



2013 ASSEMBLY BILL 836

March 3, 2014 - Introduced by Representative MURSAU. Referred to Committee on Environment and Forestry.

1 **AN ACT** *to repeal* 283.19 (2) (b); *to renumber* 283.19 (2) (a); *to renumber and*
2 *amend* 30.2022 (1), 283.01 (8) and 283.17 (2); *to amend* 30.2022 (2), 30.2022
3 (3), 30.2022 (4), 30.2022 (6), 283.19 (5) and 283.53 (2h); and *to create* 30.2022
4 (1g), 30.2022 (1p), 283.01 (8) (b), 283.17 (2) (a), 283.17 (2) (b), 283.17 (2) (c) and
5 283.33 (4m) of the statutes; **relating to:** activities affecting waters of this state
6 carried out under the direction of the Department of Transportation,
7 performance standards and effluent limitations for new and modified point
8 sources of pollution, and termination of certain permits authorizing discharges
9 into waters of this state.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waters and also administers various environmental laws. In order for a person to conduct an activity in or near a navigable water or to discharge certain pollutants into the air or waters of this state, the person may be required to obtain one or more permits from DNR. Among the environmental permits that DNR issues are storm water discharge permits.

Current law exempts the Department of Transportation (DOT) from obtaining certain navigable waters permits and certain environmental permits affecting

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waters of this state including storm water discharge permits. The exemptions apply to activities affecting waters of this state that are carried out under DOT's direction and supervision, such as the construction of a highway or bridge (transportation activity), and are subject to certain conditions. Under these conditions, DOT must accomplish the transportation activity in accordance with interdepartmental liaison procedures established by DOT and DNR for the purpose of minimizing the adverse environmental impact of the activity. DOT and DNR must also exchange information and cooperate in planning and carrying out DOT activities in order to alleviate potential detrimental encroachment on the waters of the state.

This bill requires DNR to issue a general permit that authorizes DOT to discharge storm water from the site of a transportation activity (transportation general permit). The bill provides that, instead of being exempt from any requirement to obtain a storm water discharge permit, DOT must obtain coverage under a transportation general permit required to be issued by DNR under this bill. The bill specifies that a transportation activity covered by a transportation general permit is subject to the interdepartmental liaison procedures that apply under current law to DOT transportation activities. The bill requires DNR to issue a transportation general permit on or before June 30, 2016, but DOT is not required to obtain coverage under that permit until DNR issues a transportation general permit as required under the bill.

Under current law, 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.

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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.** 30.2022 (1) of the statutes, as affected by 2013 Wisconsin Act 80,
2 is renumbered 30.2022 (1m) and amended to read:

3 30.2022 (1m) ~~Activities~~ Transportation activities affecting waters of the state,
4 as defined in s. 281.01 (18), ~~that are carried out under the direction and supervision~~
5 ~~of the department of transportation in connection with highway, bridge, or other~~
6 ~~transportation project design, location, construction, reconstruction, maintenance,~~
7 ~~and repair~~ are not subject to the prohibitions or permit or approval requirements
8 specified under s. 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351,
9 61.353, 62.231, 62.233, or 87.30 or chs. 281 to 285 or 289 to 299. However, at the
10 earliest practical time prior to the commencement of these transportation activities,
11 the department of transportation shall notify the department of the location, nature,
12 and extent of the proposed work that may affect the waters of the state. This
13 subsection does not apply beginning on the date on which the department of natural
14 resources issues a general permit under s. 283.33 (4m) (b) 1.

15 **SECTION 2.** 30.2022 (1g) of the statutes is created to read:

16 30.2022 (1g) In this section, “transportation activity” means an activity carried
17 out under the direction and supervision of the department of transportation in
18 connection with highway, bridge, or other transportation project design, location,
19 construction, reconstruction, maintenance, or repair.

20 **SECTION 3.** 30.2022 (1p) of the statutes is created to read:

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1 30.2022 **(1p)** Transportation activities affecting waters of the state, as defined
2 in s. 281.01 (18), are not subject to the prohibitions or permit or approval
3 requirements specified under s. 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20,
4 59.692, 61.351, 61.353, 62.231, 62.233, or 87.30; or under chs. 281 and 283, except
5 s. 283.33; or under chs. 285 or 289 to 299. However, at the earliest practical time prior
6 to the commencement of these transportation activities, the department of
7 transportation shall notify the department of the location, nature, and extent of the
8 proposed work that may affect the waters of the state. This subsection applies
9 beginning on the date on which the department of natural resources issues a general
10 permit under s. 283.33 (4m) (b) 1.

