2013 DRAFTING REQUEST

Bill

Received:	**1/22/2014**	Received By:	**btradewe**
Wanted:	**As time permits**	Same as LRB:	**-3079**
For:	**Amy Loudenbeck (608) 266-9967**	By/Representing:	**Lonna Morouney**
May Contact:	**Marney Hoefer** **Paul Kent**	Drafter:	**btradewe**
		Addl. Drafters:	
Subject:	**Environment - water quality**	Extra Copies:	**RNK**

Submit via email: **YES**
Requester's email: **Rep.Loudenbeck@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	btradewe 1/22/2014	csicilia 1/22/2014		_____ _____	srose 1/22/2014	srose 1/22/2014	State S&L

FE Sent For:

At Intro.

<END>

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Please jacket for Assembly

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	btradewe	/1 cjs	/1 cjs				State S&L
FE Sent For:		1/21/14	1/21 1/24				

<END>

Tradewell, Becky

From: Morouney, Lonna
Sent: Wednesday, January 22, 2014 9:50 AM
To: Tradewell, Becky
Subject: RE: LRB 3079

Yes, thank you

Lonna Morouney
Committee Clerk for Assembly Committee on Workforce Development
Office of Representative Amy Loudenbeck
31st Assembly District

Office 209 North
PO Box 8952
Madison, WI 53708
608-266-9967 Toll free: (888) 529-0031
Lonna.morouney@legis.wi.gov

From: Tradewell, Becky
Sent: Wednesday, January 22, 2014 9:43 AM
To: Morouney, Lonna
Subject: FW: LRB 3079

Lonna,

Should I go ahead and draft the assembly companion for Rep. Loudenbeck now? If so, would you like to have it jacketed right away?

Becky Tradewell

From: Smith, Ryan
Sent: Wednesday, January 22, 2014 9:20 AM
To: Tradewell, Becky
Cc: Morouney, Lonna
Subject: LRB 3079

Becky,

We are releasing LRB 3079 to Rep. Loudenbeck for an Assembly companion.

Thanks,

Ryan Smith
Chief of Staff
Office of Sen. Robert Cowles
800-334-1465

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-3079/1
RCT:cjs:rs

2013 BILL

AN ACT ***to amend*** 283.63 (1) (am) and 283.63 (4); and ***to create*** 283.13 (7) and 283.16 of the statutes; **relating to:** adaptive management plans for reducing discharges of phosphorus and total suspended solids to the waters of the state and a statewide variance to the water quality standard for phosphorus for certain dischargers.

Analysis by the Legislative Reference Bureau

This bill provides for a variance to limits on the amount of phosphorus allowed in discharges to water bodies that contain excessive amounts of phosphorus, if conditions specified in the bill are met. The bill also authorizes the use of adaptive management, explained below, to comply with water quality standards for phosphorus and total suspended solids.

Water quality standards and effluent limitations

The federal Clean Water Act allows the federal Environmental Protection Agency (EPA) to delegate responsibilities under the act, including issuing wastewater discharge permits for point sources (factories and sewage treatment plants, for example), to a state if the state's laws comply with requirements in the act. EPA has delegated these responsibilities to this state.

Consistent with the Clean Water Act, current state law requires the Department of Natural Resources (DNR) to promulgate rules setting water quality standards for the waters of the state. The standards include criteria for specific

pollutants. A criterion may be narrative (describing the characteristics that the water should have) or numeric (specifying the maximum concentration of a pollutant).

Under current federal and state law, wastewater discharge permits include restrictions, called effluent limitations, on the amount of various pollutants that may be discharged. One type of effluent limitation is applicable without regard to the quality of the receiving water body and is based on the level of control achieved using treatment technology that is reasonably available (considering cost, among other things) for limiting the discharge of a pollutant. If this kind of limitation (called a technology based effluent limitation) is not sufficient to ensure that a water quality standard for a pollutant will be met in a particular water body, permits for sources that discharge into the water body must generally contain effluent limitations for the pollutant that are more stringent than the technology based effluent limitation and that are designed to ensure that the water quality standard will be met. This kind of limitation is called a water quality based effluent limitation.

