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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Natural Resources...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2013)

Assembly

Record of Committee Proceedings

Committee on Natural Resources

Assembly Bill 195

Relating to: the regulation of emissions of hazardous air contaminants associated with agricultural waste and the partial suspension of rules promulgated by the Department of Natural Resources.

By Joint Committee for Review of Administrative Rules.

September 13, 2011 Referred to Committee on Natural Resources.

January 18, 2012 **PUBLIC HEARING HELD**

Present: (16) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.

Absent: (0) None.

Excused: (0) None.

Appearances For

- Jordan Lamb, Madison — Wisconsin Pork Association
- Jordan Lamb, Madison — Wisconsin Cattlemen's Association
- Jayme Sellen, DePere — Dairy Business Association

Appearances Against

- None.

Appearances for Information Only

- Bart Sponseller, Madison — Wisconsin Department of Natural Resources

Registrations For

- Mike Wehler, Plain — Wisconsin Pork Producers
- Paul Zimmerman, Madison — Wisconsin Farm Bureau Federation
- Bob Welch, Madison — Wisconsin Corn Growers Association
- Gary Tauchen, Madison — Representative, 6th Assembly District

Registrations Against

- Jennifer Giegerich, Madison — Wisconsin League of Conservation Voters

- Genie Ogden, Madison

Registrations for Information Only

- None.

January 18, 2012

EXECUTIVE SESSION HELD

Present: (16) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.

Absent: (0) None.

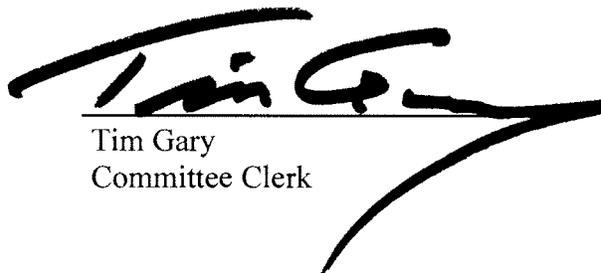
Excused: (0) None.

Moved by Representative Nerison, seconded by Representative Rivard that **Assembly Bill 195** be recommended for passage.

Ayes: (11) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens and Danou.

Noes: (5) Representatives Molepske Jr, Mason, Clark, Milroy and Hulsey.

PASSAGE RECOMMENDED, Ayes 11, Noes 5



Tim Gary
Committee Clerk

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Nerison

Seconded by: Rivard

AB 195 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Jeffrey Mursau, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulse	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

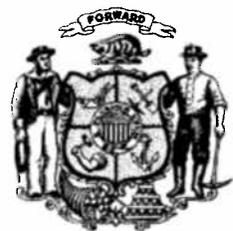


Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE



January 17, 2012

Members of the Wisconsin State Assembly
Committee on Natural Resources
Wisconsin State Capitol
Madison, WI 53707

VIA Hand Delivery

RE: **Support AB 195 - Agricultural Air Emissions**

Dear Representative Mursau:

On behalf of the members of Wisconsin agricultural groups listed below, we write to ask you to **support Assembly Bill 195** in the Natural Resources Committee tomorrow, January 18, 2012.

AB 195 is critical for Wisconsin farmers. It extends the exemption for air emissions from animal agricultural waste from DNR regulation, which is set to expire next summer. This exemption has been in place for a number of years as Wisconsin, and all other states, wait for guidance on this Clean Air Act regulation from the U.S. EPA.

Background

NR 445 Establishes Air Emissions Limitations

DNR rule, NR 445, establishes ambient air standards for specific contaminants for a variety of stationary sources. For purposes of agricultural waste, NR 445 establishes acceptable ambient air concentrations for ammonia and hydrogen sulfide. Under the rule, "agricultural waste" includes livestock manure, animal waste byproducts, litter and bedding. Compliance with the limits in NR 445 is measured at a farm's property line.

Laws Not Designed for Regulation of Farms

When NR 445 was originally promulgated in the 1980's, it was not contemplated by the Legislature that the rule would be applied to sources like a farm. Rather, the rule was designed to regulate air emissions from sources that had smokestacks.

