of the program is completed.

22. If the Division of Administration and Technology funding and positions are maintained as funded from emissions fees and if no additional emissions fees revenues are provided, DNR would have to hold expenditures to \$944,000 less than authorized from emissions fees revenues to remain within available revenues. This would be in addition to the annual expenditure reductions of \$709,600 for four deleted positions and the eight positions held vacant in the Air and Waste Division under the bill. Total expenditures reductions of \$1,653,600 would be necessary. While past air program revenue shortfalls or expenditure reductions have generally been accomplished in the Air and Waste Division rather than in the support programs of the Division of Administration and Technology and the Division of Customer Assistance and External Relations, DNR officials indicate that an expenditure reduction of this magnitude may require review of departmentwide expenditures currently funded from emission fees.

23. The Committee could choose to obtain the \$1,653,600 in necessary annual expenditure reductions by reducing expenditure authority in all appropriations funded from stationary source fees by approximately 14% or by reducing expenditure authority in the Bureau of Air Management by approximately 17%. If the emission fee expenditure reductions would be allocated among all appropriations, the annual reductions would equal 18 of 115 current Air and Waste positions (13 of the 110 positions under the bill after deletion of the four and transfer of one to Customer Assistance and External Relations), 0.15 of 1.0 Enforcement position, 1.0 of 5.5 Administration and Technology positions, 0.85 of 5.75 Customer Assistance and External Relations positions (1.85 of 6.75 positions under the bill) and 0.25 of 2.0 positions in the Commerce small business clean air assistance program. Under this alternative, there would be position authority for 162.5 Bureau of Air Management positions and would allow approximately 157 filled positions, which would be less than current and 1999 staff levels. If the emission fee expenditure reductions would be allocated totally to the Bureau of Air Management, 21 positions (16 of the 110 positions under the bill) with \$1,653,600 PR annually could be deleted, leaving 159.5 positions in the Bureau.

24. The current requirement that DNR implement a fee structure beginning in 2001-02 that includes a five-year rolling average is expected to affect individual stationary emission sources in different ways, depending on whether the emissions of a facility increase or decrease. For example, if a facility's emissions decrease, the more recent lower emissions would be averaged with prior higher emissions and the facility would pay for a greater average number of tons than are

emitted in the current year. Conversely, if a facility's emissions are higher this year than in previous years, the facility would be assessed fees for a lower average number of tons than the current year emissions. The average emissions would be subject to the constant \$35.71 per ton fee that is in effect for 2000-01 and subsequent years. The five-year rolling average might lessen significant changes in fees from year to year if emissions increase or decrease by large amounts. While eliminating the five-year rolling average would increase or decrease fees for specific facilities, it is difficult to quantify the revenue impact for all emission sources. Recently, some industry representatives have indicated that they believe the five-year rolling average will not work as they had hoped because fees wouldn't decline as rapidly as had been hoped if emissions decrease.

25. Currently, beginning in 2001-02, and under the bill's elimination of the five-year rolling average, it is anticipated that stationary source emission fees will remain at approximately \$10.5 million tons. While DNR would still be required to promulgate a performance-based fee rule, the effect of the bill would be to assess the current fee of \$35.71 per ton on emissions in the last calendar year. This is the same fee calculation that existed prior to Act 9, but prior to Act 9, a CPI adjustment was applied to the fee rate annually, as included in the federal Clean Air Amendments as a presumptive minimum.

26. Some would argue that additional revenues should be provided to the air management program, to retain some of the authorized but unfunded positions, pay for costs that increase over time, and increase the likelihood that the DNR air program would obtain approval from EPA of delegation to administer the operation permit program. Others would argue that no additional revenues should be added until or unless EPA determines that Wisconsin's operation permit program does not meet federal requirements.

27. There are numerous options for providing revenues that would allow retention of some of the currently authorized but vacant positions in the Division of Air and Waste and/or fund the support activities provided by the Division of Administration and Technology.

28. One revenue option would be to restore the annual adjustment of the emissions tonnage fee based on the consumer price index, as included in the federal Clean Air Amendments as a presumptive minimum. For example, if the five-year rolling average would be eliminated under the bill, the CPI adjustment could be reinstated and the \$0.86 per ton fee added in 1999 Act 9 could be eliminated. Under this alternative, the fee would increase from \$35.71 per ton in 2000-01 to approximately \$36.00 in 2001-02 (3.3% increase) to generate approximately \$85,600 in additional revenue. The fee would increase to approximately \$36.76 in 2002-03 (2.1% increase) to generate approximately \$308,600 in additional revenue. This would provide sufficient revenues to retain four of the 12 positions in the Division of Air and Waste for which there are insufficient revenues under the bill. The Division of Air and Waste would have 171.5 authorized positions, of which approximately 166 would be filled under average turnover.

