Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

December 11, 2003

TO: Members
Assembly and Senate Select Committees on Job Creation

FROM: Bob Lang, Director

SUBJECT: Environmental Regulation Provisions of AB 655 and SB 313

In response to a number of requests regarding a comparison of current law requirements and those under Senate Bill 313 and Assembly Bill 655 (identical bills referred to as "the bill" in this document) related to Department of Natural Resources (DNR) waterway and air pollution emissions provisions, this office has prepared the following attachment. For each topic we have compared the provisions of current law (and have noted certain recent administrative proposals under current law) with those in the bill that relate to criteria for issuing or reviewing air and waterway permits and for the state procedure on developing standards and recommending nonattainment designations under the federal Clean Air Act. Waterway provisions begin on page one of the attachment and the air emissions provisions begin on page seven.

RH/KB/lah
Attachment

ATTACHMENT

Topic	Current Law	AB 655 / SB 313
Waterway Permit Exemptions	Certain swim rafts, water ski platforms, piers, wharfs, boat hoists and seasonal boat shelters are exempt from a waterway permit requirement. Also, Duck Creek Drainage District in Columbia County is exempted from permit requirements relating to the placement of a structure or deposit in a drain that the drainage board operates, provided that DATCP has approved of its placement after consulting with DNR. In addition, any project under the supervision of DOT in connection with highway, bridge, or other transportation project design, location, construction, maintenance, and repair is not subject to waterway permit requirements, but is subject to the conditions of a memorandum of agreement between DNR and DOT.	No permit would be required for the currently authorized purposes and, in addition, the following activities would be exempt from waterway permit requirements: (a) a deposit of sand, gravel, or stone that totals less than two cubic yards in any five-year period; (b) a structure, other than a pier or a wharf, that is placed on a seasonal basis and that is less than 200 square feet in size and less than 38 inches in height (such as a water trampoline); (c) a boat shelter, hoist, or lift that is placed on a seasonal basis adjacent to the riparian owner's pier or wharf or to the shoreline on the riparian owner's property; (d) a pier that is no more than six feet wide, that extends no further than to a point where the water is three feet at its maximum depth, or to the point where there is adequate depth for mooring a boat or using a boat hoist or lift, whichever is closer to the shoreline, and which has no more than two boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline (this is similar to an existing DNR policy on pier placement); (e) a wharf that extends no more than 30 feet (while the 30-foot limit would appear to apply along the shore, the bill does not specify a limit on the allowable distance into the water); (f) an intake or outfall structure that is authorized by a storm water discharge permit or a facility plan approved by DNR; (g) riprap in an amount not to exceed 75 linear feet (if the riprap is located outside of an area where riprap had previously been placed); or (h) riprap in an amount not to exceed 300 linear feet (if the riprap is located in an area where riprap had been previously placed). Additional activities exempted under the bill would include: (a) constructing, dredging, or enlarging any part of an artificial waterway that is located within 500 feet of an existing navigable waterway if the artificial waterbody does not have a surface connection to any navigable water other than an overflow device, and the activity to be completed was authorized under a storm water discharge permit or a water or sewage facility plan authorized by DNR; (b) grading of an area in excess of 10,000 square feet if the area is not located in an area of special natural resource interest and is authorized by a storm water discharge permit, a shoreland or wetland zoning ordinance, or by a construction site erosion control plan; (c) construction of culverts with a diameter less than 48 inches that are part of private roads or driveways (a limit on the number or area is not specified); and (d) the removal of certain amounts of material if the removals were not from an area of natural resource interest, did not contain hazardous substances, and would be placed in an upland area (amounts would be limited to 1,000 cubic yards or less from an area from which material had been previously removed and the removal

