

2013 DRAFTING REQUEST

Bill

Received: 11/13/2012 Received By: eshea
Wanted: As time permits Same as LRB:
For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
May Contact: Drafter: eshea
Subject: Environment - env. cleanup Addl. Drafters: rkite
Nat. Res. - fish and game
Nat. Res. - miscellaneous
Nat. Res. - wet/shore/flood Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Add uniform citation process cross reference in wetland enforcement; change age regarding sturgeon spearing; confidentiality of information or complaints sent to DNR; remove gross revenue requirement regarding Dry Cleaner Environmental Response Council

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>
/P1	eshea 3/11/2013	evinz 11/19/2012	rschluet 11/19/2012	_____	srose 11/19/2012		
/P2	eshea 4/1/2013	evinz 3/12/2013	jfrantze 3/12/2013	_____	sbasford 3/12/2013		
/P3	eshea	evinz	jmurphy	_____	sbasford		

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	4/22/2013	4/3/2013	4/3/2013	_____	4/3/2013		
/P4	rkite 4/30/2013	evinz 4/23/2013	phenry 4/23/2013	_____	mbarman 4/23/2013		State
/1	rkite 5/8/2013	evinz 4/30/2013	jmurphy 4/30/2013	_____	mbarman 4/30/2013	mbarman 5/3/2013	State
/2		evinz 5/9/2013	rschluet 5/9/2013	_____	lparisi 5/9/2013	lparisi 5/9/2013	State

FE Sent For:

*act
intro*

<END>

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5/9/13

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/P4	evinz	phenry	_____	mbarman		State
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eev 4/30/13
Jm 4/30
self

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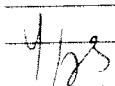
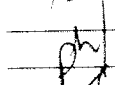
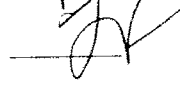
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4/8/13

Vers. Drafted

Reviewed
4/3/2013

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1/p 4 eev
4/23/13

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1p3 eev 4/3/13 [Signature] [Signature]
 [Signature] [Signature]

FE Sent For:

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Companion to LRB:
For: Neal Kedzie (608) 266-2635
By/Representing: Dan Johnson
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Subject: Environment - env. cleanup
Nat. Res. - fish and game
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Nat. Res. - wet/shore/flood
Addl. Drafters: rkite
Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

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1p2 eev 3/12/13 *[Signature]* *11/12* *[Signature]*

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/P1	eshea	/pl eev 11/19/12	/pl eev 11/19/12				

FE Sent For:

<END>

Shea, Elisabeth

From: Kite, Robin
Sent: Tuesday, November 13, 2012 11:08 AM
To: Shea, Elisabeth
Subject: FW: bill draft request
Attachments: DNR clean up bill.docx

From: Johnson, Dan
Sent: Tuesday, November 13, 2012 9:43 AM
To: Gibson-Glass, Mary; Kite, Robin
Subject: bill draft request

Hi Mary and Robin,

Senator Kedzie would like to make a request for a bill to be drafted, as per the attached instructions. We are granting permission to the office of Rep. Jeff Mursau to make a similar request.

Please let me know if you have any questions regarding this request. Thank you!

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635

Citation Authority in Wetlands

Fix a cross reference.

The uniform citation process is found in s. 23.50 Wis. Stats., thus a revision is needed in 23.50 to cross-reference 281.36, and a revision in 281.36 to give the DNR the authority to use the 23.50 process in wetland enforcement.

Sturgeon Spearing

2011 Wisconsin Act 168 correctly changed the age from 14 to 12 in 29.237(1m), however did not change the age in 29.569(3) (bm) 2. Please rectify and make that change.

Confidentiality for DNR Hotline

Provide that information or complaints received by e-mail, text message, or other electronic means have the same confidentiality protection currently provided to people who use the toll-free DNR hotline.

Amend s. 23.38 Wis. Stats in the following manner:

23.38(1)

The department shall maintain a toll-free telephone number ~~at department headquarters~~ to receive reports of violations of any statute or administrative rule that the department enforces or administers. The department shall relay these reports to the appropriate warden or officer for investigation and enforcement action. The department shall publicize the toll-free telephone number as widely as possible in the state.

(1m) In addition to the toll-free number under sub. (1), the department may provide additional electronic methods for individuals to report violations under this section.

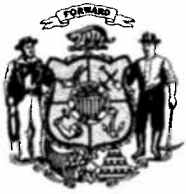
23.38(2)

(2) The department shall maintain records which permit the release of information provided by informants while protecting the identity of the informant. Any records ~~maintained by the department~~ which relate to the identity of informants shall be only for the confidential use of the department in the administration of this section, unless the informant expressly agrees to release the records. Appearance in court as a witness shall not be considered consent by an informant to release confidential records maintained by the department.

Dry Cleaner Environmental Response Council

Remove the gross revenue requirement under s. 15.347(2)(a) and (2)(b) Wis. Stats. Collapse those two sections into one, which reads as follows:

“Three members representing dry cleaner operations.”



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0544/P1

EHS...

Leev

In 11/19/12

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AI
RFV

1 AN ACT ^{gen cat}; relating to: a uniform citation process for violations of wetland
 2 discharge permit law; eligible age for sturgeon spearing; electronic methods for
 3 reporting natural resources and environmental law violations.

INSERT
✓ R

Analysis by the Legislative Reference Bureau

Current law requires the Department of Natural Resources (DNR) to maintain a toll-free telephone number for receiving confidential reports of violations of any statute or administrative rule that the DNR enforces or administers. This bill adds that DNR may provide other electronic methods for confidentially reporting violations of these laws or rules.

