

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11/1/01

BILL NO. 48 507

OR
SUBJECT (51)

(NAME) Bob Graubpa
Rep. AL OTT

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11/1/01

BILL NO. AB507

OR
SUBJECT

(NAME) Sen Hansen

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11.9.01

BILL NO. AS 507

OR
SUBJECT 11/3

(NAME) Tom Liss
H.E. Messin Suite 404

(Street Address or Route Number)

(City and Zip Code) 53705

(Representing) WISCONSIN ENERGY CORP.

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11-1-01

BILL NO. AB 507

OR

SUBJECT Anhydrous

Ammonia

BREY McNulty
(NAME)

2 E. MIFLIN

(Street Address or Route Number)

MADISON, WI 53702
(City and Zip Code)

Wis. ENERGY CORP.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY.**

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

Chairman:
Agriculture Committee



Member:
Conservation & Land Use
Consumer Affairs
Natural Resources
Utilities

Al Ott

State Representative • 3rd Assembly District

TO: ROBERT J. MARCHANT, ATTORNEY, LEGISLATIVE REFERENCE BUREAU

FROM: Representative Al Ott

RE: Anhydrous Ammonia Regulation

DATE: October 5, 2001

Attached to this memorandum is a copy of WLC: 0200/1, prepared by Mark Patronsky of the Legislative Council. The attached bill draft relates to anhydrous ammonia regulations, and the penalties for failure to comply with those regulations. This is also the subject of 2001 Assembly Bill 507, which you previously drafted at my request.

I am submitting the attached bill draft as a request for another bill draft on this subject. I would like to explain my rationale for the attached draft, because it may not be apparent why I am seeking these changes in the statute. If you have further questions, please feel free to contact me or Mark Patronsky.

The *first change* proposed by the bill draft relates to s. 101.10 (2), Stats., which is the authorization for the Department of Commerce (Commerce) to promulgate rules setting standards for storage and handling of anhydrous ammonia. As you recall, this statute was originally created because a decision was made in 2001 Assembly Bill 7, and its predecessor, 1999 Assembly Bill 703, to create penalties for violations of Commerce rules regarding storage and handling of anhydrous ammonia. At that time, Commerce had already promulgated rules regarding anhydrous ammonia in ch. Comm 43. However, the Commerce authority to promulgate these rules consisted of general statutory language regarding the regulation of places of employment and public buildings, and did not contain a specific reference to anhydrous ammonia. [See s. 101.02 (15), Stats.]

As I understand conventional drafting practices of the Legislative Reference Bureau, statutes ordinarily do not refer directly to administrative rules, but rather to the statutory authority for those rules. Thus, s. 101.10 (2) was created to provide explicit statutory authority for Commerce rules on anhydrous ammonia, and also a statutory reference for the prohibitions and penalties in s. 101.10 (3) and (4), Stats.

The first sentence of s. 101.10 (2), Stats., authorizes Commerce to "promulgate rules that prescribe reasonable standards relating to the safe storage and handling of anhydrous ammonia." The remainder of that subsection was intended, in the original draft legislation, to reflect the current contents

of ch. Comm 43. However, industrial users of anhydrous ammonia have approached me with concerns about s. 101.10 (2), to the extent that the failure of industrial employees to comply with ch. Comm 43, even in minor respects, could be deemed a felony. This has never been the intent of this statute. The statute was intended to relate to the theft of anhydrous ammonia from places where it is legitimately stored and used, by individuals involved in illegal drug manufacture.

The attached draft proposes to delete all language after the first sentence of s. 101.10 (2). This will leave the judgments regarding the contents and exceptions of this rule to Commerce decision-making subject, of course, to legislative review. This amendment does not affect the content of the Commerce rules, and the prohibitions and penalties in the statute continue to apply to the Commerce rules.

