



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A

### LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-1045/1 (For: DNR)

has been copied/added to the drafting file for

**2013 LRB-1042** (For: DNR)

Are These "Companion Bills" ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 02/14/2014 (Per: RNK)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/7/2013 Received By: rkite  
Wanted: As time permits Same as LRB:  
For: Natural Resources By/Representing: Mike Bruhn  
May Contact: Drafter: rkite  
Subject: Environment - water quality Addl. Drafters:  
Extra Copies: RCT

Submit via email: YES  
Requester's email: michael.bruhn@wisconsin.gov  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Storm water discharge permit changes required by federal law

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 6/10/2013			_____			
/P1	rkite 8/14/2013	jdye 6/12/2013	phenry 6/12/2013	_____	srose 6/12/2013		
/1		jdye 8/15/2013	jfrantze 8/15/2013	_____	sbasford 8/15/2013		State S&L

FE Sent For:

<END>

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/?	rkite 6/10/2013	1/8/15 jld	ph	HS			
/P1		jdye 6/12/2013	phenry 6/12/2013		srose 6/12/2013		

FE Sent For:

<END>

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**Pre Topic:**

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**Topic:**

Storm water discharge permit changes required by federal law

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	rkite	PI 6/12 jld		==			
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FE Sent For:

<END>

**From:** Bruhn, Michael L - DNR [<mailto:Michael.Bruhn@wisconsin.gov>]  
**Sent:** Friday, December 28, 2012 12:53 PM  
**To:** Kite, Robin  
**Subject:** DNR Drafting Request - EPA 75 Package

Hi Robin,

This Session, the Governor's office has asked the agencies to have their Legislative agenda items drafted, prior to providing them to the legislative authors. Below, is the first DNR legislative drafting request. Can I get it in a preliminary draft? Issue #1 may need to be modified based in input from the DOT.

1. Clarify definition of "new source" is tied to the date that federal new source performance standards are enacted, not when the state rules are promulgated.
2. 10-year protection period for more restrictive thermal limits. This provision clarifies that the exemption to the thermal limit is for facilities with water quality based limitations, not alternate limitations.
3. Addresses the change concerning termination of a permit consistent with the changes in Act 167. The state uses the word revoke, and EPA wants the word terminate to replace revoke.

Attached are two issue papers created by our attorneys that provide additional information on these issues. Please contact me with any questions or concerns.

Thanks!!

Michael Bruhn  
Legislative Liaison  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 266-5375  
(✉) e-mail: [michael.bruhn@wisconsin.gov](mailto:michael.bruhn@wisconsin.gov)  
Website: [dnr.wi.gov](http://dnr.wi.gov)  
Find us on Facebook: [www.facebook.com/WIDNR](http://www.facebook.com/WIDNR)

DATE: January 4, 2013  
TO: Paul Heinen  
FROM: Bureau of Water Quality  
Division of Water  
SUBJECT: 2013-2014 Legislative Proposal

**All Information Below Must be Typed.**

1. Problem/Issue (Be concise) In a letter dated July 18, 2011, EPA sent a letter to the Department identifying 75 questions or concerns with Wisconsin's legal authority to administer its National Pollutant Discharge Elimination System ( NPDES) approved program. Under the Clean Water Act, states with approved NPDES permit programs must have statutes and rules that are at least as stringent as the federal requirements.

The Department has proposed to address the federal issues through four parallel procedures: an Attorney General's Statement verifying state authority (completed), amendments to the Wisconsin-EPA memorandum of agreement ( MOA) to administer the NPDES permit program, rule-making revisions ( already started) and legislative changes. The changes requested below address three of the 75 issues.

2. Description of Legislation (Provide statute number and a plain English explanation) The suggested changes are as follows:

SECTION XX. 283.01 (8) of the statutes is amended to read:

283.01 (8) "New source" means any point source the construction of which commenced after the effective date of ~~applicable effluent limitations~~ or federal standards of performance ~~under 33 USC 1316~~ that are applicable to the point source or after the proposal, under 33 USC 1316, of federal standards of performance that are applicable to to the point source, if the federal standards of performance take effect within 120 days of their proposal.