However, in August of 2003, a group of citizens threatened to sue a Wisconsin dairy farm alleging that NR 445 should be used to regulate air emissions on that farm. In response to the threatened litigation, the Wisconsin DNR opened a rulemaking, which proposed changes to NR 445 that would regulate air emissions from farms. However, neither the Legislature nor the DNR were ready to apply the rule to farms. It was simply too complex. Accordingly, on March 23, 2004, the DNR established final rules in Chapter NR 445 requiring livestock farms in Wisconsin to control emissions of ammonia and hydrogen sulfide but it also incorporated an exemption from the regulation of emissions from agricultural waste while federal and state regulatory approaches were further developed.

While the State of Wisconsin was initially dealing with how to apply NR 445 to farms, a similar *federal* citizens' suit propelled the U.S. EPA into trying to determine how to apply Clean Air Act requirements to livestock farms. Yet, the EPA was also not ready to establish protocols for air emissions from farms.

As a way to deal with the threatened federal litigation, the EPA announced a voluntary Air Compliance Agreement and corresponding national air study, called the National Air Emissions Monitoring Study (NAEMS). Under NAEMS, twenty-four (24) farms in nine (9) states have been monitored with EPA oversight for two years. EPA has studied emissions of particulate matter, ammonia, hydrogen sulfide and volatile organic compounds from each of these operations. In January 2011, EPA announced that it had gathered all its data from this study but that it had not yet evaluated or published air-emissions estimating methods for use to regulate farms.

Agricultural Exemptions from NR 445 Linked to Federal Study

There have been two previous exemptions from the application of NR 445 to agricultural waste, but they both carried expiration dates. The first, in June 2004, exempted agricultural waste from the rule until June 2007 (with 12 additional months to comply). The second, in August 2008, exempted agricultural waste from the rule *until July 31, 2011*. This is the exemption that will expire without legislative action.

These exemptions were implemented in Wisconsin to allow the EPA time to complete its federal air monitoring study and to produce some methodologies based on that data upon which Wisconsin could base its regulation, and also to allow Wisconsin to conduct some air monitoring studies. As stated above, EPA has not yet completed its work and no federal recommendations have been proposed.

Pass AB 195 - Allow Time for Development of Federal Guidance Based on Science

Although there is no question *whether* federal and state air emissions laws will be applied to livestock farms - eventually. The critical question that remains is *how* these laws will be applied to farms. Neither the U.S. EPA nor the DNR have yet established uniform standards or calibrations to determine what size farms, what type of farms, or what manure-handling methods produce air emissions that exceed the legal thresholds of regulated pollutants (ammonia and hydrogen sulfide.) Neither has any other state.

Accordingly, we ask that you support AB 195 tomorrow and allow Wisconsin to remain in step with the development of these regulations.

If you have any questions about these comments, please contact Jordan Lamb (608) 252-9358 or jkl@dewittross.com.

Sincerely,

Terry Quam, Wisconsin Cattlemen's Association

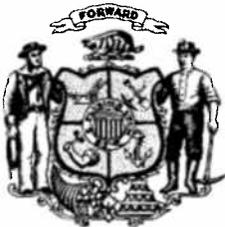
Mike Wehler, Wisconsin Pork Association

Paul Zimmerman, Wisconsin Farm Bureau Federation

Laurie Fischer, Dairy Business Association



WISCONSIN STATE LEGISLATURE



MEMORANDUM

TO: Representative Jeff Mursau, Chair, Assembly Natural Resources Committee and Members of the Assembly Natural Resources Committee

FROM: Jordan Lamb

DATE: January 18, 2012

RE: Testimony in Support of AB 195, Suspending Portions of Wis. Admin. Code § NR 445, Related to Regulation of Air Emissions Associated with Agricultural Waste, and NR 406 and NR 407 Related to Air Permitting

Thank you, Representative Mursau and Members of the Assembly Natural Resources Committee, for allowing me to testify today **in support of AB 195**, which would suspend portions of administrative rules NR, 406, 407 and 445, related to Control of Hazardous Air Pollutants.

