



JESSE KREMER

STATE REPRESENTATIVE • 59TH ASSEMBLY DISTRICT

Good afternoon, Mr. Chair and Committee members. I appreciate the opportunity to testify before you today. AB 204 is a common-sense bill that would repeal an existing DNR administrative rule, requiring facilities that have the *potential* to emit greenhouse gasses to obtain air permits, as well as also comply with “best available control technology” for greenhouse gases. This rule was originally enacted to mirror federal EPA regulations. However, in June 2014, the U.S. Supreme Court struck down the portion of the EPA rule requiring a facility to obtain an air permit solely on the basis of *potential* greenhouse emissions.

In keeping with the theme of the Assembly’s “Red Tape Review” initiative, this bill seeks to clean up our statutes and bring parity with federal law. Removing this unenforceable rule will also bring certainty and assurance to businesses in the state that may be unsure as to whether or not the DNR will attempt to enforce this rule. Such a business currently exists in my district. I trust that the passage of this bill will further encourage them and provide certainty as they look to expand and grow in the state of Wisconsin.

Again, thank you for the opportunity to testify today. I look forward to your support of this measure.

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**Testimony to the Wisconsin Assembly Committee on Environment and Forestry
Assembly Bill (AB) 204**

**By Kristin Hart – Air Permit Section Chief
Bureau of Air Management
May 12, 2015**

Thank you Chairman Mursau and Committee members for the opportunity to provide testimony today. I am Kristin Hart, the Chief of the Air Permits and Stationary Source Modeling Section in the Bureau of Air Management for the Department of Natural Resources. I am testifying, for information only, regarding AB 204. This bill would eliminate an invalid requirement regarding major source construction permits for stationary sources that emit greenhouse gases.

On June 23, 2014, the US Supreme Court made an important decision in Utility Air Regulatory Group (UARG) v. EPA. This decision concerned the regulation of greenhouse gases. In summary, the Court said that greenhouse gases may not be treated as an air pollutant for purposes of determining whether a source is major under the major source new source review air permit programs. This means that construction of new equipment or changes to existing equipment that increase the emissions of greenhouse gases above the major source thresholds may not, by themselves, trigger review under the more rigorous major source construction permitting rules.

This bill repeals the portion of air permit rules that required major new source review for new construction or modification where only greenhouse gases exceed the review thresholds. The rule changes do not affect DNR's authority to continue regulating greenhouse gases for construction or modification where a different pollutant exceeds the review threshold. This rule change is consistent with EPA's guidance to states on implementing the Supreme Court's Decision.

Thank you for the opportunity to provide information on AB 204. I would be happy to answer any questions you have at this time.



WISCONSIN MANUFACTURERS & COMMERCE

TO: Honorable Members of the Assembly Environment and Forestry Committee

FROM: Eric Bott, Director of Environmental and Energy Policy
Wisconsin Manufacturers and Commerce

DATE: May 12th, 2015

RE: Support Assembly Bill 158 and Assembly Bill 204 – Repealing Unlawful and Antiquated Rules

Wisconsin Manufacturers and Commerce (WMC) respectfully requests your support for two bills before the committee today – Assembly Bill (AB) 158 and AB 204, legislation that efficiently removes obsolete and unenforceable administrative rules from Wisconsin’s code. As Wisconsin’s State Chamber of Commerce and Manufacturing Association, representing more than 3,800 member companies statewide, WMC is dedicated to ensuring that Wisconsin is the most competitive state in the nation to do business. Eliminating confusing red tape is a small but smart way to work toward this goal.

AB 158 repeals NR 128, a chapter of the administrative code that no longer serves any practical purpose other than to create potential confusion for the regulated community. The programs administered under NR 128 have either been transferred to other agencies or no longer operate.

AB 204 repeals an unlawful provision of Wisconsin’s administrative code to maintain consistency with the federal Clean Air Act. In order to remain competitive, it is critical that Wisconsin avoid state requirements that are inconsistent or more stringent than those enforced by the U.S. Environmental Protection Agency (EPA). Such requirements drive up costs, add unnecessary confusion, and increase exposure to potential litigation.