*( This change addresses issue 27 in EPA's letter regarding the definition of a "new source" The change clarifies that the definition of new source is tied to the date that federal new source performance standards are enacted – not the date state rules are promulgated)*

SECTION XX. 283.17 (2) of the statutes is amended to read:

283.17 (2) ~~Any~~ If the modification of a point source ~~of~~ with a discharge having a



thermal component, ~~the modification of which~~ is commenced after October 18, 1972, and ~~which if the point source, as modified, meets the most stringent effluent limitation established under s. 283.13 or sub. (1) and this subsection, where, and~~ the limitation assures protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the water into which the discharge is made, the point source shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during either the 10-year period beginning on the date of completion of the modification or the period of depreciation or amortization of the facility for the purpose of section 167 or 169 of the internal revenue code, whichever ends first.

*(This change addresses issue 6 in EPA's July 18<sup>th</sup> letter regarding 10 year protection period for more restrictive thermal limits. It clarifies that the exemption is to the thermal limit is to facilities with water quality based limitations, not alternate limitations)*

**SECTION XX. 283.53 (2h)** of the statutes is amended to read:

**283.53 (2h)** The department may, with the consent of the permittee, ~~revoke~~ terminate a permit issued under s. 283.31 or 283.33 without following the procedures in sub. (2)(b) to (f).

*( This change in part addresses issue 48 in EPA's July 18<sup>th</sup> letter and is consistent with the changes made in Act 167)*

3. Background (Two paragraphs maximum) These legislative changes will help to resolve the following issues in EPA's July 18, 2011 letter and provide clarification that the statutory provision is consistent with federal law: Issue 6 (10 year protection period from thermal limitations), Issue 27 (definition of new source) and Issue 48 ( federal terminology for WPDES permit actions ( e.g. modification, revoke and reissue or permit termination). Issue 48 was addressed in part through Act 167, however the change suggested above should have also been made. Statutory changes for the storm water program will be included in a separate request. Other changes in the 75 issues can be done through rulemaking.
4. Past Legislation (Please provide specific bill numbers. If none, leave blank)  
  
As mentioned above, issue 48 was in part addressed by Act 167.
5. Fiscal Estimate (Your best estimate – you do not need M&B review)  
No fiscal impact, just clarifying changes.
6. Bureau Contact (Name & phone number) Mike Lemcke (266-2666) or Tom Mугan (266-7420) and Robin Nyffeler (Legal Services) 266-0024

**SIGNATURES:**

Legal Services \_\_\_\_\_

Bureau Director \_\_\_\_\_

Division Administrator \_\_\_\_\_

**Remember:** This format is meant to convey proposed changes in policy needing legislation. There will be many of these forms coming to the Secretary, so be brief and concise. There will be time later to detail the issues.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/22

Called Mike Bruhn - for more info -

told Mike that I didn't understand  
some of this language - he referred  
me to DNR attorney Robin Negler

5/8/13

Per Robin Nyffeler (DNR)

Amended language in 283.01(8) -  
intention is to make clear ~~the~~ what  
federal standards apply once construction  
commences -

the standards that apply are those in effect  
when construction begins - unless -  
if feds. have proposed new standards,  
then the proposed standards apply if  
the proposed standards are promulgated  
in final form w/in 120 days of when  
the standards were proposed

Robin said this change is per letter from  
EPA - I asked her about the  
definition of new source under s. 283.19(2)(b)  
because that statute is referenced in  
the letter -

she had not realized that there was a  
2d definition - both definitions should  
be the same

40 CFR 122.2 (regulation re: 120 day limit)



State of Wisconsin  
2013 - 2014 LEGISLATURE

RM  
PI  
LRB-1045  
RNK: A  
jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In  
6/10

PLW

X

Gen

and termination of  
certain permits authorizing  
discharges into waters of this state

1  
2

AN ACT ...; relating to: performance standards and effluent limitations for new  
and modified point sources of pollution.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3  
4  
5  
6  
7  
8

SECTION 1. 283.01 (8) of the statutes is renumbered 283.01 (8) (a) and amended to read:  
283.01 (8) (a) "New source" means, except as provided in par. (b), any point source the construction of which commenced after the effective date of applicable effluent limitations or standards a standard of performance under 33 USC 1316 that is applicable to the point source.

9

History: 1973 c. 74; 1979 c. 221; 1983 a. 189; 1987 a. 403; 1993 <sup>16, 112, 482</sup>; 1995 a. 227 s. 847; Stats. 1995 s. 283.01.  
SECTION 2. 283.01 (8) (b) of the statutes is created to read:



1 SECTION 6. 283.17 (2) (c) of the statutes is created to read:

2 283.17 (2) (c) The limitation under par. (b) assures protection and propagation  
3 of a balanced indigenous population of shellfish, fish, and wildlife in and on the water  
4 into which the discharge is made.

