2007 Senate Bill 197

Testimony for Information by
Susan A. Jones
Director, Dane County Office of Lakes and Watersheds
August 28, 2007

Citizens enjoy more than 20,000 acres of surface water in Dane County, and County government and our partners are taking every possible action to control phosphorus runoff into those waters that are so important to our quality of life and our local economy. Why are we controlling this nutrient? Phosphorus from many sources causes excessive algae growth and decreases water clarity, often turning lakes green. Decaying algae also depletes oxygen in the water, so that fish can no longer thrive. In 2002 we gained the tragic distinction of the first human death in the nation caused by exposure to a toxin released from an algae bloom.

Dane County soils contain two to three times more phosphorus than that needed for healthy turf, according to research conducted by Dr. Elena Bennett, who sampled 236 lawns in urban, rural, and suburban locations. She found the average soil phosphorus level to be 54 parts per million. UW Extension's recommendation on the phosphorus level sufficient for healthy turf: 20 parts per million.

As part of our effort to improve lake water quality by reducing phosphorus runoff, Dane County, after extensive public input and discussion, adopted an ordinance banning unnecessary phosphorus in lawn fertilizer in April 2004 (effective January 2005). The ordinance (Chapter 80 of the Dane County Code of Ordinances) is substantially similar to the language of SB 197, and applies in every town, village and city in the County.

The ordinance:

- Prohibits use of phosphorus-containing lawn fertilizers, unless a soil test shows that phosphorus is necessary.
- Prohibits retail display of phosphorus-containing lawn fertilizers.
- Makes clear that golf courses, farmstead lawns, and commercial applications to lawns are subject to the ordinance.
- Exempts newly-established turf and lawns during their first growing season.
- Exempts fertilizers intended primarily for garden and indoor plant application, and fertilizers applied to trees and shrubs and for agricultural uses.
- Clarifies that yard waste compost and biosolids intended primarily as soil amendments are exempt from the ordinance.
- Specifies penalties for ordinance violations, with higher penalties for commercial/retail violations.

We are now into our third year of implementation, which has been smooth and effective. There is no doubt that much less fertilizer containing phosphorus is now being applied to Dane County lawns. Retailers were readily able to secure and offer phosphorus-free

lawn fertilizer (we provided a delayed implementation date to allow for this, and for sale of existing inventory). Our citizens who use lawn fertilizer are now purchasing the phosphorus-free product that meets their needs for healthy turf without adding to our already excessive soil phosphorus levels. Although we haven't paid for studies to document this, anecdotally we do not have any evidence of problems with lawns or runoff as a result of our ordinance. Modeling conducted by Dr. Steve Carpenter of the UW Center for Limnology tells us that we can expect the impact of the ordinance alone to be one to five additional low-algae days per month for Lake Mendota.

Our neighbors to the west in Minnesota, particularly John Barten, Water Resources Manager at Three Rivers Park District in the Twin Cities area, do have water quality monitoring data supporting their conclusion that restricting phosphorus use is an effective low-cost practice for reducing phosphorus in runoff from residential areas.

Both the U.S. District Court for the Western District of Wisconsin, and the 7th Circuit of the U.S. Court of Appeals have upheld our ordinance. You can read those decisions on our Dane County Office of Lakes and Watersheds web site: www.danewaters.com/management/phosphorus.aspx . Additional resources posted there include the text of our ordinance and 44 pages of expert answers to questions posed during the Dane County Lakes and Watershed Commission's development of the ordinance, which it undertook at the request of Dane County Executive Kathleen Falk.

Susan A. Jones
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jones.susan@co.dane.wi.us

Wisconsin Green Industry Federation

August 27, 2007

To: Senate Environment & Natural Resources Committee Members

Re: SB 197 Restrictions on the use and sale of fertilizer containing phosphorus and other lawn fertilizer.

We are happy to work with you to create a bill that will have the desired effect and will have support of the consumers, retailers, fertilizer manufacturers and distributors, landscape professionals, lake and watershed organizations, and others. We offer the following suggested amendments germane to the bill, which will create statewide consistency and improve the existing ability of the WDATCP in the regulation of fertilizer:

Amendment #1

In 1993 Wisconsin passed the Pesticide Preemption Law due to a patchwork of ordinances around the state that were creating not only an enforcement nightmare, but also created a problem with landowners/farmers whose property crossed more than one county, town or village that might have all had different restrictions. The law has been working very well without any adverse impact to Wisconsin's natural resources or to the health and safety of its citizens. Our groundwater protection law, and now the nonpoint source pollution law have provided for a comprehensive approach that is regulated by the DNR and DATCP at the state level.

Suggested amendment # 1 will accomplish the same goal; to ensure that fertilizer regulations in the state are science based and consistent. There are local ordinances that have recently passed in Wisconsin that not only create a patchwork approach for fertilizers, but may attempt to regulate weed and feed products that are registered and regulated as pesticides. This clear violation of the Pesticide Preemption Law further demonstrates the need to implement fertilizer preemption to clarify this issue.

Local fertilizer and use restrictions are unnecessary and burdensome to commerce and to the strength of Wisconsin's agricultural industry. We strongly believe that the Department of Agriculture, Trade and Consumer Protection should have the authority of how fertilizers are regulated.

12342 W. Layton Ave., Greenfield, WI 53228 **414-529-4705**

This amendment generally prohibits political subdivisions from regulating fertilizers. The bill allows a political subdivision to regulate fertilizer use on property it owns; zone areas with respect to fertilizer manufacturing, distribution, and disposal; and
implement any regulation of fertilizers that the political subdivision is required by federal law or state law to implement. SECTION 2. 94.643 of the statutes is created to read:

Is this in addition to SB 197 state regs?