In 2010, the EPA proposed a new series of regulations, including expansive new permitting requirements for power plants and large industrial facilities with the potential to emit greenhouse gases (GHGs) above certain thresholds. Wisconsin soon after adopted NR 405.07(9)(a)2 to maintain constancy with EPA’s new regulation.

Last June, however, the U.S. Supreme Court rejected EPA’s attempt to regulate GHGs emitted by stationary sources without the consent of Congress. As a party to the case heard by the U.S. Supreme Court, WMC commended the court for affirming the fact that we in America live in a nation of laws and not of bureaucratic whim. State and federal agencies must be held to the letter of the law just as citizens are each and every day.

Now that the U.S. Supreme Court has invalidated this portion of EPA’s rule, Wis. Stat. §§ 285.11(16) and (17) compel the State to repeal its own unenforceable rule in NR 405. WMC commends the leadership of Rep. Jesse Kremer and Sen. Terry Moulton for seeking to resolve this problem through legislation, a considerably less time consuming and costly approach as compared to the administrative rules process. WMC also thanks Rep. James Edming and Sen. Jerry Petrowski for championing AB 158.

Again, AB 158 and AB 204 will reduce confusion and potential costs for Wisconsin employers and strongly deserve your support.

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Founded in 1911, WMC is Wisconsin’s chamber of commerce and largest business trade association.



MEMORANDUM

TO: Assembly Committee on Environment and Forestry
FROM: Katherine B. White
DATE: May 12, 2015
SUBJECT: *Support of Assembly Bill 204*

Committee on Environment and Forestry:

Thank you, Mr. Chair and Committee members, for the opportunity to address the committee today. My name is Katie White, and I am an associate with Michael Best Strategies, LLC. I am here today on behalf of our client, Graymont Western Lime Inc to express our support for Assembly Bill 204 (AB 204). Graymont is in the early stages of potentially expanding one of its manufacturing facilities in Wisconsin, and the passage of AB 204 would provide certainty and clarity as they continue to investigate growing their business in our state.

In 2014 the U. S. Supreme Court partially upheld a U.S. Environmental Protection Agency (EPA) rule which generally requires facilities that otherwise need an air permit based on their emission of conventional pollutants to also comply with "best available control technology" for greenhouse gases. However, the Court held to be illegal that portion of the rule which required facilities to obtain an air permit solely on the basis of potential greenhouse gas emissions. Wisconsin Administrative Rule Ch. NR 405.07(9)(a)2. mirrors that portion of the EPA rule which the U.S. Supreme Court invalidated and must be amended to ensure that state law is consistent with this holding of the U.S. Supreme Court.

Under Wis. Stat. §§ 285.11(16) and (17), DNR's rules in this regard must be consistent with the federal Clean Air Act. AB 204 would repeal NR 405.07(9)(a)2 and bring Wisconsin law into compliance with these state statutes and federal regulations. Additionally, it would provide certainty to the entities that are subject to this invalid regulation. The Wisconsin Department of Natural Resources (DNR) has indicated that, in recognition of the U.S. Supreme Court's decision, it will not enforce NR 405.07(9)(a)2. However, until it is officially repealed, the rule will continue to be published in the Administrative Code, creating a degree of uncertainty and a lack of clarity for regulated entities. This lack of clarity could give rise to potentially costly legal advice. This uncertainty hinders the efficient operation and growth of the state economy, for no strong policy reason and with no legal basis.

AB 204 would ensure that Wisconsin's regulations are consistent with the federal regulatory framework and, thereby, in compliance with state statute. The bill would also provide clarity and certainty for businesses, such as Graymont, that may be looking to invest within the State of Wisconsin. I urge you to support this legislation.

Thank you for your time and consideration,

Katie B. White, Associate
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