State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

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Date Added To File: 11/05/2003 (Per: GMM)

☞ The 2003 drafting file for the following compile drafts

LRB 03–3380

LRB 03–3426

LRB 03–3455

LRB 03–3599

have been transferred to the drafting file for

2003 LRB 03–3629

LRB-3455

2003 DRAFTING REQUEST

Bill

Received: **10/09/2003**

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Cathy Stepp (608) 266-1832**

By/Representing: **Scott Manley**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact: **Jeff Schoepke, WMC**
Jeff Fassbender

Addl. Drafters:

Subject: **Environment - air quality**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes concerning air pollution permits

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/P1	btradewe 10/24/2003	csicilia 10/28/2003	jfrantze 10/29/2003	_____ _____	lnorthro 10/29/2003		S&L
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LRB-3455

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required

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Chapter 285
(Air Program)

[**Note**: These proposals relating to Chapter 285 require additional refinement prior to submittal to LRB for drafting.]

1. Issue: Adoption of EPA New Source Review Reforms

Incorporation into Wisconsin's air permitting program federal New Source Review reforms.

Background: EPA promulgated rules to reform the new source review (NSR) program. The reforms would be administered by the EPA under the Clean Air Act and would "remove the obstacles to environmentally beneficial projects, clarify NSR requirements, encourage emissions reductions, promote pollution prevention, provide incentives for energy efficiency improvements, and help assure worker and plant safety." For more than two decades, states, industry and the EPA have recognized that the NSR program needs serious repair. The final and proposed NSR rules will help promote safer, cleaner and more efficient factories, refineries and power plants.

Adopting the federal NSR reforms in Wisconsin is a high priority for Wisconsin's business community. While it is encouraging DNR has recently made NSR modifications a priority, it remains unclear whether meaningful changes can be accomplished through a DNR-led advisory committee. In addition, there is an argument the Legislature should formally be a part of these deliberations.

Proposal: Add s. 285.11 (19) to require DNR do the following:

> (19) Promulgate rules by [date specific, or within set period from the EPA rules' effective date] that incorporate changes promulgated by the U.S. environmental protection agency to the federal clean air act new source review program and without any state-only requirements that are inconsistent or more stringent than the federal program.

2. Issue: Criteria for Listing Hazardous Air Contaminants not regulated by EPA

Establish criteria and related findings necessary before DNR can regulate hazardous air contaminants not regulated by EPA.

Background: The Legislature, under s. 285.27 (2), set forth a general policy that regulating hazardous substance not regulated by EPA are allowed, but only upon a finding such regulation is necessary. The existing provision provides that "If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant **if the department finds the standard is needed to provide adequate protection for public health and welfare**."

DNR recently promulgated significant revisions to the existing air toxics rules (NR 445). In some ways the rule was improved during the 3-year advisory committee process. But despite these changes, expanding the program by adding 144 new substances (bringing the total to 577) and lowering many thresholds substantially increases the reach of the rule and creates new burdens for sources already regulated under NR 445. The federal program regulates 188 substances. Although DNR made the requisite "finding" that the regulation of these additional substances was need, they did not undertake any analysis that the substances posed any actual environmental or health risks. Thus, the benefits were never quantified, much less shown to be sufficient to justify the $100 million price tag industry must cover in the first year.

DNR's mercury initiative, also recently promulgated after year of advisory committee deliberation, had similar policy defects. Proceeding with a state-only mercury rule at this time would impose substantial burdens on utilities targeted by rule, and substantially increase the cost of doing business in Wisconsin through higher electric rates. The proposal would have little impact on Wisconsin water quality, and the effort will be proved meaningless because state law requires such standards to be superceded by pending federal mercury standards.

The primary policy defect that needs to be addressed is the lack of any legislative direction on what factors or other considerations should be part of the finding of need. The result is that DNR has a blank check to add any substances not regulated by EPA.

A related issue is the inherent inconsistencies and duplication resulting from both a comprehensive federal and state program to regulate hazardous air contaminants. For example, the 1990 amendments to the federal program restructured prior law with an objective to regulate area source and industrial categories rather than concentrating on individual pollutants. In contrast, the state program continues to target individual pollutants, create inconsistencies and complexities. In addition, separate administrative components relating to permitting, monitoring and compliance requirements create additional inconsistencies and unnecessary redundancies.

Proposal: Revised s. 285.27(2) and (4) as follows:

285.27 Performance and emission standards.

(1) Standards of performance for new stationary sources.

Note: Modify same as sub (2)

(a) *Similar to federal standard.* If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).

(b) *Standard to protect public health or welfare.* If a standard of performance for any air contaminant for new stationary sources is not promulgated under section 111 of the federal clean air act, the department may promulgate an emission standard of performance for new stationary sources if the department finds the standard is needed to provide adequate protection for public health or welfare.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard of performance for a new stationary source than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive emission standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

(2) Emission standards for hazardous air contaminants.

(a) *Similar to federal standard.* If an emission standard for a hazardous air contaminant is promulgated under ~~section 112 of~~ the federal clean air act, the department shall promulgate ~~by~~ a rule that incorporates ~~a similar~~ such standard and related administrative requirements. ~~but t~~This ~~standard~~ rule may not be more restrictive in terms of emission limitations or otherwise more burdensome to affected sources than the comparable federal ~~standard~~ requirements except as provided under sub. (4).

(b) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under ~~section 112 of~~ the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare. The department's finding shall be supported with written documentation relating to each hazardous air contaminant that includes all of the following:

1. A human health and ecological risk assessment that characterizes the Wisconsin sources known to release the hazardous air contaminant and the receptors that are potentially at risk from the release.

2. An analysis and related finding that identified receptors are subjected to inhalation levels of the hazardous air contaminant above recognized environmental health standards.

3. An evaluation of risk management options considering risks, costs, economic impacts, feasibility, energy, safety and other relevant factors, and a finding that the preferred risk management option reduces risks in the most cost-effective manner practicable.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard for a hazardous air contaminant than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

(4) Impact of change in federal standards. If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state

standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. The department's finding shall be supported with that written documentation required under subsection (b). This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.

Tradewell, Becky

From: Manley, Scott
Sent: Friday, October 03, 2003 10:55 AM
To: Tradewell, Becky
Cc: Malaise, Gordon
Subject: FW: Ch. 285

Becky,

Attached below is the additional information needed to begin drafting the Chapter 285 reforms in the omnibus bill, that is in addition to the information already submitted to you. I would call your attention to item #5 on page 6, which is noted as a "work in progress." You do not need to do any drafting for that particular item at this time. We will let you know if we develop this idea further, and want to include it in the draft.

Thank you!

Scott
-----Original Message-----
From: Jeff Schoepke [mailto:jschoepke@wmc.org]
Sent: Friday, October 03, 2003 10:19 AM
To: Manley, Scott
Subject: Ch. 285

Scott-

Here are Ch. 285 permitting items, as discussed prior. There are couple items I wanted to note for you, and I just called and left a message. Please give me a call when you have a chance.

Thanks again for all your help.

Jeff Schoepke
Director of Environmental Policy
Wisconsin Manufacturers & Commerce
ph: (608) 258-3400 fax: (608) 258-3413
jschoepke@wmc.org

Regulatory Reform

Chapter 285 – DNR's Air Program

(Oct. 2, 2003)
Draft – Not for Distribution

Prefatory Note: Delays in getting necessary air permits are not necessarily related to the lack of deadlines – the statutes already have specific timelines. Rather, DNR processes impede permit approval. For example, DNR has a 20-day statutory deadline to inform the applicant what information is needed to assess the application (DNR's "completeness determination"), with a requirement to issue a "preliminary determination" on the approvability of the permit within 30 days of after receipt of the information DNR deems necessary. DNR routinely issues a letter noting the application is incomplete, which in effect, indefinitely "tolls" the 30-day preliminary determination deadline. This and other "negotiations" with DNR relating to the permit application delay approvals interminably, sometimes killing the project altogether.

A related issue is the overall scope of the permit program; that is, the air program "construction ban" is too sweeping, delaying projects that do not pose any meaningful threat. There is a misconception that unpermitted activities are unregulated sources of air pollution. In actuality, a permit merely memorializes in one place existing emission limits a business must meet; whether or not they have a permit. Thus, these proposals to reduce or streamline permitting requirements do not affect a source's primary responsibility to meet substantive environmental standards.

The purpose of these proposed changes is to provide the following four-tiered permitting process:

1. **Permit Exemptions.** Expand permit exemptions by eliminating permit requirements for those sources that do not emit meaningful levels of air contaminates.
2. **Registration Permits.** Create a new permitting option to allow, upon written notice to DNR, owners/operators to commence construction and operation of sources that by their design or operation parameters can not reasonably be expected to exceed applicable emission limitations.
3. **General Permits.** Modify existing general permit provisions for non-unique sources to allow owners/operators to commence construction and operation if there is a general operating permit in place for that source.
4. **"Negotiated" Permits.** Streamline existing permitting procedures for those remaining, unique sources that require a "negotiated" permit.

A. Limit Activities Needing "Negotiated" Permits

1. Provisions Relating to Permit Exemptions.

a. Amend s.285.60 (1)(a) to read:

1. Except as provided in sub. (2m) (3), (6), (9), (10) (a), and s. 285.61 (10) no person may commence construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the department.

Note: Sub. (2m) relates to registration permits, (3) relates to general permits, (6) relates to exemptions by rule, (9) relates to consolidation of permit requirements, (10)(a) relates to streamlining measures, and 285.61 (10) relates to waiver of construction permits.

b. Amend s.285.60 (6) to read:

(6) EXEMPTIONS ~~by rule~~. (a) *Exemption by rule.* Notwithstanding the other provisions of this section the department shall ~~may~~, by rule, exempt types of stationary sources from any requirement of this section if the ~~potential~~ emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

(b) *Specific exemptions.* Notwithstanding subs. (1) and (2), no permit is required for the following sources:

1. Sources that are components of a process, equipment or activity that is otherwise covered by an existing operation permit or included in a complete application for an operations permit.

2. Sources that meet the definition of "agricultural facility," livestock operations," or "agricultural practices" under s. 281.16(1).

3. [Other exempt sources listed here.]

Note: Generally, MN does not require a permit for sources that don't otherwise need a federal permit and that have a potential to emit less 50 tons per year (tpy) of SO2, 25 tpy of PM10, 0.5 tpy of Lead, and 100 tpy of VOC. (See MN Admin. Rule s 7007.0300) Such a general exemption level should be drafted for this section.

2. Establish a Registration Permit Option.

a. Create s. 285.60 (2m) to read:

(2m) REGISTRATION PERMITS. (a) *Sources with low actual emissions* .Notwithstanding the other provisions of this chapter a person may commence construction, reconstruction, replacement, modification, and operation of a stationary source with low actual emission if the owner or operator of a stationary source provides the department in a form prescribed by the department sufficient information that the source qualifies for a registration permit.

