

2015 DRAFTING REQUEST

Bill

Received: 11/25/2015 Received By: mpfotenh
For: Natural Resources 266-2120 Same as LRB: -4369
May Contact: By/Representing: Tim Gary
Subject: Environment - water quality Drafter: mpfotenh
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Timothy.Gary@wisconsin.gov
Carbon copy (CC) to: mary.pfotenhauer@legis.wisconsin.gov
robin.kite@legis.wisconsin.gov
zachary.wyatt@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Review of water quality standard variances under 40 CFR 131.14

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 12/18/2015	kmochal 12/18/2015	_____			
/P1	mpfotenh 1/7/2016	kmochal 1/7/2016	_____	lparisi 12/18/2015		
/P2	mpfotenh	kmochal	_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	zwyatt 1/8/2016	1/8/2016	_____	lparisi 1/8/2016		State
/2	zwyatt 1/11/2016	kmochal 1/11/2016	_____	mbarman 1/11/2016	srose 1/12/2016	State

FE Sent For:

*at
intro*

<END>

Wyatt, Zachary

From: Gary, Timothy J - DNR <Timothy.Gary@wisconsin.gov>
Sent: Monday, January 11, 2016 10:34 AM
To: Pfothenauer, Mary; Wyatt, Zachary
Subject: LRB 3961/1

Mary,

Can we please amend the /1 draft into a /2 draft the following ways:

- Page 3, Line 7
 - ss. 283.15 **or** 283.16. The department shall receive information regarding these
- Page 6, Line 14
 - this section remains in effect for a an approved point source until the **point** source's permit

Can we have a second, identical LRB drafted so a bill can be introduced in both legislative chambers?

Sincerely,

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customerurvey> to evaluate how I did.

Tim Gary
Legislative Liaison
Wisconsin Department of Natural Resources
Phone: (608) 266-2120
Timothy.Gary@wisconsin.gov



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Pre Topic:

No specific pre topic given

Topic:

Review of water quality standard variances under 40 CFR 131.14

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 12/18/2015	kmochal 12/18/2015	_____			
/P1	mpfotenh 1/7/2016	kmochal 1/7/2016	_____	lparisi 12/18/2015		
/P2	mpfotenh	kmochal	_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	1/8/2016	1/8/2016	_____	lparisi 1/8/2016		State

FE Sent For:

<END>

11-12-15

DRAFTING INSTRUCTIONS:

- 1.) General: The primary purpose of the statutory change to s. 283.16 is to comply with newly revised federal variance requirements in 40 CFR 131.14. 40 CFR 131.14 was published in the federal register on Friday, August 21, 2015 (see Federal Register dated Friday, August 21, 2015, Vol. 80, No. 162). Wisconsin's program, including approval of variances, must comply with the Clean Water Act and federal regulations promulgated under the Act. The simplest revision would be to add language that states that the Department will comply with 40 CFR 131.14 in administration of the variance. EPA has stated, however, that 40 CFR 131.14(b)(1)(v) and (vi) must be explicitly stated either in the statute or in a rule.

Under federal regulations, elements of variances must be reviewed as part of the triennial standards review process in 40 CFR 131.20 (a). In addition, if the term of a variance is longer than 5 years, a state must specify a frequency for reevaluating the highest attainable condition. The frequency of reevaluation must occur at least every 5 years pursuant to 40 CFR 131.14 (b)(1)(v). Pursuant to 40 CFR 131.14(b)(1)(v) and (vi), if a state fails to conduct a reevaluation of the highest attainable condition at the frequency specified in the variance, or fails to submit the results of the reevaluation within 30 days, then the variance is terminated.

Triennial standard reviews versus highest attainable condition reevaluations: Triennial standard reviews are required under federal law (40 CFR 131.20 and by 33 USC 1313(c)(1)), and are recognized in s. 283.16. The purpose of triennial standards reviews is for states to solicit information from the public and stakeholders regarding whether the state's water quality standards should be revised or expanded. In addition, as part of this process, the state must solicit information on variances and review whether variances are still appropriate and the designated use and criteria are attainable.

The purpose of the highest attainable condition reevaluation is more narrow in scope. It evaluates whether the interim terms and conditions of approved variances reflect the highest attainable condition at the time a variance is approved for a permitted facility. States can conduct highest attainable condition reevaluations as part of the triennial standards review or it can be done as a separate process. Variances cannot be granted if reevaluations are not conducted in accordance with the frequency specified in the variance.

Proposed language. To satisfy the requirements in 40 CFR 131.14(b)(1)(v) and (vi), the statute must specify the frequency of the highest attainable condition reevaluation and must specify that the variance is no longer available if the reevaluation is not completed in the time period specified in the variance or if the results of the reevaluation are not submitted within 30 days of completion of the reevaluation.

The proposed language creates two separate review procedures A.) A triennial standards review that must occur every three years and that generally solicits information from the public and stakeholders on all water quality standards in the state and establishes a prioritization list for suggested revisions into the continuing planning process - s. 283.83. As stated above, triennial standard reviews are federally required under 40 CFR 131.20 and by 33 USC 1313(c)(1) and the review must also solicit general information on variances (uses and criteria that aren't being met in waterbodies). The hearing and public participation process must comply with 40 CFR 25.

The Department has been conducting triennial standard reviews for years to satisfy this federal requirement, but the review and hearing process isn't clearly identified in state statutes. In addition, as stated above, the triennial standards review process must identify the variances to water quality standards that the state has approved - both site specific variances under s. 283.15 and the multidischarger variance under s. 283.16, and solicit information on these variances. Under the variance part of the triennial review process, the state will solicit general economic and treatment technology information that can help the state determine whether the promulgated criteria and use (the standard) is still not attainable and continuance of the variance is appropriate. In the existing statutory language, the Department will look at new significant economic data and notify DOA if economic considerations have significantly changed;

B.) The second review is a new review under federal regulations and it is the highest attainable condition reevaluation. This new reevaluation process only applies to variances and was created in 40 CFR 131.14.

As stated above, the highest attainable condition reevaluation is more narrow than a triennial standards review. The purpose of the reevaluation is to determine whether the interim terms and conditions of the variance reflect the highest attainable condition. The highest attainable condition is interim numeric effluent limitations that will apply during the term of the variance that reflect optimization of phosphorus removal at a permitted treatment system and that considers available and cost effective interim treatment technology for the permitted system as well as pollutant minimization or reductions in a watershed. The reevaluation must be conducted at least every five years. Since site specific variances under s. 283.15 are limited by the 5 year term of the permit, the reevaluation occurs at reissuance. The multi discharger variance in s. 283.16, however, has a 10 year term that applies to categories of dischargers, and since permits reissuances are staggered throughout the variance time period, the reevaluation on the interim limits in s. 283. 16(6) and highest attainable condition must occur at a scheduled frequency.