29. Another revenue alternative would be to reinstate the CPI adjustment and retain the \$0.86 per ton fee. Under this alternative, the fee would be approximately \$36.86 per ton in 2001-02 to generate approximately \$339,300 in additional revenue and approximately \$37.82 in 2002-03 to generate approximately \$562,300 in additional revenue. This would provide sufficient revenues to

retain eight of the 12 positions in the Division of Air and Waste for which there are insufficient revenues under the bill. The Division of Air and Waste would have 175.5 authorized positions, of which approximately 170 would be filled under average turnover.

30. Another revenue alternative would be to impose an annual facility fee on air emission sources, such as the structure proposed by DNR and Governor Thompson in the 1999-01 biennial budget bill. The 1999-01 biennial budget act did not include the facility fee. DNR again proposed a facility fee in the Department's 2001-03 biennial budget request, with a CPI annual adjustment of the fee rate. If a facility fee would be enacted using the structure and fee rates included in the Governor's 1999-01 budget, with a CPI annual adjustment, the facility fee would generate additional revenue of approximately \$1,338,100 in 2001-02 and \$1,364,900 in 2002-03. The minimum threshold would exempt emitters of small quantities less than five tons, which are currently exempt from the emission tonnage fee. Under this revenue alternative, the annual facility fee would be: (a) \$50 if the total amount of emissions is at least five tons but does not exceed 25 tons; (b) \$650 if the emissions exceed 25 tons but do not exceed 100 tons; (c) \$2,000 if the emissions exceed 100 tons but do not exceed 250 tons; (d) \$7,000 if the emissions exceed 250 tons but do not exceed 4,000 tons; and (e) \$20,000 if the emissions exceed 4,000 tons. This would provide sufficient revenues to retain eight of the 12 positions in the Division of Air and Waste for which there are insufficient revenues under the bill. It would also allow retention of emissions fee funding for the Division of Administration and Technology instead of converting it to federal indirect revenues (\$944,000 and 5.5 positions annually). The Division of Air and Waste would have 175.5 authorized positions, of which approximately 170 would be filled under average turnover.

31. If current law is maintained, there would be \$12.2 million annually in authorized expenditures from emissions fees revenues but available revenues would be \$10.5 million annually. DNR would have to reduce expenditures by approximately \$1.7 million annually and hold approximately 17.5 of 127.25 positions authorized from emissions fees vacant in order to maintain air emissions funded expenditures within existing fee revenues. DNR would have to continue its current process of promulgating an emissions fee rule for 2001-02 assessments that includes a five-year rolling average and would apply that system with a \$35.71 fee per ton.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to: (a) delete \$944,000 PR annually and 9.5 PR air management positions funded from air emissions tonnage fees, including 4.0 positions in the Air and Waste Division and 5.5 positions in the Division of Administration and Technology; (b) provide \$944,000 FED annually and 5.5 FED positions to convert funding for the 5.5 PR air management program staff in the Division of Administration and Technology to federal indirect revenues; and (c) change the method of calculation of the annual air emissions fee so that the fees assessed beginning in 2002 (fiscal year 2001-02) would be based on actual emissions of pollutants in the preceding year, instead of the preceding five years.



<u>Alternative 1</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	\$1,888,000	- \$1,888,000	\$0
<i>[Change to Bill]</i>	\$0	\$0	<i>[\$0]</i>
2002-03 POSITIONS (Change to Base)	5.50	- 9.50	- 4.00
<i>[Change to Bill]</i>	0.00	0.00	<i>0.00]</i>

2. Approve the Governor's recommendation and, in addition: (a) delete \$251,000 PR annually associated with the four Air and Waste Division positions that are deleted under the bill; and (b) delete \$458,600 PR annually and 8.0 PR positions in the Air and Waste Division positions that would be held vacant under the bill to maintain air emissions funded expenditures within existing fee revenues.