94.643 Fertilizer; local regulation. (1) This section is an enactment of statewide concern for the purpose of providing uniform regulation of fertilizers.
2) In this section:
a) "Fertilizer" has the meaning given in s. 94.64 (1) (e).
b) "Political subdivision" means a city, village, town, or county.
3) (a) Except as provided in par. (b), a political subdivision may not prohibit the use of or otherwise regulate fertilizers.
(b) A political subdivision may ~~enact an ordinance~~ that does any of the following:
1. Regulates fertilizer use on property in which the political subdivision has a fee simple ownership interest.
2. Zones areas with respect to fertilizer manufacturing, distribution, and disposal.
3. Implements any regulation of fertilizers that the political subdivision is required by federal law or state law to implement.
(4) (a) No later than the first day of the 3rd month beginning after the effective date of this paragraph .... [revisor inserts date], a political subdivision shall provide the department with a copy of any ordinance that is authorized under sub. (3) and that is enacted before the effective date of this paragraph .... [revisor inserts date].
(b) A political subdivision may not enact an ordinance that is authorized under sub. (3) until it consults with the department. If a political subdivision enacts an ordinance that is authorized under sub. (3), it shall provide the department with a copy of the ordinance no later than 60 days after enactment.

Amendment #2

Option 1: Delete *(4) Restriction on Display.* Some products labeled for use on lawns, also may be labeled for use on trees, shrubs, flowers, vegetable gardens, etc. This restriction would present problems for manufacturers who register, label, package, and distribute products labeled for multiple sites, which is very common. This would cause manufactures financial hardship, and retailers with limited products to offer customers, let alone display.

Current language holds retailers in violation if they display lawn fertilizers containing phosphorus, although it is legal for a merchant to sell the product to any customer upon request. A large part of marketing products to the public is having the product on display, and this would severely limit the ability to market a perfectly legal product. In addition many stores have very limited amounts of storage area for pallets of lawn fertilizer which is out of the customer's sight, or could be readily accessible to the merchant or clerk to obtain for the customer. This also puts the retailer in the position of being a violator subject to the penalties noted.

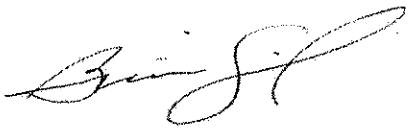
Option 2: Amend as follows: ~~(4) RESTRICTION ON DISPLAY. No person who sells fertilizer at retail may display lawn fertilizer that is labeled as containing phosphorus~~. A person who sells fertilizer at retail ~~may~~ must post a sign advising customers that lawn fertilizer containing phosphorus is available ~~upon request~~ for uses permitted by sub. (2) (b).

Merchants in Wisconsin are already required to have lawn signs and pesticide information sheets available free of charge to retail consumers at the point of sale of pesticide products. ATCP 29.41(3) (a) Wis. Admin Code. Posting of this additional sign at the point of sale of phosphorus-containing lawn fertilizers would insure that the public is notified of the restrictions on the use of phosphorus-containing fertilizers.

Thank you for allowing us to provide comments on this bill. We hope we can work with you in this endeavor.

Sincerely,

The Wisconsin Green Industry Federation



Brian Swingle
Executive director

12342 W. Layton Ave., Greenfield, WI 53228 **414-529-4705**

Rock River Coalition

Our Mission:
"To educate and provide opportunities for people of diverse interests to work together to improve the environmental, recreational, cultural, and economic resources of the Rock River Basin"

August 23, 2007

State Senator Mark Miller
Room 409 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

RE: AB 396, SB 197: Phosphorus fertilizer Restrictions

Dear Senator Miller:

The Rock River Coalition is in full support of a Bill to restrict the statewide unnecessary use of phosphorus fertilizers for turf grass. The Rock River itself is impaired with excess phosphorus, and restricting the use of additional unneeded fertilizer on lawns in our basin, is part of a larger strategy to improve the water quality in our basin's rivers and lakes.

Controlling phosphorus runoff from our watershed is one of the most important things we can do to control excess algae and to keep our area lakes and rivers healthy. Since local soils are naturally high in phosphorus, the application of additional unnecessary phosphorus in lawn fertilizers does not benefit our lawns, and can cause big problems for the lakes. When soils are saturated with phosphorus, it runs off into our lakes and streams where 1 lb. of phosphorus can generate 500 lbs of algae.

Because the storm sewers and roadside ditches in our local communities feed into our lakes and rivers this ban is important throughout our communities, not just for waterfront property.

A number of communities in the Rock River Basin have passed ordinances restricting phosphorus in lawn fertilizers, creating a patchwork of protection for local waters. Because people may buy their fertilizer outside of the community where it is spread; local ordinances cannot give the same level of protection that a statewide ordinance would provide.

Research in Minnesota has documented the difference a ban on unnecessary phosphorus for lawn fertilizer can make in phosphorus loading to urban lakes. www.lakeaccess.org . The result was a statewide ban on unnecessary lawn applications of phosphorus. Closer to home, in our basin, Dane County, the City and Town of Delafield, the Village of Lac La Belle, and Towns of Oconomowoc and Delavan have all passed phosphorus ordinances to protect the waters in their communities. Ordinances are pending for the City of Oconomowoc and village of Nashotah.

While we know that this is not the only source of phosphorus that needs addressing, it is an important, very low cost step, to help meet water quality goals in our phosphorus challenged watershed. We urge your support for this important legislation.

Sincerely,
ROCK RIVER COALITION

Joseph M. Dorava, PE
President

Rock River Coalition ◆ 864 Collins Rd ◆ Jefferson WI 53549 ◆ rriver@excel.net ◆ http://www.rockrivercoalition.org

August 27, 2007

State Senator Mark Miller
Room 409 South
State Capitol
P.O. Box 7882
Madison WI 53707-7882

Dear Senator Miller:

I am writing to you in support of SB197… a bill to ban the sale and use of lawn fertilizer containing phosphorus. Using phosphorus free lawn fertilizer is a simple and proven way in which everyone can contribute to better water quality state wide.

For many years, I have been active as an advocate for the protection of the waters of Wisconsin. In pursuit of that advocacy, I have undertaken an active role in both local and state lake organizations, pursued numerous opportunities for habitat protection training and utilized these tools to educate citizens and property owners on the important and valuable role that our natural resources play in making Wisconsin so great.

You will hear testimony from many sources regarding the importance of enacting this bill, all of which is based on sound science, and the experience of those who have been involved in the passage of similar ordinances.