On behalf of the Wisconsin Pork Association and the Wisconsin Cattlemen's Association, I ask that you support AB 195 and suspend those portions of NR 445 that impose emissions limitations on sources of hazardous air contaminants from agricultural waste, and also suspend the related air permitting requirements under NR 406 and NR 407 for the following reasons.

NR 445 Establishes Air Emissions Limitations

NR 445 establishes ambient air standards for specific contaminants for a variety of stationary sources. For purposes of air emissions from agricultural waste, NR 445 establishes acceptable ambient air concentrations for ammonia (418 micrograms per cubic meter) and hydrogen sulfide (335 micrograms per cubic meter). Under the rule, "agricultural waste" includes livestock manure, animal waste byproducts, litter and bedding. Compliance with the limits in NR 445 is measured at a farm's property line.

State Law Not Designed for Regulation of Emissions from Farms

When NR 445 was originally promulgated in the 1980's, it was not contemplated by the Legislature that the rule would be applied to sources like a livestock farm. Rather, the rule was designed to regulate air emissions from sources that had smokestacks.

MEMORANDUM

TO: Representative Jeff Mursau, Chair, Assembly Natural Resources Committee
and Members of the Assembly Natural Resources Committee

FROM: Jordan Lamb

DATE: January 18, 2012

PAGE: 2

However, in August of 2003, a group of citizens threatened to sue a Wisconsin dairy farm alleging that NR 445 should be used to regulate air emissions on that farm. The citizens group filed a notice of intent to sue under the federal Clean Air Act alleging that the Wisconsin dairy farm had failed to apply for and obtain the required air quality permits from the DNR prior to expanding its dairy operation.

In response to the threatened litigation, the Wisconsin DNR opened a rulemaking which proposed changes to NR 445 that would regulate air emissions from farms. However, the Legislature was concerned. In October 2003, Senator Neal Kedzie, Chair of the Senate Environment and Natural Resources Committee, and Representative DuWayne Johnsrud, Chair of the Assembly Natural Resources Committee, sent a joint letter to the DNR stating their belief that NR 445 did not allow for the regulation of emissions from animal waste.

As a way to deal with the litigation and the fact that the DNR was not ready to regulate air emissions from farms under NR 445, on March 23, 2004 the DNR established final rules in Chapter NR 445 requiring livestock farms in Wisconsin to control emissions of ammonia and hydrogen sulfide but it also incorporated a 3-year exemption from the regulation of emissions from agricultural waste while federal and state regulatory approaches were further developed.

Federal Law Not Designed for Regulation of Ag Air Emissions

In 2005, a federal court ruling spurred by a similar *federal* citizens' suit, propelled the U.S. EPA into trying to determine how to apply Clean Air Act requirements to livestock farms. Yet, the EPA was also not ready to establish protocols for air emissions from farms.

As a way to deal with the threatened federal litigation, the EPA announced a voluntary Air Compliance Agreement and corresponding national air study, called the National Air Emissions Monitoring Study (NAEMS). Under NAEMS, twenty-four (24) farms in nine (9) states have been monitored with EPA oversight for two years. EPA has studied emissions of particulate matter, ammonia, hydrogen sulfide and volatile organic compounds from each of these operations. In January 2011, EPA announced that it had gathered all its data from this study but that it had not yet evaluated or published air-emissions estimating methods for use to regulate farms. Those are expected in the next 12-18 months.

MEMORANDUM

TO: Representative Jeff Mursau, Chair, Assembly Natural Resources Committee
and Members of the Assembly Natural Resources Committee

FROM: Jordan Lamb

DATE: January 18, 2012

PAGE: 3

Agricultural Exemptions from NR 445 Linked to Federal Study

There have been two exemptions from the application of NR 445 to agricultural waste. The first, in June 2004, exempted agricultural waste from the rule until June 2007 (with 12 additional months to comply). The second, in August 2008, exempted agricultural waste from the rule until July 31, 2011. (Parallel exemptions were provided in the air permitting rules, NR 406 and 407.) Without additional action, NR 445 will go into effect for farms on July 31, 2011.