5 History: 1987 a. 27 ss. 1846mg, 1846ms; Stats. 1987 s. 147.055; 1991 a. 39; 1995 a. 227 s. 862; Stats. 1995 s. 283.17.

5 SECTION 7. 283.19 (2) (a) of the statutes is renumbered 283.19 (2).

6 SECTION 8. 283.19 (2) (b) of the statutes is repealed.

7 SECTION 9. 283.19 (5) of the statutes is amended to read:

8 283.19 (5) ~~After the effective date of any standard of performance promulgated~~  
9 ~~by the department under this section, no~~ No owner or operator of any new source may  
10 operate such source in violation of any standard of performance applicable to such  
11 a source.

12 History: 1973 c. 74; 1993 a. 16.; 1995 a. 227 s. 863; Stats. 1995 283.19

12 SECTION 10. 283.53 (2h) of the statutes is amended to read:

13 283.53 (2h) The department may, with the consent of the permittee, revoke  
14 terminate a permit issued under s. 283.31 or 283.33 without following the procedures  
15 in sub. (2) (b) to (f).

16 History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53; 2011 a. 167.

(END)

**Kite, Robin**

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**From:** Bruhn, Michael L - DNR <Michael.Bruhn@wisconsin.gov>  
**Sent:** Monday, July 01, 2013 11:40 AM  
**To:** Kite, Robin  
**Subject:** FW: Draft review: LRB -1045/P1 Topic: 75 issues - federal law  
**Attachments:** 13-1045/P1.pdf

Hi Robin,

I have just one very minor change to the draft that is being requested by one of our attorneys (see below).

Thank you!!

Michael Bruhn  
Legislative Liaison  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 266-5375  
(✉) e-mail: [michael.bruhn@wisconsin.gov](mailto:michael.bruhn@wisconsin.gov)  
Website: [dnr.wi.gov](http://dnr.wi.gov)  
Find us on Facebook: [www.facebook.com/WIDNR](http://www.facebook.com/WIDNR)

---

**From:** Nyffeler, Robin T - DNR  
**Sent:** Monday, July 01, 2013 10:50 AM  
**To:** Bruhn, Michael L - DNR  
**Subject:** FW: Draft review: LRB -1045/P1 Topic: 75 issues - federal law

Hi Mike,

The drafter reorganized s. 283.17(2), but I think the reorganization makes it easier to read and it looks fine. The only change that should be done on this draft in response to EPA's concerns ( issue 6 in the 75 issues letter) is:

Section 5, line 3 on page 3: the words "sub. (1) or" should be deleted.

Thanks

Robin

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**From:** Bruhn, Michael L - DNR  
**Sent:** Monday, June 17, 2013 9:42 PM  
**To:** Nyffeler, Robin T - DNR  
**Subject:** FW: Draft review: LRB -1045/P1 Topic: Storm water discharge permit changes required by federal law

Hi Robin,

I have a draft from the EPA 75 issue that I would like you to review. Please let me know if there are any changes necessary.

Thanks!

Michael Bruhn

Legislative Liaison  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 266-5375  
(✉) e-mail: [michael.bruhn@wisconsin.gov](mailto:michael.bruhn@wisconsin.gov)  
Website: [dnr.wi.gov](http://dnr.wi.gov)  
Find us on Facebook: [www.facebook.com/WIDNR](http://www.facebook.com/WIDNR)

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**From:** LRB.Legal [<mailto:LRB-LegalServices@legis.wisconsin.gov>]  
**Sent:** Wednesday, June 12, 2013 11:50 AM  
**To:** Bruhn, Michael L - DNR  
**Subject:** Draft review: LRB -1045/P1 Topic: Storm water discharge permit changes required by federal law

**Following is the PDF version of draft LRB -1045/P1.**



TCI. 8/16  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1045/P1  
RNK:jld:ph

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

X

Regen

1 AN ACT *to repeal* 283.19 (2) (b); *to renumber* 283.19 (2) (a); *to renumber and*  
2 *amend* 283.01 (8) and 283.17 (2); *to amend* 283.19 (5) and 283.53 (2h); and *to*  
3 *create* 283.01 (8) (b), 283.17 (2) (a), 283.17 (2) (b) and 283.17 (2) (c) of the  
4 statutes; **relating to:** performance standards and effluent limitations for new  
5 and modified point sources of pollution and termination of certain permits  
6 authorizing discharges into waters of this state.

