



Department of Natural Resources Testimony – 2014 AB 836

Assembly Committee on Environment and Forestry, March 4, 2014

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Subject: AB 836 – Activities affecting waters of the 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 afternoon Chairman Mursau and members of the committee. Thank you for the opportunity to testify on Assembly Bill 836. This bill modifies state law pertaining to activities affecting waters of the state carried out under the direction of the Department of Transportation (DOT), 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 (DNR) may terminate 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 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. It is important to note that these omissions/deviations had accumulated over time and several administrations. 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 by AB 836.

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 an inconsistency with the Federal Clean Water Act.

AB 836 will remove the storm water permit exemption from s. 30.2022(1) and require Wisconsin DOT to obtain coverage under a transportation general 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 bill requires the DNR to issue a transportation general permit on or before June 30, 2016. Wisconsin DOT is not required to obtain coverage under that permit until DNR issues it as required by the bill. However, the amendment to AB 836 pertaining to Section 17 that creates s. 283.33 (4m) further clarifies the statutory language to be consistent with Federal requirements.

The 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 836 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 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 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 this bill today and I would be happy to answer any questions.