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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

COMMITTEE NOTICES ...

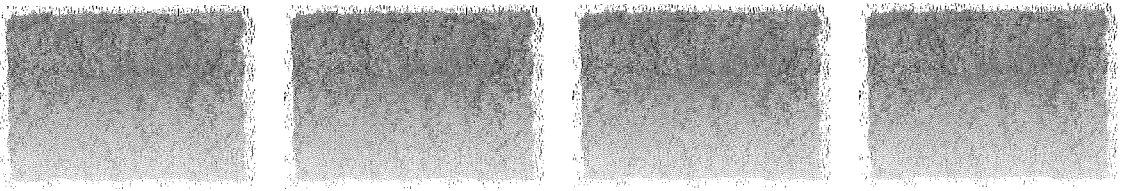
- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (~~August~~ 2012)

June-2014



To: Senate Committee on Environment and Natural Resources
August 28, 2007 Public Hearing

From: Thomas J. Crawford, Senior Staff Attorney
Milwaukee Metropolitan Sewerage District and Milorganite®

Re: Discussion of the “Milorganite®” substitute amendment to **2007 A.B. 396 and SB 197.**

The Milwaukee Metropolitan Sewerage District works to reduce phosphorus and other Nonpoint sources pollutants which adverse impact water quality.

SB 197 pursues the water quality goal with the unintended consequence of putting Milorganite® out of business in our home state. A Milorganite® Substitute Amendment is suggest which achieves the dual environmental policies of beneficial recycling of biosolids (a/k/a sewage sludge) while minimizing application of water-extractable phosphorus by consumers to residential turf.

The goals are: (1) reduce phosphorus runoff to improve water quality, (2) make the law simple, clear and uniform, and (3) reduce “needless” phosphorus fertilizer use. The goals weave together the newest urban stormwater regulations (NR 151 and NR 216), with longstanding state fertilizer regulations and protect the unsophisticated consumer from paying for plant nutrients they do not need. The Milorganite® substitute amendment accomplishes each goal with an added emphasis on individual responsibility that “each before his own door sweep and the village will be clean.”

Turf is Turf, no more needs to be said.

The definitions are deleted. “Turf” is used in §94.38(10). Turf is not a new technical word or a term with a different meaning than the dictionary. The turf definition includes land use exemptions (wrong place for agricultural exemptions, redundant and repetitious with later expressions of the same exemptions). The bill defined turf as “closely mowed, managed grass” and thereby exempts “unkept” lawns that do not achieve “perfect lawn” quality standards.^{1/} Every work in a statute is presumed to mean something, not extraneous “surplusage.” Therefore, the legislature must mean that “loosely” and “infrequently” mowed grass is exempt and outside the special meaning given to turf. The descriptive adjectives are not helpful.

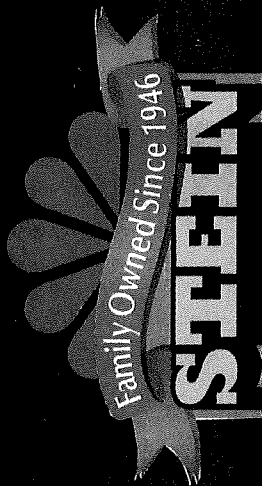
^{1/} See, David Mello, *Picture Perfect* or Ted Steinberg, *American Green: The Obsessive Quest for the Perfect Lawn* (2006).



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Degrees of mowing do not matter and are not Helpful.

The descriptive phrase “closely mowed, managed grass” appears in the Minnesota Phosphorous turf fertilizer law, 18C.60(1), Minn. Stats. Minnesota’s law is the source of the poor drafting. There is no reason to copy a definition at odds with the every day language. The every day meaning of turf is turf..

State-wide uniformity is essential.

Currently, local governments are preempted from regulating Milorganite® pursuant to §283.82, Wis. Stats. Preventing local governments from prohibiting what the State has expressly permitted is a fundamental policy. Preemption of local government regulation of the fertilizer business is added and is germane under the relating clause. Minnesota preempts local government regulation because the goals of the law are statewide and uniformity is required. Replacing disparate local ordinances on phosphorus content of fertilizers with a state-wide policy will ensure that no-phosphorus fertilizers are carried at all lawn and garden stores without regard to municipal boundary.

