



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

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

Chapter NR 411

Report to the Legislature Administrative Code NR 411 The Joint Committee for Review of Administrative Rules

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

Chapter NR 411, promulgated by the Department of Natural Resources (DNR), creates rules for the construction and operation permits for indirect sources of carbon monoxide.

Description of Problem

At the request of Senator Leah Vukmir, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on ch. NR 411 relating to indirect sources on March 29, 2011. Chapter NR 411 was created in 1972 due to Milwaukee being found to be in nonattainment for carbon monoxide (CO). Since adoption of this administrative code, automobile engine and exhaust construction have been improved to limit CO pollution. With this improvement, Wisconsin has dramatically lowered CO pollution. At the public hearing, concerns were raised over the need to continue to regulate indirect sources of CO due to the state's lowered levels. Indirect sources of CO are mainly businesses and large residential developments that would have a large concentration of automobiles. Businesses with parking lots big enough to hold 1,000 cars would be regulated under ch. NR 411.

Arguments in Favor of Suspension

- *Since 1972, Wisconsin's CO levels have been reduced considerably due to advancements in automobile construction. With such low levels of CO, there is no longer a need to regulate indirect sources.*
- *These regulations cost the state and private industries over \$400,000 per year. The cost for a business to develop an indirect source air permit includes consultant fees, traffic modeling and documentation and ranges from \$30,000 to \$40,000.*
- *No state bordering Wisconsin currently regulates indirect sources of air pollution. This puts Wisconsin at a competitive disadvantage in trying to attract businesses to our state.*
- *The standards to require a business to get this permit are not based upon potential pollution levels. It is simply based upon the size of a parking lot. Many times businesses that need a larger parking*

lot due to delivery trucks must apply for this permit even though they will never have parking spots for 1,000 vehicles.

Arguments Against Suspension

- *Even though no one testified or submitted written testimony against the suspension, a minority of committee members argued that suspending this rule was detrimental to the environment.*
- *Wisconsin should be a national leader in environmental protection and should not simply use EPA regulations to govern our regulatory climate.*

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 Ch. NR 411. The committee passed the following motion on a 6-3-1 vote (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Hebl, Taylor, Risser; ABSENT: Kessler):

“That the Joint Committee for Review of Administrative Rules suspend NR 411, pursuant to s. 227.26 (2) (d), Stats., on the basis of testimony received at its March 29, 2011 meeting, and on the grounds that the contents of NR 411 are no longer needed due to changes in the state’s air quality; are arbitrary and capricious; and impose an undue hardship on business owners as stated in s. 227.19 (4) (d) 5 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 1830/2 and LRB 2105/1, which would prohibit the Department of Natural Resources from requiring air pollution control permits for indirect sources. The bills were introduced as Senate Bill 111 and Assembly Bill 159.

Passage of one of the bills in support of the JCRAR suspension would permanently eliminate the permit requirement for indirect sources of air pollution and put Wisconsin on equal footing with its neighbors.