



# Jeff Mursau

STATE REPRESENTATIVE • 36<sup>TH</sup> ASSEMBLY DISTRICT

## Assembly Bill 755

Assembly Committee on Environment and Forestry

January 27, 2016

Committee Members,

Thank you for allowing me to speak in support of AB 755, a bill requiring the Department of Natural Resources to issue a general permit to the Department of Transportation to discharge storm water from the site of a transportation project. I am introducing this bill again this session at the request of the Department of Natural Resources.

In 2011, the US EPA sent a letter to the DNR following their review of the Wisconsin Pollutant Discharge Elimination System (WPDES) program. In the letter, the EPA outlined 75 issues the state needed to address to bring the program into compliance with federal requirements. Assembly Bill 755 addresses some of these concerns, including:

- Revises the definition of "New Source" point source that is consistent with the federal definition.
- Clarifies statutory language related to performance standards and effluent limitations
- Amends how the DNR may terminate certain permits authorizing discharges into waters of this state

The DNR and DOT are both here today and they can speak in further detail on the need for these changes and clarifications.

Thank you for your time and consideration of AB 755.



## Wisconsin Department of Transportation

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**DATE:** January 28, 2016

**TO:** Members, Assembly Committee on Environment and Forestry  
The Honorable Jeff Mursau, Chair

**FROM:** Tom Rhatican, Assistant Deputy Secretary  
Wisconsin Department of Transportation

**SUBJECT:** Assembly Bill 755 (general permit for storm water discharge from transportation projects)

Chairman Mursau and Committee Members:

The Wisconsin Department of Transportation (WisDOT) would like to provide some important background information to committee members as you consider 2015 Wisconsin Assembly Bill 755 (AB 755). AB 755 requires the Wisconsin Department of Natural Resources (DNR) to issue a general permit covering storm water discharges from transportation sites such as construction, reconstruction, maintenance or repair of a highway or bridge.

WisDOT is fully in support of this bill. AB 755 codifies the long standing cooperative agreement between the DNR and WisDOT, and simply converts our interdepartmental liaison procedures into a permit process.

Under current law, WisDOT is not required to obtain certain permits affecting waters of this state, including storm water discharge permits. Instead, and through our interdepartmental liaison procedures with the DNR, WisDOT employs an alternate strategy involving coordination, review, and concurrence from the DNR prior to construction.

The US Environmental Protection Agency (EPA) notified the DNR that our interdepartmental procedures for approval of construction-site erosion control and storm water management activities may lack some necessary elements of the federal Clean Water Act (CWA). In response to the EPA, the DNR and WisDOT agreed to develop a legislative proposal that included the statutory changes necessary to address the EPA's concerns. The necessary provisions are included in AB 755.

AB 755 requires that WisDOT obtain coverage under a general permit prior to initiating construction activities. Because it is WisDOT's and DNR's intention to model a transportation-specific general permit after our successful interdepartmental liaison procedures, we are confident that this bill, if passed, will meet the EPA requirements and allow both agencies to accomplish our respective missions in the most coordinated and efficient manner.

If you have any questions, please contact me or Nate Yahn, WisDOT legislative advisor, at (608) 266-1114.



Department of Natural Resources Testimony – Assembly Bill 755

Assembly Committee on Environment and Forestry, January 28, 2016

Timothy Gary, Legislative Liaison  
Department of Natural Resources

Subject: AB 755 – Activities affecting waters of this state carried out under the direction of the Department of Transportation, performance standards and effluent limitations for new and modified point sources of pollution, and termination of certain permits authorizing discharges into waters of this state.

Good morning/afternoon Chairman Mursau and members of the committee. Thank you for the opportunity to testify on AB 755. This draft bill modifies state law pertaining to activities affecting waters of the state carried out under the direction of the Department of Transportation, clarifies statutory language concerning performance standards and effluent limitations for new and modified point sources of pollution, and amends how the Department of Natural Resources may terminated certain permits authorizing discharges into waters of this state. Today I am testifying for informational purposes on behalf of the Department of Natural Resources.

Under the Federal Clean Water Act, the United States Environmental Protection Agency (USEPA) requires National Pollutant Discharge Elimination System (NPDES) permits for discharges of wastewater, which includes storm water discharges from certain municipalities, industrial facilities, and construction sites. The Department of Natural Resources is the delegated authority to issue state permits comparable to NPDES permits for wastewater and storm water discharges under the Wisconsin Pollutant Discharge Elimination System (WPDES) program pursuant to ch. 283, Wis. Stats.

In July 2011, the USEPA sent a letter to the DNR documenting its review of the WPDES program and outlining several omissions or deviations in the WPDES program compared Federal requirements. In total, 75 issues were raised in the letter that the USEPA requested the state address, some that require statutory changes. Three of these issues are addressed in this draft bill.

Under current law, activities affecting waters of the state undertaken by the Wisconsin Department of Transportation are not subject to the DNR's storm water permit requirements pursuant to s. 30.2022(1) of the statutes provided that those activities are accomplished in accordance with interdepartmental liaison procedures established by the DNR and Wisconsin DOT. Since the mid-1990s, the two agencies have been operating under a Memorandum of Understanding to provide protection to waters of the state from transportation related activities affecting waters of the state, namely highway construction. However, under s. 30.2022(1), these transportation activities have been exempt from the requirement to obtain a storm water discharge permit from DNR. The USEPA identified the Wisconsin DOT storm water permit exemption as a deficiency that needs to be addressed.

The draft bill will remove the storm water permit exemption from s. 30.2022(1) and require Wisconsin DOT to obtain coverage under a storm water permit issued by the DNR. The working relationship between the two agencies established by the interdepartmental liaison procedures that apply under current law will remain in place. The draft bill requires the DNR to issue a transportation general permit on or before June 30, 2018. Wisconsin DOT is not required to obtain coverage under a storm water permit until DNR issues the transportation general permit as required by AB 755.

The draft bill also addresses the definition of “new source” and implementation of the New Source Performance Standards as required by USEPA in its WPDES program review. Under federal law, a new source must comply with the Federal new source performance standards upon promulgation of the new standards by the USEPA. This is essentially a clarification to follow the definition of “new source” in Federal law.

Furthermore, AB 755 addresses the thermal limitation protection period in the USEPA's list of WPDES program review issues. 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 draft bill specifies that this exemption applies to modified point sources with respect to water quality based effluent limitations only. The change is required to follow the Federal protection period established in Federal law.

Finally, the draft bill amends how the DNR may terminate certain permits authorizing discharges to waters of the state. This change is intended to make our permit processing terminology consistent with federal law. This is a clarifying change with no substantive impacts.

Thank you for the opportunity to testify on AB 755 today and I would be happy to answer any questions.