11 **SECTION 4.** 30.2022 (2) of the statutes is amended to read:

12 30.2022 **(2)** The exemption exemptions under sub. ~~(1)~~ does (1m) or (1p) do not
13 apply unless the transportation activity is accomplished in accordance with
14 interdepartmental liaison procedures established by the department and the
15 department of transportation for the purpose of minimizing the adverse
16 environmental impact, if any, of the transportation activity. If the transportation
17 activity affects a wetland, as defined in s. 23.32 (1), the department of transportation
18 shall conduct any required mitigation either by complying with the
19 interdepartmental liaison procedures and any applicable interagency agreement on
20 mitigation banks that is approved by the department of natural resources or by using
21 any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

22 **SECTION 5.** 30.2022 (3) of the statutes is amended to read:

23 30.2022 **(3)** If the department determines that there is reasonable cause to
24 believe that an a transportation activity being carried out under this section is not
25 in compliance with the environmental protection requirements developed through

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1 interdepartmental liaison procedures, it shall notify the department of
2 transportation. If the secretary and the secretary of transportation are unable to
3 agree upon the methods or time schedules to be used to correct the alleged
4 noncompliance, the secretary, notwithstanding the exemption provided in this
5 section, may proceed with enforcement actions as the secretary deems appropriate.

6 **SECTION 6.** 30.2022 (4) of the statutes is amended to read:

7 30.2022 (4) The department of transportation and the department shall
8 exchange information and cooperate in the planning and carrying out of ~~such~~
9 transportation activities in order to alleviate, to the extent practical under the
10 circumstances, any potential detrimental encroachment on the waters of the state.

11 **SECTION 7.** 30.2022 (6) of the statutes is amended to read:

12 30.2022 (6) This section does not apply to transportation activities in the Lower
13 Wisconsin State Riverway, as defined in s. 30.40 (15).

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

16 283.01 (8) (a) “New source” means, except as provided in par. (b), any point
17 source the construction of which commenced after the effective date of applicable
18 effluent limitations or standards a standard of performance under 33 USC 1316 that
19 is applicable to the point source.

20 **SECTION 9.** 283.01 (8) (b) of the statutes is created to read:

21 283.01 (8) (b) If the federal environmental protection agency proposes a
22 standard of performance under 33 USC 1316 that is applicable to a point source and
23 if the standard of performance takes effect within 120 days of the publication of that
24 proposed standard of performance, “new source” means a point source the

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1 construction of which commenced after the date of publication of that proposed
2 standard of performance.

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

5 283.17 (2) (intro.) ~~Any~~ If a point source of with a discharge having a thermal
6 ~~component, the modification of which is commenced after October 18, 1972, and~~
7 ~~which, as modified, meets the most stringent effluent limitation established under~~
8 ~~s. 283.13 or sub. (1) and this subsection, where the limitation assures protection and~~
9 ~~propagation of a balanced indigenous population of shellfish, fish and wildlife in and~~
10 ~~on the water into which the discharge is made, modified, the point source shall not~~
11 ~~be subject to any more stringent effluent limitation with respect to the thermal~~
12 ~~component of its discharge during either the 10-year period beginning on the date~~
13 ~~of completion of the modification or the period of depreciation or amortization of the~~
14 ~~facility for the purpose of section 167 or 169 of the internal revenue code, whichever~~
15 ~~ends first., if all of the following apply:~~

16 **SECTION 11.** 283.17 (2) (a) of the statutes is created to read:

17 283.17 (2) (a) The modification of the point source commenced after October
18 18, 1972.

19 **SECTION 12.** 283.17 (2) (b) of the statutes is created to read:

20 283.17 (2) (b) The point source, as modified, meets the most stringent effluent
21 limitation established under s. 283.13.

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

23 283.17 (2) (c) The limitation under par. (b) assures protection and propagation
24 of a balanced indigenous population of shellfish, fish, and wildlife in and on the water
25 into which the discharge is made.

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1 **SECTION 14.** 283.19 (2) (a) of the statutes is renumbered 283.19 (2).

2 **SECTION 15.** 283.19 (2) (b) of the statutes is repealed.

3 **SECTION 16.** 283.19 (5) of the statutes is amended to read:

4 283.19 (5) ~~After the effective date of any standard of performance promulgated~~
5 ~~by the department under this section, no~~ No owner or operator of any new source may
6 operate such source in violation of any standard of performance applicable to such
7 a source.

8 **SECTION 17.** 283.33 (4m) of the statutes is created to read:

9 283.33 (4m) TRANSPORTATION ACTIVITIES. (a) In this subsection, “transportation
10 activity” has the meaning given in s. 30.2022 (1g).

11 (b) 1. The department of natural resources shall issue a general permit under
12 this section on or before June 30, 2016, that authorizes the department of
13 transportation to discharge storm water from the site of a transportation activity.
14 A general permit issued under this paragraph is subject to the requirements for
15 general permits issued under s. 283.35.

16 2. The department of natural resources shall notify the legislative reference
17 bureau when it issues a general permit under subd. 1. The legislative reference
18 bureau shall publish the notice in the Wisconsin Administrative Register.

19 (c) Beginning on the date on which the department of natural resources issues
20 a general permit under par. (b) 1., the department of transportation may not
21 discharge storm water from the site of a transportation activity unless it is covered
22 by a general permit issued under par. (b) 1.

23 (d) A permit issued under this section shall incorporate the interdepartmental
24 liaison procedures established under s. 30.2022 (2) and the requirements specified
25 in rules promulgated under ss. 30.2022, 283.33, and 283.35.

