

Vote Record

AB548 11

Assembly Committee on Environment

Date: 10-28-97 Executive Session Public Hearing

Bill Number: AB548

Moved by: Duff Seconded by: Hoven

Motion: Recom for Passage

Committee Member	Aye	No	Absent	Present	Absent
Rep. Marc Duff, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Lorraine Seratti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Peter Bock	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Judy Robson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>9</u>	<u>0</u>	<u>1</u>		

Motion Carried

Motion Failed



September 12, 1997

Mr. Carlton Nash, Chief
Regulation Development Section
U.S. Environmental Protection Agency (AR 18J)
77 West Jackson Blvd.
Chicago, IL 60604

Dear Mr. Nash:

I am writing this letter on behalf of Wisconsin Manufacturers and Commerce (WMC) to express our strong opposition to the Forest County Potawatomi Community request to the Environmental Protection Agency (EPA) to redesignate its lands from Class II status to Class I status pursuant to the Prevention of Significant Deterioration (PSD) provisions of the Clean Air Act. WMC is a statewide business association with approximately 4,600 members who employ about 500,000 people in the state of Wisconsin. WMC has been, and continues to be, involved in numerous environmental issues on behalf of its members. In regard to this redesignation request, WMC has previously provided testimony and written comments expressing our concerns.

Please note that we have enclosed with these comments a number of documents pertaining to the EPA's recent redesignation of the Yavapai Apache's reservation lands. These documents include: Petition for Review of the Decision of the EPA, Petitioner's Opening Brief; Brief Amicus Curiae, the American Forest and Paper Association, et al; Brief of Amici Curiae States of Wisconsin, California, Michigan, Montana, South Dakota and Utah; and Opening Brief of Petitioner, Arizona Chamber of Commerce. WMC believes that most of the arguments in opposition to the Yavapai Apache's redesignation contained in these documents are applicable to the Potawatomi redesignation and that the Potawatomi's redesignation must be denied on the basis of those arguments. Consequently, WMC incorporates those arguments by reference into these comments, and requests that those arguments be incorporated into the official record of this matter.

In addition to the arguments set forth in these documents, WMC believes the Potawatomi redesignation should be denied for a number of reasons. First, WMC believes it is premature for EPA to make any redesignation decisions regarding the Potawatomi's reservation lands. The EPA published an advance notice of proposed rulemaking relating to PSD permit review procedures for non-federal Class I areas on May 16, 1997. These rules may address a number of issues pertaining to this matter. EPA should not go forward until such time as these rules are completed. This will allow interested parties to more accurately assess the impact of this redesignation.

Wisconsin Manufacturers
Association — 1911
Wisconsin Council
of Safety — 1923
Wisconsin State Chamber
of Commerce — 1929

James S. Haney
President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Education and Programs

Second, we are greatly concerned about the uncertainty created by this redesignation. As you are aware, Class I areas may be protected based upon Air Quality Values (AQRV's). AQRV's are air controls to protect items such as visibility, odor, flora, fauna, cultural resources, geological features, climate, and acid participation. It is unclear what impacts AQRV's will have because they are undefined. EPA even acknowledged this uncertainty during its presentation prior to the public hearing on August 15, 1997 in Rhinelander, Wisconsin. EPA's overheads specified the AQRV's were not well defined.

In addition, there is uncertainty because it is unclear to whom AQRV's will be applied. More specifically an EPA official was asked during the question and answer period prior to the August 13, 1997 hearing in Rhinelander, Wisconsin, whether AQRV's applied to minor sources. The EPA official responded "not at this time". This type of response from the regulatory agency responsible for this matter only serves to create additional uncertainty. This uncertainty obviously prohibits organizations from evaluating the impact of redesignation, and precludes the ability to make informed business decisions.

Third, WMC has concerns regarding the creation of multiple regulatory systems. Class I creates another regulatory layer in an area heavily regulated at the state and federal level. In addition, if a number of Indian tribes pursue Class I status, there is a potential of overlapping tribal regulations.

Fourth, WMC has significant concerns regarding the redesignation process. The redesignation process is largely procedural in nature, and provides little opportunity to evaluate whether a redesignation is good environmental policy. This process concern is amplified by the fact that EPA does not act as a non-biased decision-maker, but rather a trustee for the Indian tribes. Consequently, there is little opportunity for substantive input into the redesignation process, and what little input is allowed is reviewed by a partial decision-maker. This is contrary to the concepts of due process contained in the United States Constitution.