Current law allows DNR to grant a permittee a variance to a water quality based effluent limitation if the permittee demonstrates that complying with the effluent limitation is not feasible for one of several reasons, including that applying the effluent limitation to the source would cause substantial and widespread adverse social and economic impacts in the area where the source is located. The term of a variance may not exceed five years. A variance may be renewed, but only for as long as it remains infeasible for the source to comply with the water quality based effluent limitation. Variances are subject to review and approval by EPA.

Phosphorus water quality rules

In 2010, DNR promulgated rules adding a numerical water quality criterion to the water quality standard for phosphorus. Some water bodies in Wisconsin do not comply with the water quality standard for phosphorus. DNR's rules include some options for sources that might have difficulty complying with a water quality based effluent limitation for phosphorus, including extended schedules for achieving compliance.

The options in the phosphorus rule also include a variance to water quality based effluent limitations for stabilization pond and lagoon wastewater treatment systems, which DNR indicates primarily serve small communities and small industries. A permittee with one of these systems must provide information showing that compliance would cause substantial and widespread adverse social and economic impacts in the area where the system is located. If the variance is granted, the permit must include an effluent limitation based on the best past performance of the source with regard to phosphorus discharges and a requirement that the permittee investigate techniques that would enable compliance with a water quality based effluent limitation.

Statewide variance for phosphorus discharges

This bill requires the Department of Administration (DOA), in consultation with DNR, to consider the costs of compliance with water quality based effluent limitations for phosphorus by sources that cannot achieve compliance without making major facility upgrades. A major facility upgrade is the addition of new

treatment equipment and a new treatment process. If DOA determines, after public notice and consideration of public comments, that compliance by these sources is not feasible because it would cause substantial and widespread adverse social and economic impacts on a statewide basis, the bill provides for a variance to a water quality based effluent limitation for phosphorus for a source that was covered by a permit before the phosphorus water quality standard took effect if the permittee certifies that the source cannot comply with the effluent limitation without a major facility upgrade.

Under the bill, if a permittee receives the variance, DNR must include in the the permit interim effluent limitations for phosphorus that are generally lower in each successive permit term and must require the source to achieve compliance with the water quality based effluent limitation by the end of the fourth permit term for which DNR approves the variance (generally within 20 years). DNR must also require the implementation of the permittee's choice of three kinds of measures to reduce the amount of phosphorus entering the waters of the state.

The measures from which a permittee that receives the variance may choose are constructing a project or implementing a plan, approved by DNR, to reduce phosphorus pollution from other sources in the basin in which the source is located in an amount equal to the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill; having another person construct such a project or implement such a plan, also approved by DNR; or making payments to counties in the basin to provide cost sharing for projects that enable agricultural sources of nonpoint phosphorus pollution (runoff) to comply with state standards for reducing runoff or for staff to implement projects that reduce runoff. The payments are initially $50 times the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill. DNR adjusts the amount per pound based on increases in the consumer price index. A county is not required to accept these payments.

If DOA initially determines that compliance with water quality based effluent limitations for phosphorus by sources that cannot achieve compliance without making major facility upgrades is infeasible, the bill requires DOA, in consultation with DNR, to review the determination every five years. If DOA finds that the determination is no longer accurate, the variance terminates. As part of this review, the bill also requires DOA to determine whether cost–effective technology is available that would allow sources to comply with more stringent interim limitations than those specified in the bill. If so, DNR must include those more stringent interim limitations in permits when they are renewed.

Adaptive management

Adaptive management is a method for achieving compliance with a water quality standard in a water body that contains excessive amounts of a pollutant. Under adaptive management, a permittee who is subject to a water quality based effluent limitation implements a plan under which the permittee works with others to reduce the amount of pollution from various point sources and nonpoint sources and uses information from monitoring, modeling, and other sources to adjust the plan as needed. The permittee is subject to less restrictive effluent limitations while

the adaptive management plan is being implemented and less restrictive pollutant limits may continue to apply if the water quality standard is achieved.

