

Committee Name:

Senate Committee – Economic Development, Job Creation and Housing (SC–EDJCH)

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**WISCONSIN
BIOTECHNOLOGY
ASSOCIATION**

AMERICA'S THIRD COASTSM
BIOTECH COMMUNITY

**Joint Hearing of the Assembly and Senate
Economic Development Committees**

**“Regulatory Impediments to
Economic Growth in Wisconsin”**

May 15, 2003

I am Jim Leonhart, representing the WISCONSIN BIOTECHNOLOGY ASSOCIATION (“WBA”), one of the “cluster leaders” in our state. Thank you for the opportunity to present our thoughts about what may constrain the growth of the biotechnology industry in Wisconsin.

The WBA represents 150 companies who are either directly involved in the development and manufacture of products based on biotechnology research or who support the expansion of this industry in this state. The life saving or life enhancing nature of the “fruits” of this industry make it critical from a value of life and from an economic vitality perspective to have this industry grow.

While many who are associated with biotechnology across the country greatly respect the research that is taking place in our University of Wisconsin System and within our companies themselves, there is not a commensurate amount of respect from the investing community. Why is the bulk of the biotech action on the coasts? Why is ag-related biotechnology getting attention in Iowa and Kansas? Why did Michigan invest a considerable amount of their tobacco money in biotechnology? Most states have figured out that biotech-related companies need to be a part of their “real time” economy.

To be brief today, permit me to simply offer what a couple of other states are doing to pave the way for biotechnology expansion:

New Jersey	<p>Introduced legislation to create within the Department of Environmental Protection a Biotechnology permit Acceleration Task Force. The task force shall be responsible for:</p> <ul style="list-style-type: none"> (1) For the development of rules and regulations designed to shorten the time period to obtain permits (2) For the development of policies to decrease the application and review costs for permits for biotech-related activities.
Also New Jersey	<p>Creates a corporation business tax credit benefit to allow new or expanding biotech companies with unused research and development credits to surrender those tax benefits for use by other corporate business tax payers.</p>
California	<p>For each taxable or income year provides that the credit for research expenses be 12% (up from 11%) of qualified research expenses, including biopharmaceutical research and biotechnology research.</p>
California	<p>Proposed legislation would authorize a taxpayer engaged in biopharmaceutical and biotechnology activities that has not received federal regulatory approval for any product to deduct 100% of the net operating losses.</p>

We need to set the climate for “economic attractiveness.” For example, can our technological advances be used to gather data and help make decisions that could result in getting products to market more quickly? New processes for a new time: all the rules and regulations need an effectiveness test!

MEA's Rhetoric is Unproductive

by Todd Palmer

May 2003 ?

Wisconsin has a problem. This state, which prides itself on progressive government, is losing its manufacturing base because of an antiquated regulatory environment that hinders development. That was the nearly unanimous testimony presented to the Joint Committee on Economic Development last Thursday. Despite characterizations to the contrary, that testimony did not come from a team of paid industry lobbyists. Rather, it came from a diverse group of private business owners, developers, regulatory professionals and citizens. Even Cory Nettles, the Secretary of the Wisconsin Department of Commerce, acknowledged the problem and that the time has come for change in this state.

Instead of acknowledging the problem and engaging in a productive dialogue on innovative ways to correct the situation, Midwest Environmental Advocates (MEA) has chosen to throw around invective rhetoric. MEA side steps the real issue of unnecessary government bureaucracy and tries to re-frame the issue as business lobbyists fighting to loosen environmental standards. Yet, businesses have repeatedly stated that it is not the standards that need to be changed; it is the unworkable and business-killing regulatory processes by which those standards are implemented. That was communicated clearly in the testimony at the recent legislative hearing but MEA ignores that part of the message.

In an effort to support its points, MEA makes several misleading assertions concerning WDNR's failure to timely issue operation permits to Wisconsin businesses. First, MEA perpetuates the misperception that businesses without an operation permit can emit at will. In actuality, an operation permit merely memorializes in one place which of the thousands of existing emission limits a business must meet. The emission standards that apply to a business without an operation permit are the same as those that apply to a source that has a permit. At most, an operation permit may increase the reporting and recordkeeping requirements for a business. In EPA's own words:

In general, this [operation permit] program was not intended by Congress to be the source of new substantive requirements. Rather, operating permits required by Title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements. Accordingly, operating permits and their accompanying applications should be vehicles for defining existing compliance obligations rather than for imposing new requirements or accomplishing other objectives.

