



## 2005 ASSEMBLY BILL 1221

May 4, 2006 - Introduced by Representative BLACK, by request of Attorney General Peg Lautenschlager. Referred to Committee on Rules.

1     **AN ACT** *to repeal* 283.11 (2) (b), 283.11 (3) (d), 283.11 (4) (e), 285.21 (1) (b) 1. to  
2             4., 285.21 (4), 285.27 (2) (b) 1. to 4., 285.27 (4) and 285.60 (6) (b); *to renumber*  
3             285.60 (6) (a); *to renumber and amend* 283.11 (2) (a), 285.21 (1) (b) (intro.)  
4             and 285.27 (2) (b) (intro.); *to amend* 283.11 (3) (a), 283.11 (3) (am), 283.11 (4)  
5             (a) (intro.), 285.11 (6) (intro.), 285.11 (16), 285.11 (17), 285.21 (1) (a), 285.21 (2),  
6             285.23 (1), 285.27 (1) (a) and 285.27 (2) (a); and *to create* 285.11 (6) (c) of the  
7             statutes; **relating to:** requirements relating to air pollution and to water  
8             pollution from point sources.

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### *Analysis by the Legislative Reference Bureau*

#### AIR QUALITY

#### *Ambient air quality standards and nonattainment areas*

Under the federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) has established a national ambient air quality standard (NAAQS) for each of six air pollutants, including ozone. Under current state law, when EPA establishes an NAAQS for a pollutant, the Department of Natural Resources (DNR) must promulgate by rule a similar standard that may not be more restrictive than the federal standard.

**ASSEMBLY BILL 1221**

This bill authorizes DNR to promulgate an ambient air quality standard that is more restrictive than the NAAQS for a pollutant.

Under current law, if EPA does not establish an NAAQS for a pollutant, DNR may establish an ambient air quality standard for the pollutant if it finds that the standard is needed to protect public health or welfare and supports this finding with specific documentation, including a public health risk assessment, a comparison of the proposed standard with air quality standards in nearby states, and an evaluation of options for managing the risks caused by the pollutant which shows that the proposed standard reduces risks in the most cost-effective manner that is practical.

This bill authorizes DNR to establish an ambient air quality standard for a pollutant in the absence of an NAAQS if DNR finds, based on credible information, that the standard is needed to protect public health, safety, or welfare or the environment. The bill eliminates the current law requirement that the department support this finding with specific documentation, including a public health risk assessment, a comparison of the proposed standard with air quality standards in nearby states, and an evaluation of options for managing the risks caused by the pollutant which shows that the proposed standard reduces risks in the most cost-effective manner that is practical.

Under the CAA, an area with levels of a pollutant above an NAAQS must be designated as a nonattainment area. In order to eliminate the violation of the NAAQS, nonattainment areas are subject to more stringent requirements under the CAA than other areas. Under current state law, DNR is responsible for identifying nonattainment areas and DNR may not identify a county as part of a nonattainment area if the air in the county does not violate an NAAQS unless the CAA requires the county to be identified as part of a nonattainment area.

This bill eliminates the prohibition on DNR identifying a county as part of a nonattainment area if the air in the county does not violate an NAAQS.

***Emission standards for hazardous air pollutants***

Under the CAA, EPA establishes national emission standards for hazardous air pollutants (NESHAPs). Under current state law, when EPA establishes a NESHAP for a pollutant, DNR must promulgate by rule a similar emission standard that may not be more restrictive than the federal standard. DNR's rule must include administrative requirements that are consistent with the federal administrative requirements.

This bill authorizes DNR to promulgate an emission standard for a hazardous air pollutant that is more restrictive than the NESHAP for the pollutant. The bill also eliminates the requirement that DNR's rule include administrative requirements that are consistent with the federal administrative requirements.

Under current law, if EPA does not establish a NESHAP for a hazardous air pollutant, DNR may establish an emission standard for the pollutant if it finds that the standard is needed to protect public health or welfare and supports this finding with specific documentation, including a public health risk assessment, a comparison of the proposed standard with air quality standards in nearby states, and an evaluation of options for managing the risks caused by the pollutant which

**ASSEMBLY BILL 1221**

shows that the proposed standard reduces risks in the most cost-effective manner that is practical.

This bill authorizes DNR to establish an emission standard for a hazardous air pollutant in the absence of a NESHAP if DNR finds, based on credible information, that the standard is needed to protect public health, safety, or welfare or the environment. The bill eliminates the current law requirement that the department support this finding with specific documentation, including a public health risk assessment, a comparison of the proposed standard with air quality standards in nearby states, and an evaluation of options for managing the risks caused by the pollutant which shows that the proposed standard reduces risks in the most cost-effective manner that is practical.

***Air pollution permit exemptions***

Under current law, a person must generally obtain an air pollution construction permit from DNR before constructing or modifying a stationary source of air pollution. A person must also generally obtain an air pollution operation permit from DNR before operating a stationary source of air pollution. Current law requires DNR to promulgate rules exempting stationary sources of air pollution from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety, or welfare or to the environment, unless the CAA requires the sources to be covered by permits.

