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REPRESENTING WISCONSIN'S 31ST ASSEMBLY DISTRICT

**Assembly Committee on Environment and Forestry
Public Hearing on Assembly Bill 735
January 28, 2016**

Good morning colleagues, and thank you Chairman Mursau for holding a public hearing on Assembly Bill 735.

As most of you are aware, last session, Senator Cowles and I authored Act 378, which created the framework for a statewide variance from wastewater discharge limits for phosphorus. This variance, when approved by the EPA, would be available to point-source dischargers in Wisconsin that meet specified conditions. As a quick refresher, a “point-source” comes from a pipe discharging directly into a waterway from sources like municipal wastewater treatment plants, cheesemakers, and paper mills. These point-sources are estimated to generate approximately 20% of the phosphorus discharged. Agriculture and urban runoff would be examples of “non-point” sources that comprise the other 80% of phosphorus that is discharged.

Act 378 directed the Department of Administration (DOA) in conjunction with the Department of Natural Resources (DNR) to study the financial impacts of Wisconsin’s stringent water quality standards for phosphorus. Should DOA and DNR determine that there are “substantial and widespread adverse social and economic impacts”¹ associated with the numeric phosphorus standards, and that reaching attainment for the phosphorus standards by point sources would require major facility upgrades, the DNR is required to seek approval for a variance from the U.S. EPA. It is important to note that neither Act 378 nor AB 735 will change Wisconsin’s existing phosphorus numeric standards.

Last summer, while DNR and DOA were working with the EPA on Wisconsin’s variance submittal package, the EPA made a number of changes to the federal Clean Water Act regarding variance submittals.² Assembly Bill 735 became necessary to align Wisconsin’s statutory multi-discharge charge variance with the newly enacted federal requirements. Without the changes included in AB 735, it is highly unlikely that the US EPA will approve Wisconsin’s multi-discharger variance program, and point source dischargers would lose the financial and permitting flexibility contained within Act 378. This would mean that many point-sources in legislative districts across the state would be forced to incur significant costs making major facility upgrades to comply with the stringent phosphorus discharge standards.

¹ <http://docs.legis.wisconsin.gov/2013/related/acts/378.pdf>

² <https://www.gpo.gov/fdsys/pkg/FR-2015-08-21/html/2015-19821.htm>



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It is important to point out that a point-source discharger who is eligible for the multi-discharger variance does not receive a pass or a proverbial get-out-of-jail-free card. Those point-sources, in exchange for reducing their phosphorus discharges over a longer compliance schedule, will pay \$50 per pound to counties to complete water quality improvement projects within the watershed the source is located. The multi-discharger variance is truly a win-win, and will result in Wisconsin's water quality being improved. These improvements to water quality will occur as point-sources reduce their phosphorus discharges incrementally, and counties will receive funding to conduct projects at non-point sources of phosphorus. Funding that would be otherwise unavailable to complete these projects at non-point sources.

Assembly Bill 735 is necessary to ensure that Wisconsin's multi-discharger variance, which passed both Houses of the Legislature in a bi-partisan manner last session, can be approved by the U.S. EPA.

Thank you for your consideration.



Assembly Committee on Environment and Forestry
AB 735 – Variances to Water Quality Standards
January 28, 2016

Good morning, Chairman Mursau and committee members. My name is Adrian Stocks and I am the Permits Section Chief in the DNR's Water Quality Bureau. Thank you for this opportunity to testify, for information only, on Assembly Bill 735, clarifying the review and availability of water quality standards variances including the proposed statewide phosphorus variance. This legislation is needed to address concerns the U.S. Environmental Protection Agency (EPA) raised to the Department since the state enacted 2013 Act 378 in April 2014.

Under current law, DNR may approve a temporary variance from applicable water quality standards and effluent limitations in a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to a point source. This allows point sources in Wisconsin to gain temporary financial relief from stringent water quality standards and limitations where compliance costs would cause substantial and widespread economic impacts. On August 21, 2015, the US EPA made changes to the federal Clean Water Act affecting *variance submittals*, *implementation requirements*, and *variance review requirements*. The primary purpose of AB 735 is to align Wisconsin's multi-discharger variance program with these new federal Clean Water Act requirements.

Specifically, the bill creates a procedure for when variances must be reviewed. It recognizes two types of review: a triennial standards review; and reviews of the highest attainable condition. Both of these reviews are required under federal law. In a triennial review, DNR collects and reviews information as to whether the published water quality standard is achievable based on new technology or new economic information. This review is required for all variances, including mercury, chloride, phosphorus, and other pollutants.

Additional review requirements are also necessary for the statewide phosphorus variance. At least every five years, DNR must review highest attainable condition. This type of review is a reevaluation of the *interim effluent limitations* established in subsection (6) of s. 283.16, Wis. Stats., to determine whether the limitations, in combination with the watershed or nonpoint source project reductions, reflect the "highest attainable condition." DNR must submit the results of this re-evaluation within 30 days of completion. If DNR fails to conduct a timely review, or fails to submit the results, the variance is no longer applicable.

Changes to the *implementation procedures* established in s. 283.16, Wis. Stats., for the statewide phosphorus variance are also necessary to conform to federal regulations. A variance condition must reflect the highest attainable condition. If the effluent limitations in subsection (6) does not reflect the highest attainable condition for a category of dischargers or for a specific permittee, then the Department must include an *interim limitation* in the permit that *does* reflect the highest attainable condition.

