

SUBJECT:

Request adoption of Board Order AM-13-10, proposed rules affecting NR 484 and 485 pertaining to the vehicle inspection and maintenance program

FOR: AUGUST, 2010 BOARD MEETING

TO BE PRESENTED BY: Larry Bruss, Chief, Regional Pollutants and Mobile Sources Section, Bureau of Air Management

SUMMARY:

Wisconsin's vehicle inspection and maintenance (I/M) program started in 1984 and is currently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Vehicles failing a reinspection are currently eligible for a waiver of compliance if the cost of repairs to the vehicle exceeds the limits in s. NR 485.045, Wis. Adm. Code, and if other conditions specified in ch. Trans 131, Wis. Adm. Code, are met.

Under s. NR 485.045, Wis. Adm. Code, the repair cost limit is currently \$788, as of July 1, 2010, in the six program counties other than Sheboygan. (This limit is adjusted annually for inflation each July 1.) In Sheboygan County the limit is fixed at \$200. Sheboygan County has a lower limit since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. Presently, however, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

The DNR is proposing to expand the coverage of the inflation-adjusted repair cost limit to all counties subject to the I/M program, thereby raising the lower limit for Sheboygan County. This proposal is equitable to the residents of all seven counties and is a change from the I/M program's previous practice from July, 2001, through June, 2009, of not allowing any repair cost waivers at all for the model year 1996 and newer cars and light trucks.

The DNR is also proposing to repeal emission limitations in s. NR 485.04, Wis. Adm. Code, for tests that are obsolete due to changes in motor vehicle technology.

The affected entities are the owners of non-exempt vehicles registered in Sheboygan County and the vehicle repair facilities that repair those vehicles in response to a failed I/M inspection.

If the revisions are not adopted, the I/M-related repairs for the vehicles in Sheboygan County would be less costly and less effective than those for the vehicles in the other I/M counties. Additionally, if this proposed rule is not adopted the DNR would have to work with DOT and the local planning organization to find other ways to reduce the motor vehicle emissions in Sheboygan County. Such programs could include reducing the speed limit on major roadways in the County or stricter speed enforcement.

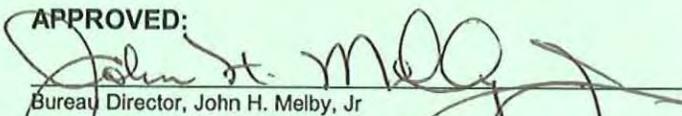
RECOMMENDATION: That the Board adopt Order AM-13-10.

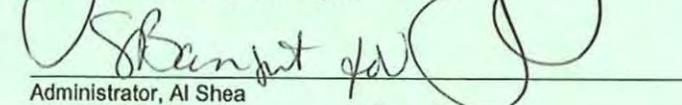
LIST OF ATTACHED MATERIALS:

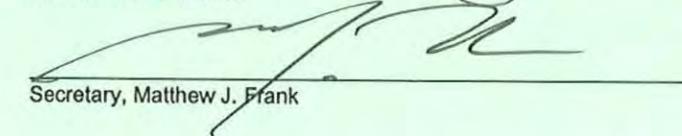
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:


 Bureau Director, John H. Melby, Jr


 Administrator, Al Shea


 Secretary, Matthew J. Frank

7/19/10
 Date

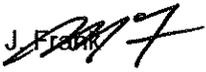
7/19/10
 Date

7-22-10
 Date

cc: Laurie Ross - AD/8 Linda Haddix - LS/8 Chris Bovee - AM/7
 Tom Steidl - LS/8 R. Eckdale - AM/7

DATE: July 19, 2010

TO: Natural Resources Board Members

FROM: Matthew J. Frank 

SUBJECT: Background Memo for Board Order AM-13-10, Proposed Rules Affecting NR 484 and 485, Pertaining to the Vehicle Inspection and Maintenance Program.

A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. Prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

Why is this rule being proposed?

The Department is proposing this rule to address the significant ozone air quality problem in Sheboygan County. Currently Sheboygan County has the highest ozone concentrations in Wisconsin and the majority of the problem stems from motor vehicle emissions. In response to that problem, the Department proposes to raise the repair cost limit for Sheboygan County, making it identical to the other counties with an I/M program. Additionally, the Department proposes to make several other minor changes to the rule to eliminate several tests that are not necessary.

For all I/M program counties except Sheboygan, the repair cost limit is currently \$788, as of July 1, 2010, (\$450 in 1989, adjusted annually each July 1 for inflation, using the federal consumer price index). In Sheboygan County the repair cost limit is fixed at \$200 for vehicles of a 1981 or newer model year and at \$75 for older vehicles. Sheboygan County has lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the use of federally-mandated reformulated gasoline in the other six counties.