This bill eliminates the requirement that DNR promulgate rules exempting stationary sources of air pollution from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety, or welfare or to the environment.

**WATER QUALITY**

Under the federal Clean Water Act (CWA), EPA establishes requirements, including effluent limitations, for wastewater discharged from point sources, such as sewage treatment plants factories. An effluent limitation is a limit on the amount of a pollutant that can be present in the wastewater discharged by a point source into a water body. Under state law, when EPA establishes a type of requirement for a pollutant under the CWA, DNR must promulgate a rule establishing the same type of requirement for that pollutant that complies with and does not exceed the requirement established by EPA.

This bill authorizes DNR to promulgate a requirement, such as an effluent limitation, for a pollutant that exceeds the requirements established by EPA under the CWA.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**ASSEMBLY BILL 1221****SECTION 1**

1           **SECTION 1.** 283.11 (2) (a) of the statutes is renumbered 283.11 (2) and amended  
2 to read:

3           283.11 (2) ~~Except for rules concerning storm water discharges for which~~  
4 ~~permits are issued under s. 283.33, all~~ All rules promulgated by the department  
5 under this chapter as they relate to point source discharges, effluent limitations,  
6 municipal monitoring requirements, standards of performance for new sources, toxic  
7 effluent standards or prohibitions and pretreatment standards shall ~~comply with~~  
8 ~~and not exceed~~ be at least as stringent as the requirements of the federal water  
9 pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.

10           **SECTION 2.** 283.11 (2) (b) of the statutes is repealed.

11           **SECTION 3.** 283.11 (3) (a) of the statutes is amended to read:

12           283.11 (3) (a) *Standards for nitrogen and disinfection.* ~~Notwithstanding sub.~~  
13 ~~(1) or (2), the~~ The department may promulgate by rule effluent limitations  
14 representing the best available demonstrated control technology, processes,  
15 operating methods or other alternatives concerning the discharge of nitrogen  
16 compounds and concerning the disinfection of sanitary wastewaters if the U.S.  
17 environmental protection agency has not promulgated an effluent limitation,  
18 effluent standard or prohibition concerning this type of discharge or disinfection.

19           **SECTION 4.** 283.11 (3) (am) of the statutes is amended to read:

20           283.11 (3) (am) *Standards for phosphorous.* ~~Notwithstanding sub. (1) or (2),~~  
21 ~~the~~ The department shall promulgate by rule effluent limitations representing the  
22 best available demonstrated control technology, processes, operating methods or  
23 other alternatives concerning the discharge of phosphorous if the U.S.  
24 environmental protection agency has not promulgated an effluent limitation,  
25 effluent standard or prohibition concerning this type of discharge.

**ASSEMBLY BILL 1221**

1           **SECTION 5.** 283.11 (3) (d) of the statutes is repealed.

2           **SECTION 6.** 283.11 (4) (a) (intro.) of the statutes is amended to read:

3           283.11 (4) (a) *Authorization.* (intro.) ~~Notwithstanding sub. (1) or (2), the~~ The  
4           department may promulgate by rule, under s. 283.21, a toxic effluent standard or  
5           prohibition applicable to a category or class of point sources for the discharge of an  
6           identified toxic pollutant, if the U.S. environmental protection agency has not done  
7           either of the following for that identified toxic pollutant:

8           **SECTION 7.** 283.11 (4) (e) of the statutes is repealed.

9           **SECTION 8.** 285.11 (6) (intro.) of the statutes is amended to read:

10          285.11 (6) (intro.) Prepare and develop one or more comprehensive plans for  
11          the prevention, abatement and control of air pollution in this state. The department  
12          thereafter shall be responsible for the revision and implementation of the plans. The  
13          rules or control strategies submitted to the federal environmental protection agency  
14          under the federal clean air act for control of atmospheric ozone ~~shall conform with~~  
15          may be more restrictive than the federal clean air act unless, based on the  
16          ~~recommendation of~~ if the natural resources board or the head of the department, as  
17          defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that  
18          ~~promulgates a rule or establishes a control strategy, the governor~~ secretary  
19          determines that the measures beyond those required by the federal clean air act meet  
20          any of the following criteria:

21          **SECTION 9.** 285.11 (6) (c) of the statutes is created to read:

22          285.11 (6) (c) The measures are necessary to protect the public health, safety,  
23          or welfare or the environment.

24          **SECTION 10.** 285.11 (16) of the statutes is amended to read:

**ASSEMBLY BILL 1221****SECTION 10**

1           285.11 (16) Promulgate rules, ~~consistent with but no more~~ at least as  
2 restrictive than as the federal clean air act, and regulations promulgated under that  
3 act that specify the amounts of emissions that result in a stationary source being  
4 classified as a major source and that may limit the classification of a major source  
5 to specified categories of stationary sources and to specific air contaminants.