New Prohibitions on common sources of urban runoff.

Prohibited practices are collected in one section and apply to all nonagricultural fertilizer materials, not limited to low phosphorus fertilizers. The prohibited practices are pathways for urban nutrients to be transported to surface waters from lawn care activities. Behavior modification is necessary to encourage on-site composting of yard waste (the end product of fertilizer use), better care and clean up by the home applicator, and respecting a safety buffer between fertilizer application and water. Municipalities with new urban stormwater permits have a duty to educate the public on these practices.

Minimum Riparian buffer strip.

A prohibition on fertilizer use within 20 feet of turf subject to flooding and the waters of the state is added. There is no specific science for a twenty feet buffer rather than 25 or 50 feet. Twenty feet is suggested as an effective buffer.

Plant available Phosphates and Organic Slow Release Nitrogen

Organic materials and organic fertilizers contained in blended commercial fertilizers need a *de minimis* phosphorus standard that is not misleading and promotes beneficial use of recycled organic materials. Minnesota defines phosphorus-free as meaning less than 0.67% phosphate (= 0.29% total phosphorus).^{2/} This is the standard adopted by the American Association of Plant

^{2/} N-P-K% = the traditional fertilizer system of comparing of primary nutrients quantity, expressed as a percentage “as is” by weight in the bag, according to uniform state fertilizer labeling laws.

N means Total Nitrogen;

P (Phosphorus) means available phosphoric acid, P₂O₅, a/k/a phosphorus pentoxide; and, K (Potassium

Food Control Officials (AAPFCO), the organization that recommends uniform state fertilizer regulations and definitions.

Organic materials always contain some phosphorus. To focus on lawn fertilizers, Minnesota excludes from phosphorus-free enforcement products that obviously are intended for garden or other non-turf uses.^{3/} The rule-of-thumb is that products with less than 18% nitrogen were not “competitive” as turf fertilizers. Milorganite® 6-2-0 was not classified by Minnesota as exclusively a turf fertilizer. True enough, slow release nitrogen Milorganite® with 4% Iron has many non-turf uses, but it is advertised as an “idiot proof” grass fertilizer.

Under the new Florida labeling rule for turf fertilizers, Milorganite® 6-2-0, with 5.5% slow release nitrogen, will be labeled as “low phosphate.”^{4/} Low phosphate means no more than 0.25 pounds of available phosphoric acid, P₂O₅, per 0.5 pounds of readily available nitrogen/1,000 sq. ft.

Environmental lab certification is unnecessary.

The requirement that phosphorus soil testing be limited to state certified labs is deleted. Lab certification is important to assure accuracy of evidence in environmental enforcement, a consideration not present in the case of individual lawn care. Nutrient soil testing kits are available for lawn and garden. The kits are simple to use and provide data that is reliable enough for top soil gardening. Some kits allow many tests of soil nutrients in different areas of the yard, providing more representative sampling.^{4/}

The turn-around for a residential soil sample submitted to a certified lab is 2 to 3 months in the spring. People not likely to wait half of the growing season to address a nutrient deficiency. A soil testing kit is proof of due care by an individual conscientiously seeking to avoid needless application of phosphorus.

means Potassium oxide (K₂O), a/k/a soluble Potash. Phosphorus and Potassium are labeled as oxides.

^{3/} *Report to the Minnesota Legislature: Effectiveness of the Minnesota Phosphorus Lawn Fertilizer Law* (March 15, 2007) Minnesota Department of Agriculture Fertilizer Division, page 11 (noting the market shift from 44% to 82% phosphorus-free lawn fertilizer between 2003 and 2006).

^{4/} Florida Dept. of Agriculture and Consumer Services, Rule 5E-1.003(2), Labeling Requirements for Urban Turf Fertilizers, vol. 38, No. 18, Fl. Adm., Weekly, May 4, 2007. See also the Florida Consumer Fertilizer Task Force developing a new state law restricting nonagricultural fertilizer use to achieve water quality standards. Consensus.fsu.edu/fertilizer-task-force/index.html.