(b) *Registration permit notice.* The department shall provide written notice to the applicant within 15 days of receipt of the form required under sub. (a) of the department's determination that the stationary source qualifies for the registration permit or describe specifically all missing information or other reasons the stationary source does not qualify for a registration permit.

(c) *Department Rulemaking.* The department shall promulgate rules setting forth the requirements for registration permits for those sources with low actual emission, including eligibility and compliance requirements for categories of sources that may elect a registration permit.

Note: Registration permits are allowed in MN and MI. MN's program allows for this more simplified permit application form for the following categories of sources with low actual emissions:

1. A facility needs a permit solely

3. Expand General Permit Option.

a. Delete existing s. 285.60 (2m) [General Construction Permits]

b. Repeal and recreate s. 285.60 (3) to read:

(3) GENERAL OPERATION PERMITS. (a) *Similar sources and emission units.* Notwithstanding the other provisions of this chapter the department shall, by rule, allow a person to commence construction, reconstruction, replacement, modification, and operation of similar stationary sources and emission units if all of the following requirements are met:

1. The owner or operator of a stationary source provides the department in an application form prescribed by the department that information necessary to determine whether the source qualifies for a general operation permit.

2. Prior to operation, the department issues a general operation permit to the owner or operator of the stationary source.

(b) *General operation permit issuance.* The department shall issue a general operation permit to the owner or operator of a stationary source within 15 days of receipt of a complete application for a general operation permit if the department determines that the stationary source qualifies for a general operation permit under rules promulgated under sub. (c). The department shall provide written notice to the applicant within 15 days of receipt of an application describing specifically all information missing from the application or other reasons the stationary source does not qualify for a general operation permit.

(c) *Department Rulemaking.* The department shall promulgate rules setting forth the requirements for general operation permits for similar sources and emission units, including eligibility, application content, and compliance requirements for sources and emission units that may elect a general operation permit. The department shall allow for the expiration of the permit in five or more years only upon a request by the owner or operator or upon a determination that an expiring permit would significantly improve the likelihood of continuing compliance with applicable requirements.

285.16(2)

Note: WI, MN, and MI allows for general operation permits for similar sources or emission units. Terms and conditions, including application forms, are generally more complex than required for registration permits. Under this proposal, an owner or operator may begin construction of a

4. Petitions for Exemptions, Registration Permits, and General Permits.

a. Create s. 285.60 (8) to read:

(8) PETITIONS FOR EXEMPTIONS, REGISTRATION PERMITS, AND GENERAL PERMITS. A person may petition the department for an exemption under s. 285.60 (6)(a), a registration permit under s. 285.60 (2m), or a general operation permit under s. 285.60 (3). The department shall provide the person with a written response to the petition within 30 days of receipt that specifies whether the source or sources meet that applicable criteria for the requested exemption, registration permit, or general operation permit. If the source or sources meet the applicable criteria, the department shall initiate necessary rulemaking or other department action within one year of receipt of the petition.

5. Consolidate Construction & Operation Permit Programs.

a. Create s. 285.60(9) to read:

(9) CONSOLIDATION AND STREAMLINING PERMITS REQUIREMENTS. Notwithstanding the other provisions of this chapter, the department may consolidate into one permit all applicable terms and conditions for a source and undertake other initiatives to reduce paperwork and other administrative tasks that do not benefit the environment.

Note: MN law, among other things, directs agencies to: 1) consolidate into one permit environmental requirements that are currently included in different permits; and, 2) reduce the time and money spent by agencies and facility owners and operator on paperwork and

6. Permit Streamlining; Federal Limitations and Legislative Report.

a. Create s. 285.60 (10) to read:

(10) PERMIT STREAMLINING, FEDERAL LIMITATIONS, AND LEGISLATIVE REPORTS. (a) *Permit streamlining.* To allow for timely installation and operation of equipment and processes and the pursuit of related economic activity, the department shall diligently and continually assess and implement measures to lessen permit obligations, including where appropriate, expansion of exemptions under sub. (6), use of registration permits under sub. (2m), use of general operation permits under sub. (3), consolidation and streamlining of permits under sub. (9), and provide for construction permit waivers under s. 285.61 (10).

(b) *Effect of federal law.* Notwithstanding sub. (2m) (3), (6), (9), (10) (a), and s. 285.61 (10) the department shall not establish programs or measures that are not allowed under the federal clean air act. To effectuate the purpose of sub. (2m) (3), (6), (9), (10) (a), and s. 285.61 (10), however, the department shall establish programs and measures consistent with those sections that meet the requirements of the federal clean air act.

(c) *Report on streamlining efforts.* The department, working with owners and operators of affected sources, shall submit a report to the legislature by [within 6 months of effective date] that contains all of the following:

1. A listing and description of all existing permit exemptions and general operation permits.

2. Recommendations and related rule revisions that expand exemptions under sub. (6), establish a registration permit program under sub. (2m), expand the use general operation permits under sub. (3), consolidate and streamline permits requirements under sub. (9), and allow for construction permit waivers under s. 285.61 (10).

3. A schedule to provide additional reviews and reports consistent with this subsection for the purpose of providing additional exemptions under sub. (6), additional sources that that may use registration permits under sub. (2m), additional sources or emission units that

may use general operation permits under sub. (3), additional consolidation and streamlining measures under sub. (9), and additional circumstances allowing for construction permit waivers under s. 285.61 (10).

4. A description of federal clean air act requirements that limit the department's ability to establish exemptions under sub. (6), use registration permits under sub. (2m), use general operation permits under sub. (3), implement consolidation and streamlining measures under sub. (9), and provide construction permit waivers under s. 285.61 (10), with recommendations on how to cooperatively work with the U.S. environmental protection agency to overcome these limitations.

B. STREAMLINE PROCESSES FOR NEGOTIATED PERMITS

1. Adoption of EPA New Source Review Reforms. Adopt federal NSR reforms in Wisconsin, as follows:

Create s. 285.11 (19) to read:

(19) Promulgate rules by [within 6 months of effective date] that incorporate changes promulgated by the U.S. environmental protection agency to the federal clean air act new source review program. The department shall not include any requirements that are inconsistent or more stringent than the federal program.

Note: Existing s. 285.11(17) requires DNR to "Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions." Industry representatives interpret this provision as a mandate to incorporate federal new source review reforms. However, DNR disagrees with this interpretation and believes it has the authority to reject major components of the federal program.

2. Waiver of Construction Permit Requirements.

Create s. 285.61 (10) to read:

(10) Notwithstanding the other provisions of this section the department shall grant a waiver to the requirement to obtain a permit prior to commencing construction, reconstruction, replacement, and modification a stationary source upon a showing by the owner or operator that obtaining the permit would cause an undue hardship. The department shall act on the waiver requests within 15 days of receipt.

Note: MI rules provide for such a waiver, which in effect allows the owner and operator to "proceed at risk" because there remains an obligation to obtain and comply with an operation permit.

See MI Admin. Rule 336.1202

3. Completeness Determination and Related Deadlines.

a. Amend 285.61 (2) to read:

(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION. (a) *Completeness determination.* Within 20 days after receipt of the application the department shall provide written notice to the applicant describing specifically all of ~~indicate~~ the plans, specifications and any other information necessary to determine if the proposed construction, reconstruction, replacement or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15. The

application shall be deemed complete if the department does not provide the written notice within 20 days of receipt of the application or when the applicant provides that information requested in the written notice.

(b) *Effect of completeness determination.* A completeness determination establishes applicable deadlines under sub. (3), but does not preclude the department from requesting additional information from the applicant. The applicant may request an extension of any deadlines under this section.

b. Amend 285.61 (3) to read:

(3) ANALYSIS. The department shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time periods after the application is deemed complete under sub. (2)~~receipt of the plans, specifications and other information~~:

c. Amend 285.61 (5)(c) to read:

(c) *Newspaper notice.* The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the analysis and preliminary determination within 10 days after the preparation of the preliminary determination.

c. Amend 285.61 (8)(b) to read:

(b) *Time limits.* The department shall act on a construction permit application within 60 days after the department gives notice under sub. 5 (c) ~~close of the public comment period or the public hearing, whichever is later,~~ unless compliance with s. 1.11 requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

d. Amend 285.62 in parallel fashion to those changes noted above.

5. Establish Meaningful Incentives for Agency Action. Require the DNR to pay lost business opportunity costs in the form of liquated damages to applicants upon missing permit issuances deadlines.

[Work in progress]

6. Challenging Permit Conditions.

a. Amend s.285.81(1) to read:

(1) PERMIT HOLDER; PERMIT APPLICANT, ORDER RECIPIENT. Any permit, part of a permit, condition or specific requirement in a permit, order, decision or determination by the department under ss.285.39, 285.60 to 285.69 or 285.75 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing ~~on~~ challenging the action in the following manner:

b. Create s.285.81(2) as follows:

(2) EFFECT OF A CHALLENGE. If a permit holder or applicant seeks a hearing challenging part of a permit or a condition or specific requirement in a permit under sub. (1), the remainder of the permit shall become effective and the permit holder or applicant may, at its sole discretion, commence construction and operation of the activity for which the application was submitted or for which the permit was issued.

c. Renumber s.285.81(2), (3) & (4) as s.285.81(3), (4) and (5).

7. Use of Contractors for Application Completeness & Preliminary Determinations. Enable certified private entities to process and issue preliminary determinations of approval for air pollution control permits.

a. Section 285.61 relating to Construction permit application and review.

i. Amend s. 285.61 (1), (2), and (3) by adding "or a certified contractor" after "department".

ii. Amend s 285.61 (4) (a) by renumbering (a) to (a) 1. and creating (a) 2. to read:

2. If the preliminary determination is issued by a certified contractor, the department shall distribute and publicize the analysis and preliminary determination as soon as it is received from the contractor.

iii. Amend s 285.61 (4) (b) 2. and (5) (a) by adding "or certified contractor's" after "department's".

iv. Amend s 285.61 (4) (b) 3. by adding "or certified contractor" after "department".

v. Renumber s. 285.61 (8) (a) as (a) 1. Create s. 285.61 (8) (a) 2. to read:

2. The department may not modify the preliminary determination issued by a certified contractor unless the comments received under subs. (6) and (7), or consideration of environmental impact as required under s. 1.11, provide clear and convincing evidence that issuance of a permit based on the preliminary determination would cause material harm to public health, safety or welfare.

b. Section 285.62 relating to Operation permit application, review and effect

Parallel construction under this section [See attached markup of current Chapter 285]

c. Create new Section relating to certification of contractors.

i. Create s. 285.755 CERTIFIED CONTRACTORS as follows:

285.755 CERTIFIED CONTRACTORS (1) In addition to state review of air pollution control permits, the Department of Administration shall authorize private contractors to review air permit applications for the purpose of making completeness determinations under s. 285.61 (2) and 285.62 (2) and preliminary determinations under s. 285.61 (3) and 285.62 (3).