Current law establishes a uniform citation procedure to be applied to violations of certain natural resources and environmental laws. This bill makes the uniform citation procedure applicable to violations of the wetland discharge permit law.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing license. Also under current law, issuance of a sturgeon spearing license is generally prohibited during a period beginning on November 1 and ending on the last day of the open season for the spearing of lake sturgeon. One exception to this prohibition is for a resident who has attained the age of 14 during that period. This bill changes this age to 12.

INSERT
A

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

INSERT
ANALYSIS RAK

NS
-1
✓

SECTION 1. 23.38^x (1) of the statutes is amended to read:

23.38 (1) The department shall maintain a toll-free telephone number at department headquarters to receive reports of violations of any statute or administrative rule that the department enforces or administers. The department shall relay these reports to the appropriate warden or officer for investigation and enforcement action. The department shall publicize the toll-free telephone number as widely as possible in the state.

NS/RT8
2-8

History: 1979 c. 34; 1993 a. 16 s. 676; Stats. 1993 s. 23.38.

SECTION 2. 23.38 (1m) of the statutes is created to read:

23.38 (1m) In addition to the toll-free telephone number under sub. (1), the department may provide additional electronic methods for individuals to report violations under this section.

SECTION 3. 23.38^x (2) of the statutes is amended to read:

23.38 (2) The department shall maintain records which that permit the release of information provided by informants while protecting the identity of the informant. Any records ~~maintained by the department which~~ that relate to the identity of informants shall be only for the confidential use of the department in the administration of this section, unless the informant expressly agrees to release the records. Appearance in court as a witness shall not be considered consent by an informant to release confidential records maintained by the department.

History: 1979 c. 34; 1993 a. 16 s. 676; Stats. 1993 s. 23.38.

SECTION 4. 23.50 (1) of the statutes is amended to read:

23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64

1 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
 2 administrative rules promulgated thereunder, violations specified under s. 280.98
 3 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
 4 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
 5 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
 6 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97; 1991 a. 16, 243, 344, 349, 491; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56; 2003 a. 139, 276; 2005 a. 360.

INSERT
13-7

SECTION 5. 29.569 (3) (bm) 2. of the statutes is amended to read:

8 29.569 (3) (bm) 2. A person who is a resident and who has attained the age of
 9 14 12 during that period.

History: 1997 a. 248 ss. 170, 171, 173, 176, 178, 180, 182, 187; 2001 a. 77, 109; 2003 a. 313; 2009 a. 385.

SECTION 6. 281.36 (14) (e) of the statutes is created to read:

10 281.36 (14) (e) The procedure in ss. 23.50 to 23.85 applies to actions brought
 11 under this subsection.
 12

(END)

13

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P1ins
EHS:.....

1 INSERT R

2 a citation procedure applicable to wetland discharge violations, sturgeon
3 spearing license issuance period, electronic methods for reporting natural resource
4 and environmental law violations, and membership on the Dry Cleaner
5 Environmental Response Council.

6
7 INSERT A

Current law requires the Department of Natural Resources (DNR) to maintain
a toll-free telephone number for receiving confidential reports of violations of any
statute or administrative rule that DNR enforces or administers. This bill provides
that DNR may also establish other electronic methods to receive confidential reports
of these violations.

Under current law, DNR may recover forfeitures imposed for the violation of
certain natural resources and environmental laws using a citation procedure. This
bill makes this citation procedure applicable to violations of laws that regulate the
discharge of certain materials into wetlands.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing
license. Also under current law, issuance of a sturgeon spearing license is generally
prohibited during a period beginning on November 1 and ending on the last day of
the open season for the spearing of lake sturgeon. One exception to this prohibition
is for a resident who has attained the age of 14 during that period. This bill lowers
this age to 12, consistent with the minimum age for obtaining a license.

8
9 INSERT 2-8

10
11 SECTION 1. 23.38 (1m) of the statutes is created to read:

12 23.38 (1m) In addition to the toll-free telephone number under sub. (1), the
13 department may establish additional electronic methods to receive reports of
14 violations of any statute or administrative rule that the department enforces or
15 administers.

1 INSERT 3-7

2 **SECTION 2.** 23.65^x (1) of the statutes is amended to read:

3 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
4 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07,
5 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or
6 any administrative rule promulgated pursuant thereto, a violation specified under
7 s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has
8 been committed the district attorney may proceed by complaint and summons.

9 History: 1975 c. 365; 1979 c. 175; 1981 c. 390; 1989 a. 284, 335, 359; 1991 a. 97; 1993 a. 16, 243, 344, 491; 1995 a. 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56.

9 **SECTION 3.** 23.65 (3) of the statutes is amended to read:

10 23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,
11 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he
12 or she finds there is probable cause to believe that the person charged has committed
13 a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29,
14 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be
15 informed of the hearing and may attend.

History: 1975 c. 365; 1979 c. 175; 1981 c. 390; 1989 a. 284, 335, 359; 1991 a. 97; 1993 a. 16, 243, 344, 491; 1995 a. 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56.