Fifth, WMC is concerned about the application of Class I status to other areas of the state, given EPA's apparent refusal to give any substantive review to redesignation requests. Class I designations were intended to protect pristine areas. If all Indian tribes pursued this designation, essentially the entire state could be impacted by Class I status. This potentially could even include Milwaukee, if the EPA allows any tribal property to be designated Class I. This is unnecessary and inappropriate.

Sixth, WMC is concerned about the impact of redesignation on economic development. The uncertainty created by Class I redesignation, the stringent limits placed on emissions, as well as the other concerns expressed above, may have significant negative impacts on economic growth. Prohibiting or discouraging business to locate or expand in Class I areas has a negative impact on job growth and the area's tax base.

Finally, WMC has concerns regarding EPA's conduct in matters regarding environmental regulation by indian tribes. EPA's conduct in regards to EPA's decision to grant "treatment as a state" status to several indian tribes under the Clean Air Water Act gives further reasons for concern. Evidence indicates EPA officials, concerned about the weakness of the "administrative records" that had been prepared to justify EPA's decision, manufactured additional evidence and then backdated the evidence to make it appear as if EPA had considered the evidence in making its original decision. This raises serious questions regarding the ability of EPA to make any impartial decisions in this case.

WMC appreciates the opportunity to comment on the matter.

Sincerely,



Patrick K. Stevers, Director
Environmental Policy

PKS:jr

Enclosures

c: Wisconsin Congressional Delegation (w/o enclosures)

TALKING POINTS FOR ASSEMBLY BILL 548 CLASS I AIR DESIGNATION PROPOSALS

- The federal Clean Air Act includes provisions for the prevention of significant deterioration (PSD) of air quality in areas that meet federal air quality standards (attainment areas).
- Under the so-called PSD provisions, attainment areas are designated as either Class I, Class II or Class III.
- New air pollution sources in Class I areas are subject to more restrictive emissions limitations than those in Class II areas, and sources in Class III areas are subject to less restrictive emissions limitations.
- Most attainment areas are originally designated Class II areas under the Clean air Act.
- States may redesignate attainment areas with their boundaries, but only American Indian tribal governing bodies may redesignate areas within the boundaries of reservations.

- A state or tribe is required to provide notice and public hearings before redesignating a nonattainment area.
- If a governor disagrees with a redesignation by a tribe, the governor may ask the administrator of the federal Environmental Protection Agency (EPA) to enter into negotiations with the parties involved to resolve the dispute.
- If the parties involved do not resolve the dispute, the EPA administrator resolves the dispute.
- A. B. 548 requires the Department of Natural Resources (DNR) to provide notice to the appropriate standing committees of the Legislature within 5 days after DNR receives notice that an American Indian tribal governing body proposes to redesignate an area as Class I.
- DNR must also notify the public about the proposed redesignation and about the public hearing on the proposed redesignation.
- The bill requires DNR to report to the Legislature on the result of consultations with a tribe concerning a proposed redesignation.

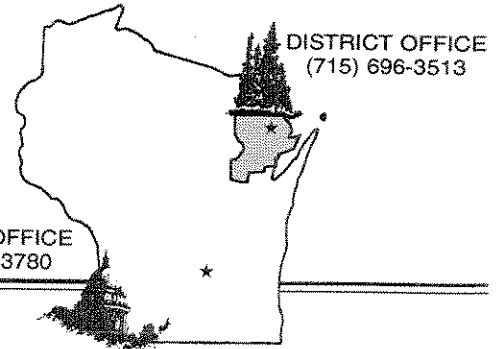
LORRAINE M.

SERATTI

STATE REPRESENTATIVE
36TH ASSEMBLY DISTRICT

P.O. Box 8953, State Capitol, Madison, WI 53708-8953
Toll-Free Legislative Hotline: 1 (800) 362-9472

MADISON OFFICE
(608) 266-3780



**TESTIMONY ON AB 548
REP. LORRAINE M. SERATTI
October 28, 1997**

DEAR CHAIRMAN DUFF AND FELLOW MEMBERS OF THE ENVIRONMENT COMMITTEE:

THE FOLLOWING IS AN UPDATE OF MY TESTIMONY ON 1995 A. B. 413 BEFORE THE SPECIAL COMMITTEE ON STATE AND FEDERAL RELATIONS ON JULY 24, 1995.