From 2001 through June, 2009, the I/M program did not issue any cost waivers for vehicles failing the OBD-II inspection. Cost waivers were not issued for OBD-II failures because the Wisconsin Department of Transportation had interpreted s. Trans 131.05(1)(j), Wis. Adm. Code, to mean that to pass a waiver equipment inspection, which is a prerequisite for receiving a waiver, the OBD-II system's malfunction indicator light (MIL) must be operational and non-active (that is, not lit). Such a condition could not exist when a vehicle fails the OBD-II inspection. As a result, no cost waivers were issued for vehicles failing the OBD-II inspection and once the I/M program became OBD-II-only in July of 2008, the program did not issue any cost waivers at all. Therefore, from 2001 through June 2009, motorists in Sheboygan County

with 1995 and newer cars had to pay the full cost of all emissions related repairs in order to get their cars registered.

Prior to the I/M program becoming OBD-II-only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD-II test, the DOT's Office of General Counsel has determined that DOT's prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the DNR is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties would enable Sheboygan County to achieve the emission levels projected in the SIP. If the proposed rule is not adopted, DNR would have to work with DOT and the Bay Lake Regional Planning Commission to develop other programs to limit motor vehicle emissions in Sheboygan. These programs could include reducing the speed limit on major roadways or stricter speed enforcement in Sheboygan County.

See the Table below for an abbreviated history of the I/M program and the repair cost limit for a waiver of compliance.

Abbreviated History of the I/M Program and Repair Cost Limit

Date	I/M Program Changes
1984	I/M tailpipe testing begins in six counties (Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha Counties) with a repair cost limit set at \$55 for a waiver of compliance.
1993	Repair cost limit for a waiver of compliance increased to \$200 for 1981 and newer model year vehicles and to \$75 for older vehicles.
1994	Tailpipe testing begins in Sheboygan County with the \$200/\$75 repair cost limit for a waiver of compliance. In the six-county area, repair cost limit for a waiver of compliance increased to \$450.
1995	Enhanced transient tailpipe testing (IM240 test) begins in all seven I/M program counties.
2001	OBD-II testing added to the I/M program for 1996 and newer vehicles. Vehicles subject to OBD-II test are not eligible for a waiver of compliance. For 1995 and older vehicles subject to tailpipe testing, the repair cost limits remain at \$450 for the six-county area and \$200/\$75 for Sheboygan County.
2008	I/M program becomes an OBD-II-only test program. No waiver of compliance is provided.
2009	DOT changes policy on whether OBD-II vehicles are eligible for a waiver of compliance. The repair cost limits for a waiver of compliance are now \$788 for OBD-II vehicles in the six-county area and \$200 in Sheboygan County.

Summary of the rules

The DNR is proposing to expand the coverage of the inflation-adjusted (currently \$788, as of July 1, 2010) repair cost limit to all counties subject to the I/M program, thereby raising the lower limit for Sheboygan County.

The DNR is also proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
- Evaporative system purge test
- Steady-state tests

These tests provide no significant additional information regarding vehicle emission performance beyond that already provided by the OBD-II scans. Furthermore, the two evaporative system tests have never been conducted by the I/M program and are intrusive, involving the cutting or crimping of fuel vapor lines. The steady-state tests were effective early in the I/M program, but are no longer conducted. These tests are poor at identifying and diagnosing emission problems in today's vehicles.

How does this proposal affect existing policy?

Currently the repair cost limit for vehicles in Sheboygan County is fixed at \$200 while the limit for vehicles in the other six I/M program counties is \$788, with an adjustment each year for inflation. The proposal will, in effect, raise the repair cost limit for vehicles in Sheboygan County to the same amount used for the other six counties. However, even with this increase, the I/M-related repair costs for vehicles in Sheboygan County would not exceed what the costs would have been under the I/M program's practice from July, 2001, through June, 2009, when no cost waivers at all were allowed for vehicles failing the OBD-II inspection.

If the proposed rule is not adopted, DNR would have to work with DOT and the Bay Lake Regional Planning Commission to develop other programs to limit motor vehicle emissions in Sheboygan. These programs could include reducing the speed limit on major roadways or stricter speed enforcement in Sheboygan County.