Pursuant to 40 CFR 131.14 (b)(v) and (vi), the consequence of failing to conduct this reevaluation at least every five years or failing to submit results within 30 days of "completion" of the reevaluation is that the variance is not available.

Since the terms of a permit with an approved variance must reflect the highest attainable condition, subsection (7) of s. 283.16 has also been revised to state that the interim limitations must reflect the highest attainable condition either for the category of dischargers, if applicable, or for a specific permitted facility.

Another minor revision is to delete the requirement that the county annual reports go to the Department of Administration (DOA). DNR administers the program, not DOA. DOA has no interest in receiving these reports.

- 2.) Clarify that implementation and administration of variances by the department under Wis. Stat. s. 283.16 does not require rulemaking. Language for this issue has already been drafted in LRB-3268/P2 RNK:ah
- 3.) The administration of site specific variances under Wis. Stat. s. 283.15 must also comply with 40 CFR 131.14, so an amendment to this section would also be helpful.

Example statutory changes:

Create s. 281.15(6)

(6) Every three years the department shall conduct a triennial water quality standards review in accordance with 40 CFR 131.20. The triennial standards review shall be subject to a public informational hearing and public comment. The purpose of the public hearing and comment period is to solicit information regarding water quality standards promulgated under this section and information on the variances approved pursuant to ss. 283.15 and 283.16. The hearing shall be public noticed on the department's Internet Web site at least 45 days prior to the hearing date. As part of the triennial standards review, the department shall review information received and make recommendations regarding priorities and potential revisions to water quality standards. If, based on new information, the department determines that water quality standards revised by any variances are now attainable, the department shall revise its standards accordingly. The results of the review shall be submitted to the environmental protection agency.

Amend s. 283.16(2m):

(2m) WATER QUALITY STANDARDS REVIEW AND HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 3 years as part of the review of water quality standards required by 33 USC 1313(c)(1) and s. 281.15(6), if the variance under this section is in effect, the department shall determine whether formal review under sub. (3) should be undertaken, considering any comments it receives on the variance under this section.

(b). 1. At least every five years after the date of initial approval of the variance by the environmental protection agency under sub. (2)(em), the department of natural resources shall reevaluate the highest attainable condition for the category of point sources that are eligible for the federally approved phosphorus statewide variance under this section. The reevaluation shall consist of a review of the interim requirements under sub. (6) to determine whether the interim requirements reflect the highest attainable condition for categories of dischargers. Consistent with 40 CFR 131.14(b)(1)(v), the department shall conduct a reevaluation of the highest attainable condition using all existing and readily available information. The reevaluation shall be subject to the same public notice and participation requirements as the triennial standards review procedures in s. 281.15(6). When the reevaluation is deemed complete by the department, the results of the reevaluation shall be submitted to the environmental protection agency within 30 days of the completion date.

2. If the department fails to conduct a reevaluation of the highest attainable condition at least every five years, then the variance will not be available as the applicable water quality standard beginning five years after the submittal date of the previous reevaluation. The variance will be reinstated when Department completes and submits the reevaluation to the environmental protection agency. If the department fails to submit the results of a reevaluation to the environmental protection agency within 30 days after a reevaluation is deemed complete, then the variance will not be available as the

applicable water quality standard until the department submits the results to the environmental protection agency.

Amend s. 283.16(7):

283.16(7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department determines under subs. (2m) or (3)(cm), 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 because the effluent limitations in sub. (6)(a) do not represent the highest attainable condition for all point sources or a category of point sources, or if at a permit reissuance the department determines that the effluent limitations in sub. (6)(a) do not represent the highest attainable condition for a specific point source, then the department shall include more stringent effluent limitations that do represent the highest attainable condition in subsequent specified under sub. (3)(cm) in the permits reissued, modified or revoked and reissued after that determination for all point sources, ~~or for a category of point sources,~~ or to a specific point source to which the more stringent limitations apply.

Create 283.16(9)

283.16(9) Notwithstanding any provisions in this section, the department of natural resources shall comply with 40 CFR 131.14 when approving an application of a variance and implementing a variance under this section.

Amend 283.16(8)(b)3:

No later than May 1 of the 2nd year following a year in which a county receives payments under this subsection, the county shall submit an annual report to the department of natural resources, ~~the department of administration,~~ the department of agriculture, trade and consumer protection, and each permittee from which it received those payments. In the annual report, the county shall describe the projects for which it provided cost sharing, quantify, in pounds, the associated phosphorus reductions achieved using accepted modeling technology, and identify any staff funded with the payments.

To make it clear that rulemaking is not required, s. 227.01(13) could be amended. This statutory provision defines the term "rule" and it includes a specific long list of agency actions which are not rules. For a statutory amendment, the state could add "any determination and action under s. 283.16, Stats" to this list to preclude the rule making argument under chapter 227, Stats.

Amend 227.01(13)

See LRB 3268/P2 for revisions to s. 227.01(13):

Create s. 227.01(13)(yt) Relates to implementing, interpreting or administering s. 283.16 including determining social and economic impacts of compliance with phosphorus effluent limitations, establishing eligibility requirements for obtaining a variance and providing guidance on administration of the variance ~~to the public.~~

Create s. 283.15(11)

(11) FEDERAL REQUIREMENTS. Notwithstanding any provisions in this section, the department of natural resources shall comply with 40 CFR 131.14 when approving an application of a variance and implementing a variance under this section. The highest attainable condition shall be evaluated when an application for a variance is submitted as part of the permit application for reissuance.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3961/? → P1
MCP... klm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Generate
catalog*

1 AN ACT *f*; **relating to:** the review of water quality standards and variances to
2 water quality standards by the Department of Natural Resources *J* and
3 exempting certain actions of the Department of Natural Resources and the
4 Department of Administration from the requirement to promulgate rules
5 relating to the statewide water quality variance for phosphorus.

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:

6 SECTION 1. 227.01 (13) (yt) of the statutes is created to read:
7 227.01 (13) (yt) Relates to implementing, interpreting, or administering s.
8 283.16 *↑* including determining social and economic impacts of compliance with
9 phosphorus effluent limitations, establishing eligibility requirements for obtaining
10 a variance, and providing guidance to the public.

