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## Response to Comments from Public Hearings on SB 547 and AB 680

The Senate Committee on Government Operations, Public Works, and Telecommunications held a public hearing on SB 547, the phosphorus bill, on February 6, 2014. A public hearing was also held on the companion bill, AB 680, by the Assembly Committee on Environment and Forestry on January 30, 2014. Attached is a summary of comments from these two hearings. This document serves as a response to the comments made at those hearings.

**1. Comment:** Eligibility for the statewide variance should be limited to those dischargers who make a showing to the Wisconsin Department of Natural Resources (WDNR) that adaptive management and/or water quality trading is not a feasible option for their facility. DNR should review that showing.

**Response:** The bill requires a facility to certify that it requires a major facility upgrade as part of its variance request. No additional language is needed to clarify that point. However, an amendment was added to clarify that DNR has the opportunity to review a variance request. DNR must approve the variance if the request substantially complies with the statewide variance criteria and requirements under this subsection.

**2. Comment.** The bill should retain the current 15-year compliance schedule, not a 20-year (4 term) compliance schedule.

**Response:** The 20 year time period was initially based upon the planning horizons used by many dischargers and is intended to provide for certainty for dischargers. 20 years is typically the planning period that is required under the Clean Water Act for municipal treatment plants that use clean water funds. The 20 year period is also the period used by the State of Montana in their multi-discharger phosphorus variance. Nevertheless, an amendment was added to clarify that the variance will be reviewed as part of the DNR triennial standards review. In addition, at the 10 year point there is an automatic review involving DNR and DOA with review and re-approval by EPA. In essence, the variance becomes a 10 year variance with a 10 year renewal option.

Extending adaptive management to 20 years is designed to ensure that the two programs are on the same time frame.

**3. Comment.** A metric of accountability should be developed to show improvement to water quality from money spent by counties. There should be more monitoring as part of the program.

**Response:** The bill currently requires that counties prepare an annual report that quantifies the phosphorus reduction using accepted modeling techniques. These reports are then reviewed by DNR. However to further ensure that these funds achieve results, an amendment was added which requires the county to develop a targeted plan for use of these funds including methods to ensure the funded projects are completed and evaluated. In addition, the counties have the ability to use some of the funds for additional modeling or monitoring for planning purposes.

**4. Comment.** The \$50 per pound does not reflect the cost of nonpoint projects.

**Response:** There is a range of costs for nonpoint projects. Soft projects such as nutrient management and tillage practices can cost between \$25 and \$50 per pound. Hard practices can cost more. In the two adaptive management pilots in Dane County the range of nonpoint practices was between \$25 to \$85 per pound. Since funds generated by this program will not be bonded money as is the case with Clean Water Fund loans, they can be used for soft practices where the largest reductions in nonpoint can be reached. Therefore \$50 per pound, which is a midrange number and at the high end of soft practices, is appropriate.

**5. Comment.** What are the roles of DOA and DNR in creating the variance? Why does DOA have a role in the variance process?

**Response:** DOA has a role in providing the analysis of economic impacts since they have greater resources and experience in economic analysis. The bill already provides that DOA will act in consultation with the DNR. However the bill will be amended in several places to clarify the leading role of DNR in reviewing technology and setting water quality standards. In addition, DNR will be the agency involved in reviewing the variance as part of its triennial standards review.

**6. Comment.** The target values should be more source specific.

**Response:** The 0.2 mg/l target value was selected because it represents the point source concentration from the Lower Fox River TMDL. However, the bill will be amended to utilize any currently approved TMDL value and use the 0.2 mg/l as the target value where there is not an approved TMDL at the time of the passage of the bill.

**7. Comment:** Accountability should be increased by use of the Wisconsin Land and Water Conservation Board.

**Response:** As noted in response to comment 2, the bill currently requires that counties prepare an annual report that quantifies the phosphorus reduction using accepted modeling techniques. These reports are then reviewed by DNR. However to further ensure that these funds achieve results, an amendment requires the county to develop a targeted plan for use of these funds including methods to ensure the funded projects are completed and evaluated. In addition, the counties have the ability to use some of the funds for additional modeling or monitoring for planning purposes. These changes could ensure greater plan focus and results without involving a separate agency. In discussing this option with the Department of Agriculture, concerns were expressed about whether the Land and Water Conservation Board would have the resources to take on additional tasks.

**8. Comment.** The bill should be amended so that the two options (adaptive management and pollutant trading) other than payment of \$50 per pound to the counties follow state nonpoint standards and show accountability like the payments to the counties.

**Response:** The bill will be amended to address those issues.

**9. Comment.** What is the role of EPA?

**Response:** EPA has a role in reviewing variances under the Clean Water Act. The bill will be amended to clarify that EPA must approve the variance and the 10 year review.

**10. Comment.** Why is the variance review 5 years?

**Response:** The 5 year variance is consistent with current state law and is coordinated with 5 year term limits for WPDES permits. Nevertheless, the bill will be amended to have the variance reviewed every three years as part of the DNR's triennial standards review, in addition to full review at the 10 year point.

**11. Comment.** Putting off implementation of the new phosphorus rules will hurt our quality of life.

**Response:** This variance requires phosphorus reductions by point sources by reducing the interim limits over four permit terms. In addition, by directing funds to nonpoint programs, the dollars can result in greater reductions of phosphorus at a lower cost.

**12. Comment.** Under the nonpoint program, compliance is mandatory but only where there are cost share dollars that provide 70% of the cost of the practice. Traditionally, compliance with nonpoint standards was effectively voluntary because there was not

enough money in the program. Since the bill will result in more funds to the program, some farmers will now be required to participate, and as a result there should be a higher cost share rate applied.

**Response:** The bill was designed to leave the existing nonpoint program intact. This bill does not change the nature of the nonpoint program standards or cost share arrangements. Higher participation should help improve water quality.

**13. Comment.** The bill should not allow a person to use some other compliance option and then switch to the variance to obtain an additional 20 years before compliance is required.

**Response:** This was not the intent of the bill, and it has been amended to clarify that If a permittee has chosen an option to comply with a phosphorus water quality based effluent limitation by means other than a variance and in a subsequent permit chooses to utilize a variance, then the permits under the other compliance options shall count as permits for purposes of sub (6)(a).