Both of these exemptions were implemented in Wisconsin to allow the EPA time to complete its federal air monitoring study and to produce some methodologies based on that data upon which Wisconsin could base its regulation, and also to allow Wisconsin to conduct some air monitoring studies. As stated above, EPA has not yet completed its work and no federal recommendations have been proposed. Wisconsin did engage in an air monitoring study in July 2010 in which they monitored ammonia and hydrogen sulfide emissions from one poultry farm, one hog farm and three dairy farms for about 4 weeks. Although the DNR can share its final conclusions with you in detail, it is my understanding that the farms overwhelmingly failed to generate fence-line concentrations that exceeded the thresholds for ammonia and hydrogen sulfide.

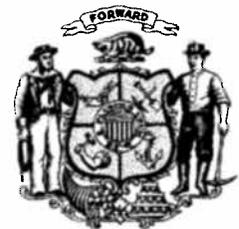
Despite the continuing lack of federal guidance, in February 2010, the NR Board authorized the DNR to proceed with NR 445 rulemaking for emissions from agricultural waste. The DNR convened a series of meetings of the Agricultural Waste Air Emissions Advisory Group, which developed "beneficial management practices" (BMPs) for the reduction of emissions of ammonia and hydrogen sulfide from various types of livestock farms in Wisconsin. On December 13, 2010, the Advisory Group completed their charge but, for the purposes of this report, the Advisory Group was neither asked to consider rule making nor asked how the BMPs might be implemented.

Problem is not "If" but "How" to Apply Emissions Limitations

There is no question *whether* federal and state air emissions laws will be applied to livestock farms. The critical question that remains for regulatory purposes is *how* these laws will be applied to farms.



WISCONSIN STATE LEGISLATURE





January 18, 2012

Rep. Mursau, Chair
And Members of the Assembly Committee on Natural Resources

Chairman Mursau and Committee Members,

Thank you for the opportunity to testify on Assembly Bill 195. The Dairy Business Association (DBA) represents dairy producers, dairy processors and allied corporate industry members throughout Wisconsin. We have members with herds as small as 50 cows and as large as 8,000. The dairy industry generates \$26.5 billion in economic activity each year and employs over 146,000 Wisconsin residents.

DBA supports AB 195 which would extend the exemption for air emissions from animal agriculture waste from Department of Natural Resources (DNR) regulation, which is currently set to expire next summer. A series of exemptions have been in place for many years as states wait for the Environmental Protection Agency (EPA) to promulgate emission standards or guidance. This issue has a long legislative history in Wisconsin; one that did not start with the purpose of regulating emissions from agricultural waste.

Compliance deadlines were established with the intent to coincide with the completion of state and federal air monitoring studies, in order to appropriately regulate emissions from Wisconsin farms. The fence line study performed by the DNR provided a small data set – too small to base a regulatory framework upon. While the EPA has completed its national air emissions study, it has yet to analyze the data set or provide any guidance to assist states in regulating such emissions. Due to the lack of scientific data or EPA guidance we ask for a delay in the regulation of emissions from agricultural waste until such science-based information becomes available.

If AB 195 is not passed, Wisconsin will once again be far ahead of the federal government and EPA on a matter of significant importance to our industry. As a consequence, Wisconsin's dairy industry will be placed under an additional regulatory burden, further eroding the national and global competitiveness of our farmers and further jeopardizing Wisconsin's ability to create jobs and grow the economy. AB 195 provides a more logical approach which would wait for the EPA to promulgate guidance upon which the DNR can develop air emission rules applicable to Wisconsin farmers.

Again, thank you for the opportunity to testify in support of AB 195.

Sincerely,

Jayne Sellen
Government Affairs Director





**Testimony to the Assembly Natural Resources Committee
AB 195: Hazardous Air Contaminants from Agricultural Waste**

**By Bart Sponseller - DNR Air Monitoring Section Chief
January 18, 2012**

Thank you for the opportunity to appear before your committee today. I am Bart Sponseller – Air Monitoring Section Chief for DNR’s Air Management Program, and I am testifying for information only regarding hazardous air contaminants from agricultural waste. I have been directly involved with the Department’s efforts on agricultural air issues since 2008.