1 **SECTION 2.** 281.15 (6) of the statutes is created to read:

2 281.15 (6) Every 3 years as part of the review required by 33 USC 1313 (c) (1),
3 the department shall review the water quality standards promulgated under this
4 section and determine whether any existing standards should be modified or new
5 standards should be adopted. The department shall hold a public hearing to receive
6 information and public comment regarding water quality standards promulgated
7 under this section. The department shall publish notice of the hearing on the
8 department's Internet Web site at least 45 days before the hearing date. The
9 department shall submit the results of a review under this subsection to the federal
10 environmental protection agency.

11 **SECTION 3.** 283.15 (11) of the statutes is created to read:

12 283.15 (11) **WATER QUALITY STANDARD REVIEW.** Every 3 years as part of the review
13 of water quality standards under s. 281.15 (6), as required by 33 USC 1313 (c) (1),
14 the department shall review the variances to water quality standards approved
15 under ss. 283.15 and 283.16. The department shall receive information regarding
16 these variances at the public hearing held under s. 281.15 (6). If the department
17 determines that a water quality standard to which a variance applies is attainable,
18 the department shall modify the appropriate standard or variance accordingly.

19 **SECTION 4.** 283.15 (12) of the statutes is created to read:

20 283.15 (12) **FEDERAL REQUIREMENTS.** Notwithstanding any of the provisions of
21 this section, the department shall comply with the provisions of 40 CFR 131.14 when
22 approving and implementing a variance under this section.

23 **SECTION 5.** 283.16 (2m) of the statutes is amended to read:

24 283.16 (2m) **WATER QUALITY STANDARDS REVIEW.** Every 3 years as part of the
25 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313

1 (c) (1), if the variance under this section is in effect, the department shall determine
2 whether formal review under sub. (3) should be undertaken, considering any
3 comments it receives on the variance under this section.

4 **History:** 2013 a. 378.

4 **SECTION 6.** 283.16 (3m) of the statutes is created to read:

5 283.16 (3m) HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 5 years after the
6 variance under this section is approved by the federal environmental protection
7 agency, as part of the review required by 40 CFR 131.14 (b) (1) (v), the department
8 shall review the interim effluent limitations under sub. (6) (a), or any other effluent
9 limitations that are in effect as a result of a previous review under this subsection
10 or sub. (3), and determine whether they are consistent with the highest attainable
11 condition for the point sources and categories of point sources that are eligible for the
12 variance under this section. In conducting this review, the department shall use all
13 existing and readily available information. The department shall hold a public
14 hearing in order to receive additional information and public comment. The
15 department shall publish notice of the hearing on the department's Internet Web site
16 at least 45 days before the hearing date.

17 (b) The department shall submit the results of a review under this subsection
18 to the federal environmental protection agency within 30 days of completion of the
19 review.

20 (c) If the department does not conduct a review within the time specified under
21 par. (a), the variance under this section will ^{cease to} be in effect beginning 5 years after
22 the variance is approved by the federal environmental protection agency, until the
23 department completes the review and submits the results of the review to the federal
24 environmental protection agency.

1 (d) If the department does not submit the results of a review to the federal
 2 environmental protection agency within the time specified under par. (b), the
 3 variance under this section ^{cease to} ~~will not be~~ in effect beginning 31 days after completion
 4 of a review under this subsection, until the department submits the results of the
 5 review to the federal environmental protection agency.

6 SECTION 7. 283.16 (4) (d) of the statutes is amended to read:

7 283.16 (4) (d) The Except as provided in sub. (3m) (c) and (d), the variance
 8 under this section remains in effect for a point source until the permit is reissued,
 9 modified, or revoked and reissued.

History: 2013 a. 378.

10 SECTION 8. 283.16 (7) of the statutes is amended to read:

11 283.16 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department
 12 determines under sub. (3) (cm) or (3m) (a) that it is ~~appropriate to apply more~~
 13 ~~stringent effluent limitations than those in sub. (6) (a) to all point sources or to a~~
 14 ~~category of point sources~~ the interim effluent limitations under sub. (6) (a), or any
 15 other effluent limitations that are in effect as a result of a previous review under sub.
 16 (3) or (3m), are not consistent with the highest attainable condition for a point source
 17 or category of point sources eligible for the variance under this section, the
 18 department shall include the ~~more stringent~~ effluent limitations that were specified
 19 under sub. (3) (cm) or (3m) (a) as being consistent with the highest attainable
 20 condition in permits that are reissued, modified, or revoked and reissued after that
 21 ~~determination for all those point sources or for the category categories of point~~
 22 ~~sources to which the more stringent effluent limitations apply.~~ ^{plain} ~~plain~~

History: 2013 a. 378.

23 SECTION 9. 283.16 (8) (b) 3. of the statutes is amended to read:

1 283.16 (8) (b) 3. No later than May 1 of the 2nd year following a year in which
2 a county receives payments under this subsection, the county shall submit an annual
3 report to the department of natural resources, ~~the department of administration,~~ the
4 department of agriculture, trade and consumer protection, and each permittee from
5 which it received those payments. In the annual report, the county shall describe the
6 projects for which it provided cost sharing, quantify, in pounds, the associated
7 phosphorus reductions achieved using accepted modeling technology, and identify
8 any staff funded with the payments.

History: 2013 a. 378.

9 **SECTION 10.** 283.16 (9) of the statutes is created to read:

10 283.16 (9) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
11 this section, the department shall comply with the provisions of 40 CFR 131.14 when
12 approving and implementing a variance under this section.

13

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3961/P1 → P2
MCP:klm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 283.16 (2m), 283.16 (4) (d), 283.16 (7) and 283.16 (8) (b) 3.; and
2 *to create* 227.01 (13) (yt), 281.15 (6), 283.15 (11), 283.15 (12), 283.16 (3m) and
3 283.16 (9) of the statutes; **relating to:** the review of water quality standards
4 and variances to water quality standards by the Department of Natural
5 Resources and exempting certain actions of the Department of Natural
6 Resources and the Department of Administration from the requirement to
7 promulgate rules relating to the statewide water quality variance for
8 phosphorus.

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:

9 SECTION 1. 227.01 (13) (yt) of the statutes is created to read:

1 227.01 (13) (yt) Relates to implementing, interpreting, or administering s.
 2 283.16, including determining social and economic impacts of compliance with
 3 phosphorus effluent limitations, establishing ^{application and} eligibility requirements for obtaining
 4 a variance, and providing guidance to the public.

5 **SECTION 2.** 281.15 (6) of the statutes is created to read:

6 281.15 (6) Every 3 years, as part of the review required by 33 USC 1313 (c) (1),
 7 the department shall review the water quality standards promulgated under this
 8 section and determine whether any existing standards should be modified or new
 9 standards should be adopted. The department shall hold a public hearing to receive
 10 information and public comment regarding water quality standards promulgated
 11 under this section. The department shall publish notice of the hearing on the
 12 department's Internet site at least 45 days before the hearing date. The department
 13 shall submit the results of a review under this subsection to the federal
 14 environmental protection agency.