Second, MEA is wrong in suggesting that businesses without an operation permit are in violation of the Clean Air Act. On this point Congress could not have been clearer in stating within the Clean Air Act that "...if an applicant has submitted a timely and complete application, the source's failure to have a permit shall not be a violation..." That makes perfect sense since operation permits perform a largely procedural task and do not change or add substantive emission limits to a source.

Third, Wisconsin businesses do not have a competitive advantage as a result of WDNR's operation permit program. MEA fails to disclose that Wisconsin businesses have needed to comply with an operation permit program since 1985. Federal law did not require operation permits in other states until almost a decade later. Further, Wisconsin has unilaterally chosen to expand Wisconsin's permit program to apply to relatively small sources called minor sources. Yet, federal law only requires operation permits for relatively large "major sources" of air pollution.

MEA is also not forthright when it asserts that DNR issues construction permits within 87 days. That statistic is from the date when a construction permit is "deemed complete" by a DNR engineer. However, DNR has never defined what constitutes a complete application and will often string a business out for months asserting that an application is not complete. At a recent meeting, DNR Air Bureau Director Lloyd Eagan stated that so far this year DNR took, on average, 183 days to issue a permit from the date a business first files its application. That is more than double the time MEA asserts and is too long when compared to other states.

Finally, MEA asserts that business organizations argue from anecdote rather than data. Wisconsin's loss of over 66,000 manufacturing jobs in the last three years cannot credibly be characterized as anecdotal by anyone who makes a living in the private sector. MEA should tell the family of an out-of-work paper mill worker that the elimination of his job is merely anecdotal.

I have helped businesses on environmental issues for over 15 years in various jurisdictions and capacities. In my experience, and that of many of my peers, Wisconsin has a national reputation for being among the worst regulatory climates for business in the United States. I have asked businesses to come forward and share their stories on perceived regulatory abuses in Wisconsin, but all have refused. They fear retaliation and retribution from regulators. I believe it speaks volumes about the regulatory climate in this state when the regulated entities live in fear of criticizing the regulators. There is a word for that form of government and it is not "progressive."

The time is right for a cooperative effort to help resolve problems shared by all Wisconsin citizens. We need more creative and innovative ways to implement environmental standards in Wisconsin. Unsubstantiated rhetoric and pleas to emotion have no place in that dialogue. MEA would be well served to re-read the mission of Echoing Green, the foundation that funded the creation of MEA:

Innovation and entrepreneurship are the engines that have driven the American economy throughout history. Echoing Green believes that the same energy and creativity need to be applied to the social sector. Experimentation and revolutionary ideas thrive in such environments. In these roiling pipelines of hope, passion, zeal and unwavering optimism, paradigm shifts are truly possible! Intractable social problems must be approached in new ways if we ever hope to solve them. Supporting innovative ideas that address root causes of social challenges is one of the most powerful strategies for catalyzing lasting change.

Todd Palmer is an attorney who chairs the Environment & Land Use practice group at DeWitt Ross & Stevens S.C. in Madison.

Opinion Editorial May 15, 2003

by Melissa K. Scanlan

Executive Director of Midwest Environmental Advocates, Inc.

The Senate and Assembly Committee on Economic Development convened a hearing today on "Regulatory Impediments to Economic Growth in Wisconsin." The hearing should have been called, "Environmental Regulatory Complaints by Industry Lobbyists," because although there are numerous regulatory programs and a variety of viewpoints on the subject, the vast majority of the hearing was spent presenting one perspective on one topic.

As the Executive Director of the only non-profit environmental law center in Wisconsin, I am all too familiar with environmental regulations in Wisconsin. Removing inefficiency in government is something on which most people can agree. However, representatives of several business organizations have confused the issue by arguing from anecdote rather than data.

We receive calls every week from people who live with contaminated water and air. Those calls come from moms and dads who are concerned about protecting their children's health. They also come from business owners who believe that they are at a competitive disadvantage when they see other businesses violating environmental standards and not getting prosecuted. A good business owner knows that environmental protection is necessary. They comply with the laws and they expect others to do the same.

But others are not doing the same. Almost half of the 610 major sources of air pollution in Wisconsin are operating without their Federally-required Title V operating permits. Wisconsin is an island of non compliance, surrounded by states that actually follow the Federal Clean Air Act. ✓

Wisconsin has the notorious distinction of having the worst operating permit issuance rate in the Nation. A March 2002 EPA Inspector General Report concluded Wisconsin had acted on a lower percentage of overdue Title V operating permit applications than any other state in EPA Region 5. See Office of Inspector General Evaluation Report, EPA and State Progress In Issuing Title V Permits, Report No. 2002-P-00008 (Mar. 29, 2002), at 48. The report concluded no other state in the country with more than 400 major sources had a worse permit issuance rate than Wisconsin, not even Louisiana, which has nearly twice as many major sources. See Inspector General Report, at 47-50.

