

2011 DRAFTING REQUEST

Bill

Received: 09/26/2011

Received By: btradewe

Wanted: As time permits

Companion to LRB:

For: John Klenke (608) 266- 0485

By/Representing: Matt Henkel

May Contact:

Drafter: btradewe

Subject: Environment - air quality

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Klenke@legis.wi.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deferral of consideration of emissions from organic materials in determining greenhouse gas emissions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 09/30/2011	mduchek 10/04/2011		_____			S&L
/1			jfrantze 10/05/2011	_____	mbarman 10/05/2011	sbasford 10/24/2011	

FE Sent For:

<END>

At intro
1/11/2012

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Deferral of consideration of emissions from organic materials in determining greenhouse gas emissions

(Fixed online)

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See attached

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1/2	btradewe	1/1 MD 10/4/11	Jb	10/5			
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FE Sent For:

<END>

Tradewell, Becky

From: Henkel, Matt
Sent: Monday, September 26, 2011 3:52 PM
To: Tradewell, Becky
Subject: Deferral dor Biogenic CO2 Emissions

Becky, thanks for helping out with this.

On July 20, 2011, the EPA published a three year deferral of the regulation of biogenic CO2 emissions under the Prevention of Significant Deterioration and Title V permitting programs. The deferral has limited effect until WI adopts a statutory change reflecting the EPA action and EPA approves the WI change.

Representative Klenke would like to introduce legislation that would amend current law to add the following language from the PSD and Title V permitting programs.

The wording of the deferral reads:

"...prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material)."

Also, would it be possible to reference the EPA rules so that if the EPA changes the July 21, 2014 date that the WI statute would reflect that as well?

Please call or email with any questions.

-Matt

Matthew Henkel
Office of Representative John Klenke
Room 21-North, State Capitol
608-266-0485



State of Wisconsin
2011 - 2012 LEGISLATURE

SOON (in 9/30)

2011 BILL

2498/L

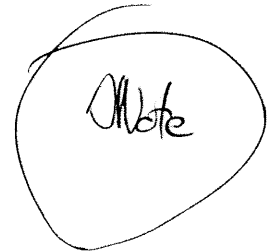


LRB-2866/2

RCT:med:rs

stays/MNR

no changes



Note

1 AN ACT to create 285.60 (3m) and 285.63 (3m) of the statutes; relating to:
2 consideration of certain greenhouse gas emissions in determining
3 requirements applicable to a stationary source of air pollution.

Analysis by the Legislative Reference Bureau

The federal Clean Air Act allows the Environmental Protection Agency (EPA) to authorize a state to administer the act if the state's air pollution control program is at least as stringent as the act. Currently, EPA delegates the authority to administer the federal Clean Air Act in this state to the Department of Natural Resources (DNR).

Current federal law and state law require construction permits and operation permits for certain stationary sources of air pollution, based on the amount of specified air contaminants emitted by the sources. Current law also requires certain stationary sources for which an air pollution permit is required to use what is called best available control technology (BACT) to control emissions of certain air pollutants. BACT requires the maximum degree of emission reduction achievable as specified by the permitting agency on a case-by-case basis, considering energy, economic, and environmental impacts.

EPA promulgated regulations, effective in 2011, requiring stationary sources that emit over threshold amounts of greenhouse gases to obtain construction and operation permits and requiring those sources to use BACT for greenhouse gas emissions. Greenhouse gases are gases, including carbon dioxide, that trap heat in the atmosphere. DNR promulgated corresponding rules. More recently, EPA

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modified its regulations by providing that, before July 21, 2014, carbon dioxide emissions from the burning or decomposition of organic material, other than fossil fuels, will not be counted toward the threshold for permitting because of greenhouse gas emissions or toward the requirement to use BACT. The modified federal regulation excludes from counting toward the threshold, for example, carbon dioxide emissions resulting from the decomposition of waste in a landfill, from burning gas derived from a landfill or manure digester, and from burning wood, wood waste, and other biomass.

This bill prohibits DNR from considering carbon dioxide emissions from the burning or decomposition of organic material, other than fossil fuels, in determining whether an air pollution construction permit or operation permit is required because of greenhouse gas emissions and in determining whether a stationary source is required to use BACT for greenhouse gas emissions, as long as this prohibition is consistent with federal law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 285.60 (3m) of the statutes is created to read:

2 **285.60 (3m)** CONSIDERATION OF CERTAIN GREENHOUSE GAS EMISSIONS. Unless
3 required under the federal clean air act, in determining whether a person is required
4 to obtain a construction permit or an operation permit for a stationary source under
5 this section based on emissions of greenhouse gases, the department may not
6 consider carbon dioxide emissions resulting from the combustion or decomposition
7 of nonfossilized and biodegradable organic material originating from plants,
8 animals, or microorganisms, consistent with 40 CFR 51.166 (b) (48) and the
9 definition of “subject to regulation” in 40 CFR 70.2.

10 **SECTION 2.** 285.63 (3m) of the statutes is created to read:

11 **285.63 (3m)** CONSIDERATION OF CERTAIN GREENHOUSE GAS EMISSIONS. Unless
12 required under the federal clean air act, in determining whether a major source is
13 subject to best available control technology under sub. (3) (a) for greenhouse gas

BILL

1 emissions, the department may not consider carbon dioxide emissions resulting from
2 the combustion or decomposition of nonfossilized and biodegradable organic
3 material originating from plants, animals, or microorganisms, consistent with 40
4 CFR 51.166 (b) (48) and the definition of "subject to regulation" in 40 CFR 70.2.

5

(END)

Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

2998/
LRB-2866/1dn
RCT:med:rs
stays

September 23, 2011
New Date

John Klenke:

This is a draft of the proposal relating to excluding certain carbon dioxide emissions in determining air pollution permitting requirements.

Because Wisconsin's air pollution statutes are structured so differently than the relevant EPA regulations, it is necessary to modify the language from the regulations in order to make our statutes clear. Also, the parenthetical language in EPA's regulations is confusing. I omitted the parenthetical language because it is confusing and is not necessary, but I included a cross-reference to the relevant regulation to clarify that the language in this draft describing the emissions that are not to be considered means the same thing as the language in the EPA regulation. Finally, I included an addition to s. 285.63 to make it clear that the exclusion of consideration of the specified emissions applies to determining whether BACT is required in addition to determining whether a permit is required (to cover major sources that are required to have a permit based on other kinds of emissions).

Please contact me with any questions or redraft instructions.

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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2998/1dn
RCT:med:jf

October 5, 2011

John Klenke:

This is a draft of the proposal relating to excluding certain carbon dioxide emissions in determining air pollution permitting requirements.

Because Wisconsin's air pollution statutes are structured so differently than the relevant EPA regulations, it is necessary to modify the language from the regulations in order to make our statutes clear.

Please contact me with any questions or redraft instructions.

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

Barman, Mike

From: Henkel, Matt
Sent: Monday, October 24, 2011 11:23 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-2998/1 Topic: Deferral of consideration of emissions from organic materials in determining greenhouse gas emissions

Please Jacket LRB 11-2998/1 for the ASSEMBLY.