IN FEBRUARY OF 1995, THE FOREST COUNTY POTAWATOMI INDIAN TRIBE SUBMITTED ITS APPLICATION TO THE U.S. EPA OF ITS INTENT TO SEEK REDESIGNATION OF ITS AIR QUALITY TO A CLASS I AIR STANDARD. IN JUNE OF 1995, THE U.S. EPA SUBMITTED ITS PROPOSED APPROVAL TO THE FEDERAL REGISTER, PLANNED A PUBLIC HEARING, AND SET A DEADLINE FOR PUBLIC COMMENT ON THIS ISSUE. THE U.S. EPA WAS THEN PLANNING ON MAKING A FINAL DECISION ON THE TRIBE'S APPLICATION AFTER THESE STEPS WERE COMPLETED.

THE EPA HELD THREE PUBLIC HEARINGS ON THE PROPOSED REDESIGNATION: THE FIRST HEARING WAS ON SEPTEMBER 29, 1994, THE SECOND ON AUGUST 12, 1997 IN CARTER, WISCONSIN AND THE THIRD HEARING WAS ON AUGUST 13, 1997 IN RHINELANDER, WISCONSIN.

THIS BILL REQUIRES THE DEPARTMENT OF NATURAL RESOURCES (DNR) TO PROVIDE NOTICE TO THE LEGISLATURE WITHIN 5 DAYS AFTER DNR RECEIVES NOTICE THAT AN AMERICAN INDIAN TRIBAL GOVERNING BODY PROPOSES TO REDESIGNATE AN AREA FOR THE PURPOSES OF THE PSD PROVISIONS OF THE FEDERAL CLEAN AIR ACT. DNR MUST ALSO NOTIFY THE PUBLIC ABOUT THE PROPOSED REDESIGNATION AND ABOUT THE PUBLIC HEARING ON THE PROPOSED REDESIGNATION. THE BILL REQUIRES DNR TO REPORT TO THE LEGISLATURE ON THE RESULT OF CONSULTATIONS WITH A TRIBE CONCERNING A PROPOSED REDESIGNATION.

THE ACTIONS BROUGHT FORTH BY A. B. 548 ARE NOT TO BE CONSIDERED AN AFFRONT TO THE NATIVE AMERICAN COMMUNITIES' DESIRE TO PROTECT THE AIR QUALITY ON THEIR RESERVATIONS.

BUT RATHER THE ACTIONS ARE TAKING ISSUE WITH THE U.S. EPA'S PROVISIONS THAT GRANT REDESIGNATION ON A PURELY PROCEDURAL BASIS, WITH A DISREGARD FOR STATE'S RIGHTS, THE DENIAL OF DUE PROCESS, AND THE LACK OF CLARITY UNDER THE REDESIGNATION PROVISIONS ON THE CLEAN AIR ACT.

CLASS I AIR STANDARDS COULD IMPOSE REGULATIONS UP TO TEN TIMES MORE STRINGENT IN CERTAIN AREAS.

Chair: Small Business and Economic Development Committee • **Vice Chair:** Mandates Committee

Member: Ways and Means Committee • Children and Families Committee • Rural Affairs Committee
Special Committee on State and Federal Relations • Legislative Council • Governor's Council on Forestry
Council of State Government's, Midwest and Canada Relations Committee

October 28, 1997
Seratti AB 548 testimony
page 2

IN THIS PROCESS, THE U.S. EPA HAS DRAWN AN ARBITRARY CIRCLE OF 100 KILOMETERS -- 65 MILES EXTENDING BEYOND RESERVATION BOUNDARIES.

UNDER THIS ACT, TRIBES COULD INCLUDE AN UNDEFINED SET OF AIR STANDARDS KNOWN AS AQRVS -- AIR QUALITY RELATED VALUES.

AQRVS ARE EXPRESSED IN BROAD TERMS AND COULD INCLUDE SOILS, FLORA, FAUNA, AND CULTURAL RESOURCES, SUCH AS MEDICINAL PLANTS AND CEREMONIAL SITES.