2013-2014 DRAFTING INSERT
FROM THE
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LRB-0544/P1insRK

RNK:...

eev

INSERT ANALYSIS RNK

Under current law, the Dry Cleaner Environmental Response Council (council) in DNR is composed of 6 members. Of those members, one member must represent dry cleaning operations with annual gross receipts of less than \$200,000 and 2 members must represent dry cleaning operations with annual gross receipts of at least \$200,000. This bill eliminates these gross receipts requirements for representation on the council and provides, instead, that 3 members of the council must represent dry cleaning operations, regardless of the amount of the operation's annual gross receipts. (sp)

INSERT 2-1

1 SECTION 1. 15.347 (2) (a) of the statutes is repealed.

2 SECTION 2. 15.347 (2) (b) of the statutes is amended to read:

3 15.347 (2) (b) ~~Two~~ Three members representing dry cleaning operations with
4 ~~annual gross receipts of at least \$200,000.~~

History: 1971 c. 100 s. 23; 1971 c. 164, 211, 277, 307, 323; 1973 c. 12, 301, 318; 1975 c. 39, 198, 224, 412; 1977 c. 29 ss. 51, 52, 52d, 1650m (1), (4); 1977 c. 377; 1979 c. 34 ss. 39g, 39r, 2102 (39) (g), (58) (b); 1979 c. 221, 355; 1979 c. 361 s. 112; 1981 c. 346 s. 38; 1983 a. 410; 1985 a. 29 ss. 87h, 87m, 3200 (39); 1985 a. 65, 296, 332; 1987 a. 27, 186, 399; 1989 a. 11, 31, 335; 1991 a. 32, 39, 269, 302, 316; 1993 a. 16, 464; 1995 a. 27 ss. 169 to 175b, 9116 (5) and 9126 (19); 1995 a. 227; 1997 a. 27, 300; 2001 a. 109; 2005 a. 168; 2007 a. 20 s. 9121 (6) (a); 2009 a. 394; 2011 a. 32 ss. 117b, 125, 126; 2011 a. 104, 168.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P1dn

EHS: @...

eev

date

To Dan Johnson:

The requested changes to section 23.38 (2) create a sentence that is not entirely clear. By removing "maintained by the department," it is not clear what records the sentence is referring to. Is your intent to refer to other records related to information an informant has provided that are not maintained by the department? Note that the final sentence also refers to "confidential records maintained by the department." It would be helpful if you could clarify what your intent is in removing this phrase.

With respect to the uniform citation procedure under sections 23.50 to 23.85, I added reference to section 281.36 where it seemed appropriate. However, it is not clear how these laws are interpreted by the DNR. Please have DNR review these sections to ensure that the references make sense.

Elisabeth H. Shea
Legislative Attorney
Phone: (608) 266-5446
E-mail: elisabeth.shea@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P1dn
EHS:eev:rs

November 19, 2012

To Dan Johnson:

The requested changes to section 23.38 (2) create a sentence that is not entirely clear. By removing "maintained by the department," it is not clear what records the sentence is referring to. Is your intent to refer to other records related to information an informant has provided that are not maintained by the department? Note that the final sentence also refers to "confidential records maintained by the department." It would be helpful if you could clarify what your intent is in removing this phrase.

With respect to the uniform citation procedure under sections 23.50 to 23.85, I added reference to section 281.36 where it seemed appropriate. However, it is not clear how these laws are interpreted by the DNR. Please have DNR review these sections to ensure that the references make sense.

Elisabeth H. Shea
Legislative Attorney
Phone: (608) 266-5446
E-mail: elisabeth.shea@legis.wisconsin.gov

Shea, Elisabeth

From: Johnson, Dan
Sent: Monday, January 28, 2013 8:49 AM
To: Shea, Elisabeth
Subject: Revisions to LRB 0544/P1

Hi Elisabeth,

We have had a chance to talk to the DNR and the Assembly co-author regarding LRB 0544/P1. We have since come to a decision regarding some revisions to the draft. Those revisions are below, and please contact me with any questions you have.

Thank you!

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635

In response the drafter's note, we offer the following:

Revise **Section 5** in LRB 0544/P1, to read:

23.38 (2) The department shall maintain records which permit the release of information provided by informants while protecting the identity of the informant. Any records that relate to the identity of informants received under this section shall be only for the confidential use of the department in the administration of this section, unless the informant expressly agrees to release the records. Appearance in court as a witness shall not be considered consent by an informant to release confidential records received under this section.

In regards to the wetland citation authority, the DNR offers the following comment:

- 1.) Language to create citation authority. LRB 0544/P1 accomplishes wetland citation authority by cross referencing 281.36 in 23.50 and 23.65(1) and (3).
- 2.) Language to re-establish wetland forfeiture provisions that allows each day of violation to be a separate offense. LRB 0544/P1 does not currently address this unintended consequence. This could be accomplished by revising 281.36(14).

The following revisions are new items to be added to the bill draft

Air Dispersion Modeling

Repeal 285.63(11) and replace with:

285.63 (11) MODELING.

(a) Except as specifically required under the federal clean air act and except as provided in par. (b), the department may not require air dispersion modeling before issuing any of the following:

1. A registration permit or general permit.
2. A minor source operating permit or operating permit renewal.
3. A major source operating permit renewal.

*Registration permit?
285.62*

4. A construction permit for a minor source with a projected actual increase in emissions of pollutants listed in s. 40 C.F.R. 51.166 (b) (23) (i) below the emission rates specified in s. 40 C.F.R. 51.166 (b) (23) (i).

(b) With regard to a federally-recognized American Indian tribe or band in this state, if the U.S. environmental protection agency has granted to the tribe or band treatment as a state under 42 U.S.C. 7601 (d) or redesignated as Class I any portion of the tribe's or band's reservation under 42 U.S.C. 7474, the department may require air dispersion modeling before issuing a permit listed in par. (a) if air dispersion modeling is provided for under any of the following:

1. An agreement between the state or the federal government and the tribe or band implementing the tribe's or band's treatment as a state or designation as a Class I Area.
2. An implementation plan for the tribe or band under 40 C.F.R. Part 49, Subpart H.
3. Rules promulgated by the department implementing the tribe's or band's treatment as a state or designation as a Class I Area.

Public Notice Requirements

Language to streamline the public notice of pending application is requested for both Chapter 30 and Section 281.36. Thus, revise these sections in the following manner:

30.208(5)(bm) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site, unless the department delegates to the applicant under par. (c) the requirement to provide notice. If the department delegates to the applicant the requirement to provide notice, the date of the notice shall be the date on which the department first publishes the proof of publication of the class 1 notice on its Internet Web site.

