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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2011-12

(session year)

## Assembly

(Assembly, Senate or Joint)

## Committee on Natural Resources...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2013)

## Assembly

### Record of Committee Proceedings

#### Committee on Natural Resources

##### Assembly Bill 159

Relating to: the regulation of indirect sources of air pollution and the suspension of a rule promulgated by the Department of Natural Resources.

By Joint Committee for Review of Administrative Rules.

September 13, 2011 Referred to Committee on Natural Resources.

January 18, 2012 **PUBLIC HEARING HELD**

Present: (16) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.

Absent: (0) None.

Excused: (0) None.

##### Appearances For

- Scott Manley, Madison — Wisconsin Manufacturers and Commerce
- Pat Osborne, Madison — Aggregate Producers of Wisconsin

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- Tom Larson, Madison — National Association of Industrial and Office Properties
- Jim Boullion, Madison — Associated General Contractors of Wisconsin
- Erin Roth, Madison — American Petroleum Institute
- Marc Bentley, Madison — Wisconsin Motor Carriers Association
- Brad Boycks, Madison — Wisconsin Builders Association
- Pat Goss, Madison — Wisconsin Transportation Builders Association
- Steve Baas, Milwaukee — Metropolitan Milwaukee Association of Commerce

- Pat Osborne, Madison — Associated Builders and Contractors

Registrations Against

- Jennifer Giegerich, Madison — Wisconsin League of Conservation Voters
- Genie Ogden, Madison

Registrations for Information Only

- Joseph Hoch, Madison — Wisconsin Department of Natural Resources

January 18, 2012

**EXECUTIVE SESSION HELD**

Present: (16) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.

Absent: (0) None.

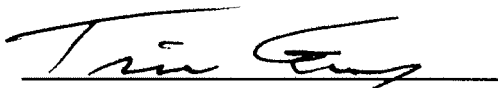
Excused: (0) None.

Moved by Representative Rivard, seconded by Representative Kleefisch that **Assembly Bill 159** be recommended for passage.

Ayes: (12) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr and Danou.

Noes: (4) Representatives Mason, Clark, Milroy and Hulsey.

PASSAGE RECOMMENDED, Ayes 12, Noes 4

  
Tim Gary  
Committee Clerk

## Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Rivard

Seconded by: Kleefisch

AB 159 SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
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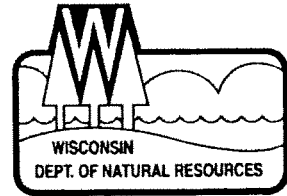
By recommended for:  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Jeffrey Mursau, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulse	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried     Motion Failed





**Testimony to the Joint Committee for Review of Administrative Rules  
NR 411 (Indirect Source Air Permit Rule)**

**By John Melby - DNR Air Bureau Director  
March 29, 2011**

I am John Melby - Bureau Director for DNR's Air Management Program and I am testifying for information only. Some key facts regarding this rule are set forth below.

**BACKGROUND**

Wisconsin's original indirect source rule was created in March, 1972 and is currently contained in NR 411. The purpose of this rule "is to control carbon monoxide (CO) emissions from indirect sources by specifying requirements for indirect source construction permits and operation permits" [NR 411.01(2)] and to protect public health. At one time, there was a CO nonattainment area in Wisconsin. Since this rule was originally adopted, however, CO emissions from automobiles have decreased dramatically. Consequently, Wisconsin no longer has exceedances of the federal CO standard.

Under Wisconsin's rule, an indirect source permit is required for certain projects that attract motor vehicles. An indirect source refers to a stationary source that attracts a large mobile source activity and has associated air pollution at or near the site. Examples include highways and roads, parking facilities, entertainment facilities, education facilities, and transportation terminals.

**SURROUNDING STATES**

There is no existing or proposed federal regulation for permitting indirect sources. However, Section 110(a)(5) of the Clean Air Act does give states the authority to develop indirect source programs. At present, no other bordering state (Illinois, Iowa, Michigan or Minnesota) has indirect source permit program.