^{4/} Rapitest™ Soil Test Kit (\$16.99) contains 40 tests, 10 each for pH, nitrogen, phosphorus and potassium.

All Agriculture use and production is exempt, don't need examples.

Section (4)(a) excludes from the phosphorus limit agricultural uses and production. It is not necessary to "laundry list" examples of agricultural use or production because the terms are broadly defined in the Right to Farm law, §823.08, and Farmland Preservation law, §91.01(1), Wis. Stats.

Continue the policy of sustainable beneficial use of biosolids

Biosolids and other organics are exempt to achieve the dual policy goals of prompting beneficial use while minimizing needless phosphorus application to turf. The Dane County Ordinance exempts biosolids from the phosphorus ban, the City of Madison Ordinance does not. In practice, neither the City of Madison nor the State of Minnesota enforce phosphorus free limits against biosolids.

No risk of needless phosphorus use

Professionals in the management of turf are exempt because the risk of needless application of phosphorus is minimal. Under the new stormwater regulations, municipalities are required to have a nutrient management plan for publicly owned turf, e.g., schools, playgrounds, parks, boulevards, etc.

Delete the Scarlet Letter Treatment.

The prohibition on retail display of a one-ton-skid of turf fertilizer with trace levels of phosphorus is deleted. Milorganite® 6-2-0 is displayed prominently as a sale item to draw consumers into lawn and garden centers. Prohibiting public display would destroy Milorganite® sales in Wisconsin and is usually Puritanical (a strict moral view of pure and proper behavior).

Strict liability, not state of mind.

The distinction between intentional and accidental prohibited fertilizer use is deleted. Proof the mental state should not be an element of these crimes. Strict liability applies. Reckless disregard for the consequences of phosphorus fertilizer application is an appropriate consideration at the penalty stage, after a violation has been proven.

Warn first, punish later.

The penalty clause is altered. Department of Agriculture, Trade and Consumer Protection (DATCP) general enforcement authority over fertilizer use is referenced with two caveats. First, educational is put before punishment. A warning is required as a precondition to prosecution. Minnesota and its local governments have not reported a single instance of enforcement since phosphorus free fertilizers became universally available at lawn and garden retailers. Secondly, the duty to clean-up your mess and mitigate harm to the waters of the state is a factor to be considered in imposing a forfeiture within the range of discretion permitted by §94.64(12)(a).

Use fertilizer on hand, don't make a waste.

An exemption is added to the effective date section to avoid wasting fertilizer already in the possession of consumers. Minnesota found that consumers brought phosphorus fertilizers (without a herbicide ingredient) to household hazardous waste collections, an expensive disposal option. Phasing out high phosphorus fertilizers by application to soil is better environmental management than "disposal" as a solid or hazardous waste.

Plant Available Phosphorus.

Less than 1% of the total P in Milorganite® is plant available. In contrast, 80% to 95% of the total P in a triple super phosphate (TSP) commercial fertilizer is plant available. Commercial phosphorus compounds are extremely water soluble.

The total phosphorus in biosolids, in particular heat dried Milorganite®, may become plant available over time as the bond of Iron (Fe), Aluminum (AL) and phosphates weather. The release is very slow. Low plant available phosphorus promotes plant utilization of P leaving less soluble P in the soil for potential losses due to rainfall or leaching.

Phosphorus Source Solubility

A summary taken from Environmental Impacts of Land Applying Biosolids
George A. O'Connor and Sarah L. Chinault
University of Florida

Some P-sources contain less soluble P than others and represent less environmental hazard because less P is available at any one time to leaching and runoff events. For example, the data in **Figure 1** show that fertilizers typically contain the greatest **percentage of total P that is soluble in a water extract (PWEF)**. Animal manures contain intermediate amounts of PWEF, and most biosolids the least.

Not all biosolids are the same, however, as demonstrated in **Figure 2**. Biosolids processing treatment (heat-drying, composting, or biological P removal) can dramatically alter P solubility. Those biosolids with high total Fe and Al concentrations are particularly low in soluble P.