<u>Alternative 2</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	\$1,888,000	- \$3,307,200	- \$1,419,200
<i>[Change to Bill]</i>	\$0	- \$1,419,200	- \$1,419,200]
2002-03 POSITIONS (Change to Base)	5.50	- 17.50	- 12.00
<i>[Change to Bill]</i>	0.00	- 8.00	- 8.00]

3. Approve the Governor's recommendation to change the method of calculation of the annual air emissions fee so that the fees assessed beginning in 2002 (fiscal year 2001-02) would be based on actual emissions of pollutants in the preceding year, instead of the preceding five years. Restore \$944,000 PR annually and 5.5 PR positions in the Division of Administration and Technology from emission fee revenues instead of converting the expenditure authority and positions to federal indirect revenues. Delete annual expenditure and position authority in all emission fees appropriations as follows: (a) \$1,343,000 PR and 13.0 PR positions in the Division of Air and Waste; (b) \$9,800 PR and 0.15 PR position in the Division of Enforcement and Science; (c) \$130,300 PR and 1.85 PR positions in the Division of Customer Assistance and External Relations; (d) \$156,800 PR and 1.0 PR position in the Division of Administration and Technology; and (e) \$13,800 PR and 0.25 PR position in the Department of Commerce small business clean air assistance program. (This would reduce funding and position authority in every stationary source emission fees appropriation in DNR and Commerce by approximately 14%.)

<u>Alternative 3</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	\$0	- \$3,307,200	- \$3,307,200
<i>[Change to Bill]</i>	- \$1,888,000	- \$1,419,200	- \$3,307,200]
2002-03 POSITIONS (Change to Base)	0.00	- 20.25	- 20.25
<i>[Change to Bill]</i>	- 5.50	- 10.75	- 16.25]

4. Approve the Governor's recommendation to change the method of calculation of the annual air emissions fee so that the fees assessed beginning in 2002 (fiscal year 2001-02) would be based on actual emissions of pollutants in the preceding year, instead of the preceding five years. Restore \$944,000 PR and 5.5 PR positions in the Division of Administration and Technology from emission fee revenues instead of converting expenditure and position authority to federal indirect

revenues. Delete \$1,653,600 PR and 16.0 PR positions in the Division of Air and Waste. (This would reduce Air and Waste funding by 17% to maintain expenditures within available revenues and includes deletion of funding for the 4.0 PR positions that are deleted under the bill.)

<u>Alternative 4</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	\$0	- \$3,307,200	- \$3,307,200
[Change to Bill]	- \$1,888,000	- 1,419,200	- \$3,307,200]
2002-03 POSITIONS (Change to Base)	0.00	- 20.00	- 20.00
[Change to Bill]	- 5.50	- 16.00	- 16.00]

5. Approve the Governor's recommendation and in addition, approve the following: (a) restore the annual CPI adjustment of the emissions tonnage fee in 2001-02 and delete the \$0.86 per ton fee, to generate additional revenue of approximately \$85,600 PR in 2001-02 and \$308,600 PR in 2002-03; (b) delete \$251,000 PR annually associated with the four Air and Waste Division positions that are deleted under the bill; and (c) delete \$229,300 PR annually and 4.0 PR positions in the Air and Waste Division to maintain air emissions funded expenditures within existing fee revenues. (The five-year rolling average would be eliminated and the estimated stationary source emissions tonnage fee would be \$36.00 per ton in 2001-02 and \$36.76 in 2002-03.)

<u>Alternative 5</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 REVENUE (Change to Base)	\$0	\$394,200	\$394,200
[Change to Bill]	\$0	\$394,200	\$394,200]
2001-03 FUNDING (Change to Base)	\$1,888,000	- \$2,848,600	- \$960,600
[Change to Bill]	\$0	- \$960,600	- \$960,600]
2002-03 POSITIONS (Change to Base)	5.50	- 13.50	- 8.00
[Change to Bill]	0.00	- 4.00	- 4.00]

*that existed before 09*

6. Approve the Governor's recommendation and in addition, approve the following: (a) restore the annual CPI adjustment of the emissions tonnage fee in 2001-02 and retain the \$0.86 per ton fee, to generate additional revenue of approximately \$339,300 PR in 2001-02 and \$562,300 PR in 2002-03; and (b) delete \$251,000 PR annually associated with the four Air and Waste Division positions that are deleted under the bill. (The five-year rolling average would be eliminated and the estimated stationary source emissions tonnage fee would be \$36.86 per ton in 2001-02 and \$37.62 in 2002-03.)