The bill authorizes DNR to allow a permittee to use adaptive management to achieve compliance with the water quality standard for phosphorus or total suspended solids (particles in the water) and, if it does so, to allow the permittee four permit terms to achieve compliance.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 283.13 (7) of the statutes is created to read:

2 283.13 **(7)** ADAPTIVE MANAGEMENT. (a) In this subsection, "adaptive
3 management option" means an approach to achieving compliance with a water
4 quality standard adopted under s. 281.15 or a total maximum daily load under 33
5 USC 1313 (d) (1) (C) approved by the federal environmental protection agency under
6 which a permittee implements a plan to achieve the water quality standard or total
7 maximum daily load through verifiable reductions in the amount of water pollution
8 from point sources and nonpoint sources, as defined in s. 281.16 (1) (e), in a basin or
9 other area specified by the department and uses monitoring data, modeling, and
10 other appropriate information to adjust the plan if needed to achieve compliance.

11 (b) The department may authorize a permittee to use an adaptive management
12 option to achieve compliance with the water quality standard for phosphorus or an
13 approved total maximum daily load for total suspended solids, and if it does so, the
14 department may specify a date under sub. (5) that provides 4 permit terms for the
15 permittee to comply with its water quality based effluent limitation for phosphorus
16 or total suspended solids.

17 **SECTION 2.** 283.16 of the statutes is created to read:

1 **283.16 Statewide variance for phosphorus. (1)** DEFINITIONS. In this
2 section:
3 (a) "Basin" means the drainage area identified by an 8–digit hydrologic unit
4 code, as determined by the U.S. Geological Survey.
5 (b) "Category" means a class or category of point sources specified by the
6 department under s. 283.13 (1).
7 (d) "Existing source" means a point source that was covered by a permit on
8 December 1, 2010.
9 (e) "Major facility upgrade" means the addition of new treatment equipment
10 and a new treatment process.
11 (g) "Nonpoint source" has the meaning given in s. 281.16 (1) (e).
12 (h) "Target value" means the number of pounds of phosphorus that would be
13 discharged from a point source during a year if the average concentration of
14 phosphorus in the effluent discharged by the point source during the year was 0.2
15 milligrams per liter.
16 (i) "Water quality based effluent limitation" means an effluent limitation under
17 s. 283.13 (5), including an effluent limitation based on a total maximum daily load
18 under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection
19 agency.
20 **(2)** INITIAL DETERMINATION CONCERNING THE WATER QUALITY STANDARD FOR
21 PHOSPHORUS. (a) The department of administration, in consultation with the
22 department of natural resources, shall determine whether attaining the water
23 quality standard for phosphorus, adopted under s. 281.15, through compliance with
24 water quality based effluent limitations by point sources that cannot achieve
25 compliance without major facility upgrades is not feasible because it would cause

1 substantial and widespread adverse social and economic impacts on a statewide
2 basis.

3 (b) The department of administration shall include all of the following in its
4 determination under par. (a):

5 1. A calculation of the statewide cost of compliance with water quality based
6 effluent limitations for phosphorus by point sources that cannot achieve compliance
7 without major facility upgrades.

8 2. A calculation of the statewide per household cost for water pollution control
9 by publicly owned treatment works that cannot achieve compliance with water
10 quality based effluent limitations for phosphorus without major facility upgrades,
11 including the projected costs of compliance with those water quality based effluent
12 limitations, and a calculation of the percentage of median household income the per
13 household cost represents.

14 4. A determination of whether the cost of compliance with water quality based
15 effluent limitations for phosphorus by point sources that cannot achieve compliance
16 without major facility upgrades would cause substantial adverse social and economic
17 impacts on a statewide basis.

18 5. A determination of whether the cost of compliance with water quality based
19 effluent limitations for phosphorus by point sources that cannot achieve compliance
20 without major facility upgrades would cause widespread adverse social and
21 economic impacts on a statewide basis.