ONCE REDESIGNATED, THE USE AND APPLICATION OF AQRVS COULD EXPAND IN THE FUTURE AND THE THRESHOLD EFFECTS FOR ADVERSE AIR POLLUTION IMPACTS COULD CHANGE.

AQRVS ARE A "WILD CARD" WITH UNKNOWN IMPACTS TO ECONOMIC DEVELOPMENT.

THE DNR FOR THE TWO STATES OF MICHIGAN AND WISCONSIN WILL BE RESPONSIBLE FOR THE MANAGEMENT OF THE REDESIGNATION AND ISSUANCE OF OPERATING PERMITS.

THE DNR MUST TAKE INTO CONSIDERATION BOTH INCREMENT EMISSIONS AND AQRVS UNDER THE PROGRAM. THIS PROGRAM WILL PLACE YET ANOTHER UNKNOWN UNFUNDED MANDATE ON TAXPAYERS IN THE STATES OF WISCONSIN AND MICHIGAN WHO WILL HAVE TO BEAR THE COST OF APPLYING THESE NEW STANDARDS.

BUSINESSES IN THIS REGION COULD BE FACED WITH THE UNCERTAINTY OF UNKNOWN COSTS RELATING TO AIR PERMITTING, AS WELL AS INCREASED COSTS OF POLLUTION CONTROL IN THE FUTURE.

CLASS I AIR AREAS COULD BECOME SHAKY GROUND FOR INVESTORS. AS A RESULT OF THE PROPOSED REDESIGNATION, BUSINESSES HAVE ALREADY STATED THEY WOULD MAKE THEIR INVESTMENTS ELSEWHERE.

THE TOTAL COSTS OF POLLUTION ABATEMENT TO INDIVIDUALS, BUSINESSES, AND GOVERNMENT IN THE UNITED STATES BETWEEN 1991-2000 WILL TOTAL AN ESTIMATED \$1.6 TRILLION.

THE WISCONSIN LEGISLATURE HAS AN OBLIGATION TO UPHOLD AND PROTECT THE ECONOMIC STABILITY OF THIS REGION AND THE STATE AS A WHOLE.

REGARDLESS OF WHETHER THERE IS ANYTHING THAT CAN BE DONE AT THE STATE LEVEL, THE PUBLIC AND THE BUSINESS COMMUNITY HAVE A RIGHT TO KNOW THE FULL POTENTIAL EFFECT OF THIS REDESIGNATION TO CLASS I STANDARDS.

ASSEMBLY BILL 413 WAS DRAFTED TO ESTABLISH NOTIFICATION PROCEDURES FOR THE DNR REGARDING REDESIGNATION APPLICATIONS BY INDIAN TRIBES TO THE U.S. EPA, REQUIRE THE DNR TO NOTIFY THE LEGISLATURE OF CONSULTATIONS WITH INDIAN TRIBES.

October 28, 1997
Seratti AB 548 testimony
page 3

IN REGARDS TO THE POTAWATOMI INDIAN TRIBE'S APPLICATION TO THE U.S. EPA, MYSELF AND MANY BUSINESS ORGANIZATIONS WERE UNAWARE OF THE TRIBE'S APPLICATION UNTIL THE FALL OF 1994. PREVIOUS WRITTEN COMMUNICATION SUBSTANTIATE DNR INVOLVEMENT IN THIS ISSUE AS EARLY AS JANUARY OF 1994, HOWEVER NO LEGISLATIVE UPDATE WAS PROVIDED UNTIL AFTER THE TRIBE ANNOUNCED THE FIRST FORMAL HEARING WHICH WAS HELD IN THE FALL OF 1994.

FURTHERMORE, IT IS DISTURBING THAT THERE ARE NO PROMULGATED RULES OR PARAMETERS BY THE U.S. EPA, THE DNR, AND THE GOVERNOR'S OFFICE TO NOTIFY THE PUBLIC AND THE LEGISLATURE OF SOMETHING THAT COULD GREATLY AFFECT THE POTENTIAL ECONOMIC DEVELOPMENT OF THE STATE AND THE STATUS OF CURRENT BUSINESS IN THE AREA.