(2) The Department of Administration, in consultation with the department, shall develop a master contract detailing the terms and conditions a contractor must meet in order to be certified to conduct preliminary air permit review.

(3) The name, address and contact person affiliated with a certified contractor shall be maintained on a directory list compiled by the Department of Administration. The listing of certified contractors shall be updated quarterly and transmitted to the department, and the directory shall be made available to the public.

(4) In order to qualify as a certified contractor, an applicant must meet the following:

(a) Submit application for contractor status on a form prescribed by the Department of Administration developed in consultation with the department.

(b) Minimum staffing and professional expertise standards developed by the Department of Administration in consultation with the department.

(c) Submit a signed statement agreeing to conduct permit review in accordance with applicable state and federal law, including adherence to fee for services consistent with the master contract.

(d) Submit a signed copy of the master contract developed by the Department of Administration under sub (2).

Note: Registration permits are allowed in MN and MI. MN's program allows for this more simplified permit application form for the following categories of sources with low actual emissions:

1. A facility needs a permit solely because a New Source Performance Standard (NSPS) applies (the potential emissions from the source fall below the permitting thresholds). For example, Storage Vessels for Petroleum Liquids (CFR part 60, subp. K, Ka.)
2. A facility purchases or uses less than 2,000 gallons of VOC-containing materials in any 12-month period and has no other emissions. For example, Auto Body Shops.
3. A facility has emissions only from boilers, internal combustion engines, VOC-containing materials (or a combination of all three). For example; POTWs, Hotels/Motels, Nursing Homes/Small Hospitals, Airports.
4. A facility that has actual emissions below specified thresholds. The effect of certain pollution control equipment may be considered in calculating emissions for this option. Facilities that commonly qualify for Option D include: Meat/Dairy/Fruit/Vegetable Producers; Grain Elevators and Feed Mills; and Wood-Related Industries.

Registration permits are allowed for sources that have potential emissions exceeding a federal or department permit thresholds but that have actual emissions less than the federal thresholds due to operation limits, fuel use, control equipment or other measures.

See MN Admin. Rule s. 7007.1110; MI Admin. Rule s.336.1208a.

First note from p. 3

Second note from p. 3

Note: WI, MN, and MI allows for general operation permits for similar sources or emission units. Terms and conditions, including application forms, are generally more complex than required for registration permits. Under this proposal, an owner or operator may begin construction of a source subject to a general permit, but can not start operation until the department issues the general operation permit.

Under DNR's rule, the general permit term cannot exceed 5 years, while MN rules allow the agency to require the permit expire 5 or more years after issuance, and only if the agency makes specific findings that an expiration date would further compliance (e.g., history of noncompliance). Provisions were added to address the limited term allowed under current DNR rules.

See WI Admin. Rule NR 407.10; MN Admin. Rule 7007.110; MI Admin. Rule 336.1201a.

Note from p. 4

Note: MN law, among other things, directs agencies to: 1) consolidate into one permit environmental requirements that are currently included in different permits; and, 2) reduce the time and money spent by agencies and facility owners and operator on paperwork and other administrative tasks that do not benefit the environment. Arising from this directive, MN implemented an "air emission permit for a total facility" and other measures to streamline permit requirements.

See MN statute s. 114C.01.

Tradewell, Becky

From: Malaise, Gordon
Sent: Wednesday, October 15, 2003 4:38 PM
To: Tradewell, Becky; Kunkel, Mark; Nelson, Robert P.; Kennedy, Debora; Kreye, Joseph
Subject: FW: Addition to Omnibus Draft--LRB-3380

Attorneys:

Attached are follow-up drafting instructions for Senator Stepp's omnibus regulatory reform draft.

As you will see, the bulk of the follow-up instructions belong to Becky, who may incorporate them in the separate preliminary draft that she is working on.

The last two pages of the follow-up instructions contain various miscellaneous items that will involve the remaining attorneys captioned above as follows:

1. Returning energy conservation dollars to utilities (LRB-3071/4) MDK.

2. Patient privacy. DAK

3. Real estate license reciprocity. MDK

4. UETA (LRB-0176/1) RPN et. al.

5. Sales tax on temporary services. JK

LRB-3380/P1 is currently in editing. When it comes out of editing, these various miscellaneous items can be inserted into a /P2 version of the draft.

If it would make things easier, you may draft your portions as inserts and give them to me. I will then insert them into the draft.

Gordon

-----Original Message-----
From: Manley, Scott
Sent: Wednesday, October 15, 2003 3:14 PM
To: Malaise, Gordon
Subject: Addition to Omnibus Draft

Gordon,

Attached below is the additional information to be incorporated into the omnibus draft. Much of the new language applies to Chapter 185, but there are other miscellaneous provisions that apply to other statutes. Thank you for seeing that this document reaches the drafters responsible for working in these areas.

Scott

LRB Additions (Oct 15, 2003).d...

The following regulatory reform recommendations were not included in the prior two packages submitted to LRB for drafting:

Chapter 285
(Air Program)

√1. Amend 285.61 (3)(a)(b) to read:

(a) *Major source construction permits.* For construction permits for major sources, within 60 ~~120~~ days.

(b) *Minor source construction permits.* For construction permits for minor sources, within 15 ~~30~~ days.

2. Amend 285.61 (7) (a) to read:

(a) *Hearing permitted.* The department may hold a public hearing on the construction permit application if requested by a person who may be directly aggrieved by the issuance of the permit, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

Note: This change adds a requirement that persons requesting a hearing be potentially affected by the permit in question. To allow anyone to delay the issuance of the permit is unfair to the applicant, creating unnecessary delays and costs to both the applicant and DNR.

3. Amend 285.62 (1) – (5) in parallel fashion to those changes noted above and in prior drafts, including added 60/15-day deadlines for a preliminary determination under s. 285.62 (3) (a) and 10-day notice deadline under s. 285.62 (3) (a).

4. Amend 285.62 (6) (c) 1. to read:

1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit or otherwise takes measures to satisfy the objection.

Note: This change merely recognizes that changes to the permit are not always required to address EPA concerns; that is a simple clarification by DNR my be sufficient to remove the objection.

5. Amend 285.62 (7) to read:

(7) DEPARTMENT DETERMINATION; ISSUANCE.

(a) The department shall approve or deny the operation permit application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for an existing source or deny the application within 6 ~~18~~ months after receiving a complete application, except that the department may, by rule, extend the 6 ~~18~~-month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule may not extend the 6~~18~~-month period for more than 3 years.

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for a new source or modified source or deny the application within 30 ~~180~~ days after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit.

6. Amend 285.62 (8) to read:

(8) OPERATION CONTINUED DURING APPLICATION. If a person timely submits a complete application for a stationary source under sub. (1) ~~and submits any additional information requested by the department within the time set by the department~~, the stationary source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until the department acts under sub. (7). An application is timely if submitted on or before the operation permit application date specified under sub. (11) (b), or for a renewal, on or before the date the operation permit expires.

Note: This provision reconciles concepts contained in other provisions that allow DNR to request additional information at any time during the permitting process, but requires DNR deadlines to be linked to its "completeness determination." This change allows for the continued operation of equipment or processes so long as the owner or operator submitted a complete permit application.

7. Ramifications for not issuing permits within prescribed deadlines.

a. Amend 285.62 (9) to read:

(9) DELAY IN ISSUING PERMITS.

(a) If the department fails to issue an operation permit or to deny the application within the period specified in sub. (7) or in a rule promulgated under sub. (7), that failure is considered a final decision on the application solely for the purpose of obtaining judicial review under ss. 227.52 and 227.53 to require the department to act on the application without additional delay.

(b) Upon an applicant's request, the department shall pay to the applicant from department appropriations for administration and technology at s. 20.370 (8)(ma) $1,000 for each day the department fails to issue an operation permit or to deny the application within the period specified in sub. (7) (b).

(c) ~~(b)~~ Paragraphs (a) and (b) ~~does~~ not apply if the department's failure to act is due to the applicant's failure to submit a complete application ~~and any additional information requested by the department in a timely manner~~.

b. Create 285.61 (10) to read:

(10) DELAY IN ISSUING PERMITS.

(a) Upon an applicant's request, the department shall pay to the applicant from department appropriations for administration and technology at s. 20.370 (8)(ma) $1,000 for each day the department fails to issue a construction permit or to deny the application within the period specified in sub. (8) (b).

(b) Paragraph (a) does not apply if the department's failure to act is due to the applicant's failure to submit a complete application.

Note: Currently, there is little incentive for DNR to act on a permit application within the statutory deadlines. In lieu of presumptive approval of permits, these provisions would require the DNR to pay to applicants what could be considered liquated damages for lost business opportunities upon missing permit issuance deadlines. Such a concept is common

in construction contracts. The money would come from GPR funding for administration and technology (about $15 million for the last biennium), rather than Air Bureau or permitting funds to avoid depleting limited resources for permit reviews (which could be inconsistent with the Clean Air Act) and to avoid having such an assessment come from other applicant's permit fees.

This provision also reconciles concepts contained in other provisions that allow DNR to request additional information at any time during the permitting process, but requires DNR deadlines to be linked to its "completeness determination." This change allows for an applicant to challenge as a denial when DNR misses the prescribed deadlines so long as the application is deemed complete.

8. Delete s. 285.63(2)(d).

Note: This provision prohibits a construction permit for a major source unless DNR finds that "the benefits of the construction or modification of the major source significantly outweigh the environmental and social costs imposed as a result of the major source's location, construction or modification." This punishes companies wishing to locate in economically depressed areas such as Milwaukee, Racine and Kenosha, and encourages greenfields development over brownfields redevelopment.

9. Amend 285.66(3) (a) (Permit Renewal) to read:

(a) A permittee shall apply for renewal of an operation permit at least 3 ~~12~~ months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

Note: The revised deadline is consistent with DNR approval deadlines; that is, DNR does not need 12 months to review a renewal application.

10. Create 285.27(2) (d) to read:

(d) *Federal standards covering similar emissions.* Emission limitations and control requirements promulgated under sub. (b) do not apply to hazardous air contaminants emitted by the emissions units, operations or activities that are regulated by an emission standard promulgated under the federal clean air act. Hazardous air contaminants "regulated by an emission standard promulgated under the federal clean air act means the hazardous air contaminants that are regulated by the federal clean air act by the name of the contaminant, by virtue of regulation of another substance as a surrogate for the contaminant, or by virtue of regulation of a species or category of hazardous air contaminants that includes the contaminant.