BACKGROUND

As you are aware, the Joint Committee for Review of Administrative Rules suspended portions of certain rules that relate to the application of the State’s Hazardous Air Contaminant requirements (NR 445) to agricultural waste. This bill would prohibit the Department from regulating hazardous air contaminant emissions associated with agricultural waste unless required by federal law. I will be providing you with some background information regarding this topic.

NR 445 has been in place since 1988 and its focus is to regulate smoke stack industries. While NR 445 applies to agricultural sources, the rule was not specifically developed with the purpose of regulating emissions of hazardous air contaminants associated with agricultural sources. It’s worth noting that NR 445 is not an odor control rule.

The rule contains a compliance extension for hazardous air emissions from agricultural waste under NR 445 and related permitting requirements through July 31, 2011. The extension was established to coincide with the anticipated completion of air emission monitoring studies of large livestock farms at the federal level. The purpose of the studies was to develop reliable air emission estimating methodologies, so that federal requirements for the animal feeding operation sector can be addressed. Data from the federal studies was made publicly available in January 2011, and US EPA intends to complete the emissions estimation methodology development process in mid 2012. In addition to emissions estimation, the study results will be used to clarify Clean Air Act issues including defining agricultural sources under the Act, determining source applicability thresholds, assessing control technology effectiveness as well as defining monitoring, reporting, and recordkeeping requirements. It will likely take a few additional years for US EPA to settle these Clean Air Act policy decisions. The absence of the emission estimation methodologies information and uncertainty over future federal regulatory approaches and timing create a strong potential for future inconsistency between federal and state policies.

During the summer of 2010, the Department investigated fence-line air concentrations of ammonia and hydrogen sulfide at a few small-to-medium dairy confined animal feeding operations (CAFOs), a single small swine CAFO, and a large egg laying CAFO in southern Wisconsin. Results of the study indicate generally low fence-line concentrations of ammonia and hydrogen sulfide relative to ambient action concentrations listed in NR 445.

BEST MANAGEMENT PRACTICES & VOLUNTARY APPROACH

In 2004, the Department revised NR 445 to update the standards based on recent scientific information and to streamline the rule approach. At that time, the Department introduced the concept in NR 445 of using best management practices (BMPs) as an emission control strategy for agricultural sources instead of the control requirements in the rule developed for traditional industrial sources. With this concept in place, the Department convened an Agricultural Waste BMP Advisory Group in April 2010 with the purpose of evaluating management practices for the reduction of hazardous air contaminants. A final report was completed in December 2010 and is publicly available. The highly collaborative process, involving the agriculture industry, environmental groups, academia and government, identified thirty (30) specific management practices for dairy, beef, swine, egg layer poultry, and broiler poultry (including turkeys) that are expected to reduce hazardous air emissions. As a result of this successful process and the uncertainty of the timing and final requirements at the federal level, the Department believes it is best to move forward with a voluntary approach to achieve emission reductions. Members of the Advisory Group have agreed to continue participating with the Department in a process that will identify and develop informational and outreach decision-making tools that encourage the voluntary use of the BMPs by the agriculture livestock industry. The completed BMPs, in conjunction with decision-making tools, will position Wisconsin to be a national leader in preparation for any federal requirements.

If the air toxics rule were to become effective, as it stands now, the rule requirements could impact thousands of farm operations throughout Wisconsin. Notwithstanding the absence of federal emissions estimation information and Clean Air Act related decisions, farms would need to determine their emissions and would be subject to pollution control requirements under NR 445 and related permitting requirements.

Thank you for the opportunity to testify and I would be happy to answer any questions.

Current Scope Statement
Feb. 5, 2010

Natural Resources

Environmental Protection – Air Pollution Control Chs. NR 406, 407, 410, 438 and 445

Subject

Development of Best Management Practices to Control Emissions of Hazardous Air Contaminants from Agricultural Waste.