As a group, biosolids have less soluble P than manures and fertilizers, and less environmental liability. Thus, P losses tend to be greatest with fertilizer, less with manure, and least with biosolids P sources (**Figures 3 and 4**).

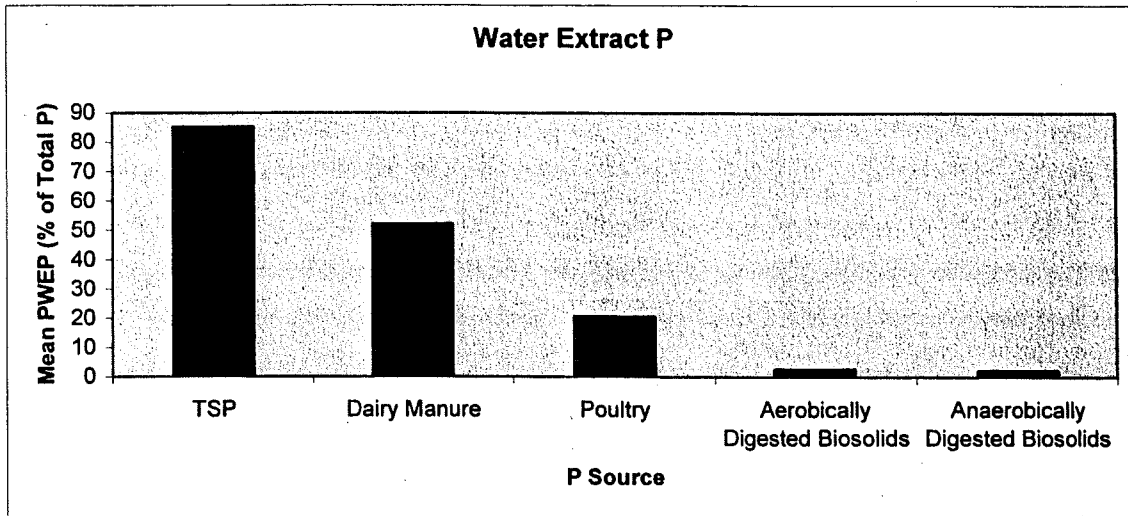


Figure 1. Comparison of percent water extractable P from fertilizer (TSP), dairy and poultry manures, and 10 aerobically and anaerobically digested biosolids (Brandt, *et al.*, 2004).

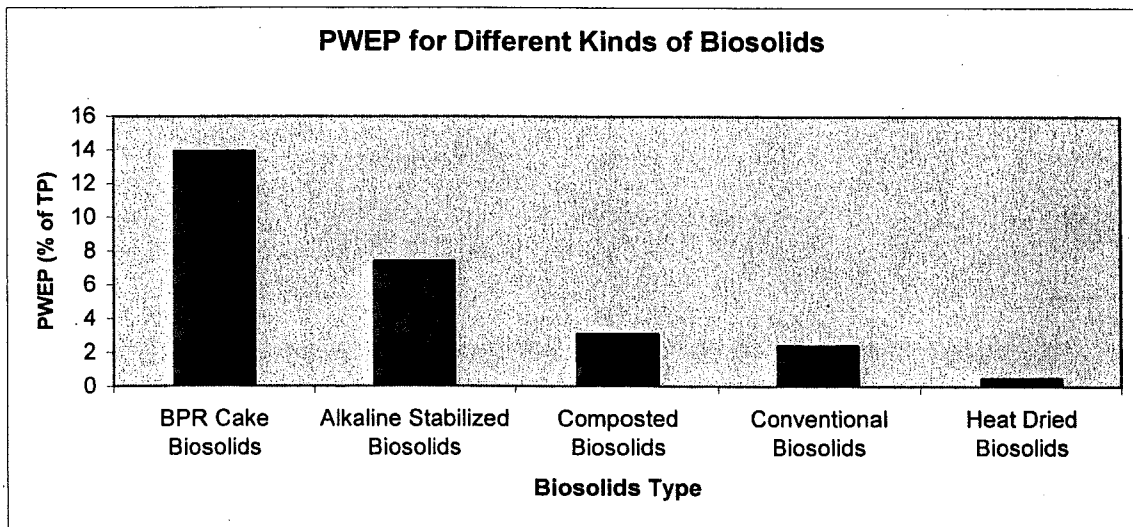


Figure 2. PWEP (% of Total P) of different biosolids types, including BPR, alkaline stabilized, composted, conventional and heat dried biosolids (Brandt, *et al.*, 2004).