15 **SECTION 3.** 283.15 (11) of the statutes is created to read:

16 283.15 (11) **WATER QUALITY STANDARD REVIEW.** Every 3 years, as part of the
 17 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313
 18 (c) (1), the department shall review the variances to water quality standards
 19 approved under ss. 283.15 and 283.16. The department shall receive information
 20 regarding these variances at the public hearing held under s. 281.15 (6). If the
 21 department determines that a water quality standard to which a variance applies
 22 is attainable, the department shall modify the standard or variance accordingly.

23 **SECTION 4.** 283.15 (12) of the statutes is created to read:

at the time the permit containing the variance
 is reissued, modified, or revoked and reissued

1 283.15 (12) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
2 this section, the department shall comply with the provisions of 40 CFR 131.14 when
3 approving and implementing a variance under this section.

4 **SECTION 5.** 283.16 (2m) of the statutes is amended to read:

5 283.16 (2m) WATER QUALITY STANDARDS REVIEW. Every 3 years, as part of the
6 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313
7 (c) (1), if the variance under this section is in effect, the department shall determine
8 whether formal review under sub. (3) should be undertaken, considering any
9 comments it receives on the variance ~~under this section.~~

Jns
8-9

9

10 **SECTION 6.** 283.16 (3m) of the statutes is created to read:

11 283.16 (3m) HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 5 years after the
12 variance under this section is approved by the federal environmental protection
13 agency, as part of the review required by 40 CFR 131.14 (b) (1) (v), the department
14 shall review the interim effluent limitations under sub. (6) (a), or any other effluent
15 limitations that are in effect as a result of a previous review under this subsection
16 or sub. (3), and determine whether they are consistent with the highest attainable
17 condition for the point sources and categories of point sources that are eligible for the
18 variance under this section. In conducting this review, the department shall use all
19 existing and readily available information. The department shall hold a public
20 hearing in order to receive additional information and public comment. The
21 department shall publish notice of the hearing on the department's Internet site at
22 least 45 days before the hearing date.

23 (b) The department shall submit the results of a review under this subsection
24 to the federal environmental protection agency within 30 days of completion of the
25 review after determining that the review under par. (a)
has been completed

1 (c) If the department does not conduct a review within the time specified under
 2 par. (a), the variance under this section will cease to be ~~in effect~~ ^{available} until the department
 3 completes the review and submits the results of the review to the federal
 4 environmental protection agency.

5 (d) If the department does not submit the results of a review to the federal
 6 environmental protection agency within the time specified under par. (b), the
 7 variance under this section will cease to be ~~in effect~~ ^{available} until the department submits the
 8 results of the review to the federal environmental protection agency.

9 **SECTION 7.** 283.16 (4) (d) of the statutes is amended to read:

10 283.16 (4) (d) ~~The~~ ^{Notwithstanding} ~~Except as provided in~~ sub. (3m) (c) and (d), the variance
 11 under this section remains in effect for ~~a~~ ^{an approved} point source until the permit is reissued,
 12 modified, or revoked and reissued. ^{source's}

13 **SECTION 8.** 283.16 (7) of the statutes is amended to read:

14 283.16 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department
 15 determines under sub. (3) (cm) ~~or (3m) (a)~~ ^{or (e)} that it is appropriate to apply more
 16 stringent effluent limitations than those in sub. (6) (a) to all point sources or to a
 17 category of point sources the interim effluent limitations under sub. (6) (a), or any
 18 other effluent limitations that are in effect as a result of a previous review under sub.
 19 (3) or (3m), are not consistent with the highest attainable condition for a point source
 20 or category of point sources eligible for the variance under this section, the
 21 department shall include the ~~more stringent~~ ^{no strike} effluent limitations that were specified
 22 under sub. (3) (cm) or (3m) (a) ^{or (e)} as being consistent with the highest attainable
 23 condition in permits that are reissued, modified, or revoked and reissued ^{no strike} after that
 24 determination ^{no strike} for all ^{the} those ^{source} point sources ^{no strike} or for the category categories of point
 25 sources to which the more stringent effluent limitations apply. ^{no strike}

1 **INSERT 3-9**

2 **SECTION 1.** 283.16 (3) (a) of the statutes is amended to read:

3 283.16 (3) (a) ~~In 2024~~ Within 10 years after the federal environmental
4 protection agency approves, under sub. (2) (em), the variance under this section, if
5 a determination under sub. (2) (a) that attaining the water quality standard for
6 phosphorus through compliance with water quality based effluent limitations by
7 point sources that cannot achieve compliance without major facility upgrades is not
8 feasible is in effect, or upon a determination under sub. (2m) that review under this
9 subsection should be undertaken, the department of administration, in consultation
10 with the department of natural resources, shall prepare a report, no later than
11 September 1, to evaluate whether the determination under sub. (2) (a) remains
12 accurate. The department of administration shall consult with permittees that
13 would be subject to water quality based effluent limitations for phosphorus and other
14 interested parties in preparing the report.

15 History: 2013 a. 378.

16 **INSERT 4-8**

17 (e) In addition to the review under par. (a), at the time the variance under this
18 section is initially approved for a point source, and at the time the source's ^{permit} is
19 reissued, modified, or revoked and reissued, the department may review the interim
20 effluent limitations under sub. (6) (a), or any other effluent limitations that are in
21 effect as a result of a previous review under this subsection or sub. (3), and determine
22 whether they are consistent with the highest attainable condition for the point
23 source.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3961/P1
MCP:klm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT to amend 283.16 (2m), 283.16 (4) (d), 283.16 (7) and 283.16 (8) (b) 3.; and
2 to create 227.01 (13) (yt), 281.15 (6), 283.15 (11), 283.15 (12), 283.16 (3m) and
3 283.16 (9) of the statutes; relating to: the review of water quality standards
4 and variances to water quality standards by the Department of Natural
5 Resources and exempting certain actions of the Department of Natural
6 Resources and the Department of Administration from the requirement to
7 promulgate rules relating to the statewide water quality variance for
8 phosphorus.

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:

9 SECTION 1. 227.01 (13) (yt) of the statutes is created to read:

1 227.01 (13) (yt) Relates to implementing, interpreting, or administering s.
 2 283.16, including determining social and economic impacts of compliance with
 3 phosphorus effluent limitations, establishing eligibility requirements for obtaining
 4 a variance, and providing guidance to the public.