22 (c) The department of administration shall make a preliminary determination
23 under par. (a) no later than the 60th day after the effective date of this paragraph ....
24 [LRB inserts date]. The department of administration shall provide public notice,
25 through an electronic notification system that it establishes or selects, of its

1 preliminary determination and shall provide the opportunity for public comment on
2 the preliminary determination for at least 30 days following the public notice.
3 (d) The department of administration shall consider any public comments in
4 making its final determination under par. (a) and shall make the final determination
5 no later than the 30th day after the end of the public comment period.
6 (e) The department of administration shall send a notice that describes its final
7 determination under par. (a) to the legislative reference bureau for publication in the
8 administrative register.
9 (f) If the department of administration determines under par. (a) that attaining
10 the water quality standard for phosphorus through compliance with water quality
11 based effluent limitations by point sources that cannot achieve compliance without
12 major facility upgrades is not feasible, the determination remains in effect until the
13 department of administration finds under sub. (3) (c) 1. that the determination is no
14 longer accurate.
15 **(3)** REVIEW OF FINDINGS AND REQUIREMENTS OF VARIANCE. (a) Every 5 years,
16 beginning in 2019, if a determination under sub. (2) (a) that attaining the water
17 quality standard for phosphorus through compliance with water quality based
18 effluent limitations by point sources that cannot achieve compliance without major
19 facility upgrades is not feasible is in effect, the department of administration, in
20 consultation with the department of natural resources, shall prepare a report, no
21 later than September 1, regarding any changes in the technology available for
22 controlling phosphorus discharges from point sources and regarding the effluent
23 limitations for phosphorus that are reasonably achievable. The department of
24 administration shall consult with permittees that would be subject to water quality

1 based effluent limitations for phosphorus and other interested parties in preparing
2 the report.

3 (b) The department of administration shall include all of the following in a
4 report under par. (a):

5 1. A determination of whether technology is reasonably available for point
6 sources to comply with effluent limitations for phosphorus that are more stringent
7 than those in sub. (6) (a).

8 2. A determination of whether technology is reasonably available for any
9 category of point sources to comply with effluent limitations for phosphorus that are
10 more stringent than those in sub. (6) (a).

11 3. A determination of whether any technology that is reasonably available for
12 compliance with effluent limitations for phosphorus that are more stringent than
13 those in sub. (6) (a) is cost effective.

14 (c) Based on its report under par. (a), the department of administration, in
15 consultation with the department of natural resources, shall do all of the following:

16 1. Decide whether the determination that attaining the water quality standard
17 for phosphorus through compliance with water quality based effluent limitations by
18 point sources that cannot achieve compliance without major facility upgrades is not
19 feasible remains accurate.

20 2. If the department of administration decides under subd. 1. that the
21 determination remains accurate, decide whether it is appropriate to apply more
22 stringent effluent limitations than those in sub. (6) (a) to all point sources or to any
23 category of point sources, based on the availability and cost effectiveness of
24 technology for compliance and, if so, specify those more stringent effluent limitations
25 based on the report under par. (a).

(d) The department of administration shall provide public notice of its preliminary decisions under par. (c) no later than the 60th day after preparing the report under par. (a) and shall provide the opportunity for public comment on the decisions for at least 30 days following the public notice.

(e) The department of administration shall consider any public comments in making its final decisions under par. (c) and shall make the final decisions no later than the 30th day after the end of the public comment period.

(f) The department of administration shall send a notice that describes its final decisions under par. (c) to the legislative reference bureau for publication in the administrative register.

(4) AVAILABILITY OF VARIANCE. (a) When a determination under sub. (2) (a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible is in effect, a permittee is eligible for a variance to the water quality standard for phosphorus for an existing source if the permittee certifies that the existing source cannot achieve compliance with the water quality based effluent limitation for phosphorus without a major facility upgrade and agrees to comply with the requirements under sub. (6).