Note: This language is included in DNR's proposed changes to its air toxics program (NR 445), except that DNR's exempts only those emissions subject to section 112 of the federal act. (There is no logical reason to prohibit sources regulated under other provisions of the act from getting the same exemption.) The purpose is to avoid duplicative requirements for substances regulated by EPA. This provision is also consistent with MI law that exempts contaminants from state controls if a federal standard "controls similar compounds." (See MI statute s. 324.5508 (2))

11. Duplicative Ambient Air Quality Standards

a. Amend 285.21(4) of the statutes is amended to read:

(4) IMPACT OF CHANGE IN FEDERAL STANDARDS. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are relaxed, the department shall alter the corresponding state standards ~~unless it finds that the relaxed standards would not provide adequate protection for health and public welfare~~.

b. Create 285.xxx to read:

The department may only apply particulate emissions controls to specific geographic areas that currently violate, or previously violated and now meet, an ambient air quality standard adopted under the federal clean air act for particulate matter 10 microns or smaller in size, or for particulate matter 2.5 microns or smaller in size.

Note: In Wisconsin, there are currently three particulate standards that are either in place, or will be in place soon. In 1977, the Environmental Protection Agency (EPA) adopted an air quality standard for total suspended particulates (TSP), which regulates particles at or below 100 microns in size. Subsequently, Wisconsin also adopted the TSP standard. In 1984, however, the EPA repealed the TSP standard, and replaced it with a PM10 standard, which addressed particulate matter at or below 10 microns in size. While Wisconsin adopted the PM10 standard, it also maintained the TSP standard as a state ambient air quality standard.

In 1997, EPA also adopted a fine particulate standard, known as PM 2.5. While the implementation of this standard has been delayed due to litigation and other causes, Wisconsin will be adopted this standard as well. Moreover, DNR has be monitoring PM 2.5 emissions.

Wisconsin has no areas that violate the PM2.5 or PM10 standard. However, there is an area in Milwaukee that is in violation of the TSP. Because of this "state only" nonattainment status, some special requirements apply to the area. For example, if a new source wanted to move into the area, it may have to obtain offsets. Moreover, the areas have the stigma of "nonattainment", which is a clear disincentive to economic growth.

Because federal ambient air standards focus extensively on particulate matter, it is unnecessary to have this additional state only ambient air quality standard. EPA obviously determined that a TSP standard was unnecessary given other particulate matter regulation. Wisconsin should also eliminate this standard so as not to impose unnecessary regulatory burdens that do not apply elsewhere on industry.

This proposal would require DNR to eliminate TSP nonattainment areas. It would also prohibit DNR from continuing to regulate these areas as nonattainment areas unless they violated the PM10 or PM 2.5 standard.

12. Establishing ambient air quality standards.

a. Amend 285.21(1) to read:

(a) Similar to federal standard. If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (4).

~~(b) Standard to protect health or welfare. If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.~~

Note: By their own admission, DNR does not have the resources, nor are they the appropriate venue for establishing ambient air quality standards. For example,

environmental groups recently petitioned DNR to establish an air quality standard for carbon dioxide (climate change gas) under this provision. In a staff memo recommending the Natural Resource Board reject the request (which they did at their September 2003 meeting), DNR notes that it has never used this authority for several reasons, including DNR's lack of technical expertise and resources to undertake the studies necessary to establish an ambient air quality standard under this provision. They argue that EPA is the proper venue for establishing such standards considering EPA's experience and resources, and the need to regulate across the broadest geographic scope. DNR would retains its authority to establish state-only standards for hazardous air emissions.

13. Clarification of Procedures for Establishing Nonattainment Designations.

a. Amend s. 285.01(30) to read:

(30) "Nonattainment area" means a county or combination of counties ~~an area~~ identified by the department in a document prepared under s. 285.23 (2) where the concentration in the atmosphere of an air contaminant in the county exceeds an ambient air quality standard, except that counties not exceeding an ambient air quality standard may be identified as nonattainment if the criteria set forth in s. 285.23 (1) are met.

b. Amend s. 285.23 to read:

285.23 **Identification of nonattainment areas.** (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. Counties that do not exceed an ambient air quality standard shall not be identified as a nonattainment area or part of a nonattainment area unless all of the following apply:

(a) The county is required to be designated nonattainment under the federal clean air act.

(b) Emissions from the county cause one or more Wisconsin counties to exceed an ambient air quality standard.

(c) The joint committee for review of administrative rules approves the department's recommendation to identify the county as nonattainment contained in the documents prepared in sub. (2).

(2) DOCUMENTS. (a) *Development of documents.* The department shall issue documents from time to time which define or list specific nonattainment areas based upon the procedures and criteria promulgated under sub. (1). Notwithstanding ss. 227.01 (13) and 227.10 (1), documents issued under this subsection are not rules.

(b) *Report to legislature.* No later than three months prior to a recommendation by the Governor on nonattainment designations under s. 207(d)(1)(A) of the federal clear air act, the department shall prepare and submit a report to the joint committee for review of administrative rules that contains proposed recommendations for nonattainment areas consistent with sub. (1) with supporting documents developed under sub. (a). The joint committee for review of administrative rules may return the department's recommendations within 30 days of receiving the department's report with a written explanation of why the proposed recommendation is returned. If the department's secretary disagrees with the committee's reasons for returning the proposed recommendation, the department's secretary shall so notify the committee in writing. The department shall not issue documents developed under sub. (a) or otherwise communicate any recommendations to the U.S. environmental protection agency until the department has adequately addressed the issues raised during the committee's review of the proposed recommendations.

Note: A nonattainment designation under the clean air act results in substantial regulatory burdens and related economic development disincentives for any area so designated. Scores of rules imposing costs and development restrictions follow such designations. Yet, there is no opportunity for legislative review the department's recommendations on nonattainment areas. In addition, in the past the department staff has circumvented the requirement that such areas be in violation of the standard by including counties meeting the standard into broad, multi-county areas that merely includes one or more counties that violate the standard. Finally, DNR takes the position that the documents required under these existing provisions are not required to be developed prior to the Governor's recommendation on nonattainment, but instead, after EPA action. To produce such documents at that point is meaningless – the decision in final.

These revisions clarify those circumstances that allow the department to recommend "attainment" counties to be designated nonattainment and provides for limited legislative review of the department's recommendations and underlying documents. They would also assure the relevant documentation is prepared in a timely manner.

14. Clarification of Authorities to Development State Implementation Plans

a. Add 285.80 to read:

285.80 Development of State Implementation Plans.

(1) DEPARTMENT'S AUTHORITIES. The department shall not adopt or submit a state implementation plan under s. 110 of the federal clean air act that includes rules or requirements that are not necessary to obtain U.S. environmental protection agency approval of the plan.

(2) LEGISLATIVE REVIEW AND APPROVAL. No later than three months prior to a submittal of a state implementation plan to the U.S. environmental protection agency, the department shall prepare and submit a report to the joint committee for review of administrative rules that describes the proposed plan and contains all supporting documents the department intends to include with the plan submittal to the U.S. environmental protection agency. The joint committee for review of administrative rules may return the department's proposed plan within 30 days of receiving the department's report with a written explanation of why the proposed plan is returned. If the department's secretary disagrees with the committee's reasons for returning the proposed plan, the department's secretary shall so notify the committee in writing. The department shall not submit the proposed plan to the U.S. environmental protection agency until the department has adequately addressed the issues raised during the committee's review of the proposed plan.

(3) LEGISLATIVE REPORT ON STATE IMPLEMENTATION PLANS. No later than [6 months from date of enactment], the department shall submit a report to the joint committee for review of administrative rules that contains all of the following:

(a) *Description of state implementation plans.* A description all existing and pending state implementation plans developed under s. 110 of the federal clean air act, including an analysis of any rules or requirements that may not have been necessary to obtain U.S. environmental protection agency approval of the plan but that are federally enforceable as a plan component.

(b) *Recommendations of plan revisions.* Recommendations for plan revisions to remove rules and other plan components that may not have been necessary to obtain U.S. environmental protection agency approval of the plan.

Note: Similar to nonattainment designations, state implementation plans (or SIPs) carry substantial regulatory weight and related economic development disincentives for any area

designated nonattainment. Scores of rules imposing costs and development restrictions arise out of such plans, as DNR must include promulgate rules or commitments to develop rules for its SIPs. Once EPA approves the SIP, any commitment to promulgate rules becomes a federally enforceable requirement on the state. Since all aspects of a SIP are federally enforceable, private groups can sue the state or regulated community under the citizen suit provisions of the Clean Air Act for deviations from the SIP.

Despite the importance of DNR SIP submittals, there is no opportunity for legislative review of the department's SIP recommendations for nonattainment areas. In addition, in the past the department has included "state-only" requirements in SIP submittals that have unnecessarily become federally enforceable. These revisions limit the department's authority for include state-only requirements in SIPs and provides for limited legislative review of the department's recommendations and underlying documents.

15. Limitations on Monitoring Requirements

a. Amend 285.17(2) to read

The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months. <u>The department shall not include any monitoring requirements in a permit if the applicant demonstrates the requirement would impose monitoring costs that exceed costs associated with monitoring requirements imposed by states adjacent to Wisconsin on similar sources, or if otherwise not needed to assure compliance with applicable requirements.</u>

Note: One of the most significant costs associated with air quality requirements relate to monitoring requirements. Often, DNR imposes costly monitoring requirements not imposed by other states, which in turn, put Wisconsin businesses at a competitive cost disadvantage. This change would limit DNR's ability to impose monitoring requirements more stringent than required by neighboring states.

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–3455/P1
RCT:...:...

WED (10/29)
AM

cjs

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SA ✓
newCRs ✓
RNs ✓
xrefs ✓

DNstc

yes cat

s granting rule-making authority /

AN ACT ...; **relating to:** air pollution control and making an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

SECTION 1. 20.370 (8) (ma) of the statutes is amended to read:

20.370 **(8)** (ma) *General program operations — state funds.* From the general fund, the amounts in the schedule for the general administration and field administration of the department and to make the payments required under ss. 285.61 (11) and 285.62 (9) (b).