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		was for maintenance purposes, or limited to 100 cubic yards or less for an area from which material had not been previously removed -- a time limit is not specified in the bill).
Permit Exemption Conditions	In most cases, activities are only exempt if they meet specified conditions including the protection of public rights in the waterway (public trust doctrine). For example, the placement of a pier or wharf is only exempt if: (a) it does not interfere with public rights in navigable waters; (b) it does not interfere with rights of other riparian owners; (c) it does not extend beyond any established pierhead line; (d) it does not violate any municipal ordinances; and (e) it is constructed to allow the free movement of water underneath and in a manner which will not cause the formation of land upon the bed of the waterway. Under current law, individual permits must meet listed criteria which includes the protection of public rights and, in some cases, not causing environmental pollution.	The bill would no longer specify protection of public rights in the waterway as a condition for exemption. For example, the bill would exempt certain waterway placement activities (such as certain piers, wharves, seasonal boat shelters, water trampolines and rip rap) if the activities do not interfere with the rights of other riparian owners and if they are located outside an area of special natural resource interest. An "area of special natural resource interest" would be defined as any area that is a state natural area, or an area that has been identified by DNR as possessing scientific value or as being an outstanding or exceptional resource water. Where the bill would change what is currently an individual permit to an exemption, protection of public rights and prevention of environmental pollution, where it currently exists, would no longer be specified as conditions for the exempt activities.
Statewide General Waterway Permits	For certain activities that require a permit, DNR may issue a general permit authorizing a class of activities, according to rules promulgated by DNR.	For specified activities DNR would be required to issue a statewide general permit within 540 days after publication of the act. DNR may also designate additional activities for general permits.
General Permit Activities	General permits or abbreviated permits (known as "short-form" permits) may be issued for sand blankets, fish cribs, bird nesting platforms, certain fords and landings, boat shelters, dry fire hydrants, certain pilings and dredging of certain artificial waterways within 500 feet of a navigable waterway and for certain activities in the Wolf and Fox River basin pilot program. However, the issuance of general permits is not required.	Statewide, general permits would be required to be issued for the following activities: (a) depositing material or placing a structure on the bed of any navigable water where no bulkhead line has been established, or beyond a lawfully established bulkhead line; (b) placing a layer of sand for the purpose of improving recreational use; (c) placing a fish crib, spawning reef, or similar item for the purpose of improving fish habitat; (d) placing a bird nesting platform, wood duck house, or similar structure for the purpose of improving wildlife habitat; (e) placing riprap or similar material on the bed and bank of navigable waters adjacent to an owner's property for the purpose of protecting the bank and adjacent land from erosion; (f) placing crushed rock or gravel, reinforced concrete planks, adequately secured treated timbers, cast in place concrete or similar material on the bed of a navigable stream for the purpose of developing a ford if an equal amount of material is removed from the stream bed; (g) placing crushed rock or gravel, reinforced concrete planks, cast in place concrete or similar material on the bed of navigable waters adjacent to the owner's property for the purpose of building a boat landing; (h) placing a permanent boat shelter (a covered structure without walls) adjacent to the owner's property for the purpose of storing or protecting watercraft and associated materials, except that no permit

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		may be granted for a permanent boat shelter which is constructed after May 3, 1988, if the property on which the permanent boat shelter is to be located also contains a boathouse (a structure with both a roof and walls) within 75 feet of the ordinary high-water mark or if there is a boathouse over navigable waters adjacent to the owner's property; (i) placing an intake structure and pipe on the bed of a navigable water for the purpose of constructing a dry fire hydrant to supply water for fire protection; (j) drive a piling into the bed of a navigable water adjacent to the owner's property for the purpose of deflecting ice, protecting an existing or proposed structure, or providing a pivot point for turning watercraft; (k) placing an intake or outfall structure that is less than six feet from the water side of the ordinary high water mark and that is less than 25 percent of the width of the channel in which it is placed; (l) placing a pier to replace a pier that has been in existence at least ten years before the effective date of the bill, that does not exceed ten feet in width or 500 square feet in area; (m) placing a pier that does not exceed 500 square feet in area in a lake that is 500 acres or more in area; (n) artificial waterway enlargement projects that do not meet the 500-foot permit exemption requirement under the bill and where the activity was authorized by a storm water-discharge permit or a water or sewerage facility plan authorized by DNR; (o) for artificial waterway enlargement activities that are designed to enhance wildlife habitat, wetlands, or that affect a body of water less than one acre in size; (p) enlargement permits to meet the grading permit requirement for any grading project or removal of topsoil that exceeds 10,000 square feet and is not eligible for the exemption included under the bill; (q) bridges crossing a navigable stream that is less than 35 feet wide; (r) culverts with a diameter less than 60 inches; (s) relocation of a stream, if the relocation is less than a total of 500 feet, or if the stream being relocated has an average flow of less than two cubic feet per second; (t) removal of material from an area from which material had been previously removed, for which the removal is for maintenance purposes, and the removal is more than 1,000 cubic yards; and (u) the removal of material from an area from which no material had been previously removed, and the material to be removed is between 100 cubic yards and 1,000 cubic yards (an allowable time period is not specified).
General Permit Development	Before issuing general permits, DNR must determine, after an environmental analysis and notice and hearing, that the cumulative adverse environmental impact of the class of activity is insignificant and that issuance of the general permit will not injure public rights or interest, cause environmental pollution, or result in material injury to the rights of any riparian owner.	Before issuing general permits, DNR would be required to provide an environmental analysis, notice, and hearing.