(b) A permittee may apply for the variance under this section in any of the following ways:

1. By requesting the variance in the application for reissuance of the permit.

2. By requesting the variance within 60 days after the department reissues or modifies the permit to include a water quality based effluent limitation for phosphorus.

1 3. If the department issued a permit to the permittee before the effective date
2 of this subdivision .... [LRB inserts date], that includes a water quality based effluent
3 limitation for phosphorus, by requesting a modification of the permit.
4 4. If the department issued a permit to the permittee before the effective date
5 of this subdivision .... [LRB inserts date], that includes a water quality based effluent
6 limitation for phosphorus and that requires the permittee to submit to the
7 department options for complying with the water quality based effluent limitation,
8 by submitting a request for the variance as a compliance option.
9 (c) After an application for a variance is submitted to the department under par.
10 (b) 2., 3., or 4., and until the last day for seeking review of the department's final
11 decision on the application or a later date fixed by order of the reviewing court, the
12 water quality based effluent limitation for phosphorus and any corresponding
13 compliance schedule are not effective. All other provisions of the permit continue in
14 effect except those for which a petition for review has been submitted under s. 283.63.
15 (d) The variance under this section remains in effect for a point source until the
16 permit is reissued, modified, or revoked and reissued.
17 (e) Notwithstanding s. 227.42, there is no right to a hearing under this
18 subsection.
19 (f) If the department approves a variance under this section and the
20 department issues a modified water quality based effluent limitation under s. 283.63
21 for phosphorus, the permittee shall comply with the least stringent of the 2 effluent
22 limitations.
23 **(6)** VARIANCE PROVISIONS. (a) Except as provided in par. (am) or sub. (7), the
24 department shall include the following interim limits in the permit for a point source
25 for which the department approves the variance under this section:

1. In the first permit for which the department approves the variance, a requirement to achieve, by the end of the term of that permit, compliance with an effluent limitation for phosphorus equal to 0.8 milligrams per liter as a monthly average.

2. In the 2nd permit for which the department approves the variance, a requirement to achieve, by the end of the term of that permit, compliance with an effluent limitation for phosphorus equal to 0.6 milligrams per liter as a monthly average.

3. In the 3rd permit for which the department includes the variance, a requirement to achieve, by the end of the term of that permit, compliance with an effluent limitation for phosphorus equal to 0.5 milligrams per liter as a monthly average.

4. In the 4th permit for which the department includes the variance, a requirement to achieve, by the end of the term of that permit, compliance with the water quality based effluent limitation for phosphorus.

(am) If a permittee certifies that the point source cannot achieve compliance with an interim limit in par. (a) 1., 2., or 3. without a major facility upgrade, the department shall include in the permit a requirement to achieve compliance with the highest achievable interim limit, except that the department may not include an interim limit that is higher than the limit established under s. 283.11 (3) (am).

(b) In the permit for a point source for which the department approves the variance under this section, in addition to the requirements under par. (a) or (am) or sub. (7), the department shall require the permittee to implement the permittee's choice of the following measures to reduce the amount of phosphorus entering the waters of the state:

1. Making payments to counties as provided in sub. (8).

2. Entering into a binding, written agreement with the department under which the permittee constructs a project or implements a plan that is designed to result in an annual reduction of phosphorus pollution from other sources in the basin in which the point source is located, in an amount equal to the difference between the annual amount of phosphorus discharged by the point source and the target value.

3. Entering into a binding written agreement, that is approved by the department, with another person under which the person constructs a project or implements a plan that is designed to result in an annual reduction of phosphorus pollution from other sources in the basin in which the point source is located, in an amount equal to the difference between the annual amount of phosphorus discharged by the point source and the target value.

(7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department of administration determines under sub. (3) (c) 2. that it is appropriate to apply more stringent effluent limitations than those in sub. (6) (a) to all point sources or to a category of point sources, the department of natural resources shall include the more stringent effluent limitations specified under sub. (3) (c) 2. in permits reissued, modified, or revoked and reissued after that determination for all point sources or for the category of point sources to which the more stringent effluent limitations apply.