History: 1971 c. 40, 95; 1971 c. 125 ss. 101 to 121, 522 (1); 1971 c. 211, 215, 277, 330, 336; 1973 c. 12 s. 37; 1973 c. 90, 100; 1973 c. 243 s. 82; 1973 c. 296, 298, 301, 318, 333, 336; 1975 c. 8, 39, 51, 91, 198; 1975 c. 224 ss. 7d, 7f, 7m, 17 to 19p; 1977 c. 29 ss. 181 to 234, 1657 (34); 1977 c. 274, 370, 374, 376, 377; 1977 c. 418 ss. 95 to 110, 929 (37); 1977 c. 421, 432; 1977 c. 447 ss. 42 to 44, 210; 1979 c. 34 ss. 199 to 322, 2102 (39) (a); 1979 c. 221; 1979 c. 361 s. 113; 1981 c. 1, 20, 86, 95, 131, 294, 330; 1981 c. 374 ss. 6, 7, 148, 150; 1983 a. 27 ss. 216m to 269, 2202 (23); 1983 a. 75, 181, 243, 397; 1983 a. 410 ss. 5m to 11, 2202 (38); 1983 a. 413; 1983 a. 416 ss. 1, 19; 1983 a. 426; 1985 a. 16, 22; 1985 a. 29 ss. 282d to 356, 3202 (26) (a), (39) (a), (c), (dm), (i); 1985 a. 46, 60, 65, 120, 202, 296; 1987 a. 27, 98, 110, 290, 295, 298, 305; 1987 a. 312 s. 17; 1987 a. 384, 397, 399, 403, 418; 1989 a. 31, 128, 284, 288, 326; 1989 a. 335 ss. 22nn to 30g, 89; 1989 a. 336, 350, 359, 366; 1991 a. 32; 1991 a. 39 ss. 326b to 394, 594c; 1991 a. 254, 269, 300, 309, 315; 1993 a. 16, 75, 166, 213, 343, 349, 415, 421, 453, 464; 1993 a. 490 ss. 18, 271; 1995 a. 27, 201, 225, 227, 296, 378, 459; 1997 a. 27, 35; 1997 a. 237 ss. 33 to 38d, 727g; 1997 a. 248; 1999 a. 9, 32, 74, 92; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16, 56, 92, 108, 109; 2003 a. 33.

SECTION 2. 285.01 (12m) of the statutes is created to read:

285.01 **(12m)** "Certified contractor" means a contractor that is certified under s. 285.755.

SECTION 3. 285.11 (6) of the statutes is amended to read:

285.11 **(6)** Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:

(a) The measures are part of an interstate ozone control strategy implementation agreement under s. 285.15 signed by the governor of this state and of the state of Illinois.

(b) The measures are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

History: 1995 a. 227 ss. 455, 989; 1999 a. 9.
****NOTE: This is the current language about SIPs in ch. 285. It needs to be reconciled with proposed s. 285.14.

SECTION 4. 285.11 (19) of the statutes is created to read:

285.11 **(19)** Promulgate rules that incorporate changes made by regulations of the federal environmental protection agency that were published in the Federal Register on December 31, 2002, relating to the review of changes to existing sources and to when those changes are considered modifications. The department may not

include in the rules any requirements that are inconsistent with or more stringent than the federal regulations.

****NOTE: I am aware that "New Source Review Program" is the way that the EPA and other people who deal with the Clean Air Act (CAA) refer to the parts of the CAA to which this provision is intended to refer. However, the act itself does not use that terminology, it is used only peripherally in the regulations, and it is not used in Wisconsin statutes. I have tried to deal with the problem of clearly identifying the relevant regulations by describing their subject matter and referring to the dates of publication in the Federal Register. Do you also want to refer to the new EPA regulations about routine maintenance, repair, and replacement? If so, I will need to have the date on which they were published in the Federal Register.

SECTION 5. 285.14 of the statutes is created to read:

285.14 State implementation plans. (1) CONTENT. The department may not submit a state implementation plan under 42 USC 7410 that includes rules or requirements that are not necessary to obtain approval of the plan by the federal environmental protection agency.

capital "S"

****NOTE: 42 USC 7410 relates to SIPs for national ambient air quality standards (NAAQS). Are there other sections of the CAA that require submission of SIPs and, if so, should they be referenced here? The issue of what SIPs may include is addressed in part in current s. 285.11 (6) and the two provisions will need to be made consistent in some way. I think that the last portion of s. 285.11 (6) was an attempt to deal with the difficulty of limiting what DNR may include in a SIP while recognizing that states with nonattainment areas may have to take measures that are not specifically set forth as requirements in the CAA in order to demonstrate reasonable further progress (and eventually come into compliance with the NAAQS). A state would have choices about what those measures would be, so the questions arises of whether the language proposed here would allow DNR to include in a SIP measures that, while not specifically required by the CAA, enable the state to demonstrate that it will make reasonable further progress.

(2) REVIEW BY COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. At least 90 days before the department submits a state implementation plan to the federal environmental protection agency, the department shall prepare and submit a report to the joint committee for review of administrative rules that describes the proposed plan and contains all of the supporting documents that the department intends to submit with the plan. If, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules do not

return the report to the department with a written explanation of why the committee is returning the report, the department may submit the plan at the end of the 90 day period. If, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules return the report to the department with a written explanation of why the committee is returning the report, the department may not submit the plan until the committee agrees that the department has adequately addressed the issues raised by the committee. If the secretary disagrees with the committee's reasons for returning the report, the secretary shall so notify the committee in writing.

****NOTE: Does DNR sometimes have to get approvals of changes to the SIP so that a specific change may be made by the operator of a stationary source? If so, might the delay that this subsection makes in the process of amending the SIP delay the ability of an operator to make a change? Given that JCRAR gets 30 days for its review and that if JCRAR returns the report DNR may not submit the plan until JCRAR is satisfied, is the 90 day requirement necessary?

SECTION 6. 285.17 (2) of the statutes is amended to read:

285.17 **(2)** The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months. The department may not include a monitoring requirement in an operation permit if the applicant demonstrates that the cost of compliance with the requirement would exceed the cost of compliance with monitoring requirements imposed on similar air contaminant sources by a state adjacent to this state or if the monitoring is not

needed to provide assurance of compliance with requirements that apply to the air contaminant source.

History: 1991 a. 302; 1995 a. 227 s. 478; 1999 a. 9.

****NOTE: This is drafted so that the applicant could satisfy the requirement by showing that any one of the adjacent states imposes less costly monitoring requirements on similar sources. Is that consistent with your intent? It seems to me that this amendment could potentially result in prohibiting DNR from requiring monitoring that would be required under the CAA (for example, under 42 USC 7414, 7475, or 7661c). It seems that what monitoring is required by EPA may depend on where a source is located, so that different monitoring requirements might sometimes apply to similar sources (in the same state or different states).

SECTION 7. 285.21 (1) (a) (title) of the statutes is repealed.

SECTION 8. 285.21 (1) (a) of the statutes is renumbered 285.21 (1) and amended to read:

285.21 **(1)** AMBIENT AIR QUALITY STANDARDS If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard ~~except as provided under sub. (4)~~.

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35.

SECTION 9. 285.21 (1) (b) of the statutes is repealed.

SECTION 10. 285.21 (2) of the statutes is amended to read:

285.21 **(2)** AMBIENT AIR INCREMENT. The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consistent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act ~~except as provided under sub. (4)~~.

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35.

****NOTE: This change is necessary because of the requested change to sub. (4).

SECTION 11. 285.21 (4) of the statutes is amended to read:

285.21 **(4)** IMPACT OF CHANGE IN FEDERAL STANDARDS. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the

federal clean air act are relaxed, the department shall alter the corresponding state standards ~~unless it finds that the relaxed standards would not provide adequate protection for public health and welfare~~.

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35.

SECTION 12. 285.21 (5) of the statutes is created to read:

285.21 **(5)** PARTICULATE STANDARDS. The department may not implement an ambient air quality standard for particulate matter measured as total suspended particulates.

SECTION 13. 285.23 (1) of the statutes is amended to read:

285.23 **(1)** PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. The department may not identify a county as part of a nonattainment area if the the concentration of an air contaminant in the atmosphere does not exceed an ambient air quality standard, unless the department is required under the federal clean air act to identify the county as part of a nonattainment area or unless emissions from sources in the county cause the concentration of an air contaminant in the atmosphere in another county to exceed an ambient air quality standard.

History: 1979 c. 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1989 a. 56; 1995 a. 227 s. 463; Stats. 1995 s. 285.23.

****NOTE: The language with which I was provided would have required both of the criteria included in this amendment to have been satisfied before the county could be identified as part of a nonattainment area. That seemed unlikely to me to have been the intent (that is, it seemed unlikely to me that the intent was to prohibit DNR from identifying a county as part of a nonattainment area if the CAA required it to do so). The language also required approval of JCRAR but that seems redundant in light of the creation of sub. (6).

SECTION 14. 285.23 (5) of the statutes is created to read:

285.23 **(5)** PARTICULATE STANDARDS. The department may not identify an area as a nonattainment area based on the concentration in the atmosphere of particulate matter measured as total suspended particulates and shall redesignate as an

attainment area any area identified as a nonattainment area if the only basis on which the area could be identified as a nonattainment area is the concentration in the atmosphere of particulate matter measured as total suspended particulates.

SECTION 15. 285.23 (6) of the statutes is created to read:

285.23 **(6)** REPORT TO THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. Before the department issues documents under sub. (2) and at least 90 days before the governor makes a submission on a nonattainment designation under 42 USC 7407 (d) (1) (A), the department shall prepare and submit a report to the joint committee for review of administrative rules that contains a description of any area proposed to be identified as a nonattainment area and supporting documentation. If the department has complied with sub. (4) and if, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules do not return the report to the department with a written explanation of why the committee is returning the report, the department may issue the documents under sub. (2) and the governor may make the submission at the end of the 90 day period. If, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules return the report to the department with a written explanation of why the committee is returning the report, the department may not issue the documents under sub. (2) and the governor may not make the submission until the committee agrees that the department has adequately addressed the issues raised by the committee.

****NOTE: I added that this process must be done before DNR issues the documents under sub. (2) because for the purposes of ch. 285, issuing the documents is what makes an area a nonattainment area. Obviously, problems could arise if the committee blocked a designation required by the Clean Air Act. Given that JCRAR gets 30 days for its review and that if JCRAR returns the report the governor may not submit the nonattainment designation until JCRAR is satisfied, is the 90 day requirement necessary?

SECTION 16. 285.27 (1) (a) of the statutes is amended to read:

285.27 **(1)** (a) ~~*Similar to federal*~~ *Federal standard.* If a standard of performance for new stationary sources is promulgated under ~~section 111 of~~ the federal clean air act, the department shall promulgate ~~by~~ a rule ~~a similar~~ that incorporates that emission standard ~~but this standard~~ and related administrative requirements. The department may not ~~be~~ promulgate a rule under this paragraph that is more restrictive in terms of emission limitations or otherwise more burdensome to persons operating sources affected by the emission standard than the federal standard and related requirements except as provided under sub. (4).

History: 1995 a. 227 s. 474, 989.

****NOTE: Do you want DNR to go back and change its existing rules conform to the amended version of this provision? If so, the draft should probably make that explicit, perhaps with a nonstatutory provision.

SECTION 17. 285.27 (2) (a) of the statutes is amended to read:

285.27 **(2)** (a) ~~*Similar to federal*~~ *Federal standard.* If an emission standard for a hazardous air contaminant is promulgated under ~~section 112 of~~ the federal clean air act, the department shall promulgate ~~by~~ a rule ~~a similar~~ that incorporates that emission standard ~~but this standard~~ and related administrative requirements. The department may not ~~be~~ promulgate a rule under this paragraph that is more restrictive in terms of emission limitations or otherwise more burdensome to persons operating sources affected by the emission standard than the federal standard and related requirements except as provided under sub. (4).