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General Permit Conditions	A general permit may include any conditions determined by DNR to be reasonably necessary to prevent environmental pollution and to protect the public interest and public rights in navigable waters and the rights of other riparian owners.	A general permit could include any of the following conditions to ensure that the cumulative adverse environmental impact of the activities authorized is insignificant and that issuance of the general permit will not injure public rights or interests, cause environmental pollution, or result in material injury to the rights of any riparian owner: (a) construction and design requirements that are consistent with the purpose and activity authorized; (b) location requirements to ensure that the activity will not materially interfere with navigation or have an adverse impact on adjacent riparian property owners rights; and (c) restrictions to protect areas of special natural resource interest.
General Permit -- Application Review	A person wishing to proceed under a general permit must apply to DNR 20 business days before commencing the activity. DNR may request additional information and must notify the person, in writing, of its determination within 10 business days after receiving adequate information.	A person wishing to proceed under a general permit would apply in writing to DNR 30 days before commencing the activity. The notification must provide information describing the activity in order to allow DNR to determine whether the activity is authorized by the general permit.
General Permit -- Approval	The applicant may proceed upon receipt of the Department's determination that the proposed activity is authorized by a general permit.	If DNR does not require additional information and does not notify the applicant that an individual permit is required the activity would be considered authorized and the applicant could proceed.
General Permit -- Denial	DNR may not authorize a person to proceed under a general permit if it determines that the proposed activity may not comply with the criteria specified for the general permit.	DNR could require an individual permit only if it determines the activity is not authorized by the general permit.
General Permit -- Completion	No provision.	Upon completion of the activity, the applicant must provide DNR with a statement certifying compliance with all general permit requirements and a photograph of the activity.
Individual Waterway Permits	If a regulated activity is not subject to an exemption or a general permit, an individual permit is required.	Same.
Placement Permits	The Department may issue placement permits for waterway activities if the structure does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest.	DNR would be required to issue an individual placement permit if all of the following apply: (a) the structure or deposit will not materially obstruct navigation; (b) the structure or deposit will not be detrimental to the public interest; (c) the structure or deposit will not materially reduce the flood flow capacity of a stream.

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Enlargement Permits	If DNR finds that the project will not injure public rights or interest, including fish and game habitat, that the project will not cause environmental pollution, that any enlargement connected to navigable waterways conforms to the requirement of laws for the platting of land and for sanitation and that no material injury to the rights of any riparian owners on any body of water affected will result, DNR must issue a permit authorizing the enlargement of the affected waterways.	DNR would be directed to issue an individual enlargement permit as long as the activity would not be detrimental to the public interest, and: (a) the activity would not cause environmental pollution; (b) any enlargement connected to a navigable waterway complies with laws relating to platting of land and sanitation; and (c) no material injury would result to the rights of any riparian owners of any real property that abuts any water body that is affected by the activity.
Bridges or Culverts	The Department must review the plans for the proposed bridge to determine whether the proposed bridge will be an obstruction to navigation or will adversely affect the flood flow capacity of the stream. The Department must grant the permit if the proposed bridge will not materially obstruct navigation, reduce the effective flood flow capacity of a stream or be detrimental to the public interest.	DNR would be required to issue a permit for a bridge or culvert if the Department found that the bridge or culvert would not materially obstruct navigation, would not materially reduce the effective flood flow capacity of a stream, and would not be detrimental to the public interest.
Stream Course Permit	The Department must grant a permit to the owner of any land to change the course of or straighten a navigable stream on the property, if such change or straightening will improve the economic or aesthetic value of the owner's land and will not adversely affect the flood flow capacity of the stream or otherwise be detrimental to public rights or to the rights of other riparian land owners located on the stream. If DNR finds that the rights of other riparian landowners will be adversely affected, it may grant the permit only with their consent.	DNR would be required to issue an individual stream course permit as long as: (a) the applicant is the owner of any land upon which the change in course or straightening of the navigable stream will occur; (b) the proposed change of course of the navigable stream will improve the economic or aesthetic value of the applicant's land; (c) the proposed change of course of the navigable stream will not adversely affect the flood flow capacity of the stream or otherwise be detrimental to the public interest; and (d) the proposed change of course of the navigable stream will not be detrimental to the rights of other riparian land owners located on the stream, or all of these owners have consented to the issuance of the permit.
Removal Permits	A permit to remove material from the bed of a lake or stream may be issued by DNR if it finds that the issuance of such a permit will be consistent with the public interest in the water involved.	DNR would be required to issue an individual removal permit as long as the Department finds that the issuance of the permit would be consistent with the public interest.
Review Procedure for Individual Waterway Permits	DNR must initially determine whether an application or contract is complete within 60 days of its submission and notify the applicant of its determination in writing. If DNR determines that the application is incomplete, the written notice must include the reason for this determination, and the specific items of information necessary to make the application complete. DNR must either order a public hearing to be held within 60 days of receiving a completed application for an individual placement, bridge, removal, stream course, or enlargement permit, or provide notice that the Department will proceed on the application without a public hearing unless a substantive written objection is received within 30 days after the notice is published. The Department is required to provide the notice of application to anyone DNR considers to be an interested party, to the municipal clerk and to the applicant who in turn must publish the notice in a newspaper that is likely to give	DNR would be required to initially determine whether an application or contract is complete within 30 days of its submission rather than 60 days currently. Once DNR determines that an application is complete, the Department would be required to provide notice of a complete application to interested members of the public within 15 days. The Department would then provide a period for public comment. If no public hearing is requested, the public comment period would end after 30 days and DNR could act on the permit application. If a public hearing were requested the comment period would end 10 days after the conclusion of the hearing. Any individual could request a public hearing. The Department could also decide to hold a hearing if it determined that there is a significant public interest in the permit. The hearing would not be a contested case hearing. Any request for a public hearing would have to be submitted to