***Analysis by the Legislative Reference Bureau***

~~This is a preliminary draft. An analysis will be provided in a subsequent version  
of this draft.~~

INS. ANALYSIS → ✓

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

7 SECTION 1. 283.01 (8) of the statutes is renumbered 283.01 (8) (a) and amended  
8 to read:  
9 283.01 (8) (a) "New source" means, except as provided in par. (b), any point  
10 source the construction of which commenced after the effective date of applicable

1 ~~effluent limitations or standards~~ a standard of performance under 33 USC 1316 that  
2 is applicable to the point source.

3 **SECTION 2.** 283.01 (8) (b) of the statutes is created to read:

4 283.01 (8) (b) If the federal environmental protection agency proposes a  
5 standard of performance under 33 USC 1316 that is applicable to a point source and  
6 if the standard of performance takes effect within 120 days of the publication of that  
7 proposed standard of performance, "new source" means a point source the  
8 construction of which commenced after the date of publication of that proposed  
9 standard of performance.

10 **SECTION 3.** 283.17 (2) of the statutes is renumbered 283.17 (2) (intro.) and  
11 amended to read:

12 283.17 (2) (intro.) ~~Any~~ If a point source of with a discharge having a thermal  
13 component, ~~the modification of which is commenced after October 18, 1972, and~~  
14 ~~which, as modified, meets the most stringent effluent limitation established under~~  
15 ~~s. 283.13 or sub. (1) and this subsection, where the limitation assures protection and~~  
16 ~~propagation of a balanced indigenous population of shellfish, fish and wildlife in and~~  
17 ~~on the water into which the discharge is made,~~ modified, the point source shall not  
18 be subject to any more stringent effluent limitation with respect to the thermal  
19 component of its discharge during either the 10-year period beginning on the date  
20 of completion of the modification or the period of depreciation or amortization of the  
21 facility for the purpose of section 167 or 169 of the internal revenue code, whichever  
22 ends first, if all of the following apply:

23 **SECTION 4.** 283.17 (2) (a) of the statutes is created to read:

24 283.17 (2) (a) The modification of the point source commenced after October  
25 18, 1972.



2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1045/lins.  
RNK:.....

INSERT ANALYSIS

Under current law, the Department of Natural Resources (DNR) must promulgate by rule effluent limitations for point sources of water pollution. An effluent limitation is a restriction on the quantity, rate, and concentration of a pollutant discharged from a point source into state waters. A point source is a discernible, confined, and discrete conveyance, such as a pipe, well, or concentrated animal feeding operation from which pollutants may be discharged into the waters of the state or into a publicly owned sewage system. DNR must also promulgate by rule standards of performance for new sources. A new source is a point source the construction of which commenced after the effective date of an applicable effluent limitation or standard of performance. Generally, DNR's rules must comply with and not exceed corresponding requirements established under federal law.

This bill revises the definition of a "new source." Under the bill, a new source is a point source constructed after the effective date of an applicable standard of performance under federal law. The bill also provides that if the federal environmental protection agency proposes a standard of performance that has not yet taken effect, a point source is a new source under that proposed standard if the proposed standard becomes a final standard within a specified period of time.

Current law specifies the circumstance under which a point source of a discharge having a thermal component, when modified, is not subject to more stringent effluent limitations. This bill specifies that this exemption applies to modified point sources with respect to water quality based effluent limitations only.

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



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1045/1  
RNK:jld:jf

## 2013 BILL

1 AN ACT *to repeal* 283.19 (2) (b); *to renumber* 283.19 (2) (a); *to renumber and*  
2 *amend* 283.01 (8) and 283.17 (2); *to amend* 283.19 (5) and 283.53 (2h); and *to*  
3 *create* 283.01 (8) (b), 283.17 (2) (a), 283.17 (2) (b) and 283.17 (2) (c) of the  
4 statutes; **relating to:** performance standards and effluent limitations for new  
5 and modified point sources of pollution and termination of certain permits  
6 authorizing discharges into waters of this state.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the Department of Natural Resources (DNR) must promulgate by rule effluent limitations for point sources of water pollution. An effluent limitation is a restriction on the quantity, rate, and concentration of a pollutant discharged from a point source into state waters. A point source is a discernible, confined, and discrete conveyance, such as a pipe, well, or concentrated animal feeding operation from which pollutants may be discharged into the waters of the state or into a publicly owned sewage system. DNR must also promulgate by rule standards of performance for new sources. A new source is a point source the construction of which commenced after the effective date of an applicable effluent limitation or standard of performance. Generally, DNR's rules must comply with and not exceed corresponding requirements established under federal law.

