



2011 ASSEMBLY BILL 728

March 15, 2012 – Introduced by Representative MURSAU. Referred to Committee on Natural Resources.

1 **AN ACT** *to repeal* 283.35 (1m) (c) and (d); *to amend* 283.01 (8), 283.01 (12) (a),
2 283.01 (13), 283.17 (2), 283.45 (1), 283.53 (2) (a) (intro.), 283.53 (2) (b), 283.53
3 (2) (c), 283.53 (2) (d), 283.53 (2d) (intro.), 283.53 (2h), 283.53 (2m), 283.55 (2) (a),
4 283.63 (1) (intro.) and 283.63 (1) (b); and *to create* 283.31 (9), 283.53 (2) (g) and
5 283.53 (3) (g) of the statutes; **relating to:** regulation of wastewater discharges
6 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

The federal Clean Water Act (CWA) includes a program for issuing permits for discharges of water pollutants from point sources, such as pipes. Under the CWA, the federal Environmental Protection Agency (EPA) may approve the issuance of these permits by a state if EPA determines that the state has a program that meets requirements in the CWA and EPA regulations under the CWA. Currently, the Department of Natural Resources (DNR) administers an EPA-approved permit program for point sources of water pollution (referred to as the Wisconsin pollution discharge elimination system or WPDES).

This bill makes various changes in the statutes for WPDES that primarily conform those statutes to provisions in the CWA and EPA regulations under the CWA. The changes relate, among other things, to standards of performance that are applicable to new sources of water pollution and procedures and standards for modifying or terminating permits.

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Current law authorizes DNR to issue a general WPDES permit authorizing certain vessels to discharge ballast water. The law specifies fees for coverage under a ballast water general permit that are applicable until June 30, 2013. The law requires DNR to promulgate rules setting fees applicable after June 30, 2013, based on the costs of administering and enforcing a general permit for ballast water discharges.

This bill makes the statutory fees for a ballast water general permit permanent and eliminates the requirement for DNR to promulgate rules setting fees.

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

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

2 283.01 (8) "New source" means any point source the construction of which
3 commenced after the effective date of ~~applicable effluent limitations or~~ federal
4 standards of performance under 33 USC 1316 that are applicable to the point source
5 or after the proposal, under 33 USC 1316, of federal standards of performance that
6 are applicable to to the point source, if the federal standards of performance take
7 effect within 120 days of their proposal.

8 **SECTION 2.** 283.01 (12) (a) of the statutes is amended to read:

9 283.01 (12) (a) A discernible, confined and discrete conveyance, including but
10 not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,
11 container, rolling stock, concentrated animal feeding operation, concentrated
12 aquatic animal production facility, landfill leachate collection system, or vessel or
13 other floating craft from which pollutants may be discharged either into the waters
14 of the state or into a publicly owned treatment works except for a conveyance that
15 conveys only storm water.

16 **SECTION 3.** 283.01 (13) of the statutes is amended to read:

17 283.01 (13) "Pollutant" means any dredged spoil, solid waste, incinerator
18 residue, filter backwash, sewage, garbage, refuse, oil, sewage sludge, munitions,

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1 chemical wastes, biological materials, radioactive substance, heat, wrecked or
2 discarded equipment, rock, sand, cellar dirt and industrial, municipal and
3 agricultural waste discharged into water.

4 **SECTION 4.** 283.17 (2) of the statutes is amended to read:

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

16 **SECTION 5.** 283.31 (9) of the statutes is created to read:

17 283.31 (9) (a) 1. Except for any toxic effluent standards and prohibitions and
18 standards for sewage sludge use or disposal, compliance with a permit during its
19 term constitutes compliance, for purposes of enforcement, with 33 USC 1311, 1312,
20 1316, 1317, 1328, and 1345 (a) and (b) and provisions of this chapter, and rules
21 promulgated under this chapter, that implement those federal statutes. However,
22 a permit may be modified, terminated, or revoked and reissued during its term for
23 cause as provided in s. 283.53 (2).

24 2. Compliance with a permit condition that implements a particular standard
25 for sewage sludge use or disposal under s. 283.82 is an affirmative defense in any

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1 enforcement action brought for a violation of that standard for sewage sludge use or
2 disposal.

3 (b) The issuance of a permit does not convey any property rights of any sort, or
4 any exclusive privilege.

5 **SECTION 6.** 283.35 (1m) (c) and (d) of the statutes are repealed.

6 **SECTION 7.** 283.45 (1) of the statutes is amended to read:

7 283.45 (1) For ~~the application for every discharge which has a total volume of~~
8 ~~more than 500,000 gallons on any day of the year, except a storm water discharge for~~
9 ~~which a permit is issued under s. 283.33~~ for which a permit is required under 33 USC
10 1342, including permits for the disposal of sewage sludge, the department shall,
11 ~~following public notice when it prepares a draft permit, prepare and send to any~~
12 ~~person who so requests, a fact sheet concerning the application described in the~~
13 ~~public notice that sets forth the principal facts and the significant methodological~~
14 ~~and policy questions considered by the department. The department shall send the~~
15 ~~fact sheet to any person who requests a copy.~~