The Town of Delavan enacted a phosphorus fertilizer ban in February of 2003…those who worked for the passage of this ordinance knew that the protection and preservation of Delavan Lake could not be left to policy makers alone, but that the time was right to pass the baton of stewardship to all who lived in or visited our community. Following Delavan's lead, several other Walworth County municipalities enacted similar ordinances to protect their community lakes. Since that time, retailers and lawn care companies have proudly joined in this effort. Enactment of SB197 is one step in addressing a major source of Wisconsin's number one water quality problem….polluted runoff into our lakes, rivers and streams.

A spokesperson for the Wisconsin Association of Lakes (WAL) put it so well....*using phosphorus free lawn fertilizer is a common sense, simple, and cost effective way to reduce the amount of nutrients entering our waterways. Many lake groups, local governments, counties and citizens are calling for a statewide initiative. A statewide policy would save local governments the duplicative costs of developing independent ordinances, and ensure consistency for consumers, retailers and suppliers.*

In passing SB197, we will be making the statement that Wisconsin cares about its waters, and that each and every community has declared itself a protector of a valuable natural resource.

Respectfully,

Mary Knipper

Mary Knipper

-Director, Wisconsin Association of Lakes
-Vice President, Walworth County Lakes Association
-Director, Delavan Lake Improvement Association

Testimony on SB197 relating to phosphorus lawn fertilizers
Prepared by: Paul D. Dearlove, Lake Ripley Management District
August 28, 2007

Dear Senate Committee on Environment and Natural Resources:

I am writing on behalf of the Lake Ripley Management District, and as a professional lake and watershed manager, to express our unequivocal support for Senate Bill 197. We believe this measure would create consistent, reasonable and long-overdue protections related to the sale and use of phosphorus lawn fertilizers throughout Wisconsin.

The inland lake protection and rehabilitation district I represent serves about 2,000 property owners in Jefferson County. We have struggled for 17 years to reverse the problems of the past and clean up Lake Ripley. Unfortunately, and despite our best efforts, our lake (like many others throughout the state) continues to suffer from the effects of polluted runoff and excess phosphorus loading: loss of water clarity, more frequent algal blooms, weed-choked swimming areas, negative fishery impacts, and local economies threatened by lost tourism and falling property values.

We know our lake, we are intimately familiar with its challenges, and we are well aware of the root causes of its most pressing and significant problems. The number one pollutant contributing to the bulk of our management expenses is phosphorus—a common (albeit often unnecessary) ingredient found in many lawn fertilizers. The runoff of lawn fertilizers into Lake Ripley may not be its only source of phosphorus pollution, or even its primary source, but it is part of the larger problem and one that can be easily and economically controlled.

We now face a golden opportunity to apply a model that is already working elsewhere, and for the simple purpose of safeguarding the health and quality of our waterways, their valued flora and fauna, and the regional economies they support and that would otherwise remain at risk. Phosphorus runoff is responsible for the degradation of the vast majority of Wisconsin's lakes and waterways, including Lake Ripley. It is an ingredient that was decisively banned from detergents decades ago because of its water quality impacts, and it is an ingredient that now needs to be removed from lawn fertilizers for the same reasons. Our clothes have not suffered as a consequent, and neither will our lawns. Our waterways, however, will reap the benefits for years to come.

Thank you.

Senator Mark Miller
Senate committee on Environment and Natural Resources
Room 409 South
State Capitol
PO Box 7882
Madison WI 53707-7882

August 27,2007

Dear Senator Miller and Senate Committee on Environment and Natural Resources

I am sorry I am unable to attend your hearing on Senate Bill 197 but have the following comments.

My name is Dr. Byron Shaw. I am an Emeritus Prof of Water resources. I taught Soil and Water Resource courses At UW Stevens Point and conducted research and Extension Education Programs Throughout Wisconsin for over 32 years. Much of my professional career and work since retirement has focused on water quality issues in Wisconsin.
I am very pleased that you are considering regulating the use of phosphorus containing lawn fertilizer in Wisconsin.

Excessive phosphorus in runoff has been recognized for over 40 years as the main cause of weed and algae problems in lakes and streams nationwide, yet little has been done to regulate the use of chemicals and fertilizers containing this nutrient. Use of phosphorus containing fertilizers by homeowners and other lawn managers is not only impacting water quality it is wasting valuable resources and costing people a lot of money.

I commend you for proposing this legislation, which I see as well designed and beneficial to the State of Wisconsin.

Passage of this legislation should also help send a message to Agriculture that all sources of phosphorus are being seriously considered so that the Agricultural industry will not feel efforts to reduce nutrient loading by them is in absence of any effort to reduce inputs from lawns.

Most lawn and farm soils throughout Wisconsin are already grossly overloaded with phosphorus due to a lack of effective education and regulation of this nutrient. This legislation will at least help stop this buildup on lawn areas and begin to reverse water quality degradation originating in urban areas.

Sincerely

Byron Shaw
Emeritus Prof Water Resources

Town and Country Resource Conservation & Development, Inc.
Committed to conserving the natural resources and enhancing the economy of southeastern Wisconsin

August 27, 2007

To: Wisconsin State Senate Committee on Environmental and Natural Resources

RE: SB 197: Restriction of lawn fertilizer containing phosphorus

On behalf of the Town and Country Resource Conservation and Development Council, I thank this committee and the sponsors of this bill for bringing this important issue to hearing today. Our organization is dedicated to helping keep farmers on the land, to bringing fresh local food to our tables, to clean water, and a healthy economy in SE Wisconsin.

I want to express our wholehearted support for SB 197 - to eliminate unnecessary phosphorus application to our lawns and turf grass in this state.

As part of our Water Team, I have been working with communities in Waukesha County to pass phosphorus restriction ordinances, including the City and Town of Oconomowoc, Village of Lac La Belle, and the City and Town of Delafield. Our soils have tested rich with phosphorus. Adding more does nothing for the health of our lawns, and it hurts our lakes.