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	notice in the area where the waterway activity will be located. If DNR does not receive a substantive written objection within the 30-day period, the Department may proceed to act on the permit application under current law. If DNR receives an objection, the public hearing must be held within 60 days of being ordered. DNR may also use this notice and hearing procedure when it is not specifically required if the Department determines that substantial interests of any party may be adversely affected by the granting of the permit. If a substantial interest of a person is injured by an agency action and there is a dispute of material fact, that person has the right to an administrative hearing before an impartial hearing officer. The contested case hearing may be requested prior to DNR's issuance of a final determination on the permit, and the issuance, denial, or conditions of the permit are generally subject to the outcome of the contested case hearing. If the outcome of the administrative hearing is disputed, an individual is entitled to a circuit court review of the administrative law judge's determination. The review of the administrative decision is generally limited to the record of the hearing. Cases are generally required to be filed in Dane County Circuit Court.	DNR within 30 days of the notice that the application is complete. A substantive written objection would not be required. The Department would be required to provide notice of a public hearing within 15 days, and the hearing would have to be held within 30 days after issuance of this notice. DNR would be required to issue its decision within 30 days after the hearing. If no hearing is requested, then DNR would issue a decision within 30 days after the close of the comment period. Within 30 days of the DNR decision to approve, conditionally approve, or deny an individual permit an applicant for or holder of the permit, or five or more persons, could ask DNR for an administrative (contested case) hearing regarding the issuance, denial, or modification of an individual permit, or regarding a term or condition of an individual permit. The petition must state the grounds for review, and why administrative review is warranted. Unless DNR determines that the request for a hearing has no basis, DNR would be required to hold an administrative hearing. The bill would require that the hearing be conducted as a contested case hearing and be subject to general administrative hearing requirements. Unlike current law, the administrative hearing could only be requested after the application for an individual permit has been acted upon by DNR. Instead of requesting an administrative hearing to review the DNR decision, the permit applicant or the Department would have the right to bring a court action to review the DNR decision. In addition, administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, would also be subject to review. Therefore, a person who was harmed by DNR's decision relating to an individual permit could bring a court action to review the DNR decision in lieu of an administrative hearing. The bill would require the court to review evidence and to examine witnesses, rather than review the record of the Department's actions. In addition, either the applicant for the permit or DNR could stop an administrative hearing and instead have the court take jurisdiction over the issues raised. If an administrative hearing is removed to a court, the circuit court would be required to review the evidence and examine witnesses. Judicial reviews would be filed with the circuit court for the county where the riparian property is located.

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	Under current law certain stream course and waterway removal permits are only subject to public notice and hearing requirements when DNR determines that the substantial interests of a party may be adversely affected by the action.	The bill would specify that individual stream course and waterway removal permit applications are subject to the general public notice and hearing provisions.
Great Lakes and Harbors	Current law requires an individual permit for the use of vessels for commercial storage on the Great Lakes or its harbors. Current law prohibits placement of a boathouse on navigable waters and limits the allowable repairs to boathouses that existed prior to 1980.	Placing a vessel for commercial storage on Lake Michigan or Lake Superior or in any of their tributaries that is determined to be navigable by the federal government would be subject to a general permit. The bill would allow the construction, repair, or maintenance of a boathouse that is in compliance with any applicable individual or general permit requirements, that is used exclusively for commercial purposes, that is on land zoned exclusively for commercial or industrial purposes, or is in a brownfield or blighted area, and that is located in a commercial harbor or on a tributary of Lake Michigan or Lake Superior.
Application Time Limits	Under the permit guarantee program, DNR is required to promulgate administrative rules that specify timelines by which the Department will make determinations on issuing certain waterway and air emissions permits. If DNR fails to make a determination within the time limit established in the rule, the applicant's fee is to be refunded.	Although the bill would establish or modify a number of statutory time limits for the air and waterway permit programs, it would not modify the fee refund provision. Therefore, it appears the timelines in administrative rule that trigger a fee refund if not met, could be longer than the statutory time limits to process and decide permits. However, the bill would require that DNR submit a report to JCRAR, and to make the report public, if it fails to act on an air construction permit within a specified time.
Ambient Air Quality Standards	If EPA establishes national ambient air quality standards (NAAQS), DNR must promulgate by rule a similar standard. (Ambient air standards relate to the quality of the air we breathe.) The DNR standard may not be more restrictive than the federal standard unless DNR finds the federal standard would not provide adequate protection for public health and welfare. EPA has established NAAQS for each of six pollutants, including ozone, sulfur dioxide, nitrogen dioxide, particulate matter (solid or liquid matter suspended in the atmosphere) that is less than 10 microns in diameter (PM10) or less than 2.5 microns in diameter (PM2.5), carbon monoxide and lead. If EPA does not promulgate an air quality standard for an air contaminant, DNR may do so if the Department finds that the standard is needed to provide adequate protection for public health or welfare. In 2003, the Natural Resources Board received a petition from several groups requesting the promulgation of an air quality standard for carbon dioxide, an air contaminant for which there is no federal standard. In September, 2003, the NR Board denied the petition, based on a DNR recommendation that included the following reasons: (1) DNR does not have the expertise to establish an ambient air quality standard for carbon dioxide; (2) staff time and resources are not currently available; and (3) other options for a broader geographic effort to reduce carbon dioxide emissions would be	If EPA establishes an ambient air quality standard, DNR would be required to promulgate by rule a similar standard. DNR would not be allowed to promulgate a more restrictive standard than the federal standard. DNR would not be allowed to promulgate a standard for a contaminant for which EPA has not established a standard. Under the bill, DNR would not have the authority to promulgate standards for contaminants such as carbon dioxide unless EPA promulgates a standard for the substance.