Hearing Synopsis and Summary of Comments

The public hearing for the proposed rule was held on June 10, 2010, in Sheboygan, Wisconsin. The number of appearances was two. Both of these people are residents of Sheboygan County and were commenting as individuals rather than as representatives of a business or other organization. Both were in opposition to the proposed rule. They opposed raising the repair cost limit and maintained that the I/M program is not necessary in Sheboygan County since most of the emissions come from outside of Sheboygan County.

The public comment period for the proposed rule ended on June 21, 2010. In addition to the two people commenting at the public hearing, the department received written comments from 10 people. At least seven of these 10 are residents of Sheboygan County. As was the case at the hearing, all 10 were commenting as individuals rather than as representatives of a business or other organization. Nine of these 10 commenters expressed opposition to either raising the repair cost limit in Sheboygan County or conducting the I/M program in Sheboygan County or both.

Fortunately opposition to the rule change was modest, since the negative effects of not adopting the rule are quite problematic. Not raising the repair cost limit in Sheboygan County to the level in effect in the other I/M program counties would jeopardize Sheboygan County from meeting the emission budget requirements in the state implementation plan. The rule as proposed is equitable to the residents of all seven I/M counties and is a change from the I/M program's previous practice from July, 2001, through June, 2009, of not allowing any cost waivers at all for the OBD-II-equipped vehicles.

The I/M program is required in Sheboygan County under the federal Clean Air Act since Sheboygan County is a moderate nonattainment area. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area. Although much of the emissions do originate outside of Sheboygan County, those originating in Sheboygan County also significantly contribute to ozone formation both within Sheboygan County and downwind of Sheboygan County.

The remaining commenter advocated more options for taking the vehicle to the inspection to reduce the need for the vehicle owner to make a special trip. The commenter suggested allowing inspections at local garages and allowing the inspection to occur within a four month time period. These changes, however, require statutory changes and are outside the scope of DNR rulemaking authority.

The Wisconsin Legislative Council Rules Clearinghouse has submitted their report on the proposed rule. They had no comments.

Information on the environmental analysis

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because the DNR considers this proposal to be a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage, and normally does not involve unresolved conflicts in the use of available resources.

Final Regulatory Flexibility Analysis

Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non-exempt vehicles registered in Sheboygan County. The DNR estimates that the proposed rule will increase the average repair cost per failed vehicle in Sheboygan County by \$216.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

The proposed rule will not impose any new requirements on small businesses.

Fiscal Estimate — 2009 Session

<input type="checkbox"/> Original	<input checked="" type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number ch. NR 485 (AM-13-10)

Subject
 Proposed rules affecting NR 484 and 485, pertaining to the vehicle inspection and maintenance program.

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget.
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Decrease Costs

Local: No Local Government Costs

1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input checked="" type="checkbox"/> School Districts <input checked="" type="checkbox"/> WTCS Districts

Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations None
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Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

Wisconsin's vehicle inspection and maintenance (I/M) program started in 1984 and is currently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Vehicles failing a reinspection are currently eligible for a waiver of compliance if the cost of repairs to the vehicle exceeds the limits in s. NR 485.045, Wis. Adm. Code, and if other conditions specified in ch. Trans 131, Wis. Adm. Code, are met.

Under s. NR 485.045, Wis. Adm. Code, the repair cost limit is currently \$788 in the six program counties other than Sheboygan. (This limit is adjusted annually for inflation each July 1.) In Sheboygan County the limit is fixed at \$200. Sheboygan County has a lower limit since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. Presently, however, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

The DNR is proposing to expand the coverage of the inflation-adjusted repair cost limit to all counties subject to the I/M program, thereby raising the lower limit for Sheboygan County. This proposal is equitable to the residents of all seven counties and is a change from the I/M program's previous practice from July, 2001, through June, 2009, of not allowing any repair cost waivers at all for the model year 1996 and newer cars and light trucks.

The DNR is also proposing to repeal emission limitations in s. NR 485.04, Wis. Adm. Code, for tests that are obsolete due to changes in motor vehicle technology. These tests are no longer conducted and this change has no fiscal effect.

The affected entities are the owners of non-exempt vehicles registered in Sheboygan County and the vehicle repair facilities that repair those vehicles in response to a failed I/M inspection. If the revisions are not adopted, the I/M-related repairs for the vehicles in Sheboygan County would be less costly and less effective than those for the vehicles in the other I/M counties.

Long-Range Fiscal Implications

None

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-06-10

Fiscal Estimate — 2009 Session

**Page 2 Assumptions Narrative
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ch. NR 485 (AM-13-10)

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate:

The only fiscal effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County than what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be \$416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only \$200 for vehicles in Sheboygan County and the same \$416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by \$216. Since about seven percent of the vehicles fail the initial inspection and since vehicles are inspected every other year, the estimated annual average additional repair cost per inspected vehicle in Sheboygan County is: $\$216 * 0.07 * 0.5 = \7.56 .