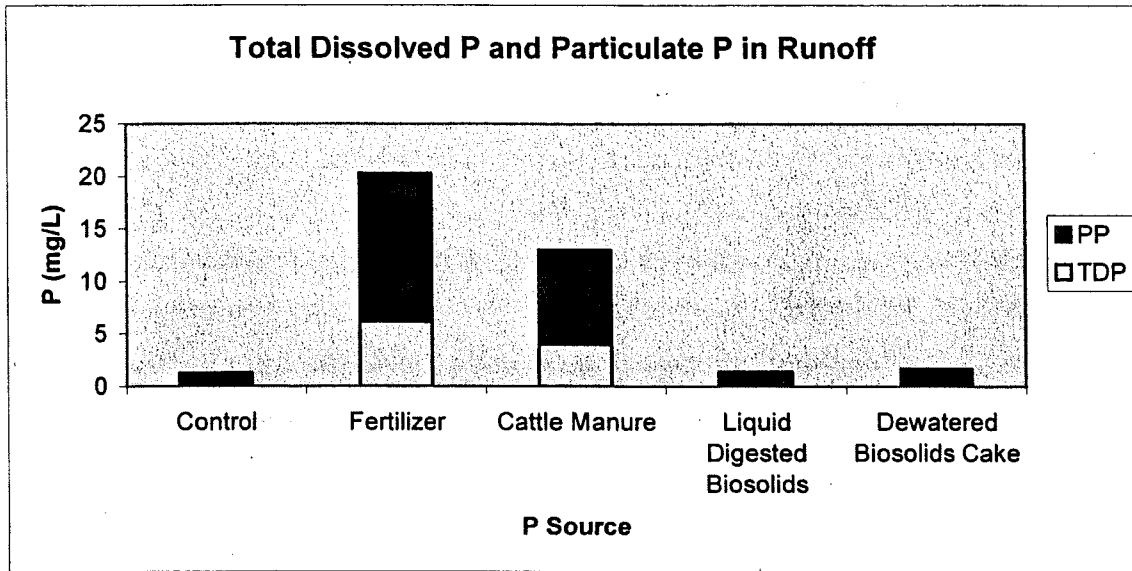


Figure 3. Particulate P (PP) and total dissolved P concentrations in runoff collected after a storm event. (Withers, *et al.*, 2001).