Commented [NRT1]: Can we add "and application"

5 SECTION 2. 281.15 (6) of the statutes is created to read:

6 281.15 (6)(a) Every 3 years, as part of the review required by 33 USC 1313 (c)
 (1),
 7 the department shall review the water quality standards promulgated under this
 8 section and determine whether any existing standards should be modified or new
 9 standards should be adopted. The department shall hold a public hearing to receive
 10 information and public comment regarding water quality standards promulgated
 11 under this section. The department shall publish notice of the hearing on the
 12 department's Internet site at least 45 days before the hearing date. The department
 13 shall submit the results of a review under this subsection to the federal
 14 environmental protection agency.

15 ~~SECTION 3. 283.15 (11) of the statutes is created to read:~~

16 ~~283.15 (11) WATER QUALITY STANDARD REVIEW. Every 3 years, as part of the~~
 17 ~~review of water quality standards under s. 281.15 (6) par. (a), as required by 33~~
 18 ~~USC 1313~~
 19 (c) (1), the department shall review the variances to water quality standards
 20 approved under ss. 283.15 and 283.16. The department shall receive information
 21 regarding these variances at the public hearing held under ~~s. 281.15 (6) par. (a).~~
 If the
 22 department determines that a water quality standard to which a variance applies
 is attainable, the department shall modify the standard or variance accordingly at
the time of permit reissuance.

Commented [NRT2]: I would not make this a separate section. Can we just have a paragraph (a) and (b) under sub. (6)? The review of variances under the triennial standards review is just one small component. Creating a separate section makes it appear as if it is a significant and separate review under the triennial standards review process.

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23 SECTION 4. 283.15 (12) of the statutes is created to read:

Commented [NRT3]: Can we add a sentence here that says that a variance approved under s. 283.15, Stats shall be modified at the time of permit reissuance?

Commented [ALM4]: I agree with Robin's suggestion here, especially from a workload perspective.

1 283.15 (12) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
2 this section, the department shall comply with the provisions of 40 CFR 131.14 when
3 approving and implementing a variance under this section.

4 SECTION 5. 283.16 (2m) of the statutes is amended to read:

5 283.16 (2m) WATER QUALITY STANDARDS REVIEW. Every 3 years, as part of the
6 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313
7 (c) (1), if the variance under this section is in effect, the department shall determine
8 whether formal review under sub. (3) should be undertaken, considering any
9 comments it receives on the variance under this section.

10 Section X. 283.16(3) should be amended to read:

11 ~~In 2024, Within 10 years of the date the federal environmental protection agency
12 approves under 40 CFR Part 131 a variance under this section, under s.~~

13 SECTION 6. 283.16 (3m) of the statutes is created to read:

14 283.16 (3m) HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 5 years after the
15 variance under this section is approved by the federal environmental protection
16 agency, as part of the review required by 40 CFR 131.14 (b) (1) (v), the department
17 shall review the interim effluent limitations under sub. (6) (a), or any other effluent
18 limitations that are in effect as a result of a previous review under this subsection
19 or sub. (3), and determine whether they are consistent with the highest attainable
20 condition for the point sources and categories of point sources that are eligible for the
21 variance under this section. In conducting this review, the department shall use all
22 existing and readily available information. The department shall hold a public
23 hearing in order to receive additional information and public comment. The
24 department shall publish notice of the hearing on the department's Internet site at
25 least 45 days before the hearing date.

26 (b) The department shall submit the results of a review under this subsection

27 ~~to the federal environmental protection agency within 30 days of after determining
28 that the review under sub. (3m) has been completed, completion of the~~

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Commented [NRT5]: I changed the date from 2024 because EPA won't be approving this variance until 2016. Also, in this section, I think in s. 283.16(3)(b)Intro, language needs to be added that says that the WDNR can submit information from previous highest attainable condition review in sub. (3) in the review under (3m) to DOA if it is still accurate.

Commented [ALM6]: I agree that this would be a beneficial change.

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2526 review.

Commented [NRT7]: We need a sentence added that clarifies that the WDNR makes the determination as to the completion date which starts the 30 day clock.

1 (c) If the department does not conduct a review within the time specified under
 2 par. (a), the variance under this section will cease to be in effect until the department
 3 completes the review and submits the results of the review to the federal
 4 environmental protection agency.

5 (d) If the department does not submit the results of a review to the federal
 6 environmental protection agency within the time specified under par. (b), the
 7 variance under this section will cease to be in effect until the department submits the
 8 results of the review to the federal environmental protection agency.

89 (e) Upon initial coverage of the variance or at the time of permit reissuance, the
 department may also review whether the interim effluent limitations in sub. (6)(a)
 represent the highest attainable condition for a specific point source.

910 SECTION 7. 283.16 (4) (d) of the statutes is amended to read:

1011 283.16 (4) (d) ~~The~~ Except as provided in sub. (3m) (c) and (d), the variance
 1112 under this section remains in effect for a point source until the permit is reissued,
 1213 modified, or revoked and reissued.

1314 SECTION 8. 283.16 (7) of the statutes is amended to read:

1415 283.16 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department
 1516 determines under sub. (3) (cm) or (3m) (a) or ~~it is appropriate to apply more~~
~~3m~~
 (e)
 that

1617 ~~stringent effluent limitations than those in sub. (6) (a) to all point sources or to a~~
 1718 ~~category of point sources the interim effluent limitations under sub. (6) (a), or any~~
 1819 ~~other effluent limitations that are in effect as a result of a previous review under sub.~~

1920 (3) or (3m), are not consistent with the highest attainable condition for a point source
 2021 or category of point sources eligible for the variance under this section, the
 2122 department shall include the ~~more stringent effluent limitations that were specified~~
 2223 under sub. (3) (cm) or (3m) (a) or 3m (e) as being consistent with the highest
 attainable

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Commented [NRT8]: One question for program staff is whether this should just be done the first time a permittee gets coverage under the MDV? If so, the cross reference should just be to the limit in (6)(a)1. Put another way, should the highest attainable condition review for a specific permittee just be done for the .8 mg/L limitation the first time a permittee gets coverage under the MDV, and thereafter the highest attainable condition is done every five years for everyone? Or, should the highest attainable condition review be done every five years and at each permit reissuance?

Commented [ALM9]: Yes!!!! It needs to be permit term 1 as well as subsequent years as well.

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Commented [NRT10]: Even if we determine a variance should no longer apply to a permittee, the variance is still applicable until it is removed from the permit terms through a formal permit mod or reissuance.

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Commented [NRT11]: Need to add "(3m)(a) or (e)" or add "(3m)(a) or at permit reissuance."

