



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

Sections of Ch NR 406, 407 & 445

Report to the Legislature Administrative Code NR 406, 407 & 445 The Joint Committee for Review of Administrative Rules

Produced pursuant to 227.26(2)(g), Stats.

Sections NR 406.04(3)(e), 407.03(2)(d), 445.08(3)(c) and 445.08(6)(d), Wisconsin Administrative Code, promulgated by the Department of Natural Resources (DNR), specify rules for the regulation for air emissions associated with agricultural waste.

Description of Problem

At the request of Representative Jim Ott, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on ss. NR 406.04(3)(e), 407.03(2)(d), 445.08(3)(c) and 445.08(6)(d), relating to air emissions associated with agricultural waste on April 27, 2011. Chapter NR 445 was created in the 1980s to regulate air emissions from smoke stacks. In 2003, a group of citizens believed ch NR 445 should cover agriculture sources of air emissions and threatened to sue a large dairy farm. At the time, the chairs of the Natural Resources Committees in each legislative house believed ch NR 445 did not cover agricultural sources and urged the DNR not to regulate such sources. In 2004, the DNR established rules regulating the control of emissions of ammonia and hydrogen sulfide for livestock farms but allowed for a three year exemption for agricultural air emissions. That exemption was then extended until July 31, 2011 with the hope that there would be Federal regulations for agricultural air emissions. However, no Federal regulations were enacted by the July 31, 2011 deadline.

Arguments in Favor of Suspension

- *At the present moment, the Federal EPA has not developed regulations on agricultural air emissions due to the complexity of measuring the amount of pollution created by agricultural sources and acceptable levels of that pollution. It is not appropriate to regulate something that can not be effectively measured.*
- *The DNR would not be able to pass a clearinghouse rule that would have extended the exemption by the July 31, 2011 deadline. By suspending these provisions, the DNR would have the time to extend the exemption until the Federal EPA can act.*

- *Dairy and livestock farms do not produce the same types or levels of air pollution as a manufacturing plant. It appears as though it was not the Legislature's intent to treat both of these facilities in a similar manner.*

Arguments Against Suspension

- *Concentrated manure can produce dangerous amounts of ammonia, hydrogen sulfide, and particulate matter. This can create health concerns for not only agriculture workers, but also for people that live near the farm. The state needs to work to protect our natural resources, not allow for more pollution.*
- *The state has been working on creating regulations on agricultural air emissions for almost seven years. We should not waste more time by pushing back this exemption.*

Action by Joint Committee for Review of Administrative Rules

On May 24, 2011, the Joint Committee for Review of Administrative Rules held an executive session on ss. NR 406.04(3)(e), 407.03(2)(d), 445.08(3)(c) and 445.08(6)(d). The committee passed the following motion on a 6-4 vote (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Taylor, Risser, Hebl, Kessler):

"That the Joint Committee for Review of Administrative Rules suspend the following provisions included in Ch. NR 406, 407 & 445, pursuant to s. 227.26 (2) (d), Stats., effective May 24, 2011, on the basis of testimony received at its April 27, 2011 meeting, and on the grounds that these provisions included in Ch. NR 406, 407 & 445 impose an undue hardship on Wisconsin's dairy industry as stated in s. 227.19 (4) (d) 6.

406.04(3)(e): For the purposes of determining emissions under sub.(2)(f), the owner or operator of a sources is not required to consider emissions of hazardous air contaminants associated with agricultural waste ~~prior to July 31, 2011.~~

407.03(2)(d): The maximum theoretical emissions from the source for any hazardous air contaminant listed in Table A, B or C of s. NR 445.07 do not exceed the emission rate listed in the table for the hazardous air contaminant for the respective stack height. For the purposes of determining emissions under this paragraph, the owner or operator of a source is not required to consider emission of hazardous air contaminants associated with agricultural wastes ~~prior to July 31, 2011.~~

445.08(3)(c): Entire provision

445.08(6)(d):

~~1. The owner or operator of a source with emissions of hazardous air contaminants associated with agricultural waste and constructed or last modified on or after July 31, 2011, shall achieve compliance with any applicable requirements in s. NR 445.07 in accordance with either s. NR 445.08 (2) or (3) (c) for the agricultural waste upon startup of the source.~~

2. Emissions of hazardous air contaminants associated with agricultural waste from a source constructed or last modified prior to July 31, 2011, are exempt from the requirements in this chapter until July 31, 2011. Subsequently, the owner or operator of the source shall do both of the following if non-exempt, potential to emit emissions of a hazardous air contaminant from agricultural waste are greater than an applicable threshold in column (c), (d), (e) or (f) of Table A of s. NR 445.07:

a. Achieve compliance with applicable requirements in s. NR 445.07 in accordance with either s. NR 445.08 (2) or (3) (c) no later than July 31, 2011. ———

b. Submit the required information in accordance with sub. (7) (b).”

On June 23, 2011, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Hebl, Taylor, Risser, Kessler) to introduce LRB 2203 and LRB 2248, which state that the DNR is not authorized to regulate agricultural air emissions unless it is required by the Federal EPA. The bills were introduced as Senate Bill 138 and Assembly Bill 195.

Passage of one of the bills in support of the JCRAR suspension would remove the DNR’s ability to regulate agricultural air emissions until the Federal EPA acts to create these types of regulations.