

# ANDRÉ JACQUE

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*Testimony before the Assembly Committee on Environment  
State Senator André Jacque  
April 15, 2021*

Chairman Kitchens and Members of the Assembly Committee on Environment,

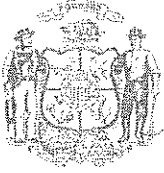
Thank you for holding this hearing and the opportunity to submit testimony in support of Assembly Bill 129, which will remove disincentives associated with Wisconsin's Environmental Compliance Audit Program compared to a similar program offered through the EPA, aligning notification and timeline requirements to improve ease of participation for businesses. This legislation was formally requested and unanimously supported by the bi-partisan appointees of the DNR's Small Business Environmental Council (SBEC) with language drafted in coordination with the DNR.

AB 129 is identical to the language of 2019 SB 215, which passed the full Senate on a voice vote but was not taken up by the full Assembly before session adjourned. The Senate companion bill (SB 151) to AB 129 has already passed the Senate Natural Resources and Energy Committee on a 5-0 vote and the full senate by voice vote already this session. The National Federation of Independent Business, Wisconsin Wildlife Federation, and Wisconsin Independent Businesses are among the organizations that have registered their support for this legislation at some point.

Though presently under-utilized, the DNR's Environmental Compliance Audit Program (recently re-branded as the Enviro-Check program) has the capacity to be a very helpful tool for small businesses and enables participants to voluntarily audit their own environmental compliance, self-disclose findings and correct violations with limited liability and lower penalties for noncompliance. With different timelines, deadlines, and procedures to follow in order to use the Wisconsin audit program and one of EPA's audit policies, companies may avoid using whichever program seems less advantageous. When designed with similar conditions for use/eligibility, the programs can be used simultaneously and offer greater advantage to business while still protecting the environment.

The chart below offers a helpful comparison of the state and federal voluntary environmental compliance audit programs and demonstrates what AB 129 would accomplish.

	<b>Current DNR Compliance Audit Policy</b>	<b>Proposed DNR Compliance Audit Policy</b>	<b>Current EPA Small Business Compliance Policy</b>
<b>Advanced audit notification</b>	notify DNR 30 days before audit (Notice of Intent form) audit within 350 days of notification	not required	not required



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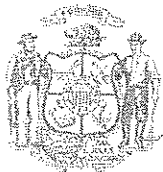
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<b>Discovery method</b>	voluntary audit	Systematic (audit or environmental management system)  voluntary (not required monitoring) independent (before regulator discovers)	Systematic (audit or environmental management system)  voluntary (not required monitoring) independent (before regulator discovers)
<b>Correction/remediation</b>	correct violation within 90 days, possible extension up to one year with approval, s. 299.85(3), Wis. Stats.	within 180 days of discovery / within 360 days if involves pollution prevention modification	within 180 days of discovery / within 360 days if involves pollution prevention modification
<b>Penalty reduction</b>	capped at \$500 per violation if corrected within required time period, per s. 299.85(7), Wis. Stats.	capped at \$500 per violation if corrected within required time period requires consideration if a small business and minor violation ("reg flex")	up to 100% reduction of civil gravity penalties
<b>Exclusions</b>	imminent threat / serious harm to public health or environment  DNR discovers violation before audit begins or before report submitted  substantial economic benefit  identified through required monitoring  repeat violation	imminent threat / serious harm to public health or environment  DNR discovers violation before audit begins or before report submitted  substantial economic benefit  identified through required monitoring  repeat violation	caused serious harm or presents imminent & substantial endangerment to public health or environment  subject to 2 or more enforcement actions for environmental violations in past 5 years  violation already discovered by agency or other entity  repeat violations (similar violation within past 3 years)
<b>Criminal Violation</b>	not eligible	not eligible	not eligible



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<b>Environmental record</b>	clean environmental record for last 2 years, s. 299.85(9), Wis. Stats.	clean environmental record for last 2 years	subject to 2 or more enforcement actions for environmental violations in past 5 years

Thank you for your consideration of AB 129.



# ROBERT BROOKS

STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

**Assembly Committee on Environment**

**April 15, 2021**

Thank you for holding a hearing on Assembly Bill 129 and allowing me to testify in support.

The DNR’s Environmental Compliance Audit Program is currently underused, but has the potential to be a beneficial tool for small businesses. The program is voluntary and allows businesses to audit their own environmental compliance, self-disclose finding, and correct violations with limited liability, and fewer penalties for non-compliance.

Assembly Bill 129 removes disincentives relating to Wisconsin’s Environmental Compliance Audit Program compared to similar EPA offered programs. Currently, different timelines, deadlines, and procedures exists between the DNR and EPA programs and businesses may avoid using the program that seems less advantageous. Assembly Bill 129 seeks to more closely align DNR notification and timeline requirements with those of the EPA. The goal is to make participation easier for businesses and encourage both programs to be used simultaneously. This will offer greater benefits to businesses, while still maintaining environmental protections.

The chart below offers a comparison of the state and federal programs and demonstrates the uniformity that Assembly Bill 129 seeks to accomplish.