These local ordinances demonstrate the wishes of our communities to control phosphorus runoff, and each community has spent time considering these ordinances, and paid their attorney to draft them. However, because residents may buy fertilizer in a different community, this patchwork of ordinances will not have nearly the same benefit as a statewide law. Rivers and lakes and their watersheds do not reflect municipal boundaries, and someone else's actions – upstream and downstream are all part keeping our waters healthy.

Study after study has emphasized that controlling phosphorus runoff into our waters and controlling phosphorus buildup in our watersheds is a key to the future health of our lakes and streams.

- Farmers are asked to do their part with nutrient management planning and manure runoff controls.
- Builders are asked to control runoff from construction sites.
- Sewage treatment plants have to meet phosphorus effluent limits.

This bill will not solve all our phosphorus runoff problems, but it is an important contribution, along with these other efforts.

Today you have the opportunity to act on a bill that is truly a win-win. Limiting the sale and application of unnecessary phosphorus in lawn fertilizers will help protect our lakes and rivers at a very low cost. Garden centers will still sell fertilizer – just a different formulation, lawns will still be green, and hopefully our lakes will be bluer. We ask your support to expedite SB 197, and to see this bill become law as soon as possible.

Thank you for the opportunity to testify today.

Lisa Conley

Lisa Conley, Past President and Board member
Town and Country RC&D
www.townandcountryrcd.org

June 4, 2007

To: **Environment and Natural Resources Committee**
Senator Mark Miller (Chair)
Senator Robert Jauch (Vice-Chair)
Senator Robert Wirch
Senator Neal Kedzie
Senator Dale Schultz

From:

Wisconsin Farm Bureau
Wisconsin Federation of Cooperatives
Wisconsin Agribusiness Council
Midwest Food Processors Association
Wisconsin Merchants Federation
Midwest Hardware Association
Wisconsin Sod Producers Association
Wisconsin Landscape Contractors Assoc.
Wisconsin Nursery Association
Lawns of Wisconsin Network
Commercial Flower Growers of WI
Gardens Beautiful Garden Centers
Wisconsin State Cranberry Growers Assoc.
Wisconsin Green Industry Federation
Wisconsin Crop Production Assoc.
Syngenta
Wisconsin Soybean Association
Wisconsin Agri-Service Association
Responsible Industry for a Sound Environment (RISE)
Wisconsin Golf Course Supt. Assoc.

Re: **SB-197, Restrictions on Phosphorous in Lawn Fertilizer**

In 1993 Wisconsin passed the Pesticide Preemption Law due to a patchwork of ordinances around the state that were creating not only an enforcement nightmare, but also created a problem with landowners/farmers whose property crossed more than one county, town or village that might have all had different restrictions. The law has been working very well without any adverse impact to Wisconsin's natural resources or to the health and safety of its citizens. Our groundwater protection law, and now the nonpoint source pollution law have provided for a comprehensive approach that is regulated by the DNR and DATCP at the state level.

The amendment we are recommending will accomplish the same goal; to ensure that fertilizer regulations in the state are science based and consistent. There are local ordinances that have recently passed in Wisconsin that not only create a patchwork approach for fertilizers, but may attempt to regulate weed and feed products that are

registered and regulated as pesticides. This clear violation of the Pesticide Preemption Law further demonstrates the need to implement fertilizer preemption to clarify this issue.

Local fertilizer use restrictions are unnecessary and burdensome to commerce and to the strength of Wisconsin's agricultural industry. We strongly believe that the Department of Agriculture, Trade and Consumer Protection should have the authority of how fertilizers are regulated.

This amendment generally prohibits political subdivisions from regulating fertilizers. The bill allows a political subdivision to regulate fertilizer use on property it owns; zone areas with respect to fertilizer manufacturing, distribution, and disposal; and implement any regulation of fertilizers that the political subdivision is required by federal law or state law to implement.

Amendment

SECTION 2. 94.643 of the statutes is created to read:

94.643 Fertilizer; local regulation. (1) This section is an enactment of statewide concern for the purpose of providing uniform regulation of fertilizers.
2) In this section:
a) "Fertilizer" has the meaning given in s. 94.64 (1) (e).
b) "Political subdivision" means a city, village, town, or county.
3) (a) Except as provided in par. (b), a political subdivision may not prohibit the use of or otherwise regulate fertilizers.
(b) A political subdivision may enact an ordinance that does any of the following:
1. Regulates fertilizer use on property in which the political subdivision has a fee simple ownership interest.
2. Zones areas with respect to fertilizer manufacturing, distribution, and disposal.
3. Implements any regulation of fertilizers that the political subdivision is required by federal law or state law to implement.
(4) (a) No later than the first day of the 3rd month beginning after the effective date of this paragraph .... [revisor inserts date], a political subdivision shall provide the department with a copy of any ordinance that is authorized under sub. (3) and that is enacted before the effective date of this paragraph .... [revisor inserts date].
(b) A political subdivision may not enact an ordinance that is authorized under sub. (3) until it consults with the department. If a political subdivision enacts an ordinance that is authorized under sub. (3), it shall provide the department with a copy of the ordinance no later than 60 days after enactment.

Please amend this bill to establish statewide consistency for fertilizer regulation.

REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers' Association • 1911
Wisconsin Council of Safety • 1923
Wisconsin State Chamber of Commerce • 1929

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President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Marketing & Membership

Michael R. Shoys
Vice President
Administration

TO: Senate Committee on Environment & Natural Resources

FROM: Scott Manley, Environmental Policy Director

DATE: August 28, 2007

RE: Senate Bill 197 – Regulation of Fertilizer

Wisconsin Manufacturers & Commerce (WMC) has a number of concerns with respect to Senate Bill 197, and respectfully asks the Committee to amend the proposal to address the issues listed below.

WMC is the state's largest business trade association, with over 4,000 members in the manufacturing, service, health care, retail, energy and insurance sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business, and toward that end, we support consistent, cost-effective and market-driven regulatory approaches that are supported by sound science.

With limited exceptions, Senate Bill 197 would prohibit the sale, display or application of fertilizer containing phosphorous in Wisconsin. The regulatory approach contemplated in this legislation is problematic because it places retail businesses in the difficult and unfair position of having to administer and enforce the law. For example, a retailer would be prohibited from selling fertilizer containing phosphorus under the bill, unless the product is sold to a person for use in the first growing season, to a person who has had a soil test demonstrating the need for additional phosphorus, or to a person using it for agricultural production.