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	more productive in achieving carbon dioxide emission reductions. If EPA relaxes a federal ambient air quality standard, DNR must alter the corresponding state standard unless it finds that the relaxed standard would not provide adequate protection for public health and welfare.	If EPA modifies a federal air quality standard, DNR would be required to alter the corresponding state standard accordingly.
Emission Standards for Hazardous Air Pollutants	If EPA establishes a standard of performance for new stationary sources under section 111 of the federal Clean Air Act or an emission standard for a hazardous air contaminant under section 112 of the clean air act, DNR must promulgate a rule that contains a similar standard that may not be more restrictive in terms of emission limitations than the federal standard. If EPA has not established an emission standard for a hazardous air contaminant under section 112 of the Clean Air Act, DNR may promulgate a rule containing an emissions standard if the Department finds that the standard is needed to provide adequate protection for public health or welfare. In 2003, DNR submitted draft rule revisions to the Legislature related to revising emissions standards for certain hazardous air contaminants that are on the federal list and for adding, deleting or revising numerous hazardous air contaminants that are not on the federal list. In October, 2003, the Assembly Natural Resources Committee and Senate Environment and Natural Resources Committee requested DNR to revise the draft rule, including a request to modify the proposed procedures for determining the need to expand the list of hazardous air contaminants regulated by the rule. To date, DNR has not returned a revised rule to the Legislature.	If EPA establishes a standard of performance for new stationary sources or an emission standard for a hazardous air contaminant under any part of the Clean Air Act, DNR would be required to promulgate a rule that incorporates the federal emission standard and related administrative requirements. In addition, the DNR rule could not be more burdensome to persons operating sources affected by the emission standard than the federal standard and related requirements. The bill would retain the current requirement that the DNR rule could not be more restrictive than federal law in terms of emission limitations. If EPA has not established an emission standard under any part of the Clean Air Act, DNR may promulgate a rule containing an emissions standard if the Department finds that the standard is needed to provide adequate protection for public health or welfare, and in addition, would have to support the finding with written documentation that includes all of the following: (1) a public health risk assessment that characterizes the stationary sources in the state that are known to emit the hazardous air contaminant and the individuals who are potentially at risk from the emissions; (2) an analysis showing that identified individuals are subjected to inhalation levels of the hazardous air contaminant that are above recognized environmental health standards; and (3) an evaluation of options for managing the risks caused by the hazardous air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the chosen compliance alternative reduces risks in the most cost-effective manner practicable. Emission limitations promulgated by DNR under the finding and related control requirements would not apply to hazardous air contaminants emitted by emissions units, operations, or activities that are regulated by an emission standard promulgated under the Clean Air Act, including a hazardous air contaminant that is regulated under the Clean Air Act by virtue of regulation of another substance as a surrogate for the hazardous air contaminant or by virtue of regulation of a species or category of hazardous air contaminants that includes the hazardous air contaminant. For example, a federal emission standard might require a type of emission control for a contaminant such as benzene, and implementing that control might also reduce the emissions of other contaminants that are on the federal list or on the state list. (DNR's draft rule revisions include

