

## Local Government Stormwater Group Update – January 13, 2016

To: Local Government Stormwater Group  
From: Curt Witynski, League of Wisconsin Municipalities

I'm forwarding to you an email I received this afternoon from Sen. Rob Cowles' staff regarding legislation the senator is introducing that modifies the statewide phosphorus variance options created last session.

**From:** Smith, Ryan [<mailto:Ryan.Smith@legis.wisconsin.gov>]  
**Sent:** Wednesday, January 13, 2016 2:40 PM  
**Subject:** SB 567 - Phosphorus Variance Revision

I am writing today because you, your company, or your organization supported the effort by Sen. Cowles and Rep. Loudonbeck in 2014 to pass a bill allowing for a statewide phosphorus variance to comply with EPA water quality standards (2013 Act 378). In order to get EPA approval for the variance, our DNR believes we need to adopt statutory changes to Act 378. Since time is of the essence for Wisconsin businesses and municipal water utilities who will be negatively impacted if Wisconsin doesn't receive the variance, Sen. Cowles introduced the statutory changes recommended by the DNR today (SB 567), and will be holding a public hearing on the bill next Tuesday, January 19 (time and place TBD), with the hope of enacting this legislation yet this session. I have attached the bill and have included some background information.

Feel free to contact me if you have any questions.

Sincerely,

Ryan Smith  
Chief of Staff  
Office of Sen. Robert Cowles  
800-334-1465

## Phosphorus Legislation

### **2013 Wisconsin Act 378**

- Act 378 creates a statewide mechanism to achieve compliance with water quality standards for phosphorus over time and provides an option to achieve greater environmental benefit by creating a formula to generate additional funding for the state's nonpoint source program.
- Statewide 70-80% of the phosphorus loads to our waters are from nonpoint runoff. Current phosphorus effluent standards would require point sources to invest significant rate payer dollars on advanced filtration technology to clean up very little of the problem

while nonpoint sources continue to contribute significant phosphorus loading to our waters.

- Act 378 provided a mechanism for the state to receive approval from EPA for a statewide variance for the wastewater discharge limits for phosphorus IF the discharger cannot meet the standards without making a major facility upgrade.
- The original legislation provided DNR authority over the statewide variance and provided for increased oversight and accountability by:
  - Limiting the variance to 10 years with potential extension for 10 years with review and approval by DNR and EPA
  - Requiring the review of the statewide variance every 3 years by DNR
  - Providing DNR authority for determining more stringent interim limits
  - Granting DNR the authority to review variance requests
  - Incorporating language to allow DNR to require facilities to optimize existing facilities and processes to meet interim limits
  - Closing a loophole to prevent permittees from switching compliance options to extend or delay compliance – 10 years is 10 years (with the possibility of a 10 year extension)
  - Maintaining Adaptive Management as a viable option for phosphorus and expanding the option to total suspended solids (TSS)
- Act 378 provided for a \$640,000 annual cap on the amount a facility/permittee would have to pay into the nonpoint program under this variance option - 65% of the funding is required to support the direct cost of nonpoint practices

### **2013-2015 Pre-Implementation:**

Before the Statewide multi-discharge phosphorus variance can be made available for any point source discharger, DOA (in consultation with DNR) had to study the feasibility of affected sources meeting phosphorus discharge limits without causing substantial and widespread adverse social and economic impacts on a statewide basis.

That report was completed on May 12, 2015 by DOA and DNR.

DNR then began to finalize conversations with EPA on the submittal of the statewide variance application to allow dischargers to begin to utilize this innovative procedure for meeting phosphorus standards and cleaning up nonpoint pollution.

In August 2015, the US EPA issued new guidance for how EPA analyzes statewide variances, including the multi-user discharge variance being sought by the State of Wisconsin. If Wisconsin would like to continue to pursue the statewide variance to offer flexibility and clean up nonpoint pollution, the state MUST modify the statutory language passed in 2013 Wisconsin Act 378.

### *Current Session - SB 567*

If Wisconsin has a chance of EPA approving our statewide multi-discharge variance request the following changes in SB 567 must be made.

#### **Three-year Review**

DNR is required to review, every 3 years, the water quality standards and variances to water quality standards including approvals under the statewide phosphorus variance. If upon review, DNR determines that a water quality standard is attainable, and the variance is no longer needed, DNR is required to modify the variance when the discharger's permit is reissued or modified.

#### **Five-year Review**

DNR is required to review, every 5 years, the interim effluent limitations under the statewide phosphorus variance to determine if they are consistent with the highest attainable condition of point sources regulated under the statewide variance.

If a point source is regulated under the statewide phosphorus variance, the DNR is required to review the applicable interim effluent limitations at the time of initial approval and for each permit term the discharger utilizes the statewide variance. The review is to determine that the interim effluent limitations are consistent with the highest attainable condition for the point source.

If DNR determines different effluent limitations are attainable, those limitations will be identified in any reissued permit.