ECONOMIC DEVELOPMENT PLANNING BY BUSINESSES AND COMMUNITIES SHOULD NOT BE ARBITRARILY INTERRUPTED BY THE ACTIONS OF THE U.S. EPA WITHOUT ADEQUATE ADVANCE NOTICE.

THIS IS PARTICULARLY IMPORTANT AS OTHER TRIBES IN THE STATE OF WISCONSIN HAVE ALSO MADE STATEMENTS OF THEIR DESIRE TO RECLASSIFY THEIR TRIBAL LANDS TO A CLASS I AIR QUALITY STANDARD. THESE TRIBES INCLUDE THE MOLE LAKE, THE STOCKBRIDGE MUNSEE, THE MENOMINEE, AND THE BAD RIVER BAND.

IF THE PROCESS CONTINUES AS IS, THE PUBLIC AND THE LEGISLATURE MAY NOT BE NOTIFIED OF THESE FUTURE REDESIGNATIONS UNTIL LATE IN THE PROCESS THEREBY POTENTIALLY IMPACTING ECONOMIC DEVELOPMENT PLANNING FOR BUSINESSES IN WISCONSIN.

IF THESE OTHER TRIBES WOULD ALSO GAIN REDESIGNATION, THERE IS A POTENTIAL FOR THE RADII TO OVERLAP AND FOR THESE STRINGENT AIR QUALITY STANDARDS TO COVER THE ENTIRE NORTHERN HALF OF WISCONSIN AND TO REACH DOWN INTO THE FOX VALLEY. (SEE VISUAL DISPLAY)

A STATE GOVERNOR IS THE ONLY INDIVIDUAL AUTHORIZED BY THE CLEAN AIR ACT TO RAISE AN OBJECTION TO DELAY THE AUTOMATIC REDESIGNATION OF THE AREA WITHIN A 65-MILE RADIUS OF THE RESERVATION. AS STATED EARLIER, GOVERNOR THOMPSON AND GOVERNOR ENGLER HAVE REQUESTED A FORMAL DISPUTE RESOLUTION WHICH THE U.S. EPA HAS ACCEPTED. EVEN WITH THE DISPUTE RESOLUTION, THERE IS NO GUARANTEE THAT THE U.S. EPA WILL DENY A TRIBE'S REDESIGNATION REQUEST.