The *second change* of the attached draft amends s. 101.10 (4) (c) by adding an additional exemption from the felony penalty. The current statute provides an exception from the felony penalty for those who are performing an agricultural activity. For agricultural activities, the prohibitions in s. 101.10 (3) (a) and (b), which relate to storing, holding, or transporting anhydrous ammonia in a container that does not meet the requirements of the rule, or transferring anhydrous ammonia into a container that does not meet the requirements of the rule, are subject to a civil forfeiture rather than a felony. The attached bill draft also provides that if these activities are undertaken in connection with the activities such as construction, repair or operation of anhydrous ammonia equipment with consent of the owner of the equipment, the activities are also subject to the civil forfeiture.

Thank you for your continued assistance with this drafting issue.

AO:tr

Attachment



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: October 26, 2001

TO: Lenders, investors and other interested parties

FROM: James E. Harsdorf *James E. Harsdorf*

SUBJECT: Ethanol payments program administered by the department.

Currently, there are several groups of investors who are planning ethanol production facilities in Wisconsin. The purpose of this memorandum is to supply basic information about the state's Ethanol Grants program administered by the Department of Agriculture, Trade and Consumer Protection. This information is intended to help lenders assess the impact this program will have on their customers. If, after reading the materials below, you have questions, please contact Kevin LeRoy, Trade Practices Analyst, at (608)224-4928.

Basics

To be eligible for a payment, an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period. The ethanol producer must also purchase commodity inputs from "local sources" as defined by department rule. An ethanol producer is eligible for payments during the first 60 months of ethanol production. Subject to available funding, the department will pay 20¢ per gallon for up to 15 million gallons of eligible ethanol production. This program is scheduled to sunset on June 30, 2006.

Maximum payment

In the current state budget, there is \$3 million dollars per year available for payments to ethanol producers. If this amount is insufficient to pay all qualified ethanol producers, the department will prorate payments among qualifying producers.

Statutory Reference

For more information, please refer to section 93.75, Wisconsin Statutes, and Subchapter III, ATCP 161, Wisconsin Administrative Code. Both documents are attached for your convenience.

93.50 AGRICULTURE, TRADE AND CONSUMER PROTECTION

(5) OTHER CREDITORS; NO DELAY. With respect to mediation or arbitration between parties before an action has been initiated to which they are parties, no agreement to mediate or to arbitrate, or the fact that mediation or arbitration is currently occurring, may have the effect of delaying, postponing or extending any time limits in any legal proceeding commenced to enforce a mortgage, land contract, lien, security interest or judgment commenced by a creditor other than the creditor or creditors participating in the mediation or arbitration.

History: 1989 a. 31; 1991 a. 39; 1993 a. 249, 250; 1997 a. 27, 252, 264.
Cross Reference: See also s. ATCP 162.01, Wis. adm. code.

93.51 Farmer assistance. (1) DEFINITIONS. In this section:

- (a) "Farmer" has the meaning given in s. 93.50 (1) (d).
- (b) "Farming" has the meaning given in s. 102.04 (3).

(2) ASSISTANCE PROGRAM. (a) The department may provide consultation and assistance to distressed farmers, which may include but is not limited to providing employment and retraining counseling for farmers needing employment other than farming, operating a program in which volunteers advise or counsel farmers about financial matters and other concerns and operating a crisis hotline for farmers.

(b) The department may make grants to low-income farmers for the purpose of paying all or part of the tuition for a farmer who enrolls in a course on farm and business management techniques offered by a technical college.

(c) The department may promulgate rules necessary to implement this section.

(3) ADVISORS. (a) The department may select volunteers to provide advice and counseling services to distressed farmers. Advisors shall have expertise and experience in relevant areas of knowledge.

(b) The department shall provide any necessary training to advisors.

(c) Advisors shall be compensated for travel and other necessary expenses in amounts approved by the department.

(d) Advisors and the department shall keep confidential all information obtained in the process of providing advice or counseling. Any such information contained in a record is not subject to the right of public inspection and copying under s. 19.35 (1). This paragraph does not apply to information relating to possible criminal misconduct.

History: 1989 a. 31; 1991 a. 39; 1993 a. 399; 1997 a. 264.

93.52 Dairy farmer exit-entry program. The department shall administer a program to assist in the transfer of farm operations from persons exiting the dairy industry to persons wishing to enter the industry, including assistance in negotiating the financial and legal aspects of farm transfers. The department shall keep confidential information obtained under the program. Any such information contained in a record is not subject to the right of public inspection and copying under s. 19.35 (1).