30.208(5)(c)(intro.) The department may delegate the department's requirement to provide notice under sub. (3) in the manner specified under par. (a) 1. or 2. or to provide notice under s. 30.209 (1m) by doing any of the following:

1. Requiring that the applicant for the permit or contract provide by publication, mailing, or other distribution one or more of the notices.
2. Requiring that the applicant for the permit or contract pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.
3. Requiring that the applicant for the permit or contract submits to the department satisfactory proof of publication of a class 1 notice.

281.36(3p)(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site, unless the department delegates to the applicant under par. (d) the requirement to provide notice. If the department delegates to the applicant the requirement to provide notice, the date of the notice shall be the date on which the department first publishes the proof of publication of the class 1 notice on its Internet Web site.

281.36(3p)(d)(intro) The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

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2. Requiring that the applicant for the permit or contract pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.
3. Requiring that the applicant for the permit or contract submits to the department satisfactory proof of publication of a class 1 notice.

Kite, Robin

From: Johnson, Dan
Sent: Wednesday, February 13, 2013 3:00 PM
To: Kite, Robin; Gary, Tim
Cc: Shea, Elisabeth
Subject: RE: Revisions to LRB 0544/P1

Robin,

I'm going to have to bump this over to Rep. Jeff Mursau's office, as the language was provided by them. I've copied Tim Gary on this message and perhaps he can answer these questions.

Thanks...

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635

From: Kite, Robin
Sent: Wednesday, February 13, 2013 2:55 PM
To: Johnson, Dan
Cc: Shea, Elisabeth
Subject: FW: Revisions to LRB 0544/P1

Dan:

I am working on the part of this redraft that concerns air dispersion modeling. The language that you provided states that "the department may not require air dispersion modeling" before issuing certain permits. Does the applicant typically do this modeling? Does DNR do this modeling? In other words, upon whom is this prohibition being placed?

Similarly, with regard to the language concerning Indian tribes, the language allows air dispersion modeling only if it is provided for under an agreement, a plan, or certain rules. Again, who is being allowed to do the modeling? And what does it mean to be "provided for"? Does this mean that it is **allowed** under the agreement, plan, or rules? Or does it mean that it is **required** under the agreement, plan, or rules? And whether allowed or required, must the agreement, plan, or rules identify a particular type of modeling?

Finally, it would be very helpful if I understood, in plain language, what the problem is that you want the draft to address on this issue. For example, might there be situations, notwithstanding the general prohibition, where a certain type of air dispersion modeling would be desirable? My understanding is that there are many different types of air dispersion models and under the draft, because the phrase "air dispersion modeling" is not defined or limited in any way, all "air dispersion modeling" would be prohibited except under certain circumstances. I just want to make sure that the draft does not have unintended consequences.

Please give me a call if you think it might be helpful to discuss these issues.

Robin

From: Johnson, Dan
Sent: Monday, January 28, 2013 8:49 AM

To: Shea, Elisabeth
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3. A major source operating permit renewal.
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(b) With regard to a federally-recognized American Indian tribe or band in this state, if the U.S. environmental protection agency has granted to the tribe or band treatment as a state under 42 U.S.C. 7601 (d) or redesignated as Class I any portion of the tribe's or band's reservation under 42 U.S.C. 7474, the department may require air dispersion modeling before issuing a permit listed in par. (a) if air dispersion modeling is provided for under any of the following:

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281.36(3p)(d)(intro) The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

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3. Requiring that the applicant for the permit or contract submits to the department satisfactory proof of publication of a class 1 notice.

Kite, Robin

From: Gary, Tim
Sent: Wednesday, February 20, 2013 9:36 AM
To: Kite, Robin
Cc: Bruhn, Michael L - DNR; Stevens, Patrick K - DNR
Subject: RE: Revisions to LRB 0544/P1

Robin,

The applicant typically voluntarily does the modeling. The prohibition is upon the DNR from requiring the applicant to model. As for cases concerning the tribes, I believe the applicant is required to do the modeling for certain sources. I believe it is required under the agreement, plan, or rules. The best plain language explanation I have is that in 1999, the State and the Forest County Potawatomi Community entered into a formal agreement that requires air dispersion modeling for certain air pollution sources within a certain distance of the center of Forest County. The regulatory reform bill that we worked on last session impacted that section of the statutes and in a commitment to both the tribe and the regulated industries, Rep. Mursau agreed to pursue language that preserves the original intent of the 1999 agreement.

I spoke with DNR legislative liaison Mike Bruhn and Air Division Administrator Pat Stevens this morning and they relayed to me the information above.

In the event that I have mistranslated our conversation, I have copied them both on this email. Pat Stevens is the expert on this, and I hope I can safely volunteer him to answer further technical questions you might have ... you have our complete permission to discuss this bill drafting portion of the bill with him.

Tim

From: Bruhn, Michael L - DNR [mailto:Michael.Bruhn@wisconsin.gov]
Sent: Tuesday, February 19, 2013 7:51 PM
To: Gary, Tim
Cc: Stevens, Patrick K - DNR
Subject: RE: Revisions to LRB 0544/P1
Yes, I believe so (the applicant would provide their modeling data to the DNR)...but let me double check with Pat.
Michael Bruhn
Legislative Liaison
Wisconsin Department of Natural Resources
(☎) phone: (608) 266-5375
(✉) e-mail: michael.bruhn@wisconsin.gov

From: Gary, Tim [mailto:Tim.Gary@legis.wisconsin.gov]
Sent: Tuesday, February 19, 2013 4:21 PM
To: Bruhn, Michael L - DNR
Cc: Stevens, Patrick K - DNR
Subject: RE: Revisions to LRB 0544/P1
Mike,
The applicant does the modeling, correct?
Tim Gary

From: Kite, Robin
Sent: Wednesday, February 13, 2013 2:55 PM
Cc: Shea, Elisabeth
Subject: FW: Revisions to LRB 0544/P1

I am working on the part of this redraft that concerns air dispersion modeling. The language that you provided states that "the department may not require air dispersion modeling" before issuing certain permits. Does the applicant typically do this modeling? Does DNR do this modeling? In other words, upon whom is this prohibition being placed?