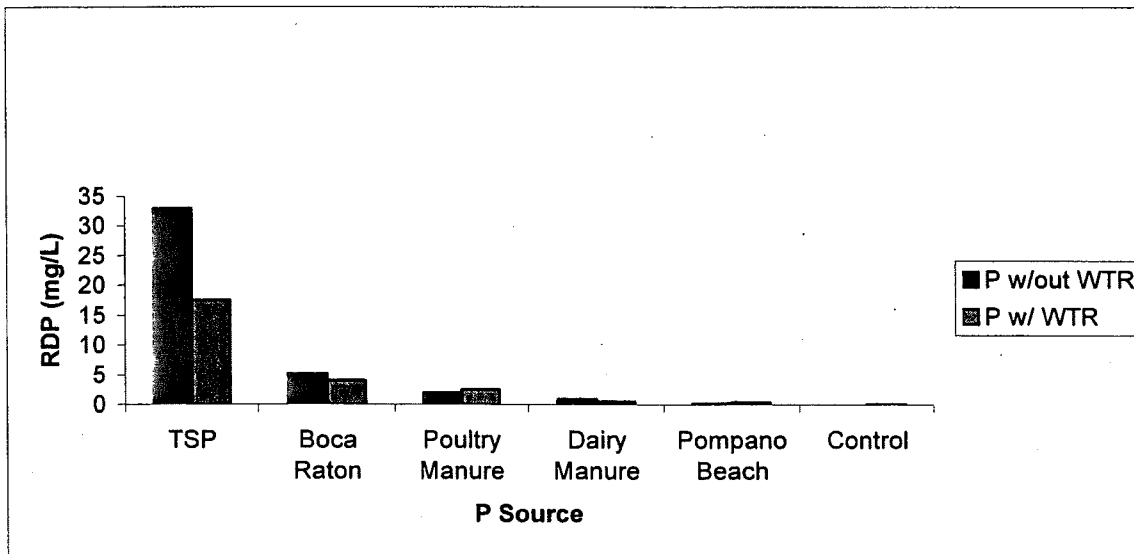


Figure 4. Runoff dissolved P for several P sources when surface applied at high P application rate with and without water treatment residuals (O'Connor and Elliott, 2002).

Plant Availability of P:

Another way P-sources (fertilizer, manure, and biosolids) differ is in the fraction of total P that is plant available. Nutrient availability is a complex function of many factors, but nutrient source solubility and release rate are critical. Thus, P-sources of lower solubility or slower release rates have lower P availabilities. P-fertilizers are designed to have high solubility and quick P release.

Research has shown that most biosolids contain P that is only about 40-50% as available as fertilizer-P (**Figure 6**). Some **biosolids-P sources (BPR materials)** are more available, and some less available (**heat-dried materials high in total Fe and Al**), than the average [that is, **Milorganite®**].

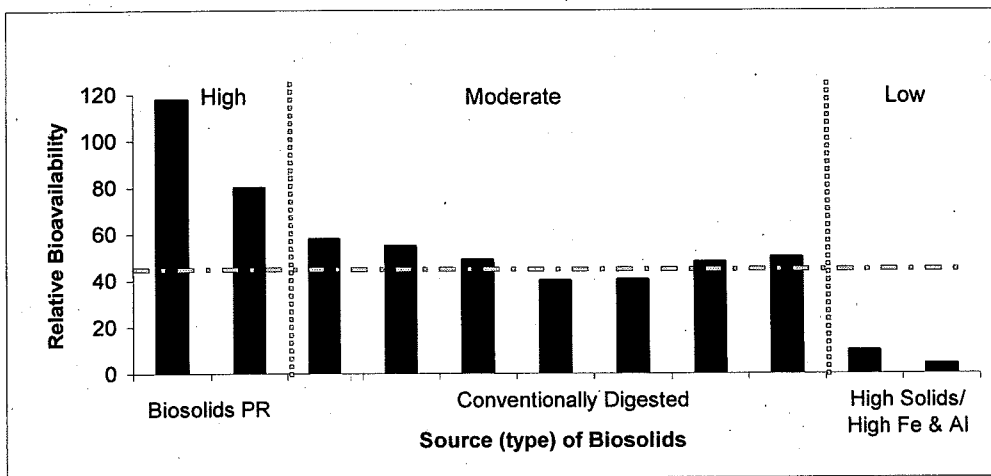
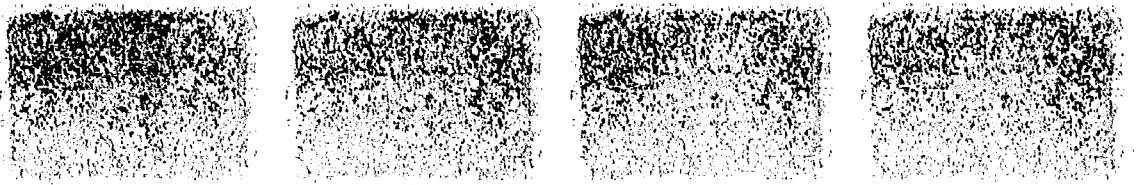


Figure 6: Phytoavailability of various biosolids sources (O'Connor, *et al.*, 2004).



