



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0164/1
RCT:jld:jf

DOA:.....Stinebrink, BB0037 - Water quality standard variance changes

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Current law generally prohibits a person from discharging pollutants into the waters of this state without a wastewater discharge permit from DNR. Discharge permits often contain requirements to use specified technology to reduce the amount of pollutants in the wastewater discharged. A discharge permit may include more stringent requirements if needed to achieve water quality standards for the waters receiving the discharge. This kind of requirement is called a water quality based effluent limitation. Under current law, after DNR reissues or modifies a discharge permit to include a water quality based effluent limitation, the permittee may apply to DNR for a variance from the water quality standard that is the basis for the limitation.

Under this bill, if a permittee applies for reissuance of a discharge permit that contains a variance or anticipates that DNR will add a water quality based effluent limitation when it reissues a discharge permit, the permittee may request a variance when it applies for reissuance of the permit, rather than waiting until after DNR

reissues the permit. This bill also extends the maximum term of a variance from three to five years, which is the maximum term of a discharge permit.

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

SECTION 1. 283.15 (2) (a) of the statutes is renumbered 283.15 (2) (am) and amended to read:

283.15 (2) (am) 1. ~~When~~ Within 60 days after the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13 (5), the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

2. After an application for a variance is submitted to the department under subd. 1., and until the last day for seeking review of the secretary's final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 283.13 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 283.63. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

SECTION 2. 283.15 (2) (a) of the statutes is created to read:

283.15 (2) (a) If a permit contains a variance or if a permittee anticipates that a reissued permit will include a water quality based effluent limitation under s. 283.13 (5), when the permittee applies for reissuance of the permit the permittee may apply to the department for renewal of the variance or for a variance from the water

quality standard that would be used to derive the water quality based effluent limitation.

SECTION 3. 283.15 (2) (b) 1. of the statutes is renumbered 283.15 (2) (b) and amended to read:

283.15 (2) (b) The department shall specify by rule the information to be included in the an application. ~~The permittee shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit under this subsection.~~

SECTION 4. 283.15 (2) (b) 2. of the statutes is repealed.

SECTION 5. 283.15 (2) (b) 3. of the statutes is repealed.

SECTION 6. 283.15 (2) (c) of the statutes is amended to read:

283.15 (2) (c) The department may request additional information from the permittee within 30 days after receiving either the an application under par. (b) 1. ~~or the information under par. (b) 2.~~ (am) 1. The permittee shall provide the additional information within 30 days after receipt of the department's request. An application is not complete until the additional information is provided to the department.

SECTION 7. 283.15 (2) (e) of the statutes is repealed.

SECTION 8. 283.15 (3) of the statutes is renumbered 283.15 (3) (b) and amended to read:

283.15 (3) (b) The secretary shall issue a tentative decision on ~~the~~ an application for a variance under sub. (2) (am) 1. within 120 days after receipt of a completed application. The department shall circulate the tentative decision to the permittee and to the parties in s. 283.53 (2) (c). If the tentative decision is to grant a variance based upon one or more of the conditions specified in sub. (4) (a) 1. a. to e., the department shall include in the notice under this subsection paragraph a

statement on the effect of the variance, if granted, on the designated use of the water body during the term of the underlying permit. The department shall provide a 30-day period for written comments on the tentative decision.

SECTION 9. 283.15 (3) (a) of the statutes is created to read:

283.15 (3) (a) The secretary shall issue a tentative decision on an application for a variance under sub. (2) (a) in the notice under s. 283.39 for the reissuance of the permit.

SECTION 10. 283.15 (4) (a) 1. (intro.) of the statutes is amended to read:

283.15 (4) (a) 1. (intro.) ~~Within 90 days after expiration of the comment period under sub. (3), the~~ The secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

SECTION 11. 283.15 (4) (a) 2. of the statutes is amended to read:

283.15 (4) (a) 2. ~~Within 90 days after the expiration of the comment period under sub. (3), the~~ The secretary shall deny a requested variance if the permittee fails to make the demonstration required under subd. 1.

SECTION 12. 283.15 (4) (a) 3. of the statutes is repealed.

SECTION 13. 283.15 (4) (b) of the statutes is repealed.

SECTION 14. 283.15 (4) (c) of the statutes is repealed.

SECTION 15. 283.15 (5) (b) of the statutes is amended to read:

283.15 (5) (b) A variance applies for the term established by the secretary, but not to exceed ~~3~~ 5 years. The term of the initial variance and any renewals thereof may not exceed the time that the secretary determines is necessary to achieve the water quality based effluent limitation. Initial and interim effluent limitations

established under par. (c) 1. apply, as appropriate, for the term of the underlying permit as issued, reissued or modified to implement the decision under sub. (4) ~~(b)~~ (a) 1. or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s. 227.51 (2) shall apply for the purposes of continuing the provisions of a permit pending the issuance or reissuance of a permit. ~~Upon the issuance or reissuance of the new permit, sub. (2) (a) 2. and s. 283.63 (1) (am) apply.~~

SECTION 16. 283.15 (5) (c) (intro.) of the statutes is amended to read:

283.15 **(5)** (c) (intro.) The department shall require all of the following in a permit reissued or modified pursuant to sub. (4) (c) to implement a variance shall require:

SECTION 17. 283.15 (5) (c) 1. of the statutes is amended to read:

283.15 **(5)** (c) 1. Compliance with an initial effluent limitation ~~which~~ that at the time the variance is approved represents the level currently achievable by the permittee and that is no less stringent than the effluent limitation achieved under the permit before reissuance. At the time a variance is approved a compliance schedule and an interim effluent limitation that is achievable by the permittee during the term of the variance may be specified. The initial and the interim effluent limitations may not be less stringent than a categorical effluent limitation that applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic effluent standard that applies to the permittee under s. 283.21.

SECTION 18. 283.15 (5) (c) 2. (intro.) of the statutes is amended to read:

283.15 **(5)** (c) 2. (intro.) Investigation of treatment technologies, process changes, pollution prevention, wastewater reuse or other techniques that may result in compliance by the permittee with the water quality standard adopted under s. 281.15, and submission of reports on the investigations at such times as required by

the department. The secretary shall modify or waive the requirements specified in this subdivision if the secretary determines, based upon comments received on the tentative decision under sub. (3), that the requirements of this subdivision are:

SECTION 19. 283.15 (6) of the statutes is amended to read:

283.15 (6) RENEWAL. ~~A variance may be renewed using the procedures in and subject to subs. (2) to (5).~~ A variance may not be renewed if the permittee did not submit the reports required under sub. (5) (c) 2. or substantially comply with all other conditions of the variance.

SECTION 20. 283.39 (3) (dm) of the statutes is created to read:

283.39 (3) (dm) If the applicant applied, under s. 283.15 (2) (a), for a variance, as defined in s. 283.15 (1), a tentative decision to approve or deny the variance, including, if the tentative decision is to grant the variance based upon one or more of the conditions specified in s. 283.15 (4) (a) 1. a. to e., a statement on the effect of the variance, if granted, on the designated use of the water body during the term of the permit;

(END)