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agreement, plan, or rules? Or does it mean that it is **required** under the agreement, plan, or rules? And whether allowed or required, must the agreement, plan, or rules identify a particular type of modeling?

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Please give me a call if you think it might be helpful to discuss these issues.

Robin

Air Dispersion Modeling

Repeal 285.63(11) and replace with:

285.63 (11) MODELING.

(a) Except as specifically required under the federal clean air act and except as provided in par. (b), the department may not require air dispersion modeling before issuing any of the following:

1. A registration permit or general permit.
2. A minor source operating permit or operating permit renewal.
3. A major source operating permit renewal.
4. A construction permit for a minor source with a projected actual increase in emissions of pollutants listed in s. 40 C.F.R. 51.166 (b) (23) (i) below the emission rates specified in s. 40 C.F.R. 51.166 (b) (23) (i).

(b) With regard to a federally-recognized American Indian tribe or band in this state, if the U.S. environmental protection agency has granted to the tribe or band treatment as a state under 42 U.S.C. 7601 (d) or redesignated as Class I any portion of the tribe's or band's reservation under 42 U.S.C. 7474, the department may require air dispersion modeling before issuing a permit listed in par. (a) if air dispersion modeling is provided for under any of the following:

1. An agreement between the state or the federal government and the tribe or band implementing the tribe's or band's treatment as a state or designation as a Class I Area.
2. An implementation plan for the tribe or band under 40 C.F.R. Part 49, Subpart H.
3. Rules promulgated by the department implementing the tribe's or band's treatment as a state or designation as a Class I Area.

2011 Act 167:

SECTION 111. 285.63 (11) of the statutes is created to read:

285.63 (11) MODELING. The department is not required to use air dispersion modeling as a basis for making its findings under [REDACTED] for a minor source unless modeling is specifically provided for under the federal clean air act, rules promulgated under this chapter, or a federal or state agreement.

Mursau, Potawatomi, WPC Proposal:

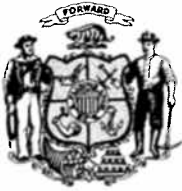
285.63 (11) MODELING.

(a) Except as specifically required under the federal clean air act and except as provided in par. (b), the department may not require air dispersion modeling before issuing any of the following:

5. A registration permit or general permit.
6. A minor source operating permit or operating permit renewal.
7. A major source operating permit renewal.
8. A construction permit for a minor source with a projected actual increase in emissions of pollutants listed in s. 40 C.F.R. 51.166 (b) (23) (i) below the emission rates specified in s. 40 C.F.R. 51.166 (b) (23) (i).

(b) With regard to a federally-recognized American Indian tribe or band in this state, if the U.S. environmental protection agency has granted to the tribe or band treatment as a state under 42 U.S.C. 7601 (d) or redesignated as Class I any portion of the tribe's or band's reservation under 42 U.S.C. 7474, the department may require air dispersion modeling before issuing a permit listed in par. (a) if air dispersion modeling is provided for under any of the following:

4. An agreement between the state or the federal government and the tribe or band implementing the tribe's or band's treatment as a state or designation as a Class I Area.
 5. An implementation plan for the tribe or band under 40 C.F.R. Part 49, Subpart H.
- Rules promulgated by the department implementing the tribe's or band's treatment as a state or designation as a Class I Area.



500w
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0544/P1 PZ

EHS:eev:rs

Stays

RMR

+ RNK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
3/11

regen. cat

1 AN ACT *to repeal* 15.347 (2) (a); *to amend* 15.347 (2) (b), 23.38 (1), 23.38 (2),
 2 23.50 (1), 23.65 (1), 23.65 (3) and 29.569 (3) (bm) 2.; and *to create* 23.38 (1m)
 3 and 281.36 (14) (e) of the statutes; **relating to:** a citation procedure applicable
 4 to wetland discharge violations, sturgeon spearing license issuance period,
 5 electronic methods for reporting natural resource and environmental law
 6 violations, ^{publication of class 1 notices, air dispersion modeling requirements,} and membership on the Dry Cleaner Environmental Response
 7 Council.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Natural Resources (DNR) to maintain a toll-free telephone number for receiving reports of violations of any statute or administrative rule that DNR enforces or administers. This bill provides that DNR may also establish other electronic methods to receive reports of these violations.

Under current law, DNR may recover forfeitures imposed for the violation of certain natural resource and environmental laws using a citation procedure. This bill makes this citation procedure applicable to violations of laws that regulate the discharge of certain materials into wetlands.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing license. Also under current law, issuance of a sturgeon spearing license is generally prohibited during a period beginning on November 1 and ending on the last day of

the open season for the spearing of lake sturgeon. One exception to this prohibition is for a resident who has attained the age of 14 during that period. This bill lowers this age to 12, consistent with the minimum age for obtaining a license.

US. analysis → Under current law, the Dry Cleaner Environmental Response Council (council) in DNR is composed of six members. Of those members, one member must represent dry cleaning operations with annual gross receipts of less than \$200,000 and two members must represent dry cleaning operations with annual gross receipts of at least \$200,000. This bill eliminates these gross receipts requirements for representation on the council and provides, instead, that three members of the council must represent dry cleaning operations, regardless of the amount of the operation's annual gross receipts.