The DNR estimates that the number of state and local government vehicles registered in Sheboygan County which are subject to inspection is 565 (115 for state government and 450 for local governments). Thus the total increased costs are $\$7.56 * 115 = \870 for state government and $\$7.56 * 450 = \3400 for local governments.

The proposed rule would have some fiscal effect on the private sector. The affected entities would be those having vehicles registered in Sheboygan County which are subject to inspection. The estimated fiscal effect is an average increase in annual repair costs of \$7.56 per inspected vehicle. Thus, the estimated fiscal effect for an entity having 100 vehicles registered in Sheboygan County and subject to inspection is \$756 per year.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

NOTE: The reason for updating this fiscal estimate is to cite the new value of the inflation-adjusted repair cost limit for the six I/M program counties other than Sheboygan. On July 1, 2010, this limit was adjusted from \$787 to \$788.

Fiscal Estimate Worksheet — 2009 Session

Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ch. NR 485 (AM-13-10)

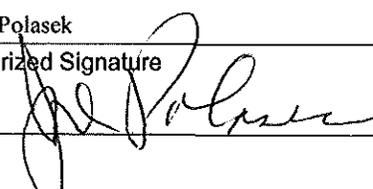
Subject
 Peoposed rules affecting NR 484 and 485, pertaining to the vehicle inspection and maintenance program.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs		870	-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ 870	\$ -
B. State Costs by Source of Funds			
GPR		\$ 870	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 870	\$ 3,400
Net Change in Revenues	\$	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-06-10

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AND AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 484.04 (7), 485.02 (3), (4), (8), (9) and (18), 485.04 (3), (4), (6), (7) (a) (title) and (b), (8), Table 2 and Table 4, and 485.045 (1) (b) and (c); to **renumber and amend** NR 485.04 (7) (a), and 485.045 (1) (intro.); and to **amend** NR 485.04 (2) (intro.) and (9), relating to the vehicle inspection and maintenance program and affecting small business.

AM-13-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: ss. 110.20(13)(b), 285.11(6) and 285.30(2), Wis. Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 110.20(13)(b), 227.11(2)(a), 285.11(1) and 285.30(2), Wis. Stats.

3. Explanation of agency authority: Section 110.20(13)(b), Stats., gives the Department authority to establish the amount of the repair cost limit for the vehicle inspection and maintenance program. Section 227.11(2)(a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.30(2), Stats., provides authority for the Department to adopt and revise emission limitations for motor vehicles.

4. Related statute or rule: The related statutes are ss. 110.20, 110.21 and 285.30, Stats. These sections specify requirements for motor vehicle emission inspections in Wisconsin. The first two sections apply to the Department of Transportation and the third section applies to the Department of Natural Resources. A related rule is ch. Trans 131, Wis. Adm. Code. This chapter establishes the Department of Transportation's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

5. Plain language analysis:

A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. However, prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

This rule is being proposed in response to two issues relating to the issuing of cost waivers: (1) the lower repair cost limits currently in effect for vehicles registered in Sheboygan County and (2) the I/M program's policy change to allow cost waivers for vehicles failing the OBD-II inspection, starting July, 2009. Descriptions of these two issues follow:

Sheboygan County:

For all I/M program counties except Sheboygan, the repair cost limit is currently \$788 (\$450 in 1989, adjusted annually each July 1 for inflation, using the federal consumer price index). In Sheboygan County the repair cost limit is fixed at \$200 for vehicles of a 1981 or newer model year and at \$75 for older vehicles. Sheboygan County has had lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the aid of federally-mandated reformulated gasoline in the other six counties. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

OBD:

Prior to July, 2009, the I/M program did not issue any cost waivers for vehicles failing the OBD-II inspection. Cost waivers were not issued for OBD-II failures because the Wisconsin Department of Transportation had interpreted s. Trans 131.05(1)(j), Wis. Adm. Code, to mean that to pass a waiver equipment inspection, which is a prerequisite for receiving a waiver, the OBD-II system's malfunction indicator light (MIL) must be operational and non-active (that is, not lit). Such a condition could not exist when a vehicle fails the OBD-II inspection. Therefore, no cost waivers were issued for vehicles failing the OBD-II inspection and once the I/M program became OBD-II-only in July of 2008, the program did not issue any cost waivers at all.