This bill revises the definition of a "new source." Under the bill, a new source is a point source constructed after the effective date of an applicable standard of

**BILL**

performance under federal law. The bill also provides that, if the federal Environmental Protection Agency proposes a standard of performance that has not yet taken effect, a point source is a new source under that proposed standard if the proposed standard becomes a final standard within a specified period of time.

Current law specifies the circumstance under which a point source of a discharge having a thermal component, when modified, is not subject to more stringent effluent limitations. This bill specifies that this exemption applies to modified point sources with respect to water quality based effluent limitations only.

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

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

1           **SECTION 1.** 283.01 (8) of the statutes is renumbered 283.01 (8) (a) and amended  
2 to read:

3           283.01 (8) (a) “New source” means, except as provided in par. (b), any point  
4 source the construction of which commenced after the effective date of applicable  
5 effluent limitations or standards a standard of performance under 33 USC 1316 that  
6 is applicable to the point source.

7           **SECTION 2.** 283.01 (8) (b) of the statutes is created to read:

8           283.01 (8) (b) If the federal environmental protection agency proposes a  
9 standard of performance under 33 USC 1316 that is applicable to a point source and  
10 if the standard of performance takes effect within 120 days of the publication of that  
11 proposed standard of performance, “new source” means a point source the  
12 construction of which commenced after the date of publication of that proposed  
13 standard of performance.

14           **SECTION 3.** 283.17 (2) of the statutes is renumbered 283.17 (2) (intro.) and  
15 amended to read:

16           283.17 (2) (intro.) ~~Any~~ If a point source of with a discharge having a thermal  
17 ~~component, the modification of which is commenced after October 18, 1972, and~~

**BILL**

1 ~~which, as modified, meets the most stringent effluent limitation established under~~  
2 ~~s. 283.13 or sub. (1) and this subsection, where the limitation assures protection and~~  
3 ~~propagation of a balanced indigenous population of shellfish, fish and wildlife in and~~  
4 ~~on the water into which the discharge is made, modified, the point source shall not~~  
5 be subject to any more stringent effluent limitation with respect to the thermal  
6 component of its discharge during either the 10-year period beginning on the date  
7 of completion of the modification or the period of depreciation or amortization of the  
8 facility for the purpose of section 167 or 169 of the internal revenue code, whichever  
9 ends first, if all of the following apply:

10 **SECTION 4.** 283.17 (2) (a) of the statutes is created to read:

11 283.17 (2) (a) The modification of the point source commenced after October  
12 18, 1972.

13 **SECTION 5.** 283.17 (2) (b) of the statutes is created to read:

14 283.17 (2) (b) The point source, as modified, meets the most stringent effluent  
15 limitation established under s. 283.13.

16 **SECTION 6.** 283.17 (2) (c) of the statutes is created to read:

17 283.17 (2) (c) The limitation under par. (b) assures protection and propagation  
18 of a balanced indigenous population of shellfish, fish, and wildlife in and on the water  
19 into which the discharge is made.

20 **SECTION 7.** 283.19 (2) (a) of the statutes is renumbered 283.19 (2).

21 **SECTION 8.** 283.19 (2) (b) of the statutes is repealed.

22 **SECTION 9.** 283.19 (5) of the statutes is amended to read:

23 283.19 (5) ~~After the effective date of any standard of performance promulgated~~  
24 ~~by the department under this section, no~~ No owner or operator of any new source may

**BILL**

**SECTION 9**

1 operate such source in violation of any standard of performance applicable to such  
2 a source.

3 **SECTION 10.** 283.53 (2h) of the statutes is amended to read:

4 283.53 (2h) The department may, with the consent of the permittee, ~~revoke~~  
5 terminate a permit issued under s. 283.31 or 283.33 without following the procedures  
6 in sub. (2) (b) to (f).

7 (END)