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

1 **SECTION 1.** 15.347 (2) (a) of the statutes is repealed.

2 **SECTION 2.** 15.347 (2) (b) of the statutes is amended to read:

3 15.347 (2) (b) ~~Two~~ Three members representing dry cleaning operations with
4 annual gross receipts of at least \$200,000.

5 **SECTION 3.** 23.38 (1) of the statutes is amended to read:

6 23.38 (1) The department shall maintain a toll-free telephone number at
7 department headquarters to receive reports of violations of any statute or
8 administrative rule that the department enforces or administers. The department
9 shall relay these reports to the appropriate warden or officer for investigation and
10 enforcement action. The department shall publicize the toll-free telephone number
11 as widely as possible in the state.

12 **SECTION 4.** 23.38 (1m) of the statutes is created to read:

13 23.38 (1m) In addition to the toll-free telephone number under sub. (1), the
14 department may establish additional electronic methods to receive reports of
15 violations of any statute or administrative rule that the department enforces or
16 administers.

1 SECTION 5. 23.38 (2) of the statutes is amended to read:

2 23.38 (2) The department shall maintain records which that permit the release
3 of information provided by informants while protecting the identity of the informant.

4 Any records ~~maintained by the department which~~ ^{received under this section} that relate to the identity of
5 informants shall be only for the confidential use of the department in the
6 administration of this section, unless the informant expressly agrees to release the
7 records. Appearance in court as a witness shall not be considered consent by an
8 informant to release confidential records ~~maintained by the department.~~ ^{received under this section}

9 SECTION 6. 23.50 (1) of the statutes is amended to read:

10 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
11 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
12 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.36, 281.48 (2) to
13 (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64
14 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
15 administrative rules promulgated thereunder, violations specified under s. 280.98
16 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
17 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
18 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
19 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

20 SECTION 7. 23.65 (1) of the statutes is amended to read:

21 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
22 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07,
23 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or
24 any administrative rule promulgated pursuant thereto, a violation specified under

1 s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has
2 been committed the district attorney may proceed by complaint and summons.

3 SECTION 8. 23.65 (3) of the statutes is amended to read:

4 23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,
5 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he
6 or she finds there is probable cause to believe that the person charged has committed
7 a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29,
8 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be
9 informed of the hearing and may attend.

10 SECTION 9. 29.569 (3) (bm) 2. of the statutes is amended to read:

11 29.569 (3) (bm) 2. A person who is a resident and who has attained the age of
12 14 12 during that period.

13 SECTION 10. 281.36 (14) ~~(a)~~ ^(f) of the statutes is created to read:

14 281.36 (14) ~~(e)~~ ^(f) The procedure in ss. 23.50 to 23.85 applies to actions brought
15 under this subsection.

16 (END)

ENS
4-13A

INSERT
4-13

ENS
4-5

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P2insRK
RNK:.....

INSERT ANALYSIS

Current law requires DNR to make specified findings before it issues certain air pollution permits. Under current law DNR is not required to use air dispersion modeling as a basis for making those findings for a minor source unless specifically provided for under the federal clean air act (CAA), rules promulgated by DNR, or a federal or state agreement. A minor source is a facility that emits air contaminants from a fixed location in an amount that is less than an amount specified by DNR by rule.

This bill prohibits DNR from requiring an applicant for certain air pollution permits, including some permits for major sources, to conduct air dispersion modeling unless required by the CAA. The bill also creates an exception to this prohibition for certain American Indian tribes or bands (tribes). The exception applies to tribes that are treated as states by the federal environmental protection agency (EPA) or tribes whose reservations have been designated by EPA as class 1 areas. Federal law gives class 1 areas special protection under the CAA. This bill provides that for these tribes, DNR may require air dispersion modeling if that modeling is authorized under an agreement between the tribe and this state or federal government, authorized under a CAA implementation plan, or authorized under department rules.

INSERT 4-13A

1 ^X
2 **SECTION 1.** 30.208 (5) (bm) of the statutes is amended to read:
3 30.208 (5) (bm) For the purpose of determining the date on which notice is
4 provided under this subsection, the date of the notice shall be the date on which the
5 department first publishes the notice on its Internet Web site, unless the department
6 delegates to the applicant under par. (c) the requirement to provide notice. If the
7 department delegates to the applicant the requirement to provide notice, the date of
8 the notice shall be the date on which the department first publishes the notice on its
9 Internet Web site ~~or 10 days after the date on which the department receives that~~
10 it received satisfactory proof of publication of a class 1 notice from the applicant,
11 ~~whichever is later.~~

History: 2003 a. 118 ss. 6, 149; 2007 a. 227; 2011 a. 167; s. 35.17 correction in (3) (c).

11 **SECTION 2.** 30.208 (5) (c) 1. of the statutes is amended to read:

1 30.208 (5) (c) 1. Requiring that the applicant for the permit or contract provide
 2 by publication, mailing, or other distribution one or more of the notices. If the
 3 department requires the applicant to publish a class 1 notice under ch. 985, the
 4 department may require the applicant to submit to the department satisfactory proof
 5 of publication of the class 1 notice.

6 History: 2003 a. 118 ss. 6, 149; 2007 a. 227; 2011 a. 17; s. 35.17 correction in (3) (e).

SECTION 3. 281.36 (3p) (c) of the statutes is amended to read:

7 281.36 (3p) (c) For the purpose of determining the date on which notice is
 8 provided under this subsection, the date of the notice shall be the date on which the
 9 department first publishes the notice on its Internet Web site, unless the department
 10 delegates to the applicant under par. (d) the requirement to provide notice. If the
 11 department delegates to the applicant the requirement to provide notice, the date of
 12 the notice shall be the date on which the department first publishes the notice on its
 13 Internet Web site ~~or 10 days after the date on which the department receives that~~
 14 ~~it received~~ satisfactory proof of publication of a class 1 notice from the applicant,
 15 ~~whichever is later.~~

16 History: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.); 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141.