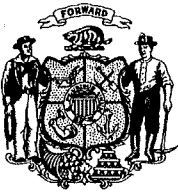
Commented [NRT12]: Can we leave this in? This section only applies to the imposition of "more stringent limits"

Commented [NRT13]: Again, need to add "(3m)(a) or (e)"

~~23~~24 condition in permits ~~that are~~ reissued, modified, or revoked and reissued after that

| ~~24~~25 determination for all ~~these a~~ point sources or for the category ~~categories~~ of
point

~~25~~26 sources to which the more stringent effluent limitations apply.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3961/P2-1
MCP:klm

Need by 4pm Fri 1/8

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regenerate catalog

1 AN ACT to amend 283.16 (2m), 283.16 (3) (a), 283.16 (4) (d), 283.16 (7) and 283.16
2 (8) (b) 3.; and to create 227.01 (13) (yt), 281.15 (6), 283.15 (11), 283.15 (12),
3 283.16 (3m) and 283.16 (9) of the statutes; relating to: the review of water
4 quality standards and variances to water quality standards by the Department
5 of Natural Resources and exempting certain actions of the Department of
6 Natural Resources and the Department of Administration from the
7 requirement to promulgate rules relating to the statewide water quality
8 variance for phosphorus.

Analysis by the Legislative Reference Bureau

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

Ins A

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

9 SECTION 1. 227.01 (13) (yt) of the statutes is created to read:

1 227.01 (13) (yt) Relates to implementing, interpreting, or administering s.
2 283.16, including determining social and economic impacts of compliance with
3 phosphorus effluent limitations, establishing application and eligibility
4 requirements for obtaining a variance, and providing guidance to the public.

5 **SECTION 2.** 281.15 (6) of the statutes is created to read:

6 281.15 (6) Every 3 years, as part of the review required by 33 USC 1313 (c) (1),
7 the department shall review the water quality standards promulgated under this
8 section and determine whether any existing standards should be modified or new
9 standards should be adopted. The department shall hold a public hearing to receive
10 information and public comment regarding water quality standards promulgated
11 under this section. The department shall publish notice of the hearing on the
12 department's Internet site at least 45 days before the hearing date. The department
13 shall submit the results of a review under this subsection to the federal
14 environmental protection agency.

15 **SECTION 3.** 283.15 (11) of the statutes is created to read:

16 283.15 (11) WATER QUALITY ^{STANDARDS} ~~STANDARD~~ REVIEW. Every 3 years, as ^{As} part of the
17 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313
18 (c) (1), the department shall review the variances to water quality standards
19 approved under ss. 283.15 and 283.16. The department shall receive information
20 regarding these variances at the public hearing held under s. 281.15 (6). If the
21 department determines that a water quality standard to which a variance applies
22 is attainable, the department shall modify the standard or variance accordingly at
23 the time the permit containing the variance is reissued, modified, or revoked and
24 reissued.

25 **SECTION 4.** 283.15 (12) of the statutes is created to read:

1 283.15 (12) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
2 this section, the department shall comply with the provisions of 40 CFR 131.14 when
3 approving and implementing a variance under this section.

4 **SECTION 5.** 283.16 (2m) of the statutes is amended to read:

5 283.16 (2m) WATER QUALITY STANDARDS REVIEW. ^{As} Every 3 years, ^{as} part of the
6 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313
7 (c) (1), if the variance under this section is in effect, the department shall determine
8 whether formal review under sub. (3) should be undertaken, considering any
9 comments it receives on the variance ~~under this section.~~

10 **SECTION 6.** 283.16 (3) (a) of the statutes is amended to read:

11 283.16 (3) (a) ~~In 2024~~ Within 10 years after the federal environmental
12 protection agency approves, under sub. (2) (em), the variance under this section, if
13 a determination under sub. (2) (a) that attaining the water quality standard for
14 phosphorus through compliance with water quality based effluent limitations by
15 point sources that cannot achieve compliance without major facility upgrades is not
16 feasible is in effect, or upon a determination under sub. (2m) that review under this
17 subsection should be undertaken, the department of administration, in consultation
18 with the department of natural resources, shall prepare a report, no later than
19 September 1, to evaluate whether the determination under sub. (2) (a) remains
20 accurate. The department of administration shall consult with permittees that
21 would be subject to water quality based effluent limitations for phosphorus and other
22 interested parties in preparing the report.

23 **SECTION 7.** 283.16 (3m) of the statutes is created to read:

24 283.16 (3m) HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 5 years after the
25 variance under this section is approved by the federal environmental protection

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3-22

1 agency, the department shall, as part of the review required by 40 CFR 131.14 (b) (1)
2 (v), review the interim effluent limitations under sub. (6) (a), or any other effluent
3 limitations that are in effect as a result of a previous review under this subsection
4 or sub. (3), and determine whether they are consistent with the highest attainable
5 condition for the point sources and categories of point sources that are eligible for the
6 variance under this section. In conducting this review, the department shall use all
7 existing and readily available information. The department shall hold a public
8 hearing in order to receive additional information and public comment. The
9 department shall publish notice of the hearing on the department's Internet site at
10 least 45 days before the hearing date.

11 (b) The department shall submit the results of a review under this subsection
12 to the federal environmental protection agency within 30 days after determining
13 that the review under par. (a) has been completed.

14 (c) If the department does not conduct a review within the time specified under
15 par. (a), the variance under this section will cease to be available until the
16 department completes the review and submits the results of the review to the federal
17 environmental protection agency.

18 (d) If the department does not submit the results of a review to the federal
19 environmental protection agency within the time specified under par. (b), the
20 variance under this section will cease to be available until the department submits
21 the results of the review to the federal environmental protection agency.

22 (e) In addition to the review under par. (a), at the time the variance under this
23 section is initially approved for a point source, and at the time the source's permit
24 is reissued, modified, or revoked and reissued, the department may review the
25 interim effluent limitations under sub. (6) (a), or any other effluent limitations that

1 are in effect as a result of a previous review under this subsection or sub. (3), and
2 determine whether they are consistent with the highest attainable condition for the
3 point source.

4 **SECTION 8.** 283.16 (4) (d) of the statutes is amended to read:

5 283.16 (4) (d) The Notwithstanding sub. (3m) (c) and (d), the variance under
6 this section remains in effect for -a- an approved point source until the source's permit
7 is reissued, modified, or revoked and reissued.