Does this mean that these businesses are not operating? No.

Wisconsin Manufacturers and Commerce (WMC) claims that the most "significant regulatory impediment" to businesses is the "inability to obtain timely permits . . ." But Wisconsin businesses are allowed to operate major sources of pollution without first obtaining their Title V permits. This situation does not harm business owners, it harms the people who have to breathe air that has more pollution in it because the businesses are

operating without Title V permits. If this is the most significant regulatory impediment to businesses, then they are operating in a fairly impediment-free environment.

Let's separate fact from fiction. When a company starts a new project that will emit air pollution, it must get a construction permit. Is there really a delay in construction permits? According to DNR Air Program Quarterly Reports, businesses in Wisconsin are receiving construction permits in a timely manner. The law requires permits to be issued within 145 days (for minor sources) and 205 days (for major sources) of submitting a complete application. On average, the DNR issues construction permits in 87 days. And if the DNR takes longer than the statutory requirements, the business does not have to pay the permit fee.

WMC's reform suggestions should not be taken seriously. As their first option, they suggest that we should "allow construction to begin" prior to the DNR issuing a permit. The Federal Clean Air Act requires businesses in all states to first obtain a Prevention of Significant Deterioration permit prior to beginning construction. Allowing construction prior to obtaining the permit would defeat the whole purpose of a regulatory review and it would violate the CAA.

This seems to take us backwards and away from the norm of the rest of the country. This is not a race to the bottom to see who can allow the most pollution within their borders. That is why we have Federal environmental laws. They set a bare minimum that must be met. Wisconsin isn't even meeting these minimum standards in many cases, which means businesses in the rest of the country are at a competitive disadvantage to the lawbreakers within our state.

What the few call regulatory hurdles, the many in Wisconsin call environmental protection of their home. WMC lists the fights to stop the Crandon Mine, Perrier, and Ashley Furniture as examples of regulatory burdens in Wisconsin. Well those burdens actually live, breathe, and vote. They are the thousands of Wisconsin citizens who came out to fight those shortsighted proposals and win. Those fights are examples of how important Wisconsin's clean water and air is to a majority of its citizens.

Wisconsin benefits from strong environmental protections that maintain our high quality of life. Businesses thrive in places that are rich in natural resources that are well managed. We will not accept a simple jobs versus environment trade off in this state. We are smart enough and committed enough to create jobs that are aligned with protecting our high quality of life.

Midwest Environmental ADVOCATES

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Melissa K. Scanlan,
Attorney
Founder & Executive
Director

Senate and Assembly Committee on Economic Development May 15, 2003 Hearing on "Regulatory Impediments to Economic Growth in Wisconsin."

Introduction

Good morning and thank you for the opportunity to present testimony today. My name is Melissa Scanlan. I am the Executive Director and lead attorney for Midwest Environmental Advocates, a non profit environmental law center that represents communities across Wisconsin that have environmental problems.

When a well is contaminated, we get called. When a company proposes to drain a trout stream in order to bottle and export Wisconsin's water, we get called. When a company gets an unwarranted exemption allowing it to emit more cancer-causing pollution, we get called. And when a company is allowed to pollute without facing enforcement action, we get called.

Those calls come from moms and dads who are concerned about protecting their children's health. They also come from business owners who believe that they are at a competitive disadvantage when they see other businesses violating environmental standards and not getting prosecuted. A good business owner knows that environmental protection is necessary. They comply with the laws and they expect others to do the same.

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**Statement of Kerry Schumann, WISPIRG Director
Before the Senate and Assembly Economic Development Committees on
"Regulatory Impediments to Economic Growth in Wisconsin"
Thursday, May 15, 2003**

Thank you for the opportunity to speak today. I am the director of the Wisconsin Public Interest Research Group, a nonprofit, nonpartisan public interest advocacy group working to protect public health and the environment, protect consumers and promote democracy.

I am here today because I am deeply concerned about the strategy of Wisconsin Manufacturers and Commerce and other entities to undermine some of the key factors that make Wisconsin a place where people want to live.

As I reviewed WMC's report yesterday, I was struck by how little evidence they actually provide to support their claims that Wisconsin's regulatory climate is limiting business opportunities in Wisconsin. In fact, the report was based solely on discussions with 60 of their own members, rather than on hard data, surveys of member and non-member companies, and real economic indicators.