Milorganite® Substitute Amendment 1 to 2007 Assembly Bill 396 and Senate Bill 197

An Act to create 94.643 of the statutes; relating to: restrictions on the use and sale of fertilizer containing phosphorus and other lawn fertilizer and providing a penalty.

Section 1. 94.643 of the statutes is created to read:

94.643 Restrictions on Turf Fertilization.

(1) Local Government Fertilizer Regulation Prohibited.

(a) Local governments are prohibited from regulating distribution [94.64 (1)(d)] or labeling [94.64 (1)(j)] of fertilizers and prohibited from regulating fertilizer use when in accordance with agronomic directions. Regulation of fertilizer distribution and labeling is a subject of exclusive statewide concern and uniformity.

(b) Local governments are prohibited from requiring that grass clippings, leaves or other organic landscaping wastes be placed in the street or other stormwater drainage system for collection, except in accordance with best management practices to control nutrient run-off from stormwater.

(2) Prohibited Consumer Fertilizer Practices. No person may:

(a) sweep, rake, blow or otherwise place organic landscaping wastes into a street or other stormwater drainage system,

(b) apply any fertilizer to turf when the ground is frozen or over-cast fertilizer on to pavement or impervious surfaces, or,

(c) apply any fertilizer to turf subject to flooding or less than 20 feet from any waters of the state.

(3) Phosphorus Limits for Nonagricultural Use. No person may apply to turf a fertilizer that contains more than 3% phosphorus except:

(a) to establish grass, using seed or sod, or

(b) to supplement soils deficient in phosphorus, as shown by a soil test.

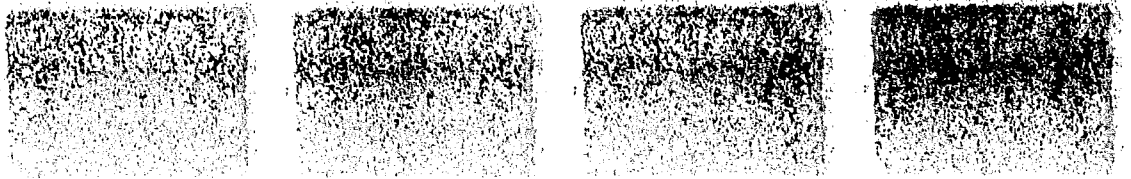
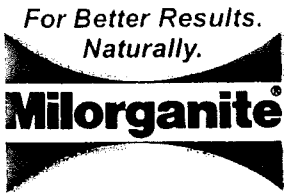
(4) Exclusions from Phosphorus Limits. The 3% phosphorus limit shall not apply to:

(a) any fertilizer marketed for agricultural use or production,

(b) golf courses, plant nurseries, sports field maintenance, home gardens, trees, ornamental plants or turf subject to a nutrient management plan, and,

(c) compost, fertilizer or soil amendments that derive phosphorus nutrients from biosolids or other organic materials.

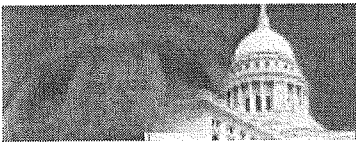




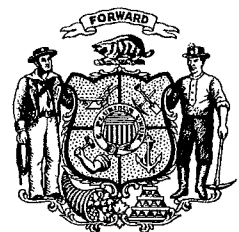
- (5) **Penalty.** Any person who violates this section shall first be given a warning regarding proper fertilizer use or yard waste management, and may thereafter be subject to forfeiture under §94.64(12)(a). A person who misapplies fertilizer has a duty to mitigate the adverse effects on the waters of the state as may be practical under the circumstances. The failure to mitigate shall be considered when forfeitures are imposed.

Section 2 . Effective Date. This act takes effect on the first day of the 12th month beginning after publication. Section 3 of this act does not apply to any phosphorus fertilizer in the possession of a consumer if purchased before the effective date.