SECTION 4. 281.36 (3p) (d) 1. of the statutes is amended to read:

17 281.36 (3p) (d) 1. Requiring that the applicant for the permit provide by
 18 publication, mailing, or other distribution one or more of the notices. If the
 19 department requires the applicant to publish a class 1 notice under ch. 985, the

1 department may require the applicant to submit to the department satisfactory proof
2 of publication of the class 1 notice.

History: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.); 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141.

INSERT 4-5

3 **SECTION 5.** 285.63^x (11) of the statutes is renumbered 285.63 (11) (a) (intro.) and
4 amended to read:
5 285.63 (11) (a) MODELING (intro.) The Except as specifically required under the federal
6 clean air act or as provided in par. (b), the department is may not required require
7 an applicant to use perform air dispersion modeling as a basis for making its findings
8 under sub. (1) for a minor source unless modeling is specifically provided for under
9 the federal clean air act, rules promulgated under this chapter, or a federal or state
10 agreement. before the department does any of the following:

History: 1979 c. 34, 221; 1981 c. 314 s. 146; 1985 a. 185³, 57; 1987 a. 27, 399; 1989 a. 56; 1991 a. 300, 302; 1993 a. 213; 1995 a. 227 s. 488; Stats. 1995 s. 285.63; 2003 a. 118; 2009 a. 185; 2011 a. 167, 171.

11 **SECTION 6.** 285.63³ (11) (a) 1. of the statutes is created to read:
12 285.63³ (11) (a) 1. Issues a registration permit issued under s. 285.60³ (2g).
13 **SECTION 7.** 285.63³ (11) (a) 2. of the statutes is created to read:
14 285.63³ (11) (a) 2. Issues a general permit issued under s. 285.60³ (3).
15 **SECTION 8.** 285.63³ (11) (a) 3. of the statutes is created to read:
16 285.63³ (11) (a) 3. Issues or renews an operation permit for a minor source under
17 s. 285.62.
18 **SECTION 9.** 285.63³ (11) (a) 4. of the statutes is created to read:
19 285.63³ (11) (a) 4. Renews an operation permit for a major source under s.
20 285.62.

1

SECTION 10. 285.65 (11) (a) 5. of the statutes is created to read:

2

285.65 (11) (a) 5. Issues a construction permit for a minor source under s.

3

285.60 that the department projects will emit the pollutants listed in 40 CFR 51.166

4

(b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR

5

51.166 (b) (23) (i).

6

SECTION 11. 285.65 (11) (b) of the statutes is created to read:

7

285.65 (11) (b) 1. In this paragraph, "tribe" means a federally recognized

8

American Indian tribe or band.

9

2. If the federal environmental protection agency treats a tribe as a state under

10

42 USC 7601 (d) or designates as class 1 all or a portion of a tribe's reservation under

11

42 USC 7474, the department may require the tribe to perform air dispersion

12

modeling before the department issues a permit specified under par (a) if air

13

dispersion modeling is authorized under any of the following:

14

a. An agreement between the tribe and the department or between the tribe

15

and the federal government, the terms of which implement the tribe's treatment as

16

a state or designation as a class 1 area.

17

b. An implementation plan under 40 CFR part 49, subpart H.

18

c. Rules promulgated by the department that implement the tribe's treatment

19

as a state or designation as a class 1 area.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P2ins
EHS:eev:rs

1 INSERT 4-13

2 SECTION 1. 281.36^v (14) (e) of the statutes is created to read:

3 281.36 (14) (e) Each day of a continuing violation is a separate offense.

Kite, Robin

From: Gary, Tim
Sent: Thursday, March 14, 2013 9:46 AM
To: Kite, Robin; Johnson, Dan
Subject: Clean up bill

Robin,

I shared the language you provided Senator Kedzie regarding air modeling in LRB 0544/P2 with the Department of Natural Resources. They asked to make the changes below because it is more correct in their opinion to refer to coverage than a registration or construction permit; and the onus is on the applicant to perform air modeling, not on the tribe.

Can you look at these suggestions from DNR and make them?

Tim Gary

From: Stevens, Patrick K - DNR [mailto:Patrick.Stevens@wisconsin.gov]
Sent: Thursday, March 14, 2013 9:30 AM
To: Gary, Tim; Bruhn, Michael L - DNR
Subject: RE:
Thanks Gary!

I added the reference to registration and general permits back in below. I think that is needed in combination with the "coverage" language you added to match up how the registration and general permit statutes are written. As we discussed yesterday, we think use of the term "coverage" is appropriate because we have existing registration and general permits that sources apply to operate under. We do not issue them a separate registration or operation permit.

Thanks again.

Pat Stevens
Administrator
Air, Waste, and Remediation & Redevelopment Division
Wisconsin Department of Natural Resources
(() phone: (608) 264-9210

DNR Suggested Change to LRB 0544/P2 Draft Language

285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.) and amended to read:
285.63 (11) (a) (intro.) The ~~Except as specifically required under the federal clean air act or as provided in par. (b), the department is may not required~~ require an applicant to use perform air dispersion modeling as a basis for making its findings under sub. (1) for a minor source unless modeling is specifically provided for under the federal clean air act, rules promulgated under this chapter, or a federal or state agreement. before the department does any of the following:

1. Issues coverage under a registration permit under s. 285.60 (2g).
2. Issues coverage under a general permit under s. 285.60 (3).
3. Issues or renews an operation permit for a minor source under s. 285.62.
4. Renews an operation permit for a major source under s. 285.62.
5. Issues a construction permit for a minor source under s. 285.60 that the applicant indicates will emit the pollutants listed in 40 CFR 51.166 (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR 51.166 (b) (23) (i).