6           **SECTION 11.** 285.11 (17) of the statutes is amended to read:

7           285.11 (17) Promulgate rules, ~~consistent with~~ at least as restrictive as the  
8 federal clean air act and regulations promulgated under that act, that modify the  
9 meaning of the term “modification” as it relates to specified categories of stationary  
10 sources, to specific air contaminants and to amounts of emissions or increases in  
11 emissions.

12           **SECTION 12.** 285.21 (1) (a) of the statutes is amended to read:

13           285.21 (1) (a) *Similar to federal standard.* If an ambient air quality standard  
14 is promulgated under section 109 of the federal clean air act, the department shall  
15 promulgate by rule a ~~similar standard but this standard may not be more~~ that is at  
16 least as restrictive than as the federal standard ~~except as provided under sub. (4).~~

17           **SECTION 13.** 285.21 (1) (b) (intro.) of the statutes is renumbered 285.21 (1) (b)  
18 and amended to read:

19           285.21 (1) (b) *Standard to protect health or, safely, welfare, or the environment.*  
20 If an ambient air quality standard for any air contaminant is not promulgated under  
21 section 109 of the federal clean air act, the department may promulgate an ambient  
22 air quality standard if the department finds, based on credible information, that the  
23 standard is needed to provide adequate protection for public health, safely, or welfare  
24 or the environment. ~~The department may not make this finding for an air~~

**ASSEMBLY BILL 1221**

1 ~~contaminant unless the finding is supported with written documentation that~~  
2 ~~includes all of the following:~~

3 **SECTION 14.** 285.21 (1) (b) 1. to 4. of the statutes are repealed.

4 **SECTION 15.** 285.21 (2) of the statutes is amended to read:

5 285.21 (2) AMBIENT AIR INCREMENT. The department shall promulgate by rule  
6 ambient air increments for various air contaminants in attainment areas. The  
7 ambient air increments shall be ~~consistent with and not more~~ at least as restrictive,  
8 ~~either~~ in terms of the concentration ~~or~~ and the contaminants to which they apply,  
9 ~~than as~~ ambient air increments under the federal clean air act ~~except as provided~~  
10 ~~under sub. (4).~~

11 **SECTION 16.** 285.21 (4) of the statutes is repealed.

12 **SECTION 17.** 285.23 (1) of the statutes is amended to read:

13 285.23 (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule  
14 procedures and criteria to identify a nonattainment area and to reclassify a  
15 nonattainment area as an attainment area. ~~After February 6, 2004, the department~~  
16 ~~may not identify a county as part of a nonattainment area under the federal clean~~  
17 ~~air act if the concentration of an air contaminant in the atmosphere in that county~~  
18 ~~does not exceed an ambient air quality standard, unless under the federal clean air~~  
19 ~~act the county is required to be designated as part of a nonattainment area.~~

20 **SECTION 18.** 285.27 (1) (a) of the statutes is amended to read:

21 285.27 (1) (a) *Similar to federal standard.* If a standard of performance for new  
22 stationary sources is promulgated under section 111 of the federal clean air act, the  
23 department shall promulgate by rule a similar emission standard, ~~including~~  
24 ~~administrative requirements that are consistent with the federal administrative~~  
25 ~~requirements, but this standard may not be more~~ that is at least as restrictive in

**ASSEMBLY BILL 1221****SECTION 18**

1 terms of emission limitations than as the federal standard ~~except as provided under~~  
2 sub. (4).

3 **SECTION 19.** 285.27 (2) (a) of the statutes is amended to read:

4 285.27 (2) (a) *Similar to federal standard.* If an emission standard for a  
5 hazardous air contaminant is promulgated under section 112 of the federal clean air  
6 act, the department shall promulgate by rule a similar standard, ~~including~~  
7 ~~administrative requirements that are consistent with the federal administrative~~  
8 ~~requirements, but this standard may not be more~~ that is at least as restrictive in  
9 terms of emission limitations than as the federal standard ~~except as provided under~~  
10 sub. (4).

11 **SECTION 20.** 285.27 (2) (b) (intro.) of the statutes is renumbered 285.27 (2) (b)  
12 and amended to read:

13 285.27 (2) (b) *Standard to protect public health, safety, or welfare or the*  
14 *environment.* If an emission standard for a hazardous air contaminant is not  
15 promulgated under section 112 of the federal clean air act, the department may  
16 promulgate an emission standard for the hazardous air contaminant if the  
17 department finds the standard is needed to provide adequate protection for public  
18 health, safety, or welfare or the environment ~~The department may not make this~~  
19 ~~finding for a hazardous air contaminant unless the finding is supported with written~~  
20 ~~documentation that includes all of the following:~~

21 **SECTION 21.** 285.27 (2) (b) 1. to 4. of the statutes are repealed.

22 **SECTION 22.** 285.27 (4) of the statutes is repealed.

23 **SECTION 23.** 285.60 (6) (a) of the statutes is renumbered 285.60 (6).

24 **SECTION 24.** 285.60 (6) (b) of the statutes is repealed.

25 (END)