A December 16, 2015 letter from EPA to DNR indicated these changes are necessary for the multi-discharger variance to be consistent with the requirements of EPA's *new* variance regulation. ***Without these changes, it is unlikely EPA will approve the statewide phosphorus variance and that point sources in Wisconsin will not be able to use this tool to seek financial relief from phosphorus compliance costs.***

In addition to the changes driven by federal regulations, other changes are proposed to the statewide phosphorus variance program to clarify that rulemaking is not required to implement the statewide phosphorus variance, to allow the intended 10 year duration for this variance, and to make other minor changes.

Thank you, and I'd be happy to answer any questions you may have or provide further information to the committee.

**Before the Wisconsin Assembly
Committee on Environment and Forestry
January 28, 2016**

Hearing on AB 735

**Comments of Vanessa D. Wishart on behalf of
Municipal Environmental Group – Wastewater Division**

The Municipal Environmental Group Wastewater Division (MEG) is an association of more than 100 municipalities throughout the state of Wisconsin who own and operate wastewater treatment facilities. For more than 25 years, MEG has been an advocate for municipalities in wastewater matters. We were one of the principal supporters of the multi-discharger variance (MDV) enacted as 2013 Act 378 and have a long history of supporting efforts to remove phosphorus from our state's waters. We are here today to register our support for AB 735 and to outline the reasons why this is needed legislation.

The central purpose of the multi-discharger variance is to direct resources to nonpoint source programs, where those resources can have the most significant impact on phosphorus reduction. Municipalities have already removed approximately 90% of the phosphorus in their discharges, and many have removed upwards of 97%. Treating that last few percent comes at an enormous cost because it requires new filtration technologies. At the same time, because point sources have already removed most of the phosphorus in their discharge, these sources are responsible for a relatively small percentage of the phosphorus in our waters. The primary issue is nonpoint pollution.

The multi-discharger variance addresses nonpoint pollution by creating a mechanism for point sources to direct funds to the existing nonpoint program—one with staff, standards, administrative capability and accountability. This puts resources where the problem is the greatest and simultaneously does so at a lower overall cost to point sources such as municipalities.

The Department of Natural Resources has worked tirelessly and expended significant resources developing a guidance package for implementation of the multi-discharger variance. This variance package will be sent to EPA for formal review shortly. Based on initial discussions with EPA, EPA is requiring certain legislative changes so that Wisconsin law better tracks recently enacted EPA regulations before EPA will approve the multi-discharger variance package. It is therefore necessary to pass AB 735 in order for EPA to proceed with its review.

Passage of AB 735 cannot wait until next session. Despite DNR's best efforts, development of the multi-discharger variance package has already taken significantly longer than initially anticipated. Hundreds of municipal permittees are "on the clock" because they have permits that require them to make a choice on compliance options this year or within the next year or two. These permittees need to know whether the multi-discharger variance is a viable option for them. If the only option for those communities is to build additional treatment, the window of opportunity to channel funds to nonpoint efforts will be closed. We therefore encourage prompt passage of AB 735 so that EPA can proceed with review of the variance package and municipalities can make necessary choices on compliance options.

For more information contact Paul Kent at pkent@staffordlaw.com



RIVER ALLIANCE
of WISCONSIN

January 28, 2016

Written Testimony to the Assembly Committee on the Environment and Forestry
Re: AB 735 (Multi-Discharger Variance)

Matt Krueger, River Restoration Director

Thank you, Chair Mursau, and the rest of the Committee, for the opportunity to provide written testimony on AB 735, the Multi-Discharger Variance.

Since 2010, Wisconsin has been a national leader on phosphorus policy, drafting and implementing innovative approaches to phosphorus reduction, tied to the permits of point sources, such as factories, wastewater treatment plants, paper mills, and food processors. River Alliance has been engaged with the shaping of some of these policies and the ongoing discussions around their implementation, since the outset.

With phosphorus trading, watershed adaptive management, and now the Multi-Discharger Variance (MDV), our state—like no other in the country—has made an earnest attempt to reduce nonpoint-source phosphorus, mainly from agriculture, by way of innovative compliance options provided to point source permits holders. We very much appreciate the intent and innovation behind these options. Unfortunately, in its current form the MDV, like phosphorus trading and watershed adaptive management before it, will not do enough to get at the core of the issue—reducing the amount of phosphorus coming from nonpoint sources, mainly agriculture.

This phosphorus turns our lakes and rivers green every August. Beaches close due to toxic algae blooms. Marinas carpeted in blue-green sludge lie dormant, as boaters avoid exposing themselves to the smell of toxic algae, or its serious health risks. Waterfront rental properties show vacancies in the peak of tourist season. These are only a few examples of the real economic impacts phosphorus pollution has on our state.

The intent of the MDV, as we understand its original conception, was to provide permit-holding point sources efficient mechanisms for phosphorus compliance, and in doing so, clean up waterways by directing funds to nonpoint source phosphorus reduction projects. However, only a small percentage of point sources will actually qualify for the MDV, meaning only their dollars

will fund nonpoint projects. (Large municipalities in urban counties generally won't qualify due to limiting economic factors, and it will be too expensive for many smaller municipalities to utilize.) The MDV will likely generate a modest amount of funding for nonpoint source pollution abatement, which is a start, but it won't make enough of a dent to show water quality improvements on a broad scale—maybe a small stream here or there will be improved—but the scenes described above will still persist.

The River Alliance is strongly supportive of genuine efforts to curb the phosphorus pollution problem; we just don't see how the MDV will do enough. We sincerely hope that the same innovation that has been displayed in recent years on phosphorus compliance in Wisconsin continues beyond the MDV, whether the approach is incentive-based, regulatory, or something in between. And we look forward to continuing to be involved with those important and timely discussions, seeking solutions to the phosphorus pollution problem.