285.63 (11) (b) of the statutes is created to read:

285.63 (11) (b) 1. In this paragraph, "tribe" means a federally recognized American Indian tribe or band.

2. If the federal environmental protection agency treats a tribe as a state under 42 USC 7601 (d) or designates as class 1 all or a portion of a tribe's reservation under 42 USC 7474, the department may require the applicant to perform air dispersion modeling before the department issues a permit specified under par. (a) if air dispersion modeling is authorized under any of the following:

- a. An agreement between the tribe and the department or between the tribe and the federal government, the terms of which implement the tribe's treatment as a state or designation as a class 1 area.
- b. An implementation plan under 40 CFR part 49, subpart H.
- c. Rules promulgated by the department that implement the tribe's treatment as a state or designation as a class 1 area.

LRB Analysis and Statutory Language for LRB 0544/P2

Current law requires DNR to make specified findings before it issues certain air pollution permits. Under current law DNR is not required to use air dispersion modeling as a basis for making those findings for a minor source unless specifically provided for under the federal Clean Air Act (CAA), rules promulgated by DNR, or a federal or state agreement. A minor source is a facility that emits air contaminants from a fixed location in an amount that is less than an amount specified by DNR by rule.

This bill prohibits DNR from requiring an applicant for certain air pollution permits, including some permits for major sources, to conduct air dispersion modeling unless required by the CAA. The bill also creates an exception to this prohibition for certain American Indian tribes or bands (tribes). The exception applies to tribes that are treated as states by the federal environmental protection agency (EPA) or tribes whose reservations have been designated by EPA as class 1 areas. Federal law gives class 1 areas special protection under the CAA. This bill provides that for these tribes, DNR may require air dispersion modeling if that modeling is authorized under an agreement between the tribe and this state or federal government, authorized under a CAA implementation plan, or authorized under department rules.

285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.) and amended to read:
 285.63 (11) (a) (intro.) The Except as specifically required under the federal clean air act or as provided in par. (b), the department is may not required require an applicant to use perform air dispersion modeling as a basis for making its findings under sub. (1) for a minor source unless modeling is specifically provided for under the federal clean air act, rules promulgated under this chapter, or a federal or state agreement: before the department does any of the following:

1. Issues a registration permit issued under s. 285.60 (2g).
2. Issues a general permit issued under s. 285.60 (3).
3. Issues or renews an operation permit for a minor source under s. 285.62.
4. Renews an operation permit for a major source under s. 285.62.
5. Issues a construction permit for a minor source under s. 285.60 that the department projects will emit the pollutants listed in 40 CFR 51.166 (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR 51.166 (b) (23) (i).

285.63 (11) (b) of the statutes is created to read:
 285.63 (11) (b) 1. In this paragraph, "tribe" means a federally recognized American Indian tribe or band.

2. If the federal environmental protection agency treats a tribe as a state under 42 USC 7601 (d) or designates as class 1 all or a portion of a tribe's reservation under 42 USC 7474, the department may require the tribe to perform air dispersion modeling before the department issues a permit specified under par. (a) if air dispersion modeling is authorized under any of the following:

- a. An agreement between the tribe and the department or between the tribe and the federal government, the terms of which implement the tribe's treatment as a state or designation as a class 1 area.
- b. An implementation plan under 40 CFR part 49, subpart H.
- c. Rules promulgated by the department that implement the tribe's treatment as a state or designation as a class 1 area.

Mursau, Potawatomi, WPC Proposal

285.63 (11) MODELING.

(a) Except as specifically required under the federal clean air act and except as provided in par. (b), the department may not require air dispersion modeling before issuing any of the following:

1. A registration permit or general permit.
2. A minor source operating permit or operating permit renewal.
3. A major source operating permit renewal.
4. A construction permit for a minor source with a projected actual increase in emissions of pollutants listed in s. 40 C.F.R. 51.166 (b) (23) (i) below the emission rates specified in s. 40 C.F.R. 51.166 (b) (23) (i).

(b) With regard to a federally-recognized American Indian tribe or band in this state, if the U.S. environmental protection agency has granted to the tribe or band treatment as a state under 42 U.S.C. 7601 (d) or redesignated

as Class I any portion of the tribe's or band's reservation under 42 U.S.C. 7474, the department may require air dispersion modeling before issuing a permit listed in par. (a) if air dispersion modeling is provided for under any of the following:

1. An agreement between the state or the federal government and the tribe or band implementing the tribe's or band's treatment as a state or designation as a Class I Area.
2. An implementation plan for the tribe or band under 40 C.F.R. Part 49, Subpart H.
3. Rules promulgated by the department implementing the tribe's or band's treatment as a state or designation as a Class I Area.

Kite, Robin

From: Johnson, Dan
Sent: Monday, March 18, 2013 3:13 PM
To: Kite, Robin; Shea, Elisabeth
Subject: RE: LRB 0544

Hello,

I know you have a request from Tim Gary for changes to the air modeling provision in LRB 0544. I have also shared this draft with the DNR and they offer the following comment:

The draft creates 281.36(14)(f) which requires all enforcement follow the process and procedure in Chapter 23, which is a quasi-criminal type process with no discovery. That process will apply in the case of a wetland citation (as provided in 23.50) but it should not apply in all enforcement cases. DNR still wants to retain the current process to refer enforcement cases to justice when appropriate and this process is problematic. **The DNR recommends removing the proposed creation of Wis. Stat. s. 281.36(14)(f).**

We would agree with that removal, unless you believe it needs to be there for other purposes. Thank you.

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635