History: 1995 a. 227 s. 474, 989.

****NOTE: See note following s. 285.27 (1) (a).

SECTION 18. 285.27 (2) (b) of the statutes is renumbered 285.27 (2) (b) (intro.) and amended to read:

285.27 **(2)** (b) (intro.) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under ~~section 112 of~~ the federal clean air act, the department may promulgate an emission

standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare. The department may not make a finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:

History: 1995 a. 227 s. 474, 989.

****NOTE: If the intent is to require public health to be affected before DNR is be authorized to act, the references to "welfare" should be deleted.

SECTION 19. 285.27 (2) (b) 1. to 3. of the statutes are created to read:

285.27 **(2)** (b) 1. A human health and ecological risk assessment that characterizes the sources in this state that are known to emit the hazardous air contaminant and the individuals and animals that are potentially at risk from the emissions.

****NOTE: Should the term "public health be used because that is the term in the introduction? Should the term be changed to "human health" in the introduction? Should this refer to stationary sources? Does this language capture what is meant by "receptors"? Do you intend that an emission standard may be based on ecological risks, not just human health risks? If not, is there a need for an ecological risk assessment? Should the ~~standard~~ authorizing DNR to promulgate an emission standard for a hazardous air contaminant (in the introduction) be changed? That ~~standard~~ and the requirements for written documentation should be consistent with each other.

2. A analysis showing that identified individuals or animals are subjected to inhalation levels of the hazardous air contaminant that are above recognized environmental health standards.

****NOTE: This limits DNR to consideration only of inhalation exposure. Is that what is intended? I drafted this to refer to human or animal exposure. Is that what is intended? Should "environmental health standards" be defined or explained? I do not see that term used in state statutes or rules. Do you want to provide any guidance on how one tells whether an environmental health standard is recognized?

3. An evaluation of options for managing the risks caused by the hazardous air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the chosen risk management option reduces risks in the most cost–effective manner practicable.

****NOTE: I don't understand what is meant by risk management option. I do not see any references to risk management options in state statutes or rules. Would a rule

promulgated under this paragraph always contain a risk management option? If not, this language must be modified.

SECTION 20. 285.27 (2) (d) of the statutes is created to read:

285.27 **(2)** (d) *Emissions regulated under federal law.* Emissions limitations promulgated under par. (b) and related control requirements do not apply to hazardous air contaminants emitted by emissions units, operations, or activities that are regulated by an emission standard promulgated under the federal clean air act, including a hazardous air contaminant that is regulated under the federal clean air act by virtue of regulation of another substance as a surrogate for the hazardous air contaminant or by virtue of regulation of a species or category of hazardous air contaminants that includes the hazardous air contaminant.

SECTION 21. 285.27 (4) of the statutes is amended to read:

285.27 **(4)** IMPACT OF CHANGE IN FEDERAL STANDARDS. If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. The department may not make this finding for an emission standard for a hazardous air contaminant unless the finding is supported with the written documentation required under sub. (2) (b) 1. to 3. This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.

History: 1995 a. 227 s. 474, 989.

****NOTE: I limited the new requirement to hazardous air contaminants because the documentation required in sub. (2) relates to hazardous air contaminants. If the intent is also to require written documentation for new source performance standards,

I will need guidance on how to modify the documentation language so that it works in reference to NSPS.

SECTION 22. 285.60 (1) (a) 1. of the statutes is amended to read:

285.60 **(1)** (a) 1. Except as provided in sub. (3) (c), (5m), (6) or (6m), no person may commence construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the department.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 485; Stats. 1995 s. 285.60; 1997 a. 35; 2001 a. 16.

SECTION 23. 285.60 (1) (b) 1. of the statutes is amended to read:

285.60 **(1)** (b) 1. Except as provided in subd. 2., par. (a) 2., sub. (6) or (6m), or s. 285.62 (8), no person may operate a new source or a modified source unless the person has an operation permit under s. 285.62 from the department.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 485; Stats. 1995 s. 285.60; 1997 a. 35; 2001 a. 16.

SECTION 24. 285.60 (2) (a) of the statutes is amended to read:

285.60 **(2)** (a) *Operation permit requirement.* Except as provided in sub. (6) or (6m) or s. 285.62 (8), no person may operate an existing source after the operation permit requirement date specified under s. 285.62 (11) (a) unless the person has an operation permit under s. 285.62 from the department.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 485; Stats. 1995 s. 285.60; 1997 a. 35; 2001 a. 16.

SECTION 25. 285.60 (2g) of the statutes is created to read:

285.60 **(2g)** REGISTRATION PERMITS. (a) *Rules.* Subject to sub. (8), the department shall promulgate rules specifying a simplified process under which the department issues a registration permit incorporating a construction permit and an operation permit for a stationary source with low actual emissions if the owner or operator provides to the department, on a form prescribed by the department, sufficient information to show that the source qualifies for a registration permit. In the rules, the department shall include eligibility and compliance requirements for categories of sources that the owners or operators of which may elect to obtain registration permits.

(b) *Procedure.* The procedural requirements of ss.285.61 (2) to (8) and 285.62 (2) to (7) do not apply to a registration permit under this subsection. Within 15 days after receipt of the form prescribed by the department, the department shall provide one of the following to an applicant for a registration permit:

1. Written notice of the department's determination that the source qualifies for a registration permit.

2. A written description of any information that is missing from the application for a registration permit.

3. Written notice of the department's determination that the source does not qualify for a registration permit, specifically describing the reasons for that determination.

SECTION 26. 285.60 (2m) of the statutes is repealed.

SECTION 27. 285.60 (3) of the statutes is repealed and recreated to read:

285.60 **(3)** GENERAL PERMITS. (a) *Rules.* The department shall promulgate rules for the issuance of general permits for similar stationary sources. In the rules, the department shall specify the information that must be included in an application for coverage under a general permit and shall include eligibility and compliance requirements for categories of sources for which the department may issue general permits.

(b) *Procedure.* The procedural requirements of ss.285.61 (2) to (8) and 285.62 (2) to (7) do not apply to the determination of whether a source is covered by a general permit under this subsection. Within 15 days after receipt of an application for coverage under a general permit, the department shall provide one of the following to the applicant:

1. Written notice of the department's determination that the source qualifies for coverage under the general permit.

2. A written description of any information that is missing from the application for coverage under the general permit.

3. Written notice of the department's determination that the source does not qualify for coverage under the general permit, specifically describing the reasons for that determination.

(c) *Exemption from construction permit requirement.* A person is not required to obtain a construction permit prior to construction, reconstruction, replacement or modification of a stationary source that qualifies for coverage under a general permit under par. (a) unless a construction permit is required under the federal clean air act.

****NOTE: Note that a person would not be aware of DNR's determination of whether a source qualified for a general permit (and therefore whether the person qualified for the exemption from the construction permit requirement) if the person did not ask for coverage under the permit before constructing the source. This could put them in jeopardy of violating the construction permit requirement. Is it the intent that general permits only be available to sources that are not required to have construction permits under the CAA? If so, par. (a) can be modified to provide that and the "unless" clause in par. (b) would be unnecessary.

SECTION 28. 285.60 (5m) of the statutes is created to read:

285.60 **(5m)** WAIVER OF CONSTRUCTION PERMIT REQUIREMENTS. Subject to sub. (8), the department shall grant a waiver from the requirement to obtain a construction permit prior to construction, reconstruction, replacement, or modification of a stationary source upon a showing by the owner or operator of the stationary source that obtaining the permit would cause undue hardship. The department shall act on a waiver request within 15 days after it receives the request.

****NOTE: As I read the Michigan rule, the owner or operator is still required to eventually get a construction permit and may not start operation until a construction permit is received. Is that the intent of this provision? If so, it should be clarified.

SECTION 29. 285.60 (6) of the statutes is amended to read:

285.60 **(6)** EXEMPTION BY RULE. ~~Notwithstanding the other provisions of this section~~ Subject to sub. (8), the department ~~may~~ shall, by rule, exempt types of stationary sources from ~~any~~ the requirement ~~of this section~~ to obtain a construction permit and an operation permit if the ~~potential~~ emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 485; Stats. 1995 s. 285.60; 1997 a. 35; 2001 a. 16.

SECTION 30. 285.60 (6m) of the statutes is created to read:

285.60 **(6m)** SPECIFIC EXEMPTIONS. A person is not required to obtain a construction permit or an operation permit for any of the following, unless a permit is required by the federal clean air act:

(a) 1. A source that is a component of a process, of equipment, or of an activity that is otherwise covered by a preexisting operation permit or a source that is a component of a process, of equipment, or of an activity that is included in a completed application for an operation permit.

****NOTE: This does not seem very clear to me. Perhaps we could discuss exactly what is intended so that I could clarify the language. Might this be covered by the new source review changes that are required by this draft and therefore not be necessary?

(b) 2. A source that is an agricultural facility, as defined in s. 281.16 (1) (a), a livestock operation, as defined in s. 281.16 (1) (c), or an agricultural practice, as defined in s. 281.16 (1) (b).

****NOTE: I'm not sure that it quite works to say that an agricultural practice is a source in the same way it works to say that a facility is a source because the definition of agricultural practice includes occupations rather than physical things. For example, a poultry farm might be a source, but is poultry farming a source?

(c) 3. A source to which all of the following apply:

a. The maximum capacity of the source to emit sulfur dioxide is less than 50 tons per year.

2
c

b. The maximum capacity of the source to emit particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers is less than 25 tons per year.

3 d c. The maximum capacity of the source to emit lead is less than one–half ton per year.

4 d d. The maximum capacity of the source to emit volatile organic compounds is less than 100 tons per year.

****NOTE: The Minnesota rules do not seem to have a blanket exemption for these sources. They require sources that do not satisfy these criteria to get a permit. The Minnesota rules require some sources that federal law does not require to be permitted to get a state permit because a permit "is needed as part of a state implementation plan to be submitted to the EPA to demonstrate attainment with a national ambient air quality standard." (See 7007.0250, subd. 3) Might any of the sources described above fall into that category for Wisconsin's SIP?

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SECTION 31. 285.60 (8) of the statutes is created to read:

285.60 (8) COMPLIANCE WITH FEDERAL LAW. The department may not promulgate a rule or take any other action under this section that conflicts with the federal clean air act.