I've spent some time the past few days looking at other economic studies. From what I've seen, quality of life indicators are very important to a strong business climate – factors such as high quality education, health coverage, homeownership rates and a clean environment.

Wisconsin's quality of life is what makes people want to live here. And our natural resources are a huge part of that quality of life. You will find few places around the country where citizens have as much of a connection with their natural environment as in Wisconsin. Wisconsinites fish, swim, hike, snowmobile, boat and otherwise enjoy our lakes, rivers, hills and forests.

Degrading those natural resources will only hurt Wisconsin – for individual citizens and for business.

It's not just about quality of life. Some of our largest industries rely on clean natural resources. For example, tourism, agriculture, paper manufacturing, beer making and fishing can only survive as long as Wisconsin has clean water.

I'm not saying that there aren't ways to improve regulations in Wisconsin. I doubt anyone in this room would say that. But the recommendations given by WMC in their report will not improve the regulatory system, and they will only harm the environment and degrade our quality of life.

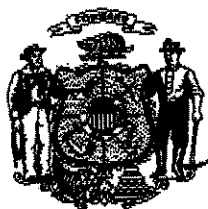
Perhaps WMC's confusion about the purpose of environmental regulation is best summed up on page 7 of their report: "Wisconsin needs to look at permit applications as an economic development opportunity, not as a regulatory opportunity." The permit process, whether it's for air, water or construction permits, isn't a "regulatory opportunity." It's a process developed to ensure minimum impact on Wisconsin's air, land and water. It's a way to prevent damage before it occurs. By using preventative practices, we can avoid the

high costs of cleanup, the toll on human health and the often irreparable damage to the environment. Prevention makes sense – economically and environmentally.

WMC also claims that the state doesn't take into account the costs to business. But, what WMC doesn't take into account is the many costs related to a degraded environment and compromised human health. For example, pollution from Wisconsin's coal-burning power plants results in almost 450 deaths and 9,340 asthma attacks every year. What is the cost of that impact? And, of course, we are just seeing the beginning of decades worth of costs to clean up the Fox River.

It's true that there are ways to improve the regulatory system. We can do things like streamline programs so that they aren't spread over multiple agencies and we can more adequately fund permitting programs. Dismantling our programs, as proposed by WMC, would be a failure for Wisconsin's businesses and Wisconsin's residents.

Quality of life is an important factor in the long-term success of business. The pressure from Wisconsin Manufacturers and Commerce to weaken Wisconsin's laws will destroy that quality of life we cherish in Wisconsin, from our clean air to our trout streams. Wisconsin isn't bad for business - it's good for citizens. And what's good for citizens is ultimately what's good for business.



Public Service Commission of Wisconsin

Burneatta Bridge, Chairperson
Ave M. Bie, Commissioner
Robert M. Garvin, Commissioner

610 North Whitney Way
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May 16, 2003

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VIA FACSIMILE

Senator Cathy Stepp
Room 7 South
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Madison, WI 53707-7882

Representative Terri McCormick
Room 127 West
State Capitol
P.O. Box 7882
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Dear Senator Stepp and Representative McCormick:

At your joint Hearing yesterday, I provided testimony on the subject of regulatory reform and need for better interagency cooperation between the Public Service Commission and the Department of Natural Resources.

Chairperson McCormick asked that I provide your Committees with a copy of my recent column in the Milwaukee Business Journal that summarizes my concerns with the current regulatory processes and offers some solutions for your consideration. Attached is a copy of the article that appeared in the April 11th edition of that publication.

I appreciated having the opportunity to testify at your hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Garvin".

Robert M. Garvin

cc: Senator Roessler

4-11-03

Regulatory process needs to be improved

The Public Service Commission (PSC) gave final approval March 31 to Wisconsin Gas Co. to proceed with the construction of a gas pipeline from Brookfield to Ixonia, where it will connect to the Guardian pipeline.

The good news is that this new pipeline will deliver needed natural gas capacity into southeastern Wisconsin to meet our growing needs for energy. The bad news is that it took more than three years to

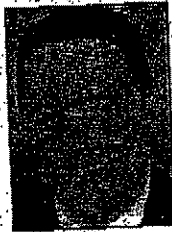
Why did this critical addition to Wisconsin's energy infrastructure take 40 months to approve?

approve the project. During that time, the estimated cost of the project also increased by nearly 60 percent to almost \$100 million. Why did this critical addition to Wisconsin's energy infrastructure take 40 months to approve? The answer lies in our dysfunctional regulatory climate. The Guardian case highlights why Gov. Jim Doyle and Wisconsin lawmakers need to repair the strained regulatory marriage between the PSC and the Department of Natural Resources (DNR), the two major agencies tasked with considering energy projects. The lack of communication and coordination that exists between our agencies is a problem that may need a legislative solution.