History: 1997 a. 264.

93.55 Chemical and container collection grants.

(1) DEFINITIONS. In this section:

(a) "Chemical" means a chemical, including a pesticide, that is used for agricultural purposes.

(b) "Pesticide" has the meaning given in s. 94.67 (25).

(2) COLLECTION GRANTS. The department may award a grant to a county for a chemical and container collection program. A grant under this subsection shall fund all or a part of the cost of a program. Costs eligible for funding include the cost of establishing a collection site for chemicals and chemical containers, the cost of transporting chemical containers to a dealer or distributor for refill and reuse or to a hazardous waste facility, as defined in s. 291.01 (8), and costs associated with the proper use and handling and disposal or recycling of chemicals and chemical containers. Grants shall be paid from the appropriation under s. 20.115 (7) (v).

(2m) FARMER LIABILITY. To the extent permitted under federal regulations, a county establishing a chemical and container collection program under sub. (2), in cooperation with the department, shall ensure that a farmer, as defined in s. 102.04 (3), who participates in the program is not liable for chemicals or chemical containers collected under the program after the farmer relinquishes control over the chemicals or chemical containers.

History: 1989 a. 335; 1991 a. 39; 1995 a. 227.

Cross Reference: See also s. ATCP 34.01, Wis. adm. code.

93.70 Conservation reserve enhancement program.

The department may expend funds from the appropriation account under s. 20.866 (2) (wf) to improve water quality, erosion control and wildlife habitat through participation by this state in the conservation reserve enhancement program as approved by the secretary of the federal department of agriculture under 16 USC 3834 (f) (4).

History: 1999 a. 9.

93.75 Payments to ethanol producers. (1) ELIGIBILITY.

Beginning on July 1, 2001, the department shall administer a program under which the department makes payments to a person who produces ethanol and who satisfies all of the following criteria:

(a) The person produces in this state, within 12 months, over 10,000,000 gallons of ethanol or, during the first 12 months that the person produces ethanol in this state, a lesser amount of ethanol that is established by the department by rule.

(b) The person has been producing ethanol in this state for fewer than 60 months.

(c) The person purchases the substances from which the person produces ethanol from a local source, as defined by the department by rule.

(2) PAYMENTS. The department shall pay a person who is eligible under sub. (1) at the rate of 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced in this state within 12 months, except that if there are insufficient funds to make payments at this rate to all eligible persons the department shall prorate the payments.

(3) RULES. The department shall promulgate rules for the program under this section. The department shall include all of the following in the rules:

(a) The amount of ethanol that a person must produce within the first 12 months that the person produces ethanol in this state to be eligible for payments under this section.

(b) A definition of "local source" for the purposes of sub. (1) (c).

(c) A method for prorating payments under sub. (2).

(3m) MONITORING. (a) The department of transportation shall monitor the impact of ethanol sales in this state on the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads.

(b) If the department of transportation determines, on or before December 31, 2003, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2003, and not later than December 31, 2003.

(c) If the department of transportation determines, after December 31, 2003, and before January 1, 2005, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2004, and not later than December 31, 2004.

(d) If the department of transportation determines, after December 31, 2004, and before January 1, 2006, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2005, and not later than December 31, 2005.

(4) SUNSET. The department may not make a payment under this section after June 30, 2006, or the first day of the 6th month beginning after the department receives a notice under sub. (3m), whichever is sooner.

History: 1999 a. 55.

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(2) Affix the logo to any item other than those described in the person's permit application under s. ATCP 161.23.

(3) Alter the logo in any way.

History: Cr. Register, March, 1993, No. 447, eff. 4-1-93.

Subchapter III — Payment to Ethanol Producers

ATCP 161.30 Purpose. This subchapter establishes standards and procedures for making payments to ethanol producers under s. 93.75, Stats.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.31 Definitions. (1) "Commodity" means grain, or another agricultural source of starch or sugar, that can be fermented and distilled to produce ethanol.

