

November 28, 2010

Mike Friedlander  
Wisconsin Department of Natural Resources  
Bureau of Air Management (AM/7)  
101 S. Webster Street  
Madison, WI 53703

Subject: Comments on proposed revisions to NR 411 - Indirect Source permitting

Dear Mr. Friedlander,

The Wisconsin Motor Carriers Association (WMCA) is statewide trade association with 1,100 members that operate commercial motor vehicles in Wisconsin.

The WMCA has members who operate facilities regulated by the Department for air emissions and has members who operate construction equipment who would be directly regulated by this proposal. The WMCA also has a significant interest in seeing that the Department adheres to the law when proposing new air regulations, and that any new regulations avoid unnecessary costs for companies operating other diesel equipment.

The WMCA opposes the proposed changes to NR 411 relative to Indirect Source Permitting for the following reasons:

1. **THE PROPOSED REGULATION OF DIESEL EXHAUST FROM CONSTRUCTION EQUIPMENT IS PREEMPTED BY FEDERAL LAW** - The proposed rule is clearly intended to expand the scope of indirect source permitting to include the regulation of diesel exhaust emissions from non-road construction equipment. However, state regulation of non-road diesel engines is very clearly preempted under s. 209(e) of the federal Clean Air Act. That provision of federal law prohibits every state from taking any action to "adopt or attempt to enforce any standard or other requirement relating to the control of emissions" from non-road engines and vehicles, including construction equipment.
2. **THE PROPOSED REGULATION OF DIESEL EXHAUST FROM CONSTRUCTION EQUIPMENT IS NOT AUTHORIZED BY STATE STATUTE** - The Department's air permitting authority is limited to stationary sources under s. 285.60. Although the definition of "stationary source" under s. 285.01(41) includes indirect sources of emissions, the definition explicitly excludes mobile sources. Specifically, the definition states "A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving."

3. **THE LEGISLATURE HAS STATUTORILY LIMITED THE DEPARTMENT’S POWERS WITH RESPECT TO MOBILE SOURCES TO CONDUCTING STUDIES AND MAKING RECOMMENDATIONS** – It should be noted that the Legislature very specifically limited the Department’s powers with respect to mobile sources to the non-regulatory functions of conducting studies and making policy recommendations. The regulation of construction equipment and associated diesel exhaust emissions proposed in this rule are clearly outside the scope of the powers authorized by the Legislature under s. 285.13(4).
4. **CARBON MONOXIDE REGULATIONS ARE NO LONGER NEEDED** - The existing NR 411 permitting requirements were first put into place in the late 1970’s to address a carbon monoxide nonattainment problem in the City of Milwaukee. However, it has been decades since Wisconsin has been even close to violating the ambient air quality standard for carbon monoxide. The Department’s own analysis makes clear that carbon monoxide emissions are no longer a pollutant of concern due to advancements in motor vehicle emission technology, and the indirect source permitting program should shift its focus elsewhere.
5. **NEIGHBORING STATES DO NOT REGULATE INDIRECT SOURCES – NOR SHOULD WISCONSIN** - None of the states surrounding Wisconsin requires indirect source permits, a circumstance which places economic development projects in our state on an unlevel playing field. Minnesota, which previously had a much more profound carbon monoxide nonattainment problem than Wisconsin, has discontinued its indirect source permitting program. Rather than inventing new ways to regulate and thereby increase the cost of doing business in Wisconsin, the Department should follow Minnesota’s lead and repeal this outdated and unnecessary regulatory program.

Members of the Wisconsin Motor Carriers Association oppose the Department’s proposed changes to NR 411 and hope the Department will reconsider the decision to pursue this expensive, ineffective and unlawful rule package at a time when Wisconsin is already struggling to create and retain jobs.

Sincerely,

Thomas A. Howells  
President