Wisconsin Gas filed its PSC application in November 1999. The PSC issued its final decision approving the pipeline in July 2001. After several public hearings, we concluded the project was needed for Wisconsin's energy needs. Our order also reduced the environmental impacts of the project through careful route development to avoid environmentally sensitive areas.

DNR'S REVIEW

Following PSC approval, Wisconsin Gas filed its DNR application in September 2001 to obtain its "Chapter 30" permit, the commonly used name for the permits



GUEST COMMENT

ROBERT GARVIN

mit in January 2003.

After many meetings, it was made clear to PSC staff that the DNR had fundamentally changed its Chapter 30 review for this and future utility applications involving any construction through wetlands. The DNR applied a stricter wetland analysis to the Guardian project than previous projects. In hindsight, it would have been far more efficient for the DNR to roll its stricter environmental review into our public process and propose preferred route alternatives to the PSC before the PSC route selection.

NO DETAILED ANALYSIS

Yet the DNR staff participated only in the preparation of the environmental impact statement and provided no detailed analysis of wetland or stream crossings at our hearing. In my view, the regulatory delays with this project could have been minimized if we had worked together and had the benefit of the DNR's wetlands expertise in the site selection in our case.

The DNR's lengthy regulatory process further reduced the amount of wetlands affected by this project. It modified the route in multiple locations; significantly increased the amount of drilling required through affected wetlands and waterways; and required an independent construction monitor to ensure minimal disruption and proper restoration of affected areas. These changes

substantial cost increases for this project.

Still, important regulatory decisions like Guardian should not take 40 months. My concern is not with the DNR's ultimate goal of reducing the project's impact on wetlands but the length of time and costs to ratepayers needed to achieve our mutual objective. Wisconsin Gas is now under tremendous pressure to get this project built by November. Any construction delays beyond that will cost ratepayers an additional \$4 million a month.

SPEED UP THE PROCESS

When Wisconsin teetered on the verge of rolling blackouts in 1997, the governor and the Legislature acted quickly to streamline the regulatory process at the PSC. The PSC is now required to approve or deny applications within six months or request a court extension for an additional six months.

Wisconsin would be wise to consider some of the Bush administration's and Congress' efforts to streamline its regulatory processes. These include:

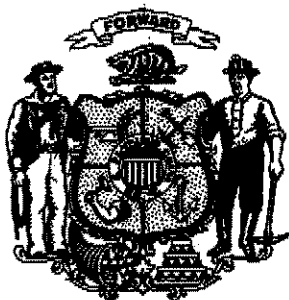
- Imposing binding intermediate and ultimate deadlines for all permits and environmental reviews;
- Requiring agencies to report, within 60 days, on the "likelihood of approval" for their project and identify key areas of concern from the public and other agencies;
- And designating a lead agency to coordinate the process.

The sense of urgency for regulatory reform that existed a few years ago in Wisconsin is now gone, as we expect healthy reserves for this summer. In my view, however, more work needs to be done. Regulators should not be agnostic to the time, costs or public concerns associated with our regulatory processes.

I hope Gov. Doyle and the Legislature consider enacting regulatory reforms to both improve Wisconsin's regulatory climate and protect the public's right to participate.

ROBERT GARVIN has been a member of the Wisconsin Public Service Commission since March 2001.

Public Service Commission of Wisconsin



PSC-2013 (R01/10/03)

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Representative Terri McCormick	(608) 282-3656

From:

Commissioner Robert M. Garvin

(608) 267-7899

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Comments:

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Thank you. My name is Mark Reimer, General Counsel to Foth & Van Dyke and Associates, Inc. Founded in 1938 in Green Bay, Foth & Van Dyke has a tradition of offering consulting, compliance and engineering services to state and local governments and industrial and commercial entities ranging in size from a few employees to Fortune 500 companies. We provide these services from offices located in four states.

We are pleased to have this opportunity to be here today to provide some brief remarks to this Committee with respect to how we see the current Wisconsin regulatory climate impacting the business development efforts of some of our industrial and commercial clients. While that climate impacts almost all of our clients and almost everything they do or desire to do, I will focus my remarks on two distinct experiences, one addressing the efforts of an ongoing business and the other addressing a new, proposed commercial project in this State. While these are distinct cases, we believe they accurately represent a broad spectrum of the commercial community.