	<b>Current DNR Compliance Audit Policy</b>	<b>Proposed DNR Compliance Audit Policy</b>	<b>Current EPA Small Business Compliance Policy</b>
<b>Advanced audit notification</b>	notify DNR 30 days before audit (Notice of Intent form) audit within 350 days of notification	not required	not required
<b>Discovery method</b>	voluntary audit	Systematic (audit or environmental management system)  voluntary (not required monitoring)	Systematic (audit or environmental management system)  voluntary (not required monitoring)



# ROBERT BROOKS

STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

		independent (before regulator discovers)	independent (before regulator discovers)
<b>Correction/remediation</b>	correct violation within 90 days, possible extension up to one year with approval, s. 299.85(3), Wis. Stats.	within 180 days of discovery / within 360 days if involves pollution prevention modification	within 180 days of discovery / within 360 days if involves pollution prevention modification
<b>Penalty reduction</b>	capped at \$500 per violation if corrected within required time period, per s. 299.85(7), Wis. Stats.	capped at \$500 per violation if corrected within required time period requires consideration if a small business and minor violation ("reg flex")	up to 100% reduction of civil gravity penalties
<b>Exclusions</b>	<p>imminent threat / serious harm to public health or environment</p> <p>DNR discovers violation before audit begins or before report submitted</p> <p>substantial economic benefit</p> <p>identified through required monitoring</p> <p>repeat violation</p>	<p>imminent threat / serious harm to public health or environment</p> <p>DNR discovers violation before audit begins or before report submitted</p> <p>substantial economic benefit</p> <p>identified through required monitoring</p> <p>repeat violation</p>	<p>caused serious harm or presents imminent &amp; substantial endangerment to public health or environment</p> <p>subject to 2 or more enforcement actions for environmental violations in past 5 years</p> <p>violation already discovered by agency or other entity</p> <p>repeat violations (similar violation within past 3 years)</p>



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# ROBERT BROOKS

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STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

<b>Criminal Violation</b>	not eligible	not eligible	not eligible
<b>Environmental record</b>	clean environmental record for last 2 years, s. 299.85(9), Wis. Stats.	clean environmental record for last 2 years	subject to 2 or more enforcement actions for environmental violations in past 5 years

As the chart outlines, the updated language mirrors federal policies administered by the EPA Small Business Compliance Audit Policy, and will encourage greater participation in Wisconsin's Environmental Compliance Audit Program.

I ask that you support this legislation.



## Assembly Committee on Environment

### *2021 Assembly Bill 129*

#### *The Environmental Compliance Audit Program*

*April 15, 2021*

Good morning Chair Kitchens and members of the Committee. My name is Lisa Ashenbrenner Hunt, and I am an Environmental Assistance Coordinator with the Wisconsin Department of Natural Resources. I manage the Compliance Audit Program, also known as Enviro-Check. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 129 (AB 129) related to the Environmental Compliance Audit Program.

Before I start my formal remarks, I want to acknowledge the work of the Small Business Environmental Council regarding the proposed legislation. I would like to thank members of the Council, including Senator Jacque and former Senator Miller, for their work to empower our regulated customers with a tool that allows for proactive management of their environmental practices. The Environmental Compliance Audit Program also benefits the department by incentivizing compliance efforts and reducing enforcement actions.

As mentioned, the state's Environmental Compliance Audit Program incentivizes Wisconsin's regulated community to proactively evaluate their environmental compliance. AB 129 includes language that would align Wisconsin's program more closely with U.S. EPA's audit processes. EPA separates their policy into two tracks which includes one specifically for small businesses. AB 129 would:

1. Eliminate the 30-day advance notification to the DNR prior to beginning an audit while still requiring the regulated entity to submit a signed statement before beginning the audit acknowledging that liability protections do not apply to violations discovered by the regulated entity before the beginning of the audit;
2. Align violation correction time frames with the EPA process by expanding the time frame within which small businesses would need to correct violations from 90 to 180 days (or to 360 days if the remedy involves a pollution prevention modification) and reducing the time frame for all other businesses from 90 to 60 days.
3. Eliminate the requirement of a public notice should the regulated entity propose an extended compliance schedule outside of the 60-day, 180-day, or 360-day (with pollution prevention) window.
4. Require DNR and DOJ to consider whether the entity is a small business when determining whether to pursue criminal enforcement action for violations revealed by a compliance audit.

We appreciate the opportunity to work with the bill authors on language that has been incorporated into this session's bill. The department also appreciates the fact that the proposed legislation retains a prenotification requirement. The advanced knowledge of when an audit is going to occur is beneficial to the administration of the Compliance Audit Program.

In addition, the department has identified a few areas where further clarification may be worth consideration.

As currently drafted, s. 299.85(3)(d) would require “A commitment to correct the violations within 60 days of submitting the report or, if the entity is a small business stationary source, within 180 days of submitting the report or within 360 days of submitting the report if the correction involves a pollution prevention modification, or according to a compliance schedule approved by the department.” The department believes the 360 days with pollution prevention option would apply only to small business stationary sources but requests clarification to ensure our interpretation aligns with the author’s intent. We also recommend adding a definition of “small business” here.

On behalf of the Department of Natural Resources, we would like to thank you for your time today. I would be happy to answer any questions you may have.