16 **SECTION 8.** 283.53 (2) (a) (intro.) of the statutes is amended to read:

17 283.53 (2) (a) (intro.) Any permit issued by the department under s. 283.31 or
18 283.33 may, at the written request of an interested person or upon the department's
19 initiative and after an opportunity for hearing, be modified, suspended ~~terminated,~~
20 or revoked and reissued, in whole or in part, for cause consistent with 40 CFR 122.62
21 and 122.64, including but not limited to:

22 **SECTION 9.** 283.53 (2) (b) of the statutes is amended to read:

23 283.53 (2) (b) Whenever, on the basis of any information available to it, the
24 department finds that there is cause for modifying, ~~suspending~~ terminating, or
25 revoking and reissuing a permit, in whole or in part, the department shall notify the

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1 permittee by certified mail or personal service of its intention to modify, ~~suspend~~
2 terminate, or revoke and reissue the permit, in whole or in part. Such notice shall
3 specify the information upon which the department relies, and if the department
4 intends to modify the permit, shall explain the modifications which the department
5 intends to make in the permit.

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

7 283.53 (2) (c) The department shall also notify the U.S. environmental
8 protection agency, the U.S. army corps of engineers, any affected state, any
9 interested agency of this state, and any interested members of the public of its
10 intention to modify, ~~suspend~~ terminate, or revoke and reissue a permit. Such notice
11 shall incorporate the terms of the notice sent to the permittee and shall be circulated
12 to members of the public in accordance with s. 283.39 (1).

13 **SECTION 11.** 283.53 (2) (d) of the statutes is amended to read:

14 283.53 (2) (d) The department may hold a public hearing on a proposed permit
15 modification, ~~suspension~~ termination, or revocation and reissuance if the
16 department determines that there is a significant public interest in holding such a
17 hearing or upon the petition of 5 or more persons. The petition shall indicate the
18 interest of the petitioners and the reasons why a hearing is warranted.

19 **SECTION 12.** 283.53 (2) (g) of the statutes is created to read:

20 283.53 (2) (g) The department shall comply with the provisions of 40 CFR 124.5
21 that are applicable to a state program when modifying, terminating, or revoking and
22 reissuing a permit.

23 **SECTION 13.** 283.53 (2d) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 728**SECTION 13**

1 283.53 **(2d)** (intro.) The department may, with the consent of the permittee,
2 modify a permit issued under s. 283.31 or 283.33 without following the procedures
3 in sub. (2) (b) to ~~(f)~~ (g) in order to do any of the following:

4 **SECTION 14.** 283.53 (2h) of the statutes is amended to read:

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

8 **SECTION 15.** 283.53 (2m) of the statutes is amended to read:

9 283.53 **(2m)** The department may, upon request of the permittee, revise or
10 modify a schedule of compliance in an issued permit if it determines that the revision
11 or modification is necessary because of the happening of an event over which the
12 permittee has little or no control. The first revision made under this subsection
13 during the term of a permit need comply only with sub. (2) (c). Subsequent requests
14 shall be subject to sub. (2) (b) to ~~(f)~~ (g).

15 **SECTION 16.** 283.53 (3) (g) of the statutes is created to read:

16 283.53 **(3)** (g) The department shall comply with 33 USC 1342 (o) when
17 establishing effluent limitations in a reissued or modified permit. The department
18 may promulgate rules to implement this paragraph.

19 **SECTION 17.** 283.55 (2) (a) of the statutes is amended to read:

20 283.55 **(2)** (a) Any duly authorized officer, employee or representative of the
21 department shall have right to enter upon or through any premises in which an
22 effluent source that is required to be covered by a permit issued under s. 283.31 or
23 283.33 is located or in which any records required to be maintained ~~by~~ under this
24 section or s. 283.33 are located, and may at reasonable times have access to and copy
25 any records, inspect any monitoring equipment or method required ~~by~~ under this

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1 section or s. 283.33, and sample any effluents which the owner and operator of such
2 source is required to sample under this section or s. 283.33.

3 **SECTION 18.** 283.63 (1) (intro.) of the statutes is amended to read:

4 283.63 (1) (intro.) Any permit applicant, permittee, affected state or 5 or more
5 persons may secure a review by the department of any permit denial, modification,
6 ~~suspension~~ termination, or revocation and reissuance, the reasonableness of or
7 necessity for any term or condition of any issued, reissued or modified permit, any
8 proposed thermal effluent limitation established under s. 283.17 or any water
9 quality based effluent limitation established under s. 283.13 (5). Such review shall
10 be accomplished in the following manner:

11 **SECTION 19.** 283.63 (1) (b) of the statutes is amended to read:

12 283.63 (1) (b) The department shall hold a public hearing at the time and place
13 designated in the notice of hearing. At the beginning of each such hearing the
14 petitioner shall present evidence to the department which is in support of the
15 allegation made in the petition. All interested persons or their representative shall
16 be afforded an opportunity to present facts, views or arguments relevant to the issues
17 raised by the petitioners, and cross-examination shall be allowed. The department
18 shall consider anew all matters concerning the permit denial, modification,
19 ~~suspension~~ termination, or revocation and reissuance. No person may be required
20 to appear by attorney at any hearing under this section.

21 (END)