The first experience involves a middle market Wisconsin-based manufacturing company with approximately 300 employees. The company is Wisconsin-born and based and has grown rapidly. Like many other growing companies, representatives of this company attribute their success to their ability to identify and respond to client needs and market demands. They take pride in the investments they have made to become as flexible as possible.

This company operates under an air permit containing over 30 pages and 50 conditions, some required by federal law and others required by state law. As is typical when drafting any permit, State regulators and company representatives discussed these conditions and ultimately reached agreement on specific permit terms. Those discussions were grounded, in part, on the company's then existing knowledge of its facility and its marketplace and its best estimate on what short and long-term changes may occur.

However, as with any projections, markets and customer needs change unexpectedly. And, new processes are developed to meet those changes. Oftentimes, a company's ability to compete in today's marketplace hinges on its ability to implement those changes at least as fast as their competitors. And more often than not in Wisconsin, due to the breadth of the State's regulatory programs, those changes require approval from some regulatory agency.

In this case, in order to respond to market demands, the company wanted to expand their operations. Not surprisingly, such a change required state approval before the company could begin the necessary construction. That approval took nine months after submittal to obtain. Wisconsin companies cannot compete nationally under that scenario.

Many respond to the concerns raised by the regulated community by arguing there would be no need for subsequent state approvals if companies did a better job predicting the future and built those predictions into more flexible state permits initially. We have seen companies strive to do that. However, that has led companies to over-permit for anticipated operational changes prematurely. This only leads to increasing demands on agency resources, more complicated permits addressing changes that may never be implemented and increased permitting cost.

The second experience involves development of a new metallic mine. This proposed project would result in creation of hundreds of Wisconsin jobs and was significant enough to require review under the Wisconsin Environmental Protection Act, commonly referred to as "WEPA." WEPA was enacted to embody Wisconsin's long held tradition of open government and significant citizen involvement in governmental decisions impacting Wisconsin's environment. The process established under WEPA to gather public input is oftentimes referred to as the "Environmental Impact Statement" process or "EIS". It is critical to recognize the WEPA process is just one of many state and federal environmental-related administrative processes this proposed mining project will be subjected to, most with their own separate public input procedures.

This proposed mining project is currently in the 10th year of the EIS process. While review and public airing of complicated environmental issues is a time consuming process, we do not believe the EIS process, as envisioned by those who enacted the program, expected it to result in delays measured in decades rather than months or perhaps years. And, while changes in design, project ownership and staff may explain a portion of the period, they certainly do not explain the entire time.

One aspect that is missing from the EIS process that we believe would help give proponents of large projects like this some certainty is a mandated timeline for environmental review. Clearly established timeframes should be provided in WEPA, and in similar other environmental statutes, that are applicable to proponents and reviewers alike. And, as with timeframes placed on project proponents, there should be real ramifications on project reviewers missing these timeframes. Additionally, an encyclopedic approach to environmental review tends to create a process that is more "research project" oriented. A more analytical review approach, coupled with a more timely review process would, in our experience, be more consistent with other states and reduce time, costs and frustrations for all parties while maintaining rigorous environmental protection.

Another area where we see an opportunity to streamline environmental review processes like the EIS process is to reduce the tendency that we see to completely redo engineering and design-related documents that have been submitted on behalf of the applicant by competent professionals. Typically, documents at the core of an EIS or other permit-related administrative processes are prepared and stamped by professional engineers and scientists. While some review may be warranted for larger more complex projects, reviewers should more readily rely on the licensed professional community to practice their discipline. We believe that the reviewing agency should determine the standards a relevant project must meet and require the applicant to submit documentation on how the standards will be met. The reviewers would then focus on whether designs and analyses were completed by licensed professionals using accepted engineering and science. This would, in our opinion, greatly simplify the process without jeopardizing environmental protection.

Large resource development projects are by their nature of great public interest. The EIS process creates ample opportunity for issues to be debated. Oftentimes, this debate spills into the legislative arena with proposals to change specific environmental statutes and the regulatory structure. Given Wisconsin's rigorous environmental laws, it is questionable whether these

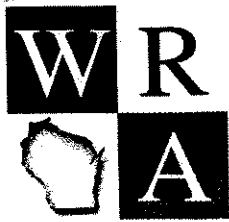
statutory changes, made in mid-stream, enhance environmental protection or simply create delay and contribute to a climate in which Wisconsin is viewed as being unfriendly to business. From our perspective and experience, many of the recent changes and proposed changes to mining laws in the state, do not "enhance environmental protection". Rather they send a message to the entire business community, not just mining, but that business development is not one of Wisconsin's primary concerns. Foth & Van Dyke believes that the legislature needs to proceed very carefully when they are faced with proposed statutory changes to environmental laws that are targeted to stop specific proposed projects.