It is unreasonable to expect retailers to enforce these provisions, and serve as a finder of fact to determine the validity of end-user application. Furthermore, the bill unfairly penalizes businesses for selling fertilizer containing phosphorous *even when the retailer reasonably believed the customer would apply the product for a lawful purpose*. By conditioning the penalty for selling the product upon its application by the end user, the bill places businesses in legal jeopardy because merchants become liable for the actions of customers after the sale. This punitive and heavy-handed approach to regulation will almost certainly cause Wisconsin businesses to stop selling these products. In the end, customers lose as product availability and consumer choice suffer.

WMC is also concerned that the bill unjustifiably restricts commerce by prohibiting businesses from displaying a lawful product in their store. As stated above, the bill would allow fertilizer containing phosphorous to be sold for agricultural production, for soil determined to be deficient in phosphorous, and for application in the first growing season. Despite

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Foley & Lardner LLP, Milwaukee

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JEFF THOMPSON, M.D., CEO
Gundersen Lutheran, La Crosse

JOHN B. TORINUS JR., Chairman & CEO
Serigraph Inc., West Bend

LARRY L. WEYERS, Chairman, President & CEO
WPS Resources Corporation, Green Bay

GERALD WHITBURN, Chairman & CEO
Church Mutual Insurance Company, Merrill

these lawful uses, Senate Bill 197 would prohibit businesses from displaying the product within view of customers. This restriction is an inappropriate and alarming government intrusion into the day-to-day operations of Wisconsin businesses. The provision will severely undermine the ability of merchants to conduct vital in-store marketing, and will create logistical problems for businesses who simply cannot afford to sacrifice valuable storage space in order to hide their products from customers. If enacted, this restriction poses yet another reason why retailers may decide to stop offering these products to persons who legitimately need them.

To address these concerns, WMC supports the amendment offered by a broad coalition of agricultural and industry stakeholder groups. The amendment would generally prohibit local governments from enacting ordinances to prohibit or otherwise regulate fertilizers.

The amendment would give the Department of Agriculture, Trade & Consumer Protection (DATCP) oversight authority over proposed ordinances. WMC believes that DATCP's experience enforcing the existing pesticide preemption law makes the agency well-suited to enforce a similar law with respect to fertilizer. We also believe DATCP is in the best position to ensure future regulations are based upon sound science which recognizes the proportionate share of residential fertilizer use to overall phosphorous loading in Wisconsin waterways.

Thank you for your thoughtful consideration of this amendment. Please feel free to contact me if you have any questions, or if I can provide you with additional information, at (608) 258-3400 or smanley@wmc.org.

Wisconsin Merchants Federation

"The Voice of Wisconsin Retailing"

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To: Members of the Senate Environment and Natural Resources Committee

From: Chris Tackett, President & CEO

Date: August 28, 2007

Subject: WMF Support of SB 197 – Restrictions on Phosphorus Fertilizer

We urge your support of SB 197 to establish statewide consistency for fertilizer regulations. Many of our members have stores in over 50 different local units of government. To comply with a "patchwork" of local regulations on the sale of fertilizer is becoming a nightmare for these retailers.

Statewide consistency would solve these problems for retailers while banning the use of phosphorus statewide.

While some may say there is conflicting science on phosphorus use there is no denying the "political science" of this issue. We accept that.

There should be one standard for fertilizer use and sale in Wisconsin. The Department of Agriculture, Trade and Consumer Protection has the expertise to craft and enforce statewide "consistent" regulations.

We urge your support for SB 197.

Aug. 28, 2007

Good morning,
Thank you for the opportunity to speak with you today. My name is Tiffany Lyden and I am a Lake Specialist with the UW-Extension Lakes Program, located in the College of Natural Resources on the UW-Stevens Point campus. A major portion of my job is working with lake organizations and people all across the state on lake-related issues.

We have been educating people for a long time about phosphorus and lakes. Phosphorus is one of the many nutrients that algae and aquatic plants (weeds) need in order to grow, just as plants on land (things like garden plants, trees, and grass) need phosphorus. However, the fact is, for the majority of Wisconsin's lakes, phosphorus is the limiting nutrient. That means it's the ingredient in least supply relative to the others. So when additional phosphorus is added, it results in more plants and algae. This is well-documented, well-understood, basic lake science. It came out in the public forum in the 1970's when our nation was looking into banning phosphorus in laundry detergents. There were studies and experiments, one even where scientists took an hour-glass shaped lake and put a barrier in between and added phosphorus to one side. The side with the added phosphorus turned green with algae. The result is that today, the effects of phosphorus in lakes are now well understood, and in a lot of places, phosphorus is now banned in laundry detergents due to its negative effect on surface waters.

Here in Wisconsin we have a strong history of citizens getting involved with lakes. There are currently over 700 lake organizations in existence in our state. Most of these organizations have been formed voluntarily over the years by concerned citizens deciding they want to be actively engaged in understanding and managing the health and future of their lake.

I provide information to these groups and assist them with a variety of things. One of the concerns that I hear from a lot of these lake organizations is how frustrated they are with trying to manage a lake that has high levels of aquatic plants and algae. Some of these lake systems are so overgrown that it makes water recreation difficult. The abundance of aquatic plants and algae can be unsightly and when they decay their smell can be pretty unpleasant. Furthermore, decaying algae can use up important oxygen needed for other fish and aquatic life, which in some lakes can lead to fish die-offs. The problem, in most of these cases, is too much phosphorus.

Many of our lake organizations spend thousands of dollars each year trying to combat the results of excess phosphorus in a lake. They use mechanical harvesters, essentially floating lawn mowers, that cut the aquatic plants, often several times a summer. Mechanical harvesting operations can cost $2-300 per acre. Other lake organizations will use chemicals that kill the aquatic plants or algae, but the phosphorus in the system will continuously provide fertilizer for new plants and algae.