*Said "water Act"*

**COST OF RULE**

Approximately \$400,000 (annual basis) considering the Department and private business costs.

Department Cost Breakdown

For fiscal year 2011, 417 hours of staff time have been budgeted for indirect source permit review. This amounts to approximately \$11,200 in base pay, excluding consideration of benefits.

Private Business Cost Breakdown

In an average year, Air Management processes 9 indirect source air permits. The cost to develop an indirect source permit application, including consultant fees, traffic modeling and documentation, can be approximately \$30,000 - \$40,000. However, this number could be higher. One permit applicant stated in a November 10, 2006 letter to the Department that they incurred approximately \$75,000 in consulting fees associated with the indirect source permitting process.

**CO NAAQS**

EPA proposed to maintain the existing National Ambient Air Quality Standard (NAAQS) for CO on February 11, 2011. The existing standard is 9 ppm as an 8 hour standard and 35 ppm for the 1 hour standard.

Thank you for the opportunity to testify, and I would be happy to answer any questions.







**Testimony to the Wisconsin Assembly Committee on Natural Resources  
Assembly Bill (AB) 159**

**By Joseph Hoch – Regional Pollutants Section Chief,  
Bureau of Air Management  
January 18, 2012**

I am Joseph Hoch – Regional Pollutant Section Chief for the Department of Natural Resources' Air Management Program and I am testifying for information only regarding AB 159. This bill would repeal Chapter NR 411, Wisconsin Administrative Code, commonly referred to as the "indirect source rule".

Wisconsin's original indirect source rule was created in March, 1972. An indirect source permit is required for certain projects that attract motor vehicles. An indirect source refers to a stationary source that attracts a large amount of mobile source activity and has associated air pollution at or near the site. Examples include highways and roads, parking facilities, entertainment facilities, education facilities, and transportation terminals.

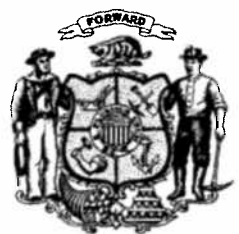
The purpose of the rule is to control carbon monoxide emissions from indirect sources by specifying requirements for indirect source construction permits and operation permits. For example, permit requirements could specify parking lot designs to limit vehicle congestion. At one time, there was a carbon monoxide nonattainment area in Wisconsin. However, carbon monoxide emissions from automobiles have decreased dramatically. Consequently, Wisconsin no longer has exceedances of the federal standard.

Section 110 of the Clean Air Act does give states the authority to develop indirect source programs. However, there is no existing or proposed federal regulation requiring permitting of indirect sources. At present, no other bordering state (Illinois, Iowa, Michigan or Minnesota) has an indirect source permit program. Furthermore, implementation cost of this rule is estimated to be approximately \$400,000 per year considering the Department and private business costs.

Thank you for the opportunity to provide information on AB 159. I would be happy to answer any questions you have at this time.



# WISCONSIN STATE LEGISLATURE





WISCONSIN'S BUSINESS VOICE SINCE 1911

**TO:** Members, Assembly Committee on Natural Resources  
**FROM:** Scott Manley, Environmental & Energy Policy Director  
**DATE:** January 18, 2012  
**RE:** Support for Assembly Bill 159 – Indirect Source Air Permits

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Wisconsin Manufacturers & Commerce (WMC) respectfully requests your support for Assembly Bill 159, which sustains JCRAR's suspension of the indirect source air permitting program under Chapter NR 411 of the Wisconsin Administrative Code. These outdated regulations no longer serve a legitimate environmental regulatory purpose, and should be repealed because they present an unnecessary regulatory burden on development projects in Wisconsin.

**What is Indirect Source Permitting?**

Chapter NR 411 requires air permits for large developments and highway construction projects, despite the absence of direct air emissions like those typically associated with a smoke stack. The air permit requirement is triggered by the size of the highway project or number of parking spaces at a development (e.g. 1,000 stalls). Therefore, shopping malls, strip malls, office parks, schools, hospitals, distribution centers, etc. are typically subject to these types of permits.

