



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

**Assembly Committee on Environment
Tuesday, September 3, 2019**

Thank you for holding a hearing on Assembly Bill 210 and allowing me to testify in favor of this legislation.

The DNR's Environmental Compliance Audit Program is currently underused, but has the potential to be a beneficial tool for small businesses. The program is entirely voluntary and allows businesses to audit their own environmental compliance, self-disclose finding, and correct violations with limited liability and fewer penalties for non-compliance.

Assembly Bill 210 removes disincentives relating to Wisconsin's Environmental Compliance Audit Program compared to similar EPA offered programs. Currently, different timelines, deadlines, and procedures exist between the DNR and EPA programs and businesses may avoid using the program that seems less advantageous. Assembly Bill 210 seeks to more closely align DNR notification and timeline requirements with those of the EPA. The goal is to make participation easier for businesses and encourage both programs to be used simultaneously. This will offer greater benefits to businesses, while still maintaining environmental protections.

Assembly Bill 210 originated and was unanimously supported by the bi-partisan appointees of the DNR's Small Business Environmental Council. Feedback from the DNR led to the changes incorporated in Assembly Amendment 1. Specifically, the amendment preserves the requirement for submitting written findings. The original bill language eliminates deadlines for completing an audit and submitting the written findings. Removal of the deadline would create conflicts with the eligibility criteria for facilities to have zero DOJ lawsuits within two years, so we decided to keep these timelines in place.

In addition, the amendment makes changes to two timeframes to correct a violation, depending on the size of the business. Again, the goal is to make Wisconsin's program more akin to federal standards. Under the amendment, small businesses will have 180 days to correct a violation or if the solution involves pollution prevention modification, a 360 day correct period will be standard. This change is consistent with the EPA Small Businesses Compliance Audit Policy and will only apply to small businesses. All other businesses will have 60 days to correct a violation, which is identical to the EPA Audit Policy.

The updated language mirrors federal policies administered by the EPA Small Business Compliance Audit Policy and the EPA Audit Policy and will encourage greater participation.

Thank you for your time and attention and I ask that you support this legislation. I would be happy to answer any questions.



Assembly Committee on Environment

2019 Assembly Bill 210

Compliance Audit Reform

September 3, 2019

Good morning Chairman Kitchens and members of the Committee. My name is Laurel Sukup, and I am the Chief of Sustainability and Business Support with the Wisconsin Department of Natural Resources. With me today is Erika Kluetmeier, who manages the Compliance Audit Program. Thank you for the opportunity to testify for informational purposes on Assembly Bill 210 (AB 210), specifically focusing on the Environmental Compliance Audit Program.

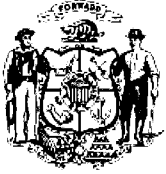
Before I start my formal remarks, I want to acknowledge the work of the Small Business Environmental Council regarding the proposed legislation. I would like to thank members of the Council, including Senators Jacque and Miller, for their work to empower our regulated customers with a tool that allows for proactive management of their environmental practices. The Environmental Compliance Audit program also benefits the Department by providing a tool to incentivize compliance efforts and reduce enforcement actions.

As mentioned, the state's Environmental Compliance Audit Program incentivizes Wisconsin's regulated community to proactively evaluate their environmental compliance. AB 210, as amended by Assembly Amendment 1, suggests language that would align Wisconsin's program more closely with U.S. EPA's audit processes. EPA separates their voluntary audits into two tracks which includes one specifically for small businesses. The proposed language would:

- 1.) Eliminate the 30-day advance notification to the DNR prior to beginning an audit;
- 2.) Align violation correction time frames with the EPA process by expanding the time frame within which small businesses would need to correct violations from 90 to 180 days (or to 360 days if the remedy involved pollution prevention modification) and reducing the time frame for all other businesses from 90 to 60 days.
- 3.) Eliminate the requirement of a public notice should the regulated entity propose an extended compliance schedule outside of the 60-day, 180-day or 360-day (with pollution prevention) window.
- 4.) Require DNR and DOJ to consider whether the entity is a small business when determining whether to pursue criminal enforcement action for violations revealed by a compliance audit.

We appreciate the opportunity to work with the bill authors on language changes and acknowledge the fact that most of our recommendations were included in the introduced amendment. The authors may wish to consider preserving the 30-day advance notification window the program currently has. The advanced knowledge of when an audit is going to occur could be beneficial. While we would still prefer this inclusion, its elimination will not ultimately harm the program.

On behalf of the Environmental Analysis and Sustainability Bureau, I would like to thank you for your time today. Erika and I would be happy to answer any questions you may have.



ANDRÉ JACQUE

STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3512

Fax: (608) 282-3541

Sen.Jacque@legis.wi.gov

State Capitol · P.O. Box 7882

Madison, WI 53707-7882

*Testimony before the Assembly Committee on Environment
State Senator André Jacque
September 3rd, 2019*

Chairman Kitchens and Members of the Assembly Environment Committee,

Thank you for holding this hearing and the opportunity to testify in support of Assembly Bill 210. I am pleased to join Representative Brooks in bringing forward this common sense bi-partisan legislation, which removes disincentives associated with Wisconsin's Environmental Compliance Audit Program compared to a similar program offered through the federal Environmental Protection Agency. This legislation aligns notification and timeline requirements to improve ease of participation for businesses, and was formally requested and unanimously supported by the bi-partisan appointees of the Wisconsin Department of Natural Resources Small Business Environmental Council (SBEC), including myself and Sen. Mark Miller, with language suggested by the DNR. I am pleased that the chair of our council is present to testify today to explain the benefits AB 210 will bring to our state's environment and small businesses.