8 **SECTION 9.** 283.16 (7) of the statutes is amended to read:

9 283.16 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department
10 determines under sub. (3) (cm) or (3m) (a) or (e) that it is appropriate to apply more
11 stringent effluent limitations than those in sub. (6) (a) to all point sources or to a
12 category of point sources the interim effluent limitations under sub. (6) (a), or any
13 other effluent limitations that are in effect as a result of a previous review under sub.
14 (3) or (3m), are not consistent with the highest attainable condition for a point source
15 or category of point sources eligible for the variance under this section, the
16 department shall include the more stringent effluent limitations that were specified
17 under sub. (3) (cm) or (3m) (a) or (e) as being consistent with the highest attainable
18 condition in permits that are reissued, modified, or revoked and reissued after that
19 determination for all the point sources source or for the category of point sources to
20 which the more stringent effluent limitations apply.

21 **SECTION 10.** 283.16 (8) (b) 3. of the statutes is amended to read:

22 283.16 (8) (b) 3. No later than May 1 of the 2nd year following a year in which
23 a county receives payments under this subsection, the county shall submit an annual
24 report to the department of natural resources, ~~the department of administration,~~ the
25 department of agriculture, trade and consumer protection, and each permittee from

INSERT A

This bill requires the Department of Natural Resources to conduct regular reviews of water quality standards and variances to water quality standards.

Background

Under current law, DNR must promulgate water quality standards for the waters of the state, and effluent limitations for point sources of water pollution. DNR may approve a temporary variance from applicable water quality standards and effluent limitations in a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to a point source.

Current law also creates a statewide variance for phosphorous water quality standards. An existing point source may request to have the statewide phosphorous variance apply to it under its WPDES permit. Current law sets the interim effluent limitations that apply to a point source for which the statewide phosphorus variance has been approved. Before the statewide phosphorus variance may be made available for any point source, the department of administration must determine that complying with the applicable phosphorous effluent limitations is not feasible, and the federal environmental protection agency must approve the statewide phosphorus variance.

3-year review of water quality standards and variances

This bill requires DNR to review, every 3 years, the water quality standards that it has promulgated to determine whether the standards should be modified or new standards should be adopted. As part of this review, DNR must also review the variances to water quality standards that it has approved, including approvals under the statewide phosphorus variance. If DNR determines that a water quality standard to which a variance applies is attainable by the permittee, DNR is required to modify the variance when the source's permit is reissued or modified.

The bill requires DNR to hold a public hearing as part of this review, and to submit the results of its review to the federal environmental protection agency.

5-year review of statewide phosphorus variance

This bill also requires DNR to review, every 5 years, the interim effluent limitations under the statewide phosphorus variance to determine whether they are consistent with the highest attainable condition for the point sources that are eligible for the statewide phosphorus variance. DNR must hold a public hearing as part of this review, and submit the results of its review to the federal environmental protection agency within 30 days of completing the review. If DNR does not conduct this review every 5 years or does not submit the results of a review within 30 days, the statewide phosphorus variance is unavailable until review is completed or the results are submitted, except that if the statewide phosphorus variance has been approved for a point source, the variance continues to apply to the source until its permit is reissued or modified.

If the statewide phosphorus variance has been approved for a point source, the bill also requires DNR to review, at the time the variance is initially approved for the

determining that the review is complete

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source and each time the source's permit is reissued or modified, the applicable interim effluent limitations to determine whether they are consistent with the highest attainable condition for the source.

Under the bill, if DNR determines that the applicable interim effluent limitations are not consistent with the highest attainable condition for a permittee or for point sources that are eligible for the statewide phosphorus variance, DNR must include the effluent limitations that were identified as being consistent with the highest attainable condition in any permit that is issued or modified after the date of that determination.

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

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2
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4

INSERT A

SECTION 1. 283.16 (3) (b) 4. of the statutes is created to read:

283.16 (3) (b) 4. The results of the most recent review under sub. (3m) (a).



2015 BILL

1 **AN ACT to amend** 283.16 (2m), 283.16 (3) (a), 283.16 (4) (d), 283.16 (7) and 283.16
2 (8) (b) 3.; and **to create** 227.01 (13) (yt), 281.15 (6), 283.15 (11), 283.15 (12),
3 283.16 (3) (b) 4., 283.16 (3m) and 283.16 (9) of the statutes; **relating to:** the
4 review of water quality standards and variances to water quality standards by
5 the Department of Natural Resources and exempting certain actions of the
6 Department of Natural Resources and the Department of Administration from
7 the requirement to promulgate rules relating to the statewide water quality
8 variance for phosphorus.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources to conduct regular reviews of water quality standards and variances to water quality standards.

Background

Under current law, DNR must promulgate water quality standards for the waters of the state and effluent limitations for point sources of water pollution. DNR may approve a temporary variance from applicable water quality standards and effluent limitations in a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to a point source.

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BILL

variance apply to that source under the source's WPDES permit. Current law sets the interim effluent limitations that apply to a point source for which the statewide phosphorus variance has been approved. Before the statewide phosphorus variance may be made available for any point source, the Department of Administration must determine that complying with the applicable phosphorous effluent limitations is not feasible, and the federal Environmental Protection Agency must approve the statewide phosphorus variance.

Three-year review of water quality standards and variances

This bill requires DNR to review, every three years, the water quality standards that it has promulgated to determine whether the standards should be modified or new standards should be adopted. As part of this review, DNR must also review the variances to water quality standards that it has approved, including approvals under the statewide phosphorus variance. If DNR determines that a water quality standard to which a variance applies is attainable by a permittee, DNR is required to modify the variance when the source's permit is reissued or modified.

The bill requires DNR to hold a public hearing as part of this review, and to submit the results of its review to the EPA.

Five-year review of statewide phosphorus variance

This bill also requires DNR to review, every five years, the interim effluent limitations under the statewide phosphorus variance to determine whether they are consistent with the highest attainable condition for the point sources that are eligible for the statewide phosphorus variance. DNR must hold a public hearing as part of this review and submit the results of its review to the EPA within 30 days of determining that the review is complete. If DNR does not conduct this review every five years or does not submit the results of a review within 30 days, the statewide phosphorus variance is unavailable until the review is completed or the results are submitted, except that if the statewide phosphorus variance has been approved for a point source, the variance continues to apply to that source until the source's permit is reissued or modified.

If the statewide phosphorus variance has been approved for a point source, the bill also requires DNR to review, at the time the variance is initially approved for the source and each time the source's permit is reissued or modified, the applicable interim effluent limitations to determine whether they are consistent with the highest attainable condition for the source.

Under the bill, if DNR determines that the applicable interim effluent limitations are not consistent with the highest attainable condition for a permittee or for point sources that are eligible for the statewide phosphorus variance, DNR must include the effluent limitations that were identified as being consistent with the highest attainable condition in any permit that is issued or modified after the date of that determination.