(2) "Commodity purchased from a local source" means any of the following:

(a) A commodity that an ethanol producer purchases from a person who produced that commodity in this state.

(b) Grain that an ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

(3) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(4) "Eligible ethanol" means ethanol that an ethanol producer produces in this state from commodities purchased from local sources.

(5) "Ethanol producer" means a person who owns and operates an ethanol production facility in this state.

(6) "Grain" means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flaxseed, milo, sunflower seed and mixed grain as defined in the federal standards act, 7 USC 241 to 271.

(7) "Grain dealer" means a grain dealer as defined in s. 127.01(19), Stats.

(8) "Grain facility" means any building, bin or storage facility, used for receiving, storing, conditioning, shipping or handling grain, whose operator is one of the following:

(a) A warehouse keeper licensed under ch. 127, Stats., or 7 USC 241 to 271.

(b) An exempt warehouse keeper, as defined in s. 127.01(14), Stats.

(9) "Production period" means a consecutive 12 month period of ethanol production designated by the ethanol producer.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.32 Payments to ethanol producers.

(1) **ANNUAL PAYMENT APPLICATION.** An ethanol producer may apply to the department, by March 1 of each year, to receive an ethanol production payment for any production period ending not more than one year prior to that March 1.

(2) **PAYMENT AMOUNT.** Except as provided in s. ATCP 161.36, the department shall in each state fiscal year award to each eligible applicant under sub. (1) a payment of 20 cents per gallon for up to 15 million gallons of eligible ethanol produced by the applicant during the production period identified in the producer's payment application.

(3) **APPROPRIATION.** The department shall make payment from the appropriation under s. 20.115 (3) (d), Stats., subject to the availability of funds in the appropriation.

(a) The ethanol producer produced at least 10 million gallons of eligible ethanol during the production period identified in the producer's payment application.

(b) The department has not previously awarded a payment to the ethanol producer for ethanol produced during the production period identified in the producer's payment application.

(c) The ethanol producer began producing ethanol in this state not more than 60 months before the end of the production period identified in the producer's payment application.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.33 Payment applications. An ethanol producer applying for a payment under s. ATCP 161.32 shall apply in writing. The application shall specify all the following:

(1) The production period for which the applicant seeks a payment.

(2) The total gallons of eligible ethanol that the applicant produced during the production period under sub. (1).

(3) The name and address of each supplier from whom the applicant purchased a commodity used to produce the eligible ethanol under sub. (2). The applicant shall identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant shall give the address of the grain facility from which the grain dealer shipped that grain to the applicant.

(4) The applicant's federal tax identification number.

(5) The date on which the applicant first produced ethanol in this state.

(6) Any other information required by the department.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.34 Department action on payment application. (1) **ACTION DEADLINE.** By May 1 of each year, the department shall act on applications received by March 1 of that year.

Note: The department will wait until the March 1 application deadline to determine the combined amount of all payment applications from ethanol producers. If eligible payment requests received by March 1 exceed the amount of payment funds available in that fiscal year, the department must prorate annual payment awards under s. ATCP 161.36.

(2) **NOTICE OF ACTION.** The department shall give each applicant written notice of its action under sub. (1). If the department denies all or part of a payment application, or awards a prorated payment amount under s. ATCP 161.36, the department shall explain its action in writing.

(3) **ADDITIONAL INFORMATION.** The department may require an applicant to provide additional information that is relevant to a payment application. The department may deny a payment application if the applicant fails to honor the department's reasonable request for relevant information.

(4) **VERIFYING INFORMATION.** The department may exercise its authority under ch. 93, Stats., to verify the information contained in a payment application, or to verify the applicant's eligibility for a payment. When verifying the amount of eligible ethanol produced from corn, the department may presume that a bushel of corn yields 2.5 gallons of ethanol unless the producer proves a different conversion rate.

(5) **MISREPRESENTATIONS.** The department may deny a payment application, or recover payments made to an applicant, if the department finds that the applicant has materially misrepresented any information related to a payment application.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.35 Payment deadline. (1) **GENERAL.** Except as provided in sub. (2) or s. ATCP 161.36, the department shall pay, by June 30 of each year, the full amount of each payment awarded under s. ATCP 161.32(2) during the state fiscal year ending that June 30.