October 28, 1997
Seratti AB 548 testimony
page 4

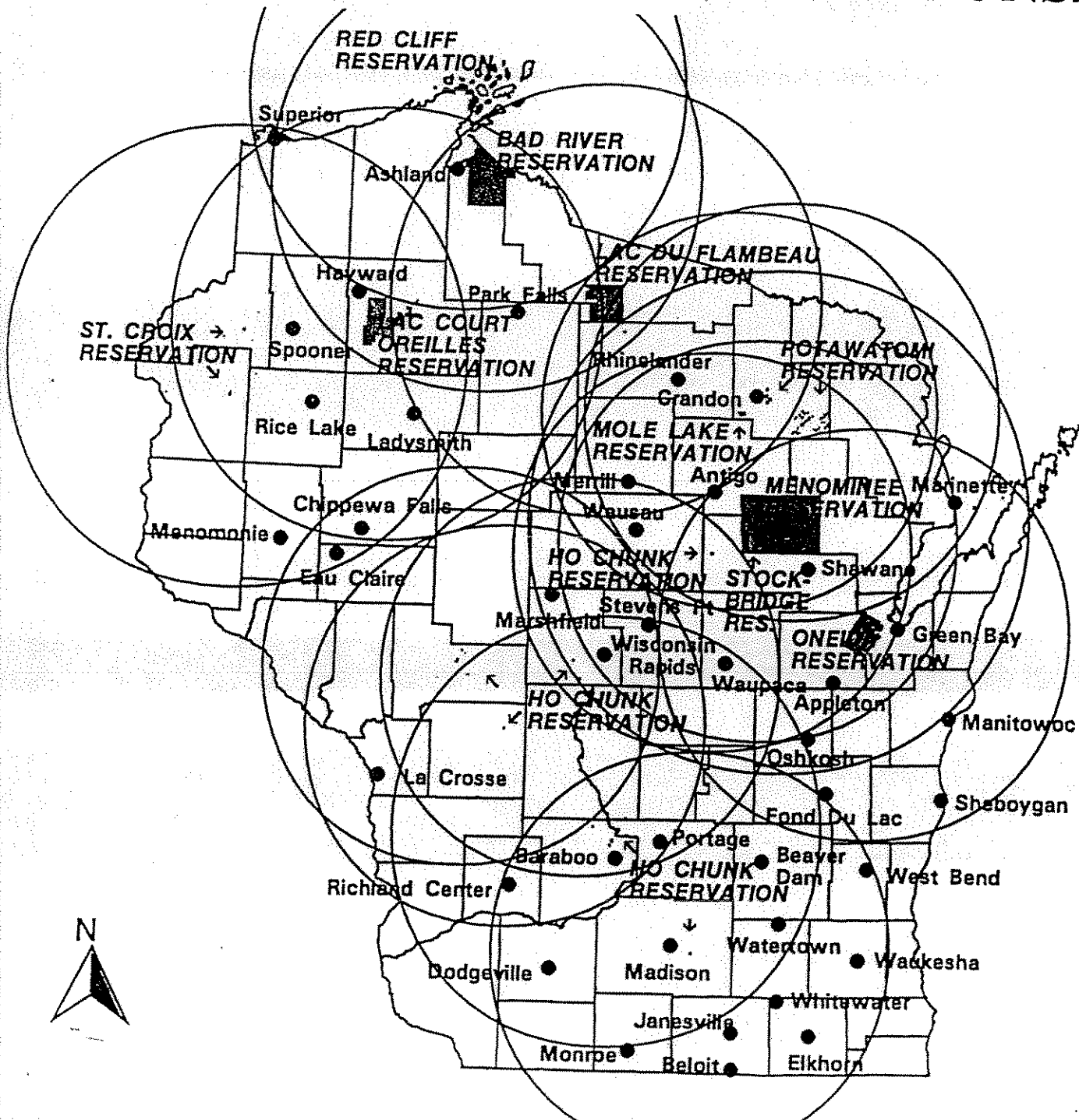
IT IS CRUCIAL THAT CITIZENS, BUSINESS OWNERS AND LOCAL GOVERNMENT OFFICIALS BE PROVIDED WITH INFORMATION THAT IS GOING TO DIRECTLY AFFECT THEM. IT IS ALSO IMPORTANT THAT THESE INDIVIDUALS HAVE AMPLE TIME TO PREPARE AND PLAN BUSINESS EXPANSION AND ECONOMIC DEVELOPMENT WITH ADEQUATE INFORMATION RELATING TO ENVIRONMENTAL REGULATION.




AB 548 WILL HELP RESOLVE SOME OF THE CONFLICTS THAT HAVE ARISEN WITH THE POTAWATOMI INDIAN TRIBE'S APPLICATION. IT IS IMPORTANT THAT THIS LEGISLATION BE PASSED SO THAT THE FUTURE OF ECONOMIC DEVELOPMENT IN WISCONSIN CAN BE MORE SECURE.

IF THE EPA ADMINISTRATOR DISAPPROVES A PROPOSED REDISIGNATION, IT MAY BE RESUBMITTED AFTER CORRECTING THE DEFICIENCIES NOTED BY THE ADMINISTRATOR.

A B 548 REQUIRES THE DNR TO PROVIDE NOTICE TO THE LEGISLATURE. THE PUBLIC AND OTHER AFFECTED STATES WHEN AN INDIAN TRIBAL GOVERNING BODY PROPOSES TO REDESIGNATE RESERVATION LAND TO A DIFFERENT CLASS UNDER THE PREVENTION OF SIGNIFICANT DETERIORATION (PSD) PROGRAM PROVISIONS OF THE FEDERAL CLEAN AIR ACT. THE BILL ALSO REQUIRES THE DNR TO REPORT TO THE LEGISLATURE ON THE RESULTS OF CONSULTATION WITH A TRIBE CONCERNING A PROPOSED REDESIGNATION.

100 KILOMETER AREAS SURROUNDING INDIAN RESERVATIONS IN WISCONSIN



 Indian Reservations
 County Boundaries
 Cities

0 30 60 90 Miles

0 50 100 150 Kilometers

Source: DNR-AM 6/12/96