Though presently under-utilized, the DNR's Environmental Compliance Audit Program has the capacity to be a very helpful tool for small businesses and enables participants to voluntarily audit their own environmental compliance, self-disclose findings and correct violations with limited liability and lower penalties for noncompliance. With different timelines, deadlines, and procedures to follow in order to use the Wisconsin audit program and one of EPA's audit policies, companies may avoid using whichever program seems less advantageous. When designed with similar conditions for use and eligibility, the programs can be used simultaneously and offer greater advantage to business while still protecting the environment.

Rep. Brooks, Sen. Miller and I have also introduced an amendment in consultation with the DNR which clarifies and ensures that the existing requirement for audit completion and submitting written findings is preserved, and makes further alignments between the state and EPA audit policies.

We are excited that the vital updates contained within AB 210 will greatly assist Wisconsin's environmental audit program with its upcoming re-launch, name change and ability to be marketed to Wisconsin businesses. The chart in addendum to this testimony offers a helpful comparison of the state and federal voluntary environmental compliance audit programs and demonstrates what AB 210 would accomplish.

We ask that committee members support this common sense legislation to align and allow better utilization of Wisconsin's Environmental Compliance Audit Program. Thank you for your consideration of Assembly Bill 210.

	Current DNR Compliance Audit Policy	Proposed DNR Compliance Audit Policy	Current EPA Small Business Compliance Policy
Advanced audit notification	notify DNR 30 days before audit (Notice of Intent form) audit within 350 days of notification	not required	not required
Discovery method	voluntary audit	Systematic (audit or environmental management system) voluntary (not required monitoring) independent (before regulator discovers)	Systematic (audit or environmental management system) voluntary (not required monitoring) independent (before regulator discovers)
Correction/remediation	correct violation within 90 days, possible extension up to one year with approval, s. 299.85(3), Wis. Stats.	within 180 days of discovery / within 360 days if involves pollution prevention modification	within 180 days of discovery / within 360 days if involves pollution prevention modification
Penalty reduction	capped at \$500 per violation if corrected within required time period, per s. 299.85(7), Wis. Stats.	capped at \$500 per violation if corrected within required time period requires consideration if a small business and minor violation ("reg flex")	up to 100% reduction of civil gravity penalties
Exclusions	imminent threat / serious harm to public health or environment DNR discovers violation before audit begins or before report submitted substantial economic benefit identified through required monitoring repeat violation	imminent threat / serious harm to public health or environment DNR discovers violation before audit begins or before report submitted substantial economic benefit identified through required monitoring repeat violation	caused serious harm or presents imminent & substantial endangerment to public health or environment subject to 2 or more enforcement actions for environmental violations in past 5 years violation already discovered by agency or other entity repeat violations (similar violation within past 3 years)

Criminal Violation	not eligible	not eligible	not eligible
Environmental record	clean environmental record for last 2 years, s. 299.85(9), Wis. Stats.	clean environmental record for last 2 years	subject to 2 or more enforcement actions for environmental violations in past 5 years

Wisconsin Legislative Council

Anne Sappenfield, Director
Jessica Karls-Ruplinger, Deputy Director



TO: REPRESENTATIVE ROBERT BROOKS

FROM: Scott Grosz, Principal Attorney

RE: Assembly Amendment __ (LRBa0449/1) to 2019 Assembly Bill 210

DATE: August 13, 2019

This memorandum briefly describes 2019 Assembly Bill 210, relating to time limits for correcting violations found by the environmental compliance audit program, as well as Assembly Amendment __ (LRBa0449/1) to the bill.

2019 ASSEMBLY BILL 210

With respect to the environmental compliance audit program administered by the Department of Natural Resources (DNR), the bill increases the amount of time a regulated entity has to correct violations from 90 to 180 days for most violations, and to 360 days if the correction involves a pollution prevention modification.

The bill also makes the following changes:

- Repeals the requirement that a regulated entity notify DNR no fewer than 30 days before beginning the audit, of the date on which the audit will begin, the site or facility or the operations or practices at a site or facility to be reviewed, and the general scope of the audit.
- Repeals the requirement that a regulated entity must include a signed statement that acknowledges that certain limits on state civil actions do not apply to violations discovered by the regulated entity before the beginning of the audit.
- Repeals a public notice and compliance period for proposed compliance schedules relating to correction of violations revealed by an audit.
- Creates of a requirement that, in determining whether to pursue criminal action for violations revealed by an audit, DNR and the Department of Justice must consider whether a violator is a small business stationary source¹ that has committed a minor violation.

ASSEMBLY AMENDMENT __ (LRBA0449/1)

Assembly Amendment __ (LRBa0449/1) modifies the timelines under which a regulated entity has to correct violations. For a small business stationary source, the amendment retains the modifications of the bill to increase the time from 90 to 180 days for most violations, and to 360 days if the correction

¹ Under current law, “small business stationary source” is defined in s. 285.79 (1), Stats.

involves a pollution prevention modification. For a regulated entity that is not a small business stationary source, the amendment reduces the time to correct violations from 90 to 60 days.

Additionally, the amendment retains the requirement under current law that a regulated entity must submit a signed statement that acknowledges the inapplicability of limits on civil actions to violations discovered before the beginning of an audit, and specifies that a regulated entity must complete the audit within 365 days after submitting the statement.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

SG:ksm