(2) **NO PAYMENT TO PRODUCER WHO HAS STOPPED PRODUCTION.** The department may not make payment under sub. (1) to an applicant who stops producing ethanol before the department makes payment.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.36 Prorating payment awards. If the sum of all awards under s. ATCP 161.32(2) in any state fiscal year

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exceeds the total amount appropriated under s. 20.115 (3) (d), Stats., for that fiscal year, the department shall prorate each applicant's payment award based on the amount of eligible ethanol that the applicant produced during the production period identified in the applicant's payment application, up to a maximum of 15 million gallons.

Note: See s. 93.75 (2), Stats.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

ATCP 161.37 Records. An ethanol producer who applies

for payment under this subchapter shall keep all the following records for at least 3 years after the application date, and shall make the records available to the department for inspection and copying upon request.

(1) All purchase records, contracts and receipts for commodities purchased from a local source.

(2) Records relating to the sale of eligible ethanol.

History: CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: November 1, 2001

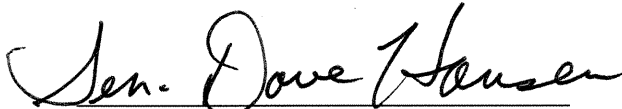
Bill: Assembly Bill 507 -- Relating to: creating an exemption from the regulation of anhydrous ammonia.

Motion: Concurrence as amended

Moved by: Hansen

Seconded by: Harsdorf

Aye: **No:**



Senator Dave Hansen

Please return to Senator Hansen's office (by messenger) by **5:00 Thursday, November 1, 2001.**

Please call the Committee Clerk, Lisa Ellinger, at 266-5670 if you have any questions.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: November 1, 2001

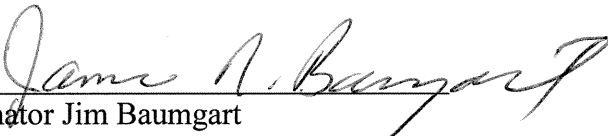
Bill: Assembly Bill 507 -- Relating to: creating an exemption from the regulation of anhydrous ammonia.

Motion: Concurrence as amended

Moved by: Hansen

Seconded by: Harsdorf

Aye: 8 **No:**



Senator Jim Baumgart

Please return to Senator Hansen's office (by messenger) by **5:00 Thursday, November 1, 2001.**

Please call the Committee Clerk, Lisa Ellinger, at 266-5670 if you have any questions.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: November 1, 2001

Bill: Assembly Bill 507 -- Relating to: creating an exemption from the regulation of anhydrous ammonia.

Motion: Concurrence as amended

Moved by: Hansen

Seconded by: Harsdorf

Aye: X **No:**



Senator Sheila Harsdorf

Please return to Senator Hansen's office (by messenger) by **5:00 Thursday, November 1, 2001.**

Please call the Committee Clerk, Lisa Ellinger, at 266-5670 if you have any questions.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: November 1, 2001

Bill: Assembly Bill 507 -- Relating to: creating an exemption from the regulation of anhydrous ammonia.

Motion: Concurrence as amended

Moved by: Hansen

Seconded by: Harsdorf

Aye: ✓ **No:** _____



Senator Alan Lasee

Please return to Senator Hansen's office (by messenger) by **5:00 Thursday, November 1, 2001.**

Please call the Committee Clerk, Lisa Ellinger, at 266-5670 if you have any questions.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: November 1, 2001

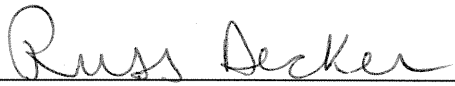
Bill: Assembly Bill 507 -- Relating to: creating an exemption from the regulation of anhydrous ammonia.

Motion: Concurrence as amended

Moved by: Hansen

Seconded by: Harsdorf

Aye: _____ **No:** _____



Senator Russ Decker

Please return to Senator Hansen's office (by messenger) by **5:00 Thursday, November 1, 2001.**

Please call the Committee Clerk, Lisa Ellinger, at 266-5670 if you have any questions.