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		a similar provision.) DNR would not be allowed to find that a relaxed federal emission standard for a hazardous air contaminant would not protect public health or welfare unless the finding is supported with the written documentation described earlier.
State Implementation Plans	Under the federal Clean Air Act, EPA designates an area as a nonattainment area if the area has levels of a pollutant that are higher than the national ambient air quality standards, and the state is required to submit implementation plans to EPA to show how the state will reduce the levels of pollutants in nonattainment areas. Under current state statutes, DNR is required to develop plans for the prevention, abatement and control of air pollution in the state. Currently, plans submitted to EPA for the control of atmospheric ozone must conform with the Clean Air Act, except that measures beyond that required by the Clean Air Act may be included if the Governor determines they are necessary to show that the state will make required reductions in the levels of ozone in ozone nonattainment areas or if the measures are part of an interstate ozone control strategy or interstate ozone control agreement between Wisconsin and Illinois.	The bill would repeal the authority for DNR to include provisions in state implementation plans that are beyond those required by EPA. DNR would only be allowed to include in the plans any rules or requirements that are necessary to obtain approval of the plan by EPA, including requirements that are necessary in order to show that the state will make necessary reductions in the levels of that pollutant in the state's nonattainment areas to comply with the Clean Air Act's reasonable further progress requirements. At least 90 days before DNR is required to submit a state implementation plan to EPA, the Department would have to prepare and submit a report to the Legislative Joint Committee for Review of Administrative Rules (JCRAR) that describes the proposed plan and contains all of the supporting documents that DNR intends to submit to EPA with the plan. JCRAR would have 30 days to review the report, and if it chooses, to return the report to DNR with a written explanation of why the Committee is returning the report. DNR would not be allowed to submit the plan to EPA until the Committee agrees that DNR has adequately addressed the issues raised.
Identification of Nonattainment Areas	DNR is authorized to identify nonattainment areas based on procedures and criteria that it establishes. DNR is required to issue documents from time to time that define or list specific nonattainment areas. Before DNR issues such a document, it is required to hold a public hearing after a 30 day notice, accept written comments for at least 10 days after the close of the hearing, and issue the document no sooner than 30 days after the close of the hearing. Under the Clean Air Act, EPA designates nonattainment areas based on EPA criteria after considering any recommendations made by the Governor. Before EPA designates nonattainment areas, DNR makes a recommendation to the Governor about areas to be designated and the Governor makes a recommendation to EPA. After EPA designates nonattainment areas, DNR implements the nonattainment area designation, as described above under "State Implementation Plans" under current law.	DNR would be prohibited from identifying a county as part of a nonattainment area if the concentration of an air contaminant in the atmosphere does not exceed an ambient air quality standard unless the Clean Air Act requires DNR to identify the county as part of a nonattainment area. Before DNR issues documents that define or list nonattainment areas, and, at least 90 days before the Governor makes a submission to EPA on a nonattainment designation, DNR would have to prepare and submit a report to JCRAR that contains a description of any area proposed to be identified as a nonattainment area and supporting documentation. JCRAR would have 30 days after DNR submits the report to review the report, and if it chooses, to return the report to DNR with a written explanation of why the Committee is returning the report. The Department would not be allowed to issue documents defining or listing nonattainment designations, and the Governor would not be allowed to

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		submit the recommended designation list to EPA until the Committee agrees that DNR adequately addressed the issues raised by the Committee.
	When EPA replaced national ambient air quality standards based on the concentration of particulate matter in the atmosphere measured as total suspended particulates with a standard based on the size of the particulate matter, DNR retained the state ambient air quality standard based on total suspended particulates and also adopted the federal standards based on the size of the particulate matter (PM10 and PM2.5). Currently, a portion of the City of Milwaukee is the only area of the state designated as being in nonattainment of total suspended particulate matter standards.	DNR would be prohibited from identifying an area as a nonattainment area based on the concentration in the atmosphere of particulate matter measured as total suspended particulates. DNR would be required to redesignate as an attainment area any area identified as nonattainment if the only basis on which the area could be identified as nonattainment area is the concentration in the atmosphere of particulate matter measured as total suspended particulates. Under the bill, DNR would redesignate an area in the City of Milwaukee from nonattainment to attainment.
Mercury Emission Standards	DNR is authorized to prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air. DNR proposed draft administrative rules related to the reduction of mercury emissions from major electric utilities, based on the effects of human ingestion of fish with mercury in them. In August, 2003, the Assembly Natural Resources Committee and Senate Environment and Natural Resources Committee requested that DNR make modifications to the rule. DNR has not sent a revised rule back to the Legislature.	DNR could only adopt mercury standards if they are consistent with the finding required to promulgate a state hazardous emission standard when there is no federal standard, including the supporting written documentation related to risk assessment, hazardous inhalation levels and cost-effective options for managing risk. Under the bill, DNR could no longer base the calculation of emission limitations on the ingestion of mercury-tainted fish, but would rather have to base emission limits on inhalation risk.
Air Construction Permits (New Source Review)	EPA recently promulgated regulations that revise the way in which it is determined under federal law whether changes to a major source are considered to be modifications that require a construction permit, or maintenance that does not require a permit. The Wisconsin Attorney General, along with several other states, filed suit challenging whether the modified federal regulations conform with the Clean Air Act. Currently, DNR is authorized to promulgate rules, consistent with the federal Clean Air Act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.	The bill would repeal the authority for DNR to promulgate rules that modify the meaning of the term "modification." Instead, DNR would be required to promulgate rules incorporating any changes made by regulations of EPA governing review of modifications of major sources, including the recent EPA revisions that were published in the Federal Register on December 31, 2002, and October 27, 2003. DNR would also be required to incorporate similar changes for minor sources if the changes reduce administrative requirements for minor sources. DNR would not be permitted to include any requirements in the rules that are inconsistent with or more stringent than the federal regulations.
Exemptions from Construction and Operation Permits	DNR is authorized to promulgate administrative rules to exempt types of stationary sources from construction permit or operation permit requirements if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment. A person is required to obtain a construction permit before beginning construction, reconstruction, replacement or modification of a stationary source of air pollution. An operation permit is required to operate the stationary source after completion of the construction, reconstruction, replacement or modification. DNR also administers state	DNR would be required (rather than authorized) to exempt minor sources (rather than "types of stationary" sources) from the requirement to obtain a construction permit and an operation permit if the emissions (rather than the "potential" emissions) from the source do not present a significant hazard to public health, safety or welfare or to the environment. The bill would create an exemption from the requirement to obtain a construction or operation permit for agricultural uses, unless the Clean Air Act requires a permit.