**Why Should NR 411 Be Repealed?**

The regulations in NR 411 were enacted in the 1970s to address a very temporary and isolated carbon monoxide (CO) nonattainment problem in Milwaukee. Milwaukee's nonattainment problem was a result of tailpipe emissions of CO from motor vehicles. The theory behind NR 411 involved regulating developments that attract a large number of vehicles to ensure that roadways are designed to accommodate the free flow of traffic, and minimize traffic congestion – which in turn minimizes tailpipe emissions.

Whether NR 411 was ever a necessary or effective regulation is debatable. However, there is no question that advancements in motor vehicle emission technology of the past 40 years has rendered this type of regulation obsolete. Milwaukee isconsin resolved its CO air quality issue decades ago, which may help explain why the DNR acknowledged in a 2010 rulemaking that CO is no longer a pollutant of concern. For example, the federal CO standard is 9 parts per million (ppm). Wisconsin measures peak CO concentration in the neighborhood of 0.3 to 0.5 ppm – we are well within compliance with this standard.

**Will Suspending NR 411 Negatively Affect Public Health?**

No. The U.S. EPA has promulgated a health-based air quality standards for CO. As noted above, peak CO concentrations in Wisconsin are well below these standards. DNR staff have acknowledged that the usefulness of NR 411 permitting has greatly diminished due to advancements in motor vehicle emission technology, and specifically noted that CO hot spots are not likely to occur due to the construction of shopping malls, business parks, etc.

**Do Surrounding States Require Indirect Source Air Permits?**

No. Minnesota previously had an indirect source permit program to address CO nonattainment problems. However, Minnesota repealed their indirect source permitting program in 2001 because they no longer have CO air quality problems.

### **Will Suspending and Repealing NR 411 Help Economic Development in Wisconsin?**

Yes. Indirect source permits are a "Wisconsin-only" regulatory obstacle among Midwest states. By definition, these permits are required for large-scale economic development projects. It does not make sense to require prospective employers to comply with the additional cost, time and complexity associated with NR 411 permits because doing so does not result in a meaningful environmental benefit.

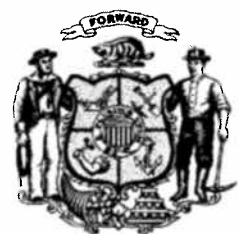
NR 411 permits add cost and time to economic development projects in Wisconsin – costs that prospective employers do not face in other Midwest states. In short, the NR 411 air permit program gives employers a reason to look to other states to locate their business.

### **Conclusion**

Passage of Assembly Bill 159 provides the Legislature with a great opportunity to eliminate a costly, ineffective and outdated regulation that serves as barrier to economic development. None of our surrounding states impose this type of regulation which requires air permits for businesses that do not have air pollution. Moreover, repealing this unnecessary regulation will not adversely impact air quality because Wisconsin is well within the health-based air quality standards established by the EPA. We respectfully urge you to vote in support of Assembly Bill 159.



# WISCONSIN STATE LEGISLATURE





# Aggregate Producers of Wisconsin

*producers of crushed stone, sand and gravel*

PO Box 2157 ■ Madison, WI 53701 ■ Phone: (608) 283-2595 ■ Fax: (608) 283-2589

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## MEMORANDUM

**DATE:** January 18, 2012

**TO:** Chairman Mursau, Members of the Assembly Committee on Natural Resources

**FROM:** Pat Osborne, APW Executive Director

**RE:** **Testimony in Support of AB 159 relating to the suspension of DNR Administrative Rule – Chapter NR 411**

Chairman Mursau and committee members, thank you for the opportunity to provide testimony in support of Assembly Bill 159, relating to codification of JCRAR's suspension of Chapter NR 411 WI Administrative Code and the elimination of the air permit program for indirect sources.

