

**SUBJECT:**

Request authorization for public hearing for Board Order AM-13-10, proposed rules affecting NR 484 and 485 pertaining to the vehicle inspection and maintenance program

**FOR: APRIL 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 \$787 (adjusted annually for inflation) in the six program counties other than Sheboygan. 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.

Transportation stakeholders may be interested in the proposed rule's impact on the safety margins for the motor vehicle emission budgets in the air quality plan.

A summary of the Board's prior actions related to this rule is provided in the attached background memo.

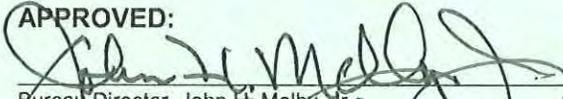
**RECOMMENDATION:** That the Board authorize the Department to hold hearings on Order AM-13-10.

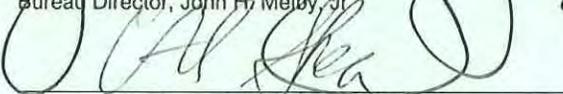
**LIST OF ATTACHED MATERIALS:**

- 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

3/19/2010  
 Date

3/22/10  
 Date

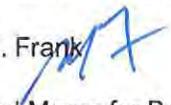
3-29-10  
 Date

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

## CORRESPONDENCE/MEMORANDUM

DATE: March 24, 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 \$787 (\$450 in 1989, adjusted annually 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 aid of federally-mandated reformulated gasoline in the other six counties.

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.

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 \$787, 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 proposal is not adopted, the DNR may need to revise the SIP to offset the increased motor vehicle emissions in Sheboygan County.

#### **Has the Board dealt with these issues before? If so, when and why?**

The Board has dealt with several rule revisions pertaining to the I/M program. In 1982, the original emission limitations ("cutpoints") for the steady-state idle test and the original exempt classes of vehicles were promulgated. In 1986, the cutpoints were revised to improve the effectiveness of the program. In 1989, requirements for inspections for tampered air pollution control equipment were promulgated. In 1993, the repair cost limit was raised to meet requirements in the federal Clean Air Act. In 1995, cutpoints were promulgated for the transient emission test and evaporative system tests, the exempt vehicle classes were revised, and the number of required inspections for tampered emission control equipment was reduced. In 1997, 1998 and 1999, the cutpoints for the transient emission test were relaxed for vehicles of model year 1990 and older. In 2000, the cutpoints for oxides of nitrogen (NOx) were changed from advisory to enforceable limits, effective May 2001. Finally, in 2005, cutpoints for NOx were relaxed for some groups of trucks and older cars, new cutpoints were established for model year 2005 and newer heavy-duty trucks, cutpoints were simplified for some categories of model year 1994 to 1996 vehicles, and catalytic converter replacement provisions were made consistent with federal emission warranty provisions.

#### **Who will be impacted by the proposed rule? How will they be impacted?**

The proposed rule will impact 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 proposed revisions are adopted, the I/M related repair costs for vehicles in Sheboygan County would be similar to those in the other I/M counties. However, 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.

**Fiscal Estimate — 2009 Session**

<input checked="" type="checkbox"/> Original	<input 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.

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive     Mandatory  
2.  Decrease Costs  
 Permissive     Mandatory  
3.  Increase Revenues  
 Permissive     Mandatory  
4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

None

**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 \$787 (adjusted annually for inflation) in the six program counties other than Sheboygan. 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.

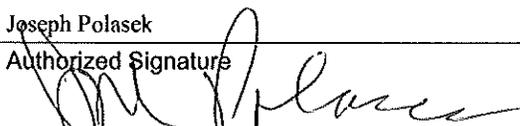
The DNR is proposing to expand the coverage of the inflation-adjusted repair cost limit to all counties subject to the I/M program, thereby raising the lower limit for Sheboygan County. This proposal is equitable to the residents of all seven counties and is a change from the I/M program's previous practice 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) 03-19-10

### 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**

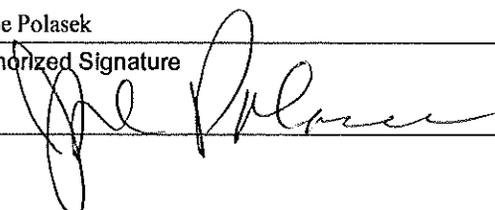
Proposed rules affecting NR 484 and 485, pertaining to the vehicle inspection and maintenance program.

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
<b>A. State Costs by Category</b>		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE )	( - FTE )
State Operations — Other Costs	870	-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>Total State Costs by Category</b>	\$ 870	\$ -
<b>B. State Costs by Source of Funds</b>		
GPR	\$ 870	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>Total State Revenues</b>	\$	\$ -

**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) 03-19-10

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

The Wisconsin Natural Resources Board proposes 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. 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:

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 2008 was 1.7487, resulting in a repair cost limit for July, 2009, through June, 2010, of  $\$450 * 1.7487 = \$787$ .

**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](mailto:christopher.bovee@wisconsin.gov)

**12. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax or email to:  
Christopher Bovee  
Department of Natural Resources  
Bureau of Air Management  
PO Box 7921

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)