<u>Alternative 6</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 REVENUE (Change to Base)	\$0	\$901,600	\$901,600
[Change to Bill]	\$0	\$901,600	\$901,600]
2001-03 FUNDING (Change to Base)	\$1,888,000	- \$2,390,000	- \$502,000
[Change to Bill]	\$0	- \$502,000	- \$502,000]
2002-03 POSITIONS (Change to Base)	5.50	- 9.50	- 4.00
[Change to Bill]	0.00	0.00	0.00]

7. Approve the Governor's recommendation to change the method of calculation of the annual air emissions fee so that the fees assessed beginning in 2002 (fiscal year 2001-02) would be based on actual emissions of pollutants in the preceding year, instead of the preceding five years. In addition, approve the following: (a) create an annual facility fee on stationary air emission sources to generate additional revenue of approximately \$1,338,100 in 2001-02 and \$1,364,900 in 2002-03 with fee amounts of: (1) \$50 if the total amount of emissions is at least five tons but does not exceed 25 tons (emitters of less than five tons would be exempt); (2) \$650 if the emissions exceed 25 tons but do not exceed 100 tons; (3) \$2,000 if the emissions exceed 100 tons but do not exceed 250 tons; (4) \$7,000 if the emissions exceed 250 tons but do not exceed 4,000 tons; and (5) \$20,000 if the emissions exceed 4,000 tons; (b) increase the facility fee annually according to the consumer price index; (c) provide \$944,000 PR annually and 5.5 PR positions for the Division of Administration and Technology instead of converting to federal indirect revenues under the bill; and (d) delete \$251,000 PR annually associated with the four Air and Waste Division positions that are deleted under the bill. (The stationary source emissions tonnage fee would remain at \$35.71 per ton in 2001-02 and subsequent years.)

<u>Alternative 7</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 REVENUE (Change to Base)	\$0	\$2,703,000	\$2,703,000
[Change to Bill]	\$0	\$2,703,000	\$2,703,000]
2001-03 FUNDING (Change to Base)	\$0	-\$502,000	-\$502,000
[Change to Bill]	-\$1,888,000	\$1,386,000	-\$502,000]
2002-03 POSITIONS (Change to Base)	0.00	0.00	0.00
[Change to Bill]	-5.50	5.50	0.00]

8. Maintain current law. (DNR would have to reduce expenditures by approximately \$1,650,000 annually and hold approximately 17.5 of 127.25 positions authorized from emissions fees vacant in order to maintain air emissions funded expenditures within existing fee revenues. DNR would have to continue its current process of promulgating an emissions fee rule for 2001-02 assessments that includes a five-year rolling average.)

<u>Alternative 8</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2001-03 FUNDING (Change to Base)	\$0	\$0	\$0
[Change to Bill]	-\$1,888,000	\$1,888,000	\$0]
2002-03 POSITIONS (Change to Base)	0.00	0.00	0.00
[Change to Bill]	-5.50	9.50	4.00]

Prepared by: Kendra Bonderud

**Hanaman, Cathlene**

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**From:** Keckhaver, John  
**Sent:** Thursday, June 14, 2001 12:27 PM  
**To:** Hanaman, Cathlene  
**Subject:** CN 1019

Cathlene,

I had a discussion with LFB regarding CN 1019<sup>a1</sup>. In addition to the other things going on in this amendment, please restore the 8.0 positions that were taken out in alternative 2, and provide \$458,600 PR annually.

Thanks.

John

RCT



State of Wisconsin  
2001 - 2002 LEGISLATURE

SOON

LRBb0836/1  
RCT:/.....  
WJ

SDC:.....Keckhaver – CN1091, Air management staff and fees

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 √ 1. Page 156, line 14: increase the dollar amount for fiscal year 2001-02 by  
3 \$458,600 and increase the dollar amount for fiscal year 2002-03 by \$458,600 for the  
4 purpose of increasing the authorized FTE positions by 8.0 PR positions for the  
5 purposes for which the appropriation is made.

6 √ 2. Page 1057, line 21: after that line insert:

7 "SECTION 3222c. 285.69 (2) (a) 11. √ of the statutes is amended to read:

8 285.69 (2) (a) 11. That no provision is used that would increase the fee per unit  
9 of pollutant emitted in order to compensate for decreases in overall amounts of  
10 emissions, but that for fees billed in each year after 2001 the fee per unit of pollutant

1 emitted is increased by the percentage by which the consumer price index, as defined  
2 in 42 USC 7661a (b) (3) (B) (v), increased in the preceding year.”

3 History: 1979 c. 34, 221; 1987 a. 27; 1989 a. 56; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27; 1995 a. 227 ss. 495 to 499; Stats. 1995 s. 285.69; 1997 a. 27, 35; 1999 a. 9.

(END)

SDC:.....Keckhaver – CN1091, Air management staff and fees

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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3 (END)