(8) PAYMENTS TO COUNTIES. (a) 1. A permittee that chooses to make payments for phosphorus reduction under sub. (6) (b) 1. shall make the payments to each county that is participating in the program under this subsection and that has territory within the basin in which the point source is located in proportion to the amount of territory each county has within the basin. The permittee shall make a total payment by March 1 of each calendar year in the amount equal to the per pound

1 amount under subd. 2. times the number of pounds by which the amount of
2 phosphorus discharged by the point source during the previous year exceeded the
3 point source's target value. If no county that has territory within the basin is
4 participating in the program under this subsection, the department shall direct the
5 permittee to make payments to participating counties selected by the department.
6 2. The per pound payment for this subsection is $50 beginning on the effective
7 date of this subdivision .... [LRB inserts date]. Beginning in 2015, the department
8 shall adjust the per pound payment each year by a percentage equal to the average
9 annual percentage change in the U.S. consumer price index for all urban consumers,
10 U.S. city average, as determined by the federal department of labor, for the 12
11 months ending on the preceding December 31. The adjusted amount takes effect for
12 permits reissued on April 1. The per pound payment in effect when a permit is
13 reissued applies for the term of the permit.
14 (b) 1. A county shall use payments received under this subsection to provide
15 cost sharing under s. 281.16 (3) (e) or (4) for projects to reduce the amount of
16 phosphorus entering the waters of the state or for staff to implement projects to
17 reduce the amount of phosphorus entering the waters of the state from nonpoint
18 sources.
19 2. A county shall use at least 65 percent of the amounts received under this
20 subsection to provide cost sharing under s. 281.16 (3) (e) or (4). To the extent
21 practicable, a county shall provide cost sharing for projects in the county that the
22 county has identified as being the highest priority or as having the greatest potential,
23 to reduce the amount of phosphorus per acre entering the waters of the state.
24 3. No later than May 1 of the year following a year in which a county receives
25 payments under this subsection, the county shall submit an annual report to the

1 department of natural resources, the department of administration, the department
2 of agriculture, trade and consumer protection, and each permittee from which it
3 received payments during the previous year. In the annual report, the county shall
4 describe the projects for which it provided cost sharing, quantify the associated
5 phosphorus reductions achieved using accepted modeling technology, and identify
6 any staff funded with the payments.

7 4. The department shall evaluate reports submitted under subd. 3. If the
8 department determines that a county is not using the payments to effectively reduce
9 the amount of phosphorus entering the waters of the state from nonpoint sources, the
10 department may require permittees who made the payments to eliminate or reduce
11 future payments to the county.

12 5. A county shall notify the department by January 1 of each year if it chooses
13 not to participate in the program under this subsection.

14 **SECTION 3.** 283.63 (1) (am) of the statutes is amended to read:

15 283.63 **(1)** (am) After a verified petition for review is filed and until the last day
16 for seeking review of the department's decision or a later date fixed by order of the
17 reviewing court, any term or condition, thermal effluent limitation or water quality
18 based effluent limitation which is the subject of the petition is not effective. All other
19 provisions of the permit continue in effect except those for which an application for
20 a variance has been submitted under s. 283.15 <u>or 283.16</u>. For those provisions for
21 which a petition for review has been submitted under this section, the corresponding
22 or similar provisions of the prior permit continue in effect until the last day for
23 seeking review of the department's final decision or a later date fixed by order of the
24 reviewing court.

25 **SECTION 4.** 283.63 (4) of the statutes is amended to read:

1 283.63 **(4)** Subsections (1) and (2) do not apply to the modification of a permit
2 which implements a decision under s. 283.15 or 283.16 or the denial of a request for
3 a variance under s. 283.15 or 283.16. A proceeding under subs. (1) and (2) shall not
4 be delayed pending completion of the review of a variance request under s. 283.15
5 or 283.16.
6 **(END)**