

CO-SPONSORSHIP MEMORANDUM

TO: All Legislators

FROM: Representative Jesse Kremer
Senator Terry Moulton

DATE: Thursday, April 23

RE: Co-sponsorship of LRB-2222/1 and 2300/1, relating to repealing an air pollution rule promulgated by the DNR.



SHORT DEADLINE: Monday, April 27 at 12:00 p.m.

As part of the Assembly's "Red Tape Review" initiative, we are proposing the repeal of an unenforceable portion of our state's administrative code. NR 405.07(9)(a)2 requires facilities and projects that have the *potential* to emit greenhouse gases above certain thresholds to obtain air permits, as well as comply with "best available control technology" limitations on emissions.

NR 405.07(9)(a)2 was enacted to mirror federal Environmental Protection Agency (EPA) regulations. However, on June 23, 2014, the U.S. Supreme Court, in *Utility Air Regulatory Group v. Environmental Protection Agency*, invalidated this rule, holding that the EPA regulations requiring facilities to obtain air permits or comply with limitations solely on the basis of potential greenhouse gas emissions were illegal. By order dated April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit vacated these federal regulations.

Under Wis. Stat. §§ 285.11(16) and (17), DNR's rules in this regard must be consistent with the federal Clean Air Act. As a result of the recent court decisions, DNR's rules are now inconsistent with the federal Clean Air Act and unenforceable under current law. This bill repeals the unenforceable portion of the DNR rules, ensuring that the rules remain consistent with the federal Clean Air Act.

To be added as a co-sponsor, please contact Rep. Kremer's office at 6-9175, Sen. Moulton's office at 6-7511, or reply to this email by Monday, April 27 at 12:00 p.m. Unless otherwise indicated, co-sponsors will be added to both versions of the bill.

Analysis by the Legislative Reference Bureau

*This bill eliminates a rule promulgated by the Department of Natural Resources, relating to construction permit requirements for stationary sources that emit greenhouse gases, which is no longer valid under the Supreme Court's decision in *Utility Air Regulatory Group v. EPA*, 573 U.S. ____ (2014).*