^

SECTION 32. 285.60 (9) of the statutes is created to read:

285.60 **(9)** PETITIONS FOR REGISTRATION PERMITS, GENERAL PERMITS, AND EXEMPTIONS. A person may petition the department to make a determination that a type of stationary source is eligible for a registration permit under sub. (2g) or a general permit under sub. (3) or to promulgate a rule specifying an exemption for a type of stationary source under. sub. (6). The department shall provide a written response to a petition within 30 days after receiving the petition indicating whether the type of stationary source meets the applicable criteria for a registration permit, a general permit, or an exemption. If the type of source meets the applicable criteria, the department shall, within 365 days after receiving the petition, submit to the

legislative council staff under s. 227.15 (1) in proposed form any necessary rules or take any other action that is necessary to grant the petition.

SECTION 33. 285.60 (10) of the statutes is created to read:

285.60 **(10)** PERMIT STREAMLINING. The department shall continually assess permit obligations imposed under this section and ss. 285.61 to 285.65 and implement measures that are consistent with this chapter and the federal clean air act to allow for timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening those obligations, including expanding exemptions under sub. (6) and expanding the availability of registration permits under sub. (2g), general permits under sub. (3), and construction permit waivers under sub. (5m).

SECTION 34. 285.61 (1) of the statutes is amended to read:

285.61 **(1)** ~~APPLICANT NOTICE~~ APPLICATION REQUIRED. A person who is required to obtain or who seeks a construction permit shall apply to the department or a certified contractor for a permit to construct, reconstruct, replace or modify the stationary source.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

****NOTE: Is the intent that an applicant may decide to whom it will submit an application? Might there be logistical or other problems with this? What if a large number of applications were submitted to one contractor who then was unable to process them in time?

SECTION 35. 285.61 (2) of the statutes is renumbered 285.61 (2) (a) and amended to read:

285.61 **(2)** (a) *Request for additional information.* Within 20 days after receipt of the application the department or the certified contractor shall ~~indicate~~ provide written notice to the applicant describing specifically all of the plans, specifications and any other information necessary to determine if the proposed construction,

reconstruction, replacement or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 36. 285.61 (2) (b) of the statutes is created to read:

285.61 **(2)** (b) *When application is considered to be complete.* For the purposes of the time limits in sub. (3), an application is considered to be complete when the applicant provides the information specified in the written notice under par. (a), or, if the department or the certified contractor does not provide written notice to an applicant within the time limit in par. (a), 20 days after receipt of the application. This paragraph does not prevent the department or a certified contractor from requesting additional information from an applicant after the time limit in par. (a).

SECTION 37. 285.61 (3) of the statutes is amended to read:

285.61 **(3)** ANALYSIS. The department or certified contractor shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time periods after the ~~receipt of the plans, specifications and other information~~ application is considered to be complete under sub. (2) (b):

(a) *Major source construction permits.* For construction permits for major sources, within ~~120~~ 60 days.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

(b) *Minor source construction permits.* For construction permits for minor sources, within ~~30~~ 15 days.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 38. 285.61 (4) (a) of the statutes is amended to read:

285.61 **(4)** (a) *Distribution and publicity.* The department shall distribute and publicize the analysis and preliminary determination as soon as they are prepared

or, if the analysis and preliminary determination are prepared by a certified contractor, as soon as the department receives them from the certified contractor.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 39. 285.61 (4) (b) 2. and 3. of the statutes are amended to read:

285.61 **(4)** (b) 2. A copy of the department's or certified contractor's analysis and preliminary determination; and

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

3. A copy or summary of other materials, if any, considered by the department or the certified contractor in making its preliminary determination.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 40. 285.61 (5) (a) (intro.) of the statutes is amended to read:

285.61 **(5)** (a) *Distribution of notice required.* (intro.) The department shall distribute a notice of the proposed construction, reconstruction, replacement or modification, a notice of the department's or certified contractor's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to all of the following:

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 41. 285.61 (5) (c) of the statutes is amended to read:

285.61 **(5)** (c) *Newspaper notice.* The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the analysis and preliminary determination within 10 days after the analysis and preliminary determination are prepared or, if the analysis and preliminary determination are prepared by a certified contractor, within 10 days after the department receives them from the certified contractor.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 42. 285.61 (7) (a) of the statutes is amended to read:

285.61 **(7)** (a) *Hearing permitted.* The department may hold a public hearing on the construction permit application if requested by a person who may be directly aggrieved by the issuance of the permit, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

SECTION 43. 285.61 (8) (a) of the statutes is renumbered 285.61 (8) (a) 1.

SECTION 44. 285.61 (8) (a) 2. of the statutes is created to read:

285.61 **(8)** (a) 2. Notwithstanding subd. 1. and s. 285.63, the department may not disapprove a construction permit application if a certified contractor made a preliminary determination that the construction permit application was approvable unless the comments received under subs. (6) and (7) or consideration of the environmental impact as required under s. 1.11 provide clear and convincing evidence that issuance of the permit would cause material harm to public health, safety, or welfare.

****NOTE: It appears that this provision could result in the approval of a permit that would not comply with the CAA.

SECTION 45. 285.61 (8) (b) of the statutes is amended to read:

285.61 **(8)** (b) *Time limits.* The department shall act on a construction permit application within 60 days after the ~~close of the public comment period or the public hearing, whichever is later~~ department gives notice under sub. (5) (c), unless compliance with s. 1.11 requires a longer time. For a major source that is located in

an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61.

****NOTE: Under sub. (6) there has to be a 30 day comment period and under sub. (7) (a) there are 30 days to request a hearing and then DNR has 60 days within which to hold the hearing. The effect of the change in this provision would be to give DNR 30 days in which to act after the public comment period and to effectively reduce (by probably more than half) the 60 days in which to hold a hearing, because the statute requires DNR to consider comments received at the hearing. To be consistent, the time in which DNR is authorized to hold a hearing should be shortened if this change is made in sub. (8) (b). ✓

SECTION 46. 285.61 (10) of the statutes is created to read:

285.61 **(10)** EXTENSIONS. The department may extend any time limit applicable to the department or a certified contractor under this section at the request of an applicant.

SECTION 47. 285.61 (11) of the statutes is created to read:

285.61 **(11)** DELAY IN ISSUING PERMITS. Subject to sub. (10), if the department fails to act on an application for a construction permit within the time limit in sub. (8) (b), the department shall, upon the applicant's request, pay to an applicant from the appropriation under s. 20.370 (8) (ma), $1,000 for each day after the time limit expiration of the until the day on which the department acts.

****NOTE: Unless I am missing something, it is unnecessary to provide that DNR need not make the payments if DNR's failure to act was due to the applicant's failure to submit a complete application because one would never get to the deadline under sub. (8) (b) unless the application was complete or was considered to be complete. Please let me know if there are questions about this. ✓ time limit

SECTION 48. 285.62 (1) of the statutes is amended to read:

285.62 **(1)** ~~APPLICANT NOTICE~~ APPLICATION REQUIRED. A person who is required to obtain an operation permit for a stationary source shall apply to the department or to a certified contractor for the permit on or before the operation permit application date specified under sub. (11) (b). The department shall specify by rule the content of applications under this subsection. If required by the federal clean air

act, the department or the certified contractor shall provide a copy of the complete application to the federal environmental protection agency. ~~The department may not accept an application submitted to the department before November 15, 1992, as an application under this subsection.~~

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

SECTION 49. 285.62 (2) of the statutes is renumbered 285.62 (2) (a) and amended to read:

285.62 **(2)** (a) *Request for additional information.* Within 20 days after receipt of the application the department or the certified contractor shall ~~indicate~~ provide written notice to the applicant describing specifically any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

SECTION 50. 285.62 (2) (b) of the statutes is created to read:

285.62 **(2)** (b) *When application is considered to be complete.* For the purposes of the time limits in sub. (3), an application is considered to be complete when the applicant provides the information specified in the written notice under par. (a), or, if the department or the certified contractor does not provide written notice to an applicant within the period under par. (a), 20 days after receipt of the application. This paragraph does not prevent the department or a certified contractor from requesting additional information from an applicant after the period under par. (a).

SECTION 51. 285.62 (3) (a) (intro.) of the statutes is amended to read:

285.62 **(3)** (a) (intro.) The department or certified contractor shall review an application for an operation permit. Upon completion of that review, the department or certified contractor shall prepare a preliminary determination of whether ~~it~~ the

application may ~~approve the application~~ be approved and a public notice. The department or certified contractor shall complete the preliminary determination and the public notice within 60 days after the application for an operation permit for a major source is considered to be complete under sub. (2) (b) and within 15 days after the application for an operation permit is considered to be complete under sub. (2) (b) for a minor source. The public notice shall include all of the following:

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

SECTION 52. 285.62 (3) (c) of the statutes is amended to read:

285.62 **(3)** (c) The department shall publish the notice prepared under par. (a) as a class 1 notice under ch. 985 in a newspaper published in the area that may be affected by emissions from the stationary source within 10 days after the notice is complete or, if the notice is prepared by a certified contractor, within 10 days after the department receives it from the certified contractor.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

SECTION 53. 285.62 (5) (a) of the statutes is amended to read:

285.62 **(5)** (a) *Hearing permitted.* The department may hold a public hearing on an application for an operation permit for a stationary source if requested by any state that received notice under sub. (3) (b) or any other person, if the person may be directly aggrieved by the issuance of the permit, within 30 days after the department gives notice under sub. (3) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it determines that there is a significant public interest in holding the hearing.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.
****NOTE: I assume that this change is wanted. Let me know if I am mistaken.

SECTION 54. 285.62 (6) (c) 1. of the statutes is amended to read:

285.62 **(6)** (c) 1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit or takes other measures to satisfy the objection.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

****NOTE: Note that 42 USC 7661d (b) (3) states: "Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c)."

SECTION 55. 285.62 (7) (a) and (b) of the statutes are amended to read:

285.62 **(7)** (a) The department shall approve or deny the operation permit application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for an existing source or deny the application within ~~18~~ 6 months after receiving a complete application, except that the department may, by rule, extend the ~~18–month~~ 6–month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule may not extend the ~~18–month~~ 6–month period for more than 3 years.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for a new source or modified source or deny the application within ~~180~~ 30 days after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit.

History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 35.

****NOTE: I am confused about the purpose of changing the period for acting on permits for existing sources. Haven't the deadlines under current law passed by now?

SECTION 56. 285.62 (7) (bm) of the statutes is created to read:

285.62 **(7)** (bm) Notwithstanding pars. (a) and (b) and s. 285.63, but subject to sub. (6) (c) 1., the department may not deny an application for an operation permit application if a certified contractor made a preliminary determination that the operation permit application was approvable unless the comments received under subs. (4) to (6) or consideration of the environmental impact as required under s. 1.11 provide clear and convincing evidence that issuance of the permit would cause material harm to public health, safety, or welfare.