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	regulations for operating permits for minor sources, which include less stringent requirements than the federal requirements for major sources.	The bill would exempt a person from the requirement to obtain a construction permit for a source that is a component of a process, or equipment, or of an activity that is otherwise covered by a preexisting operation permit or an activity that is otherwise covered by a preexisting operation permit. A source would also be exempt from the construction permit requirement if it is a component of a process, of equipment, or of an activity that is included in a completed application for an operation permit. These two exemptions would not apply if a person is required to obtain a construction permit for the source under the Clean Air Act. DNR would be required to grant a waiver, unless it conflicts with the Clean Air Act, to the requirement to obtain a construction permit prior to construction, reconstruction, replacement, or modification of a stationary source if the owner or operator shows that obtaining the permit would cause undue hardship.
General Air Permits	Under the Clean Air Act, a person is required to obtain a construction permit before beginning construction, reconstruction, replacement or modification of a large stationary source of air pollution, also known as a major source. Under state statutes, DNR is authorized to promulgate administrative rules specifying types of sources that may obtain general construction permits and general operation permits, which may cover numerous similar stationary sources.	The bill would repeal the authority to promulgate rules for general construction and operation permits. Instead, the bill would require DNR to promulgate rules for issuance of general permits for similar stationary sources. A person would not be required to obtain a permit prior to construction, reconstruction, replacement or modification of a stationary source that qualifies for coverage under a general permit unless a construction permit is required under the Clean Air Act. The general permit applicant would not be required to comply with statutory provisions related to applicant submittal of plans and specifications, departmental analysis and preliminary determination of eligibility, public notice, public comment period, and provision for an optional public hearing, that currently apply to applicants for general construction and operation permits.
Registration Permits	Under the Clean Air Act, a person is required to obtain a construction permit before beginning construction, reconstruction, replacement or modification of a large stationary source of air pollution, also known as a major source.	DNR would be required to promulgate rules, which could not conflict with the Clean Air Act, to provide a simplified process under which DNR would issue a registration permit for a stationary source with low actual emissions. A person would not be required to obtain a permit prior to construction, reconstruction, replacement or modification of a stationary source that qualifies for coverage under a registration permit unless a construction permit is required under the Clean Air Act. The registration permit applicant would not be required to comply with statutory provisions related to applicant submittal of plans and specifications, departmental analysis and preliminary determination of eligibility, public notice, public comment period, and provision for an optional public hearing, that currently apply to applicants for construction and operation permits.

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Construction and Operation Permit Consistency with Federal Law		The bill would add a general provision that would specify that DNR would not be allowed to promulgate a rule or take any other action related to construction or operation permits that would conflict with the federal Clean Air Act.
Air Construction Permit Process	DNR or a certified contractor reviewing the application, must prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and make a preliminary determination on the approvability of a construction permit within 120 days after receipt of plans and specifications for a major source or within 30 days for a minor source.	The bill would modify those time periods to 60 days after receipt of a complete application for a major source and 15 days for a minor source.
	Currently, within 20 days after receipt of the construction permit application, DNR is required to indicate the plans, specifications or other information necessary to determine if the proposed construction, reconstruction, replacement or modification will meet statutes and rules.	The bill would require DNR or a certified contractor to provide written notice to the applicant describing specifically all of the plans, specifications or other information necessary to complete the application. An application would be considered complete when the applicant provides the information specified in the written notice. If DNR or a certified contractor do not provide written notice to an applicant within 20 days after receipt of the application, the application would be considered complete 20 days after receipt of the application. DNR or a certified contractor could request additional information after the 20 days, but that action would not extend the requirement to make a preliminary determination on the approvability of a construction permit within 60 days after receipt of a complete application for a major source or 15 days for a minor source.
	DNR is required to publish a newspaper notice of the public comment period and the opportunity to request a public hearing on the analysis and preliminary determination.	DNR would be required to publish the newspaper notice within 10 days after the analysis and preliminary determination are prepared, or, if prepared by a certified contractor, within 10 days after DNR receives them from the certified contractor.
	DNR is authorized to hold a public hearing on a construction permit application if requested by a person, any affected state or EPA.	DNR would be authorized to hold a public hearing on an application if requested by a person who may be directly aggrieved by the issuance of the permit (rather than if requested by any person), in addition to any affected state and EPA.
	Only DNR may receive and act upon an air construction permit application.	The bill would create a process for applicants to submit an application to a certified contractor instead of to DNR. DNR would not be allowed to modify a preliminary determination made by a certified contractor under the new process unless modification is necessary to comply with the Clean Air Act or unless comments received during the public comment and public hearing process or consideration of the environmental impact, if required, provide clear and convincing evidence that issuance of the permit would cause material harm to public health, safety, or welfare.