Prior to the I/M program becoming OBD-II-only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD-II test, the DOT's Office of General Counsel has determined that DOT's prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the DNR is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties would enable Sheboygan County to achieve the emission levels projected in the SIP.

Rule Summary:

The DNR is proposing to expand the coverage of the inflation-adjusted, currently \$788, repair cost limit in s. NR 485.045, Wis. Adm. Code, to all counties subject to the I/M program, thereby raising the lower limits for Sheboygan County.

The DNR is also proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
- Evaporative system purge test
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These tests provide no significant additional information regarding vehicle emission performance beyond that already provided by the OBD-II scans. Furthermore, the two evaporative system tests have never been conducted by the I/M program and are intrusive, involving the cutting or crimping of fuel vapor lines. The steady-state tests were effective early in the I/M program, but are no longer conducted. These tests are poor at identifying and diagnosing emission problems in today's vehicles.

6. Summary of, and comparison with, existing or proposed federal regulation:

The proposed rule is consistent with the federal clean air act and the federal regulations for motor vehicle inspection and maintenance programs under that act. These regulations are found in 40 CFR 51.350-51.373.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Illinois is the only adjacent state that has a vehicle inspection and maintenance program. In Illinois the repair cost limit for a waiver is \$450. Thus, the state of Illinois has not adjusted its repair cost limit for the increase in the federal consumer price index since 1989.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

The U. S. Environmental Protection Agency (EPA) has issued guidance for adjusting the repair cost limit for inflation: Calculation of the I/M Waiver Adjusted for CPI, Office of Mobile Sources, U.S. EPA, EPA 420-B-99-011, December, 1999, <http://www.epa.gov/otaq/epg/b99011.pdf>. The DNR has followed this guidance for calculating the repair cost limit. The consumer price index (CPI) adjustment for 1989 to 2009 was 1.7520, resulting in a repair cost limit for July, 2010, through June, 2011, of $\$450 * 1.7520 = \788 .

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

The only economic effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County that what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be \$416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only \$200 for vehicles in Sheboygan County and the same \$416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by \$216.

10. Effect on small business:

Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non-exempt vehicles registered in Sheboygan County.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

The proposed rule will not impose any new requirements on small businesses.

11. Agency contact person:

Christopher Bovee, DNR – Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, telephone number: (608) 266-5542; e-mail address: christopher.bovee@wisconsin.gov

SECTION 1. NR 484.04 (7) is repealed.

SECTION 2. NR 485.02 (3), (4), (8), (9) and (18) are repealed.

SECTION 3. NR 485.04 (2) (intro.) is amended to read:

NR 485.04 (2) (intro.) Except as provided in sub. (7) (a), any motor vehicle undergoing the transient emission test may not emit from the exhaust system:

SECTION 4. NR 485.04 (3), (4), (6), and (7) (a) (title) are repealed.

SECTION 5. NR 485.04 (7) (a) is renumbered NR 485.04 (7) and as renumbered NR 485.04 (7) (title) is amended to read:

NR 485.04 (7) (title) FAST-PASS TRANSIENT EMISSION TEST.

SECTION 6. NR 485.04 (7) (b), (8) and Table 2 and Table 4 are repealed.

SECTION 7. NR 485.04 (9) is amended to read:

NR 485.04 (9) EFFECTIVE DATE FOR OXIDES OF NITROGEN REQUIREMENTS. An inspection under s. 110.20 (6) (a), Stats., shall include an inspection for emissions of oxides of nitrogen. However, the emission limitations for oxides of nitrogen in subs. (2) (c) and ~~(7) (a) 3.~~ (7) (c) shall apply for compliance purposes only to inspections conducted after May 1, 2001.

SECTION 8. NR 485.045 (1) (intro.) is renumbered NR 485.045 (1) and as renumbered is amended to read:

NR 485.045 (1) REPAIR COST LIMIT. For vehicles subject to the motor vehicle emission inspection program under s. 110.20 (6), Stats., the repair cost limit for determining eligibility for a waiver of compliance under s. 110.20 (13), Stats., from the emission limitations of s. NR 485.04, shall be established in accordance with 42 USC 7511a (b) (4) or (c) (3) (C), and regulations promulgated thereunder, and shall equal the following amounts: higher of \$450 or an amount calculated from a base of \$450 and adjusted annually, beginning in 1989, by the percentage, if any, by which the consumer price

index, as defined in section 502 (b) (3) (B) (v) of the Act (42 USC 7661a (b) (3) (B) (v)), has been adjusted.

SECTION 9. NR 485.045(1) (b) and (c) are repealed.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)