But there are still a lot of lakes out there that aren't dealing with such situations. They may be at the other end of the spectrum without a lot of phosphorus now, but they are very concerned and are looking to protect their lake by minimizing the phosphorus

coming into the system. They have seen other degraded lakes and don't want that to happen.

Many lake organizations engage in studies to learn more about their lake. They learn that phosphorus can come from many sources within a watershed (which is the land that drains to the lake). They initiate projects to work with landowners, to educate people, and take on projects to benefit the lake. Many of them have worked with their local municipalities to implement no-phosphorus fertilizer ordinances, because they see it as an important and easy step to reduce unnecessary phosphorus, and keep it out of the lake.

With over 700 lake organizations and countless other individuals, we literally have thousands of volunteers taking care of public waters – our lakes. And they are doing so on their own time, usually spending their own money. Phosphorus is one of their biggest issues. Finding ways to reduce unnecessary phosphorus inputs into state waters can help people and organizations better protect and improve the water quality of the our state's lakes.

Thank you very much for your time.

Submitted by:
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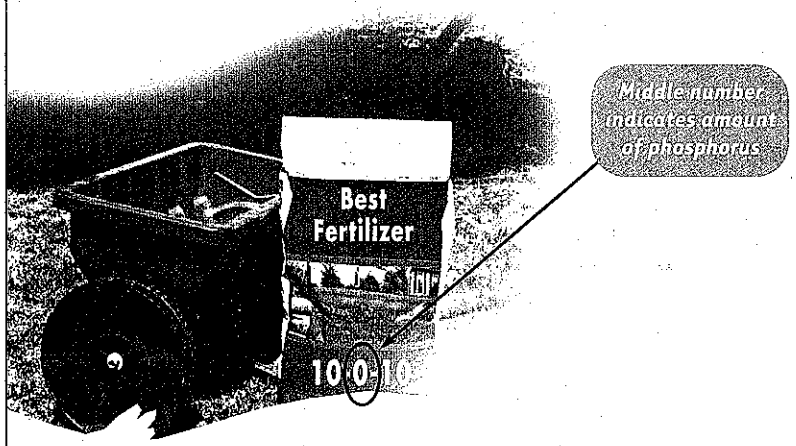
Simple Step #1:

Choose zero-phosphorus fertilizer

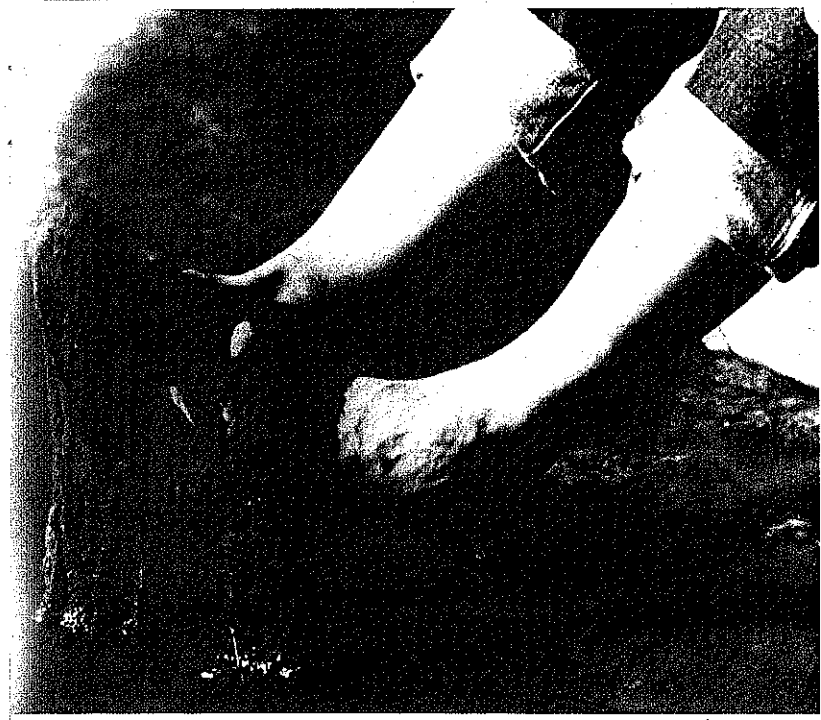
If you must fertilize, avoid fertilizers that contain phosphorus. Remember, it's phosphorus that accelerates algae growth in our lakes and rivers. Most lawns and gardens already contain adequate – and often excessive – amounts of phosphorus. Based on a study of 236 lawns sampled in Dane County, the average available soil phosphorus concentration was approximately four times higher than the amount needed to maintain a healthy lawn.[2] Consider this – one pound of phosphorus in runoff can result in 500 pounds of algae growth![3]

Phosphorus is an essential nutrient for plants. However, when too much phosphorus makes its way into our lakes and streams it promotes the rapid growth of weeds and algae and decreases water clarity, often turning lakes green. Decaying algae also depletes oxygen in the water, so that fish can no longer thrive. Human activities contribute a great deal to the amount of phosphorus that enters a lake or stream.



WHEN YOU'RE FERTILIZING THE LAWN, REMEMBER, YOU'RE NOT JUST FERTILIZING THE LAWN.

Photo courtesy of Washington State Department of Ecology, King County, and the cities of Bellevue, Seattle, and Tacoma



If you follow the instructions on a bag of fertilizer containing phosphorus, you may be adding over 50 pounds of phosphorus to a half-acre lot each year.[4]

Some communities have prohibited the use of phosphorus fertilizer around lakes and streams. *Check local ordinances.*

DOOR COUNTY
Soil & Water
Conservation Department

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PUBLIC HEARING: Senate Committee on Environment and Natural Resources
August 28, 2007
Senate Bill 197—Restrictions on the Use and Sale Of Fertilizer Containing Phosphorus

Good morning and thank-you for the opportunity to provide comment regarding SB 197 concerning the sale and use of fertilizer containing phosphorus. My name is William Schuster and I am the County Conservationist in Door County. I represent the Door County Board of Supervisors, the Door County Land Conservation Committee and the Door County Soil & Water Conservation Department in stating our support of the reasonable and workable requirements in SB 197 as a tool to help protect, and improve, the quality of the waters of Door County and the State of Wisconsin. On November 28, 2006 the Door County Board of Supervisors adopted a resolution stating their official support for such legislation.