WISCONSIN STATE LEGISLATURE



Memorandum

August 28, 2007

To: Beth Bier

From: Heather Libbey

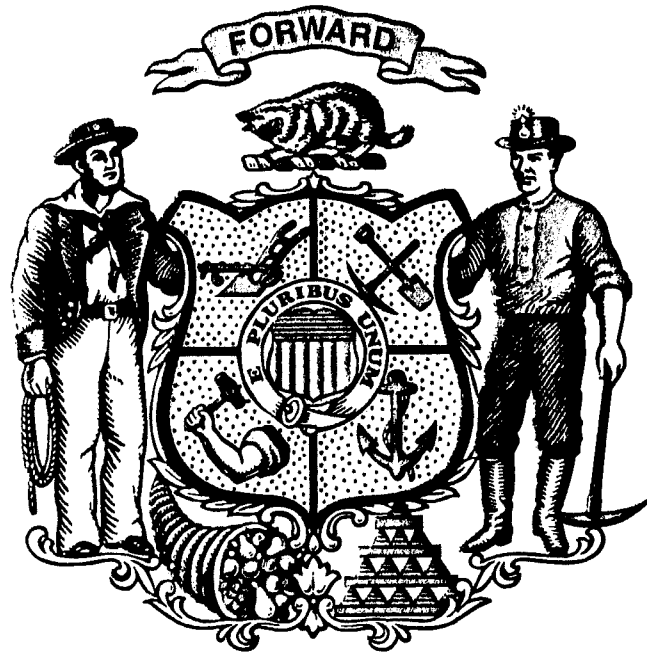
Re: Committee Hearing on SB 197, SB 198, and Clearing House Rule 07-034

The hearing began with discussion of SB 198. Representatives from both the DNR and the WI Wildlife Federation spoke in favor of repealing the outdated three-day waiting period for a bow-hunting license. There was no one speaking in opposition.

The hearing continued with the discussion of SB 197. There were representatives from several groups present to speak in favor of the bill. Some of these were the Association of WI Lakes, WI Land and Water Conservation, WI Wildlife Federation, and various other groups, as well as residents who live on Wisconsin lakes.

Three speakers spoke in favor of the bill, but proposed amendments. The representative from the Crop Production Association spoke in favor of the bill, but proposed an amendment that would allow the state law to pre-empt local ordinances and prevent local governments from passing more stringent ordinances. They also spoke against wording in the bill that would make it the responsibility of the retailers to prevent illegal purchase of the product. The WI Green Industry Federation also spoke in favor of the bill, but suggested an amendment that would only allow local governments to pass stricter ordinances if they are first approved by the state. They also proposed an amendment that would allow retailers to display fertilizer that contains phosphorus, but they would have to post a sign detailing the restrictions and exemptions of the fertilizer's use. The representative from the MMSD also spoke in favor of the bill, but asked for certain amendments. One of the suggested amendments would exempt bio-solids, such as Milorganite. The suggested amendment would also allow for an exemption for fertilizers which contain less than 3% total phosphorus, so long as less than 1% of that is "plant available" phosphorus.

The hearing concluded with discussion of Clearinghouse Rule 07-034. Representatives from Health and Family Services, the Department of Agriculture, the DNR and the Department of Public Health all spoke in support of the amendment to the groundwater quality standard. They argued that a standard was needed for Alacore-ESA in order to increase public access for well compensation as well as create an enforcement standard for the Department of Agriculture. There was no one to speak against the amendment.



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

Jones Testimony on 2007 SB 197, page 2

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.

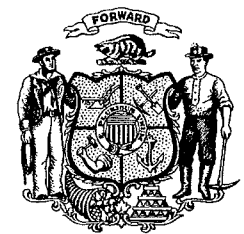
Both the U.S. District Court for the Western District of Wisconsin, and the 7th Circuit of the U.S. Court of Appeals have upheld our ordinance. You can read those decisions on our Dane County Office of Lakes and Watersheds web site:

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
608/224-3764
jones.susan@co.dane.wi.us



WISCONSIN STATE LEGISLATURE





Edgar Harvey, Jr., Chair
N3635 Timberview Road
Waldo, WI 53093
920-528-7071

Robert Bohmann, Vice-Chair
1105 Melvin Ave.
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262-681-2055

John Edelblute, Secretary
2332 Belfast Lane
Hartford, WI 53027
262-673-2813

August 28, 2007

Senator