APW is a statewide trade association of 125 producer and associate member companies engaged in aggregate production throughout Wisconsin. Our members conduct portable crushing and fixed-site nonmetallic mining activity and operate under various air permits issued by the department. We routinely engage in Wisconsin DNR rulemaking on air permit issues and have consistently been opposed to the department's various attempts to convert an outdated carbon monoxide rule into a diesel and particulate matter emissions control rule on diesel construction equipment.

The bill before you today should be recommended for passage for several reasons:

**The indirect source air permit program (Chapter NR 411) is outdated and no longer necessary to achieve a carbon monoxide air quality standard in compliance with the federal Clean Air Act.**

- Wisconsin is well within the federal carbon monoxide air quality standard and the repeal of NR 411 will not result in Wisconsin falling out of compliance with the CO standard.
- The rule was originally adopted to control vehicle tailpipe emissions of carbon monoxide at heavy traffic areas like shopping malls (measured in parking spaces) and road and highway projects (measured in traffic flow patterns). By its own analysis, the department

recognizes that the current carbon monoxide rule is no longer necessary to address a pollutant of concern in Wisconsin.

- According to the DNR, "*Automotive technologies and motor vehicle fuels have dramatically improved over the last 30 years resulting in reduced emissions.*" [Ref. August 4, 2010 Memo from DNR Secretary Matthew Frank to the DNR Board – Board Order AM-34-05 relating to proposed rules affecting NR 411]

**Maintaining an Indirect Source Air Permit Program puts us out-of-step with the federal government and surrounding states.**

- As indicated in the department's August 2010 rule analysis, neither the federal government nor any of the states surrounding Wisconsin have similar regulations. "*There is no existing or proposed federal regulation for permitting indirect sources. Illinois, Iowa, Michigan, and Minnesota do not have similar rules. Minnesota had an indirect source permit program, but the program was discontinued on July 1, 2001 in response to budget cuts.*"
- In these difficult economic times, particularly among the state's construction industry, which is experiencing unemployment at roughly twice the overall state unemployment rate, the last thing we can afford is a costly, novel regulation that makes it more difficult for Wisconsin to compete with surrounding states for large development projects.

**The rule has been used as a back-door mechanism for the department to impose, and attempt to impose, emission controls on diesel powered construction equipment.**

- Proposed revisions to Ch. NR 411 were initiated with a scoping statement issued back in June of 2005. Since then, the department has been unable to convince policy makers to embrace its vision of indirect source regulation. Instead, the department has, at times, attempted to impose construction equipment controls on developers through Development Agreements, under the guise of NR 411.
- Conditions in such development agreements have included: Tier III emission standards on multiple pieces of construction equipment, mandatory oxidation catalyst retrofits for all off-road construction equipment that do not meet Tier II emission standards, idling restrictions and fuel restrictions. These requirements represent a significant cost to any subcontractor who wants to work for a developer under such an agreement. For example, a Tier III upgrade on a piece of diesel construction equipment could cost \$30,000 for that one piece of construction equipment alone.
- The use, or attempted use, of Ch. NR 411 to regulate off-road diesel construction equipment should be rejected by the Legislature.
  1. The department does not have the legal authority to impose emission controls on mobile sources. Section 209 of the Clean Air Act (42 USC 7543, Section 209) preempts states from adopting standards or other requirements relating to the control of emissions from mobile sources, including off-road engines.

2. The Legislature has not enacted any new policy directive or otherwise directed the department to significantly expand the application of the carbon monoxide rule to new sources and for different pollutants. Yet, the department on numerous occasions has attempted to forward revisions to Ch. NR 411 without corresponding legislative direction or authority.

**Summary:** The rule is no longer necessary to control the pollutant for which it was originally created. The continuation of an indirect source air permit program puts Wisconsin out of step with federal requirements and permit programs in surrounding states. The department's attempt to regulate diesel construction equipment temporarily employed on certain development projects yields minimal environmental gain at significant regulatory cost.

**Recommendation:** Pass Assembly Bill 159 to repeal NR 411 in its entirety and eliminate the Indirect Source Air Permit Program.