Objective of the Proposed Rule

Changes to chs. NR 406, 407, 410, 438, and 445. The proposed rule changes pertain to implementation of existing air permit and emission requirements for sources of hazardous air contaminants from agricultural waste. The primary effort is to establish best management practices (BMPs) that control hazardous air emissions from agricultural waste. The proposed changes may also address scope, timeframe for review, submittal and approval, testing, record keeping, and reporting requirements related to BMPs approved by the Department.

In addition, possible amendments to ch. NR 410 would address fees to support Department implementation of proposed best management practices.

Policy Analysis

Existing Policy

Existing policy on the regulation of air emissions from agricultural waste is established in current rules as follows.

Hazardous air emissions from agricultural waste are regulated under ch. NR 445. This rule establishes ambient air standards for specific contaminants beyond the source's property line. The acceptable ambient concentrations for ammonia and hydrogen sulfide, two contaminants associated with agricultural waste, are 418 and 335 micrograms per cubic meter, respectively. Both of these ambient concentrations are averaged on a 24-hour basis. Multiple compliance demonstration options are provided in NR 445 for sources subject to these standards. For example, sources may demonstrate emissions are below specific values established in the rule, or sources may perform air dispersion modeling to determine off-property concentrations relative to established standards.

Revisions to ch. NR 445, made in July 2004 provided a 36 month exemption, until June 2007, for sources of hazardous emissions from agricultural waste. After June 2007, new sources were to have complied upon start-up of operations and existing sources had an additional 12 months to comply. The July 2004 revisions allowed use of best management practices, as approved by the Department, as a compliance option for these sources in addition to those mentioned previously.

Also published in July 2004 were revisions to the air permit requirements of chs. NR 406 and 407, providing a parallel 36 month air permit exemption for sources of hazardous emissions from agricultural waste from July 2004 to July 2007.

The end of the 36 month exemption period was established to coincide with the anticipated completion of studies at the state and federal level. It was anticipated these studies would provide air emission data to support rule applicability determinations and information about the efficacy of best management practices to support the evaluation and establishment of BMPs. Information about these studies is provided below.

Revisions to ch. NR 445, effective August 1, 2008, extended the exemption period, for a second time, through July 31, 2011. This second extension was granted because the results of state and federal air monitoring studies of animal feeding operations were not available at that time to support implementation of the rules with the prior compliance deadlines.

State Study

The Department engaged in a cooperative project to evaluate air emissions and BMPs for the control of hazardous air emissions from the handling of agricultural waste. The project included ambient air monitoring for hydrogen sulfide and ammonia, as well as odor evaluation near several dairy operations, installation of grant-funded improvements, and ambient air monitoring to evaluate the impact of BMPs to control hydrogen sulfide and ammonia emissions. The final report was published in September 2009. Air emissions from landspreading of agricultural waste were not included in this study.

Federal Study

As a result of a 2003 National Academy of Science report, US EPA initiated a national program to monitor and evaluate air emissions from animal feeding operations called the National Air Emissions Monitoring Study. Field work began in late 2006, much later than originally anticipated by the Department. Data collection was scheduled to be completed in mid 2009. Within 18 months after the study ends, US EPA will evaluate the data and publish air emission-estimating methods for animal feeding operations (by end of 2010). These methods will allow owners to estimate air emissions from their animal feeding operations and comply with applicable federal regulatory requirements in the Clean Air Act; Comprehensive Environmental Response, Compensation, and Liability Act; and the Emergency Planning and Community Right-to-Know Act, as noted in a following section. Air emissions from landspreading of agricultural waste are not included in this study either.

New Policy, Alternative Policies

The Department does not anticipate changes to underlying policy related to air permit requirements and hazardous air pollutant emission requirements for hazardous air pollutant emissions from agricultural waste.

Development of BMPs for agricultural waste may result in amendments to ch. NR 410 to establish fees. Fees may be necessary to support implementation of BMPs to control hazardous air contaminant emissions.