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	DNR is required to hold the public hearing within 60 days after the deadline for requesting a hearing if the Department deems that there is significant public interest in holding a hearing. DNR is required to act on a construction permit application within 60 days after the close of the public comment period or the public hearing, whichever is later, unless compliance with environmental impact statement provisions requires a longer time.	The bill would change the time period to 30 days. DNR would be required to act within 60 days after it publishes the newspaper notice of the public comment period, which would be 30 days after the close of the public comment period. The bill would authorize a person to petition DNR to make a determination that a type of stationary source meets the criteria for a registration permit, a general permit, or an exemption as a minor source. DNR would be required to provide a written response to the petition within 30 days after receiving the petition indicating whether the type of stationary source meets the applicable criteria for a registration permit, general permit or exemption. If the type of source meets the applicable criteria, DNR would be required to, within 365 days after receiving the petition, issue the registration permit or general permit. For an exemption that meets the applicable criteria, DNR would be required to submit, within 365 days after receiving the petition, draft administrative rules to the Legislative Council staff or to take any other action necessary to provide the exemption.
Air Operation Permit Process	DNR must review an application for an operation permit and make a preliminary determination on the approvability of the application. Current law does not specify a time limit for DNR completion of the review and preliminary determination. DNR is required to publish a newspaper notice of the public comment period and the opportunity to request a public hearing on the analysis and preliminary determination. DNR is authorized to hold a public hearing on an operation permit application if requested by a person or any state that received notice of the application. DNR is required to act on an operation permit application within 180 days after the permit applicant submits to the Department the results of all equipment testing and emission monitoring required under the construction permit. DNR is authorized to include, in rule or in an operation permit, a requirement that the owner or operator of an air contaminant source shall monitor the emissions of the air contaminant source or monitor the ambient air in the vicinity of the air contaminant	The bill would create a requirement that DNR or a certified contractor must complete the preliminary determination and the public notice within 60 days after receipt of a complete application for a major source and 15 days for a minor source. DNR would be required to publish the newspaper notice within 10 days after the notice is complete, or, if prepared by a certified contractor, within 10 days after DNR receives the notice from the certified contractor. DNR would be authorized to hold a public hearing on an application if requested by a person who may be directly aggrieved by the issuance of the permit. DNR would be required to act within 30 days instead of 180 days. The bill would modify the current authority to prohibit DNR from including a monitoring requirement in an operation permit if the applicant demonstrates that the cost of compliance with the requirement would exceed the cost of compliance

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	source and report the results of the monitoring to DNR. DNR is authorized to specify methods for conducting the monitoring and for analyzing the results of the monitoring. DNR must require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to DNR no less often than every six months. If a person submits a complete application for a stationary source and submits any additional information requested by DNR within the time set by DNR, the stationary source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until DNR acts to approve or deny the operation permit. Currently, a person who holds an operation permit is required to apply for renewal of the permit at least 12 months before the operation permit expires.	with monitoring requirements imposed on similar air contaminant sources by an adjacent state or if the monitoring is not needed to provide assurance of compliance with requirements that apply to the air contaminant source, unless the monitoring is required under the Clean Air Act. The bill would modify the deadline for applying for the renewal of an operation permit from at least 12 months to at least six months before the permit expires. However, the bill would also specify that if a person submits an application for renewal of an operation permit before the date the permit expires, the stationary source could not be required to discontinue operation and the person could not be prosecuted for lack of an operation permit until DNR acts to approve or deny the operation permit. (This is similar to the current provision related to application for the initial operation permit.) In addition, the provision related to renewals would not apply in a situation that would contravene federal law.
Criteria for Air Permit Approval	One of the current criteria for approval of a construction permit or an operation permit for a major source that is a new or modified source and that is in a nonattainment area is that, based on an analysis of alternative sites, sizes, production processes and environmental control techniques is that DNR finds that the benefits of the construction or modification of the major source significantly outweighs the environmental and social costs imposed as a result of the major source's location, construction or modification. An air pollution control permit or part of a permit issued by DNR becomes effective unless the permit holder seeks a hearing on the permit or part of a permit.	The bill would eliminate this criterion. The bill would specify that if a permit holder or applicant seeks a hearing challenging part of the permit, the remainder of the permit would become effective and the permit holder or applicant would be allowed to begin the activity for which the permit was issued.