BILL

For further information see the *state* 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:

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2 227.01 (13) (yt) Relates to implementing, interpreting, or administering s.
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4 phosphorus effluent limitations, establishing application and eligibility
5 requirements for obtaining a variance, and providing guidance to the public.

6 **SECTION 2.** 281.15 (6) of the statutes is created to read:

7 281.15 (6) Every 3 years, as part of the review required by 33 USC 1313 (c) (1),
8 the department shall review the water quality standards promulgated under this
9 section and determine whether any existing standards should be modified or new
10 standards should be adopted. The department shall hold a public hearing to receive
11 information and public comment regarding water quality standards promulgated
12 under this section. The department shall publish notice of the hearing on the
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15 environmental protection agency.

16 **SECTION 3.** 283.15 (11) of the statutes is created to read:

17 283.15 (11) WATER QUALITY STANDARDS REVIEW. As part of the review of water
18 quality standards under s. 281.15 (6), as required by 33 USC 1313 (c) (1), the
19 department shall review the variances to water quality standards approved under
20 ^{2 s.} 283.15 ^{2 or} and 283.16. The department shall receive information regarding these
21 variances at the public hearing held under s. 281.15 (6). If the department

BILL**SECTION 3**

1 determines that a water quality standard to which a variance applies is attainable,
2 the department shall modify the standard or variance accordingly at the time the
3 permit containing the variance is reissued, modified, or revoked and reissued.

4 **SECTION 4.** 283.15 (12) of the statutes is created to read:

5 283.15 (12) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
6 this section, the department shall comply with the provisions of 40 CFR 131.14 when
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8 **SECTION 5.** 283.16 (2m) of the statutes is amended to read:

9 283.16 (2m) WATER QUALITY STANDARDS REVIEW. ~~Every 3 years as~~ As part of the
10 review of water quality standards under s. 281.15 (6), as required by 33 USC 1313
11 (c) (1), if the variance under this section is in effect, the department shall determine
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13 comments it receives on the variance ~~under this section.~~

14 **SECTION 6.** 283.16 (3) (a) of the statutes is amended to read:

15 283.16 (3) (a) ~~In 2024~~ Within 10 years after the federal environmental
16 protection agency approves, under sub. (2) (em), the variance under this section, if
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18 phosphorus through compliance with water quality based effluent limitations by
19 point sources that cannot achieve compliance without major facility upgrades is not
20 feasible is in effect, or upon a determination under sub. (2m) that review under this
21 subsection should be undertaken, the department of administration, in consultation
22 with the department of natural resources, shall prepare a report, no later than
23 September 1, to evaluate whether the determination under sub. (2) (a) remains
24 accurate. The department of administration shall consult with permittees that

BILL

1 would be subject to water quality based effluent limitations for phosphorus and other
2 interested parties in preparing the report.

3 **SECTION 7.** 283.16 (3) (b) 4. of the statutes is created to read:

4 283.16 (3) (b) 4. The results of the most recent review under sub. (3m) (a).

5 **SECTION 8.** 283.16 (3m) of the statutes is created to read:

6 283.16 (3m) HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 5 years after the
7 variance under this section is approved by the federal environmental protection
8 agency, the department shall, as part of the review required by 40 CFR 131.14 (b) (1)
9 (v), review the interim effluent limitations under sub. (6) (a), or any other effluent
10 limitations that are in effect as a result of a previous review under this subsection
11 or sub. (3), and determine whether they are consistent with the highest attainable
12 condition for the point sources and categories of point sources that are eligible for the
13 variance under this section. In conducting this review, the department shall use all
14 existing and readily available information. The department shall hold a public
15 hearing in order to receive additional information and public comment. The
16 department shall publish notice of the hearing on the department's Internet site at
17 least 45 days before the hearing date.

18 (b) The department shall submit the results of a review under this subsection
19 to the federal environmental protection agency within 30 days after determining
20 that the review under par. (a) has been completed.

21 (c) If the department does not conduct a review within the time specified under
22 par. (a), the variance under this section will cease to be available until the
23 department completes the review and submits the results of the review to the federal
24 environmental protection agency.

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1 (d) If the department does not submit the results of a review to the federal
2 environmental protection agency within the time specified under par. (b), the
3 variance under this section will cease to be available until the department submits
4 the results of the review to the federal environmental protection agency.

5 (e) In addition to the review under par. (a), at the time the variance under this
6 section is initially approved for a point source, and at the time the source's permit
7 is reissued, modified, or revoked and reissued, the department may review the
8 interim effluent limitations under sub. (6) (a), or any other effluent limitations that
9 are in effect as a result of a previous review under this subsection or sub. (3), and
10 determine whether they are consistent with the highest attainable condition for the
11 point source.

12 **SECTION 9.** 283.16 (4) (d) of the statutes is amended to read:

13 283.16 (4) (d) The Notwithstanding sub. (3m) (c) and (d), the variance under
14 this section remains in effect for a- an approved ^{point} point source until the source's permit
15 is reissued, modified, or revoked and reissued.

16 **SECTION 10.** 283.16 (7) of the statutes is amended to read:

17 283.16 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department
18 determines under sub. (3) (cm) or (3m) (a) or (e) that it is appropriate to apply more
19 ~~stringent effluent limitations than those in sub. (6) (a) to all point sources or to a~~
20 ~~category of point sources~~ the interim effluent limitations under sub. (6) (a), or any
21 other effluent limitations that are in effect as a result of a previous review under sub.
22 (3) or (3m), are not consistent with the highest attainable condition for a point source
23 or category of point sources eligible for the variance under this section, the
24 department shall include the more stringent effluent limitations that were specified
25 under sub. (3) (cm) or (3m) (a) or (e) as being consistent with the highest attainable

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1 condition in permits that are reissued, modified, or revoked and reissued after that
2 determination for all the point sources source or for the category of point sources to
3 which the more stringent effluent limitations apply.

4 **SECTION 11.** 283.16 (8) (b) 3. of the statutes is amended to read:

5 283.16 (8) (b) 3. No later than May 1 of the 2nd year following a year in which
6 a county receives payments under this subsection, the county shall submit an annual
7 report to the department of natural resources, ~~the department of administration,~~ the
8 department of agriculture, trade and consumer protection, and each permittee from
9 which it received those payments. In the annual report, the county shall describe the
10 projects for which it provided cost sharing, quantify, in pounds, the associated
11 phosphorus reductions achieved using accepted modeling technology, and identify
12 any staff funded with the payments.

13 **SECTION 12.** 283.16 (9) of the statutes is created to read:

14 283.16 (9) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
15 this section, the department shall comply with the provisions of 40 CFR 131.14 when
16 approving and implementing a variance under this section.

17 (END)