



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

Section NR 404.04(3)

Report to the Legislature Administrative Code NR 404.04(3) The Joint Committee for Review of Administrative Rules

Produced pursuant to 227.26(2)(g), Stats.

Section NR 404.04(3), promulgated by the Department of Natural Resources (DNR), creates rules for the regulation for total suspended particulates, set at 150 micrograms per cubic meter – maximum twenty four hour concentration, not to be exceeded more than once per year.

Description of Problem

At the request of Senator Leah Vukmir, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on s. NR 404.04(3) relating to total suspended particulates (TSP) on March 29, 2011. Section NR 404.04(3) was created in response to Federal Environmental Protection Agency (EPA) standards that were created in 1971. In 1987, the EPA replaced their TSP standard with a more restrictive air quality standard covering even smaller particles. At this point, the EPA no longer regulated TSP. Over the years, the EPA has adopted additional regulations based upon current scientific data. In 2008, the DNR adopted those new EPA standards, while continuing to regulate TSP. In 2003, the state passed Act 118, which required state regulations to be no more restrictive than the Federal standard.

Arguments in Favor of Suspension

- *Wisconsin is required by s. 285.21, Stats., to have an ambient air quality standard that is not more restrictive than federal standards unless certain health conditions exist. With changes adopted by the EPA in 1987, 1997, and 2006, the state has a more restrictive regulation for TSP. As the DNR contends this is not a health related regulation, no health conditions exist.*
- *This regulation costs Wisconsin's businesses hundreds of thousands of dollars to comply with. This is money that is being wasted as this regulation does not have any effect on air quality or the health of Wisconsin's citizens. This is money that can be better used to expand business operations and create jobs.*

- *Under the Doyle Administration, Secretary Hassett introduced a Clearinghouse Rule to eliminate this TSP standard due to the fact the DNR had no authority to have it in Administrative Code. The Natural Resource Board stopped this rule from advancing with this provision included.*
- *The DNR stated that removal of this TSP standard will actually improve the environment as this will free up staff time to actually go after real environmental problems.*

Arguments Against Suspension

- *TSP pollution can cause the following nuisances to the public welfare: corrodes metals and masonry, soils structures and motor vehicles, dusts the leaf surfaces of crops, trees and shrubs, and can impair visibility.*
- *While businesses that are currently covered by the TSP standard will still be required to employ basic control precautions to limit TSP emissions, the DNR will not be able to measure whether these precautions are effective without this TSP standard.*

Action by Joint Committee for Review of Administrative Rules

On April 27, 2011, the Joint Committee for Review of Administrative Rules held an executive session on s. NR 404.04(3). The committee passed the following motion on a 6-3-1 vote (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Taylor, Risser, Hebl.; ABSENT: Kessler):

“That the Joint Committee for Review of Administrative Rules suspend Ch. NR 404.04 (3), pursuant to s. 227.26 (2) (d), Stats., effective April 27, 2011, on the basis of testimony received at its March 29, 2011 meeting, and on the grounds that the contents of Ch. NR 404.04 (3) conflict with state law; are contrary to legislative intent; and impose an undue hardship on Wisconsin’s businesses as stated in s. 227.19 (4) (d) 3, 4 and 6, Stats.”

On May 24, 2011, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Hebl, Taylor, Risser, Kessler) to introduce LRB 1858/1 and LRB 2106/1, which would state the DNR is not authorized to modify the state secondary air quality standard or enforce such a standard if it is more restrictive than the corresponding federal standard. The bills were introduced as Senate Bill 110 and Assembly Bill 160.

Passage of one of the bills in support of the JCRAR suspension would remove the DNR’s ability to regulate secondary air quality in a manner that is no more restrictive than corresponding Federal standards.