To illustrate the importance of this topic to Door County and the visitors to Door County I ask you to review the two photographs I have included with the copy of my comments. The pictures are of two public sand swimming beaches in Door County; one a County Park and the other a State Park. Both beaches were rendered almost unusable due to the accumulation of excessive water weeds and algae (cladophora) which are in part a result of excessive nutrients in the waters surrounding Door County. It is not suggested that excessive phosphorus in lawn fertilizers is *the* sole cause of this situation of excessive nutrients; but it is part of the cause and this legislation can be part of the solution; with your support of SB 197 you can be part of the solution.

The premise behind the proposed legislation is sound and simple. If the soil is not deficient in phosphorus, as demonstrated by a soil test, phosphorus should not be applied. The application of phosphorus fertilizer where not needed is a waste of the consumer's money; a waste of the fertilizer; and most importantly threatens our surface waters with excessive nutrients.

Last year we reviewed some of the past soil test results of lawn soils in Door County. Based on the soil tests almost all of the lawns did not require any additional phosphorus fertilizer; yet when the landowner goes to the local store to purchase fertilizer in most cases they are sold fertilizer containing phosphorus. The landowner is unwittingly purchasing, and the clerk is unknowingly selling, a product that is unnecessary and potentially harmful to the quality of our surface waters.

What we are requesting is really just a requirement for nutrient management for lawns. We are not asking the residential/urban landowners of the State to do any more than what we already require of farmers. Via NR 151, (Agricultural Nonpoint Standards &

Prohibitions), the farmers, and agricultural fertilizer applicators, are already required to apply fertilizers to their fields according to the soil needs as demonstrated by a soil test; SB 197 requires the same of landowners with lawns.

A couple important details regarding the proposed legislation:

- It is important that local units of government are empowered to enforce the regulation if they so chose. Enforcement authority should not be limited to the Wisconsin Department of Natural Resources and/or the Wisconsin Department of Agricultural Trade & Consumer Protection. Both agencies have limited staff available and would also have to rely on the Department of Justice to enforce. Limiting the enforcement authority to a State agency will greatly weaken the effectiveness of the legislation. The State agencies have other priorities.

- The restriction on the display of fertilizers containing phosphorus is necessary to avoid the situation of a consumer attempting to purchase the product, without the necessary soil test, and the vendor being placed in position of having to refuse to complete the sale. Fewer unauthorized sales, and a lesser likelihood for conflict, would occur if the fertilizer containing phosphorus would be maintained in the inventory but not displayed. The consumer would present the required soil test and request the product at the sales counter. A sign in the store would make it clear that fertilizer containing phosphorus is available upon request. The requirement of no displays of phosphorus containing fertilizer will also effectively promote no phosphorus fertilizer as the lawn fertilizer of choice.

Again I want to thank-you for the opportunity to speak to you today on this important topic. On the behalf of the County of Door, I encourage you to support SB 197 and provide us with one more tool to protect the quality of our surface waters.

I'd be pleased to answer any questions that you may have of me at this time.

William E Schuster
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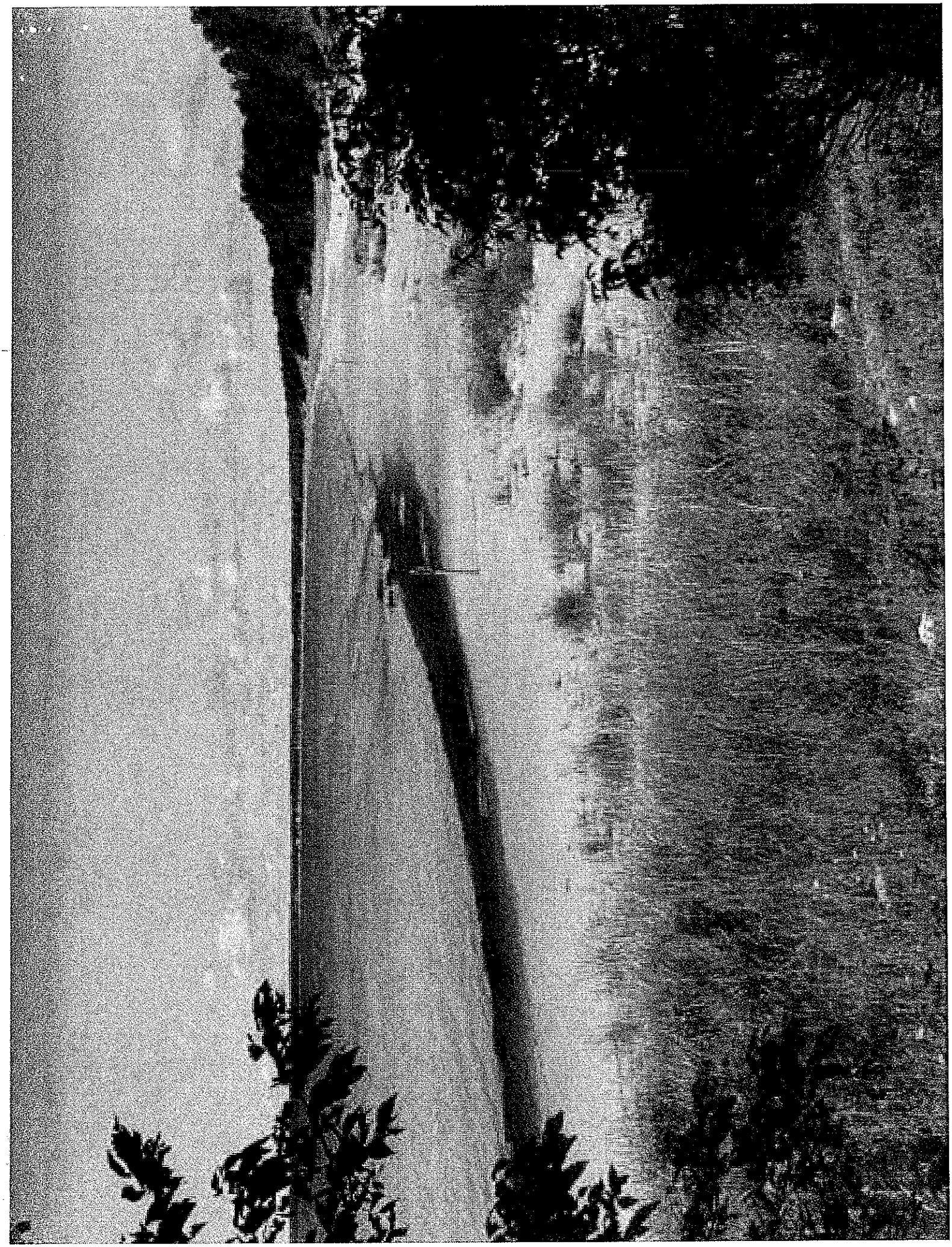