We constantly hear our clients' frustration with these approval processes. I suspect our competitors in other states hear similar stories. However, what we are starting to hear at an alarmingly increasing rate is companies questioning their commitment to Wisconsin. For instance, the company discussed in the first experience stated if it had known the approval process was going to get this complicated and time-consuming, it would have investigated the possibility of doing business in a different state. Similarly, the second experience has caused mining companies to actually question this State's commitment to the business and manufacturing community. And those are truly troubling developments.

I would like to make clear that we agree with Wisconsin's deeply held tradition of sound environmental stewardship and the State's agencies steadfast commitment to that stewardship. However, as a business both operating and helping others operate in this state, we urge our elected representatives to strike an appropriate balance between that stewardship and economic development. One that maintains and fosters growth in the commercial sector while allowing us to enjoy those natural resources we treasure. Summarizing, we respectfully offer that the following actions will go a long way to developing a "win-win" for Wisconsin's environment and its business community:

- ◆ Grant business the flexibility it needs to operate and react to changing market demands by limiting reviews to truly significant items;
- ◆ Agency reviews should focus on whether the project as designed will meet standards, and not on re-engineering the project as part of the review process;
- ◆ The legislator should tread carefully when considering statutory changes targeted to stop specific projects; and,
- ◆ As with businesses, reviewers should be held to legal timelines with ramifications in the event those timelines are missed.

In closing, these concerns are real and serious. Not addressing them will simply foster the perception that Wisconsin is a hostile place to do business. And, once that perception becomes fixed, it will be too late.



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Memorandum

To: Members, Joint Committees on Economic Development
From: Michael Theo and Thomas Larson
Date: May 15, 2003
Re: State Regulatory Reforms

Like great schools, a clean environment, and an efficient transportation system, a healthy, vibrant economy is critical to Wisconsin's quality of life. Many factors contribute to our state's economy including a skilled labor force, an adequate supply of affordable housing, and a favorable regulatory environment. If any of these factors are lacking, companies will look to other states and countries to do business.

The current regulatory environment in Wisconsin is problematic. This is particularly true in the housing and real estate development industry. Government red tape, excessive delays in receiving permits, and a lack of financial incentives are making it difficult for Wisconsin to meet our demands for housing and economic development.

To meet these demands, remain competitive in the global business market and jump start our state's economy, we need a comprehensive regulatory reform. The following is a list of possible initiatives to promote regulatory reform and economic development in Wisconsin:

Regulatory Reform

- Trans. 233 – Repeal and revise Trans. 233 to address the excessive delays in receiving DOT approvals, unreasonable traffic study requirements, and overreaching DOT regulatory authority; all of which are creating tremendous obstacles for economic development in Wisconsin.
- E-commerce – Revise the state's electronic commerce statutes to facilitate use of transactional platforms and electronic signatures using federal legislation (E-sign) and the Uniform Electronic Transaction Act (UETA) as the foundation for Wisconsin-specific statutes.
- Permit processing deadlines – To help expedite the permit approval process, require all state agencies and local governments to establish timelines for acting on permit applications. If the permits are not granted within the specified time frame, the permits will be deemed automatically approved.

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- State agencies' use of guidances – To provide the economic development community with greater certainty about state regulations, prohibit the use of “guidances” used for regulatory purposes unless such guidances have been adopted by administrative rule.
- Unified development permit review process – Require all state and local governments establish a unified development permit review process which includes a comprehensive list of all permits required; a sequence of the permit approval process with specific names of responsible governments, departments and individuals involved in the process; disclosure of required recorded hearings (and limit such hearings and appeals to just one); and estimate the time necessary for review.
- Moratoria enabling legislation – Authorize municipalities to enact moratoria on economic development only to prevent the overburdening of public facilities or a significant threat to public health or safety presented by economic development.
- Vested rights – Freeze development regulations for completed permit applications and provide that any subsequent changes in land use regulations will not affect the consideration of the pending application.
- Impact fees – Require that impact fees cannot be collected prior to the issuance of a building permit. Impact fee ordinances must include a procedure for individualized assessments of impact fees, an appeals process, a provision for credits (for on-site improvements and for impact fees paid in excess of a development's proportionate share), and cannot be retroactive. Assessed impact fees must be refunded to the payor of the fee if the capital improvement is not commenced within 5 years. Authorize communities to exempt affordable housing from impact fees.
- Other fees imposed on economic development – Codify existing case law prohibiting local units of government from charging fees that exceed the actual costs incurred to provide that service. Fees that are imposed to generate revenue are an illegal tax unless specifically authorized by the legislature.