****NOTE: See the note following s. 285.61 (8) (a) 2.

SECTION 57. 285.62 (9) (b) of the statutes is repealed and recreated to read:

285.62 **(9)** (b) Subject to sub. (12), if the department fails to act on an application for an operation permit within the time limit under sub. (7) (b), the department shall, upon the applicant's request, pay to an applicant from the appropriation under s. 20.370 (8) (ma), $1,000 for each day after the expiration of the time limit until the day on which the department acts.

****NOTE: See note following s. 285.61 (11).

SECTION 58. 285.62 (12) of the statutes is created to read:

285.62 **(12)** EXTENSIONS. The department may extend any time limit applicable to the department or a certified contractor under this section at the request of an applicant.

SECTION 59. 285.63 (1) (d) of the statutes is amended to read:

285.63 **(1)** (d) *Source will not preclude construction or operation of other source.* The stationary source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of

another stationary source if the department received plans, specifications and other information under s. 285.61 (2) (a) for the other stationary source prior to commencing its analysis under s. 285.61 (3) for the former stationary source. This paragraph does not apply to an existing source required to have an operation permit.

History: 1979 c. 34, 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 56; 1991 a. 300, 302; 1993 a. 213; 1995 a. 227 s. 488; Stats. 1995 s. 285.63.

SECTION 60. 285.63 (2) (d) of the statutes is repealed.

SECTION 61. 285.66 (2) of the statutes is renumbered 285.66 (2) (a).

SECTION 62. 285.66 (2) (b) of the statutes is created to read:

285.66 **(2)** (b) Notwithstanding par. (a), the department may not specify that coverage under a general permit under s. 285.60 (3) expires except as follows:

1. The department may specify an expiration date for coverage under a general permit at the request of an owner or operator.

2. The department may specify a term of 5 years or longer for coverage under a general permit if the department finds that expiring coverage would significantly improve the likelihood of continuing compliance with applicable requirements compared to coverage that does not expire.

3. The department may specify a term of 5 years or less for coverage under a general permit if required by the federal clean air act.

SECTION 63. 285.66 (3) (a) of the statutes is amended to read:

285.66 **(3)** (a) A permittee shall apply for renewal of an operation permit at least ~~12~~ 3 months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

History: 1979 c. 34, 221; 1991 a. 302; 1995 a. 27; 1995 a. 227 s. 492; Stats. 1995 s. 285.66.

****NOTE: Note that 40 CFR 70.5 (a) (1) (iii) states that: "For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator...".

SECTION 64. 285.755 of the statutes is created to read:

285.755 Certified contractors. **(1)** RESPONSIBILITIES OF THE DEPARTMENT OF ADMINISTRATION. (a) The department of administration shall certify private contractors to review applications for air pollution control permits for the purposes of determining under ss. 285.61 (2) and 285.62 (2) whether additional information is needed from applicants and of making preliminary determinations under ss. 285.61 (3) and 285.62 (3).

(b) The department of administration, in consultation with the department of natural resources, shall specify minimum standards relating to staffing and professional expertise applicable to private contractors certified under this section.

(c) The department of administration, in consultation with the department of natural resources, shall develop a master contract containing the terms and conditions that a contractor must satisfy in order to be certified under this section.

(d) The department of administration shall maintain a directory containing the name, address, and contact person for each certified contractor. The department of administration shall update the directory every 3 months and shall provide the directory to the department of natural resources and make it available to the public.

(2) REQUIREMENTS. The department of administration may not certify a contractor under this section unless the contractor does all of the following:

(a) Submits an application on a form prescribed by the department of administration in consultation with the department of natural resources.

(b) Meets the minimum standards relating to staffing and professional expertise that are specified under sub. (1) (b).

(c) Submits a signed statement agreeing to conduct the activities described in sub. (1) (a) in accordance with applicable state and federal law.

****NOTE: I do not understand what the instructions mean by "including adherence to fee for services."

(d) Submits a signed copy of the master contract developed under sub. (1) (c).

SECTION 65. 285.81 (1) (intro.) of the statutes is amended to read:

285.81 **(1)** **(intro.)** PERMIT HOLDER; PERMIT APPLICANT; ORDER RECIPIENT. Any permit, part of a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing ~~on~~ challenging the action in the following manner:

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302; 1995 a. 227 s. 502; Stats. 1995 s. 285.81.

SECTION 66. 285.81 (1m) of the statutes is created to read:

285.81 **(1m)** EFFECT OF A CHALLENGE. If a permit holder or applicant seeks a hearing challenging part of a permit under sub. (1), the remainder of the permit shall become effective and the permit holder or applicant may begin the activity for which the permit was issued.

SECTION 67. Nonstatutory provisions.

(1) SUBMISSION OF PROPOSED RULES. The department shall submit in proposed form the rules required under section 285.11 (19) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

(2) REPORT ON STREAMLINING EFFORTS.

(a) The department, in consultation with owners and operators of stationary sources of air pollution, shall develop a report that contains all of the following:

1. A list of all existing exemptions under section 285.60 (6) of the statutes, as affected by this act, and all general operation permits under section 285.60 (3) of the statutes, as affected by this act.

2. Recommendations, and related proposed rule revisions, for expanding exemptions under section 285.60 (6) of the statutes, as affected by this act, establishing registration permits under section 285.60 (2g) of the statutes, as created by this act, expanding the use of general operation permits under section 285.60 (3) of the statutes, as affected by this act, issuing construction permit waivers under section 285.60 (5m) of the statutes, as created by this act, and taking other actions under section 285.60 (10) of the statutes, as created by this act.

3. A schedule for providing additional reports containing recommendations, and related rule revisions, for expanding exemptions under section 285.60 (6) of the statutes, as affected by this act, expanding the use of registration permits under section 285.60 (2g) of the statutes, as created by this act, expanding the use of general operation permits under section 285.60 (3) of the statutes, as affected by this act, expanding the issuance of construction permit waivers under section 285.60 (5m) of the statutes, as created by this act, and taking other actions under section 285.60 (10) of the statutes, as created by this act.

4. A description of requirements in the federal clean air act that limit the department's ability to expand exemptions under section 285.60 (6) of the statutes, as affected by this act, expand the use of registration permits under section 285.60 (2g) of the statutes, as created by this act, expand the use of general operation permits under section 285.60 (3) of the statutes, as created by this act, expand the issuance of construction permit waivers under section 285.60 (5m) of the statutes, as created by this act, and take other actions under section 285.60 (10) of the statutes,

as created by this act, and recommendations on how these limitations might be overcome.

****NOTE: The instructions indicated that DNR should recommend how to work cooperatively with EPA to overcome the CAA requirements that interfere with the listed activities, but if the requirements are in the CAA, there really is nothing that EPA can do about them.

(b) The department shall submit the report under paragraph (~~a~~) to the legislature in the manner provided under s. 13.172 (2) no later than the first day of the 7th month beginning after the effective date of this paragraph.

Use dr. "Z" (on page 27)

(3) REPORT ON STATE IMPLEMENTATION PLANS. No later than the first day of the 7th month beginning after the effective date of this subsection, the department of natural resources shall submit to the joint committee for review of administrative rules a report that contains all of the following:

(a) A description of all of this state's existing and pending state implementation plans under 42 USC 7410 with an analysis of any rules or requirements included in the plans that may not have been necessary to obtain federal environmental protection agency approval but that are federally enforceable as a result of being included in the plans.

(b) Recommendations for revisions of state implementation plans to remove rules and other requirements that may not have been necessary to obtain federal environmental protection agency approval.

(END)

DNote

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3455/P1dn
RCT:.....

cjs

This is a preliminary draft containing the proposed changes to ch. 285, the air pollution laws. I have included a number of questions and comments in the draft itself.

I find that discussions (and statutes) about general permits are often confusing because of a lack of a clear distinction between the broad permit that DNR issues and the determination of whether a particular source qualifies for the permit. In discussing general permits, I have tried to distinguish between DNR issuing a general permit, which is the general document for a category of similar sources, and DNR determining that a particular source is eligible for coverage under a general permit.

We try to avoid broad "notwithstanding" clauses in the statutes for several reasons. For one thing, they make it difficult for persons using the statutes to know what the law is. The use of overbroad preemption provisions is prohibited by Joint rule 52 (6), which provides "[a]ll parts of the statutes and of other laws which are intended to be superseded ... should be specifically referred to, so far as practicable, and expressly superseded ... ." Also, it is easy to end up with conflicting "notwithstanding" clauses and then it is not clear which one is meant to control. In the language proposed for this draft in the second set of instructions, for example, s. 285.60 (2m) would have started with "notwithstanding the other provisions of this chapter, ..." and s. 285.60 (10) (b) [which would be an "other provision of this chapter"] would have said "notwithstanding sub. (2m), ...". I have tried to narrow and reconcile the "notwithstanding" clauses in this proposal.

Regarding proposed s. 285.60 (9): I do not see anything in ch. 285 that would prevent DNR from granting one permit for multiple sources at a facility. I think that DNR's rules currently allow this. If that is the case, there is nothing to "notwithstand" in order to allow for facility–wide permits. I would be glad to work with you to identify other provisions in ch. 285 that prevent DNR from reducing paperwork and other administrative tasks that do not benefit the environment so that the draft can specifically authorize DNR not to comply with them when that is consistent with the Clean Air Act.

The instructions for this draft indicate that this state should wait to take action on mercury emissions until the federal government takes action. Section 285.11 (9) requires DNR to prepare and adopt minimum standards for the emission of mercury

compounds or metallic mercury into the air and is the statute that DNR cited as authorizing the proposed rule. Do you want this draft to repeal s. 285.11 (9)?

The instructions for this draft indicated that s. 285.62 (8) should be amended to delete the language about submitting additional information requested by DNR within the time set by DNR and to provide that an application is timely if submitted on or before the operation permit application date specified under s. 285.62 (11) (b) or, for a renewal, on or before the date that the operation permit expires. The intended effect of these changes is unclear to me and they are not included in this preliminary draft. For a permit other than a renewal, is the intent that operation be allowed to continue only if the application is considered to be complete under proposed s. 285.61 (2) (b) on or before the permit application date? If so, operation would not be allowed to continue if the application is submitted just before the permit application date and then (before the 20 days are up but possibly after the permit application date) DNR or the certified contractor requested additional information. For a renewal, if DNR or the certified contractor requests additional information within 20 days, is the intent that operation may only be continued if the additional information is submitted before the old permit expires? Or is the intent that operation may continue as long as a permit application is filed on time without consideration of when the applicant submits any additional information that is requested in the 20 days? Or is something else intended?

Please consider whether there should be delayed effective dates for any of the provisions of this proposal. The draft will need initial applicability provisions to address issues such as whether the changed deadlines for DNR action and the penalties for late action apply to applications that have been filed before the proposal becomes law.

Please contact me with any questions about this draft.

Rebecca C. Tradewell
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3455/P1dn
RCT:cjs:jf

October 29, 2003

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Please contact me with any questions about this draft.

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