Edgar Harvey, Jr., Chair
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August 28, 2007

Senator Mark Miller
Senator Robert Wirch
Senator Dale Schultz
Senator Robert Jauch
Senator Neal Kedzie

Re: Wisconsin Conservation Congress Position on SB 197 Relating to the Sale & Use of Fertilizers Containing Phosphorus

Members of the Senate Environmental and Natural Resources Committee:

Today you will be reviewing Senate Bill 197 (SB 197) relating to the sale and use of fertilizers containing phosphorus. The Conservation Congress recently reviewed two citizen resolutions that are similar to the language and intent of SB 197. Like SB 197, these resolutions call for total or conditional bans on the use and sale of fertilizers containing phosphorus. Similar citizen resolutions were presented and passed in 12 counties this past April during the annual Conservation Congress County Meetings that are held in conjunction with the DNR Spring Hearings. In accordance with the Congress' purpose to receive, review and relay public input on natural resource issues, we offer the following information for your consideration.

Too much phosphorus is delivered to our waterways and is causing excessive plant and algae growth. One pound of phosphorus can produce 300-500 pounds of algae. Excess phosphorus in our waterways contributes to unsightly algal blooms some of which are known to be toxic to humans, murky water clarity, weed-choked recreational areas, and low dissolved oxygen levels that harm fish and aquatic life. Recreational and water quality impairments from phosphorus pollution lowers property values, increases management costs, and threatens Wisconsin's multi-billion dollar tourism and outdoor recreation industry.

There are laws that work to reduce phosphorus from industries, wastewater treatment plants, and agriculture. There is another source of phosphorus that is unnecessary and controllable; fertilizers applied to lawns. The application of phosphorus lawn fertilizers often exceeds soil requirements, leading to a build up of phosphorus in the soil that poses a long-term water quality threat to Wisconsin's surface waters including the Great Lakes and the Mississippi River. Local governments in Wisconsin and the state of Minnesota have recognized the seriousness of the threat, and adopted controls affecting the sale and use of lawn fertilizers containing phosphorus.

With the increase in residential density on and near many of our lakes, rivers, and streams, the local use of phosphorus by homeowners and other non-agricultural users can be a significant contribution to the local and regional waterways. With many of the state's watersheds crossing municipal and county boundaries, and with a mobile consumer, this problem demands uniformity of regulation that transcends local jurisdictional boundaries.

Therefore, the Wisconsin Conservation Congress supports legislation, such as SB 197, that limits or bans the use and sale of lawn fertilizers containing phosphorus. In addition, exceptions should be included for lands in agricultural production and the establishment of new turf or when a soil test confirms a soil phosphorus deficiency.

Thank you for reviewing our position. Please feel free to contact me if you have any questions.

Sincerely,

Ed Harvey, Jr.

Ed Harvey, Jr.
Chair

As established by Wisconsin State Statutes, the Wisconsin Conservation Congress is officially recognized as the only natural resources advisory body in the state where citizens elect delegates to represent their interests on natural resources issues on a local and statewide level to the Natural Resources Board and the Department of Natural Resources. Their mission is to represent the citizens of Wisconsin by working with the Natural Resources Board and the Department of Natural Resources to effectively manage Wisconsin's greatest asset, our abundant natural resources, for present and future generations to enjoy.

Wisconsin Land and Water Conservation Association, Inc.
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Testimony of Julian Zelazny, Executive Director, to the Senate Environment and Natural Resources Committee in Favor of Senate Bill 197

Thank you, Chairman Miller and members of the committee, for allowing me to speak in favor of SB 197. My name is Julian Zelazny. I am the executive director of the Wisconsin Land and Water Conservation Association (WLWCA).

WLWCA represents the interests of County Land Conservation Committees and Departments and has done so for over 50 years. The LCCs are the local entities responsible for soil and water conservation and delivery of conservation services at the county level. Traditionally this role was in an agricultural context, but as the demographics of Wisconsin shift we area increasingly becoming active in other areas of resource conservation.

At our annual meeting in December of 2006 the WLWCA membership passed a resolution in support of a statewide restriction on the use of phosphorus in lawn fertilizers. Through this action out membership expressed the view that prevention of phosphorus-containing runoff is an important issue that requires a multi-faceted solution. The LCCs are already engaged in agriculture related nutrient management planning and implementation throughout Wisconsin in addition to addressing nutrient runoff in the context of urban and forested environments. The terms of SB 197 assure that one prominent and easily prevented source of phosphorus pollution is no longer providing runoff into the surface waters of the state. This lays to rest one of the avenues of phosphorus input and allows county conservationists to focus in different areas.

WLWCA believes that a restriction on the use of phosphorus-containing lawn fertilizer is an appropriate response to the problem of excessive phosphorus in Wisconsin's surface waters. As we continue to identify and address sources of excess phosphorus in an agricultural context it is reasonable and fair to expect homeowners to similarly manage the nutrients that they place on the ground. Fortunately Wisconsin's soils are already sufficiently phosphorus-rich that no further phosphorus is required for lawn growth making management of phosphorus simple: Don't apply any, it's not necessary.

Thank you for the opportunity to speak to you in favor of SB 197. I am happy to answer any questions you may have.