



# Wisconsin Motor Carriers Association

Good stuff.



*"Promoting Safe and Reliable Truck Transportation"*

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January 18, 2006

To: Members,  
Assembly Natural Resources Committee

Subject: Opposition to Clearinghouse Rule 05-032

On behalf of the 1,250 members of the Wisconsin Motor Carriers Association (WMCA), I am appearing today in opposition to Clearinghouse Rule 05-032, pertaining to the provision that establishes a \$35 per-vehicle fee to the Transportation Service License fee.

The WMCA opposes this provision because it is a new fee that has not been approved by the Legislature. The fee will not only add expense, but will create additional paperwork for carriers hauling these materials.

Most trucking companies travel in numerous states and therefore must comply with a multitude of regulations and pay a variety of user fees. As a result, most fees paid by the industry are paid on a mileage pro-ration basis. The International Fuel Tax Agreement (IFTA) apportions a company's fuel tax based on mileage traveled in each state. A similar agreement, the "International Registration Plan" apportions vehicle registration fees based on mileage traveled in each state.

It is also our belief that the fee would violate the Commerce Clause of the United States Constitution. That opinion is shared by the American Trucking Associations as well. Please refer to their attached memo that concludes that:

"There is little question in our minds that if Wisconsin promulgates the flat, \$35 per-truck hazardous waste transporter fee that has been proposed, it would be vulnerable to constitutional challenge under the Commerce Clause."

It should be pointed out that a similar hazardous materials transporter fee proposed in Wisconsin by the State Emergency Response Board (SERB), was ruled unconstitutional by the Court of Appeals in 1996 because the flat per-carrier hazardous materials transporter fees at issue in that litigation failed the internal consistency test. The Wisconsin Supreme Court denied review of the case on December 17, 1996. In that case (please see attached), the Court of Appeals found:

"Flat, unapportioned hazardous materials transportation registration fee imposed by Wisconsin regulation on persons offering or transporting hazardous materials in commerce violated Commerce clause: while possible fee of \$2,000 may not have been burdensome for intrastate carrier, cost of doing business for interstate carrier would be prohibitive if same of similar fees were imposed by each state, fees were unrelated to extent of carrier's use of Wisconsin facilities or mileage traveled within state, and fee could not be justified solely because agency promulgating fee or regulation had not made studies necessary to structure constitutionality apportioned fees."

Many states have attempted to impose flat, per vehicle fees, but literally scores of them have been struck down under the principle that it violates the Commerce Clause. In most cases, local trucks derive far greater economic benefit from a flat fee and those types of fees usually discriminate against out-of-state truckers by subjecting them to a higher charge per-mile traveled.

We hope that you will oppose the provision in CR 05-032 that creates a per-vehicle transporters fee.

Sincerely,

Thomas A. Howells  
President