

January 13, 2004

MEMO TO: Wisconsin Senators and Assembly Representatives  
Governor Jim Doyle  
Attorney General Peg Lautenschlager  
DNR Secretary Scott Hassett

FROM: Caryl Terrell, Chapter Director, Sierra Club - John Muir Chapter  
Atty Bruce Nilles, Senior Midwest Representative, Sierra Club

RE: Analysis of the Air Provisions of LRBs0295/2, Substitute Amendment #2 to  
AB 655, the so-called "Job Creation Act"

The Sierra Club appreciates the many changes made in the air and water provisions of early versions of this bill. However, our analysis of the air provisions reveals continuing areas of backsliding on current state law. Wisconsin families have a right to healthy, breathable air. This bill puts our families' health at risk.

**We respectfully request that AB 655 not be passed unless the air issues below and the Public Trust issues raised by the Wisconsin Wildlife Federation are addressed.**

1. Section 177, page 60: prohibits DNR from including in a SIP submission measures unless first promulgated as a rule -- this has the result of prohibiting the DNR from including in a SIP submission measures established by the legislature in statute or site-specific SIP measures which are common place.

2. Section 181 has four criteria for analysis. Each of the following three weaknesses are also present in Section 187 on page 65 and establish significant hurdles before the DNR can protect residents from the toxic air pollutants, such as mercury.

a. Section 181 (parts 1 & 2) page 61-2, requires DNR to establish and document specific populations that are at risk in WI before establishing an ambient air quality standard, even if similar levels of pollution have already been documented to cause harm in other states.

b. Page 63 lines 7-8 requires DNR to compare the programs in five Midwest states before establishing new standard in WI - this could be a massive undertaking and will delay timely protection of WI residents. Again, a "race to the bottom."

c. Page 63 lines 3-6, - requires "cost-effective" determination before establishing new health-based ambient air-quality standards. Under current law the time for doing a "cost-effective" determination is when deciding how to meet the health-based standard, not in setting a protective level. This proposed approach is exactly the approach the US Supreme Court rejected in *Whitman v. American Trucking Ass'n* in 2001.

3. Section 193 page 67 line 17 - allows exemption based on "low actual or potential emissions." The "actual or" invites abuse. Once a source is exempted because of low actual emissions, there will not be reporting of changes in actual emissions that could lead to human exposure to unhealthy levels of air pollution. Equipment is currently evaluated on potential to emit. Delete "actual or" so line 17 reads only with "low potential emissions."

Please feel free to contact us with questions.

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