Statutory Authority

Sections 285.11(1) and (16); 285.17; 285.69 Stats.

Estimate of Time Necessary to Develop the Rule

3,944 hours DNR staff time.

Entities Affected by the Rule

Entities likely to be impacted include owners and operators of animal feeding operations, including small businesses e.g., small farms. Beneficial effects of the rule may be realized by neighbors adjacent to owners and operators of animal feeding operations.

Comparison with Federal Regulations

Existing Federal Regulations

Under the federal Clean Air Act, new and existing major stationary sources of federally regulated criteria air pollutant emissions are subject to federal air permit requirements. Included are permit requirements under the federal "Prevention of Significant Deterioration (PSD)" and "Non-Attainment Area" New Source Review programs, along with the applicable requirements for "Best Available Control Technology", and "Lowest Achievable Emission Rate" technology and offsets, respectively. Emissions associated with animal feeding operations are not, categorically, exempt from these requirements.

Under Section 112(b) of the federal Clean Air Act, hazardous air pollutants are regulated through National Emission Standards for Hazardous Air Pollutants (NESHAPs), established by industry sector. No such standards have been established specifically for animal feeding operations. Ammonia and hydrogen sulfide, two air pollutants associated with animal feeding operations, are not regulated as federal hazardous air pollutants under section 112(b).

The Clean Air Act lists ammonia and hydrogen sulfide in section 112(r)(3), Prevention of Accidental Releases, and both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) have reporting requirements for releases to the air, including emissions of hydrogen sulfide and ammonia.

In the late 1990s, as noted in an August 2005 press release, US EPA realized that it did not have sufficient air emissions data to implement federal Clean Air Act requirements for animal feeding operations. To resolve the situation, US EPA began discussions with animal feeding operation owners in 2001. These discussions led to a January 31, 2005 EPA Federal Register notice offering individual animal feeding operations an opportunity to voluntarily sign a consent agreement committing animal feeding operations to participate in a nationwide air emission monitoring study and establish a timeline for participating animal feeding operations to achieve compliance with federal air permit, air emission control, and air emission reporting requirements. In return, EPA provided limited amnesty from enforcement action during the term of the agreement.

The Department is not aware of any new or proposed federal regulations pertaining to hazardous air pollutant emissions from animal feeding operations, although EPA was petitioned in 2009 to list concentrated feeding operations under the Clean Air Act section 111(b)(1)(A) and promulgate standards of performance under sections 111(b)(1)(B) and 111(d).

Existing State Regulations

The federal air permit requirements described above are incorporated into state air permit rules in chs. NR 405, 406, and 407. In addition, chs. NR 406 and 407 include air permit requirements for minor

sources. Emissions associated with animal feeding operations are not, categorically, exempt from these requirements. However, the revisions to chs. NR 406 and 407 published in July 2004 established an exemption period ending in July 2007 for sources of hazardous air contaminant emissions from agricultural waste. The exemption period was extended, again, in February 2008 for chs. NR 406 and 407.

Chapter NR 445 establishes acceptable ambient air concentrations for ammonia and hydrogen sulfide, two pollutants associated with agricultural waste from animal feeding operations. These concentrations are 418 and 335 micrograms per cubic meter, respectively, on a 24 hour average basis. As noted above, ammonia and hydrogen sulfide are not regulated as federal hazardous air pollutants under section 112(b), but are included in 112(r) of the Clean Air Act.

Similar to federal reporting requirements, state reporting requirements include the air spill reporting requirements in ch. NR 445 and the annual air emission reporting requirements of ch. NR 438. Air emissions from animal feeding operations are not categorically exempt from these reporting requirements.

The proposed changes to chs. NR 406, 407, and 445, pertain to implementation of established state air permit requirements and state hazardous air emission requirements for sources of hazardous air contaminants from agricultural waste. The proposed changes will affect the manner in which state and federal regulations differ, but are not expected to resolve the existing differences.

Contact Information

Bart Sponseller, WDNR, 101 S. Webster St, Madison, WI 53701. Phone: 608-266-1058 Email: bart.sponseller@wisconsin.gov