The WRA encourages the legislature to adopt these and other regulatory changes to enhance the state's ability to attract, maintain and grow Wisconsin businesses and jobs. We stand ready to assist you in any way.

Overlapping Grading Regulations

The following regulations, spread among nine different government agencies, overlap to regulate the grading of soil in the vicinity of water.

Direct regulation

- 1) Uniform Dwelling Code and Commercial Building Codes (Comm 21, Comm 65)
- 2) DNR stormwater standards and permits (NR 151, NR 216)
- 3) Navigable water law (Ch. 30.19)
- 4) County shoreland zoning ordinances
- 5) County floodplain zoning ordinances
- 6) Town building, driveway, and other permits
- 7) City Subdivision review (if within extra-territorial zone)

Indirect regulation

- 8) Regional Planning Commission sewer extension permits
- 9) Metropolitan Sewerage District permits
- 10) U.S. Environmental Protection Agency stormwater regulations
- 11) U.S. Army Corps of Engineers wetland and navigable water regulations

WI Joint Committee on Economic Development

Sales/Use Tax on Temporary Help Services

May 15, 2003

**Jon P. Skavlem, CPA
Virchow, Krause & Company LLP
WICPA Wisconsin Taxation Committee**

Wisconsin Sales/Use Tax on Temporary Help Services

- Businesses of all types increasingly rely on “temporary help” and staffing services to meet their specialized manpower needs
- Technological change, skilled labor shortages and cost considerations have driven this trend
- Temporary help and staffing services are a major part of WI’s economy
- US Census Bureau estimates that WI sales of employment services exceeded \$2 billion in 2001

Wisconsin Sales/Use Tax on Temporary Help Services

- WDOR has taken position that certain employment services are subject to sales and use tax
- Based on broad reading of Sec. 77.52 (2)(a) Wis. Stats.
- Deemed to apply to outsourcing, staffing, leasing, and other short-term employment arrangements
- Position attempts to establish a tie-in with other types of taxable services e.g. repairs to tangible personal property, telephone answering.

Wisconsin Sales/Use Tax on Temporary Help Services

- Terms of contract and intent of parties are ignored
- Network and IT consulting/staffing agencies adversely impacted
- Large and small “temporary help” businesses included also at risk
- Both vendors and consumers face tax significant tax assessments
- New standard applied retroactively

Wisconsin Sales/Use Tax on Temporary Help Services

- Contrary to legislative intent?
- WDOR draft Wisconsin Tax Bulletin (WTB) release formulated to address issues
- Lack of clear standards and legal authority for WTB release puts businesses at risk
- Other activities beyond services to TPP will be drawn in

Wisconsin Sales/Use Tax on Temporary Help Services

- **Examples:**
 - “Temp” working on an hourly basis from staffing agency makes copies for you. Deemed to have purchased a taxable printing service?
 - Contract for a “temp” handle your receptionist and switchboard duties. Deemed to have purchased a taxable telephone answering service?

Wisconsin Sales/Use Tax on Temporary Help Services

- Many compliance issues involved
 - Verbal contracts common in staffing industry
 - Lack of detailed records to track multiple tasks
 - Hardware/software investments needed
 - Difficulty in applying tax standard
 - Magnification of existing tax disputes e.g. custom vs. canned software
- Costly and protracted litigation will result from the attempt to tax “temporary help” and staffing services that could be avoided

Wisconsin Sales/Use Tax on Temporary Help Services

- Unfavorable economic consequences
 - Hidden tax increase
 - Hits labor input to economy during period of relatively high unemployment
 - Compliance costs will be high, creating even further drag on WI's economy
 - WI approach is not consistent with other states that have specific statutes
 - Uncertainty of tax treatment has "chilling effect"
 - Inequities among taxpayers now exist

Wisconsin Sales/Use Tax on Temporary Help Services

- Solution – Affirm legislative intent that “temporary help” and staffing services are exempt from sales/use tax
- Guidance for Sec. 77. 52(2)(a) Wis. Stats. is available and has been advanced by tax practitioners, WICPA, and industry representatives
- Fiscal impact – Depends on point of view

Wisconsin Sales/Use Tax on Temporary Help Services

Questions?

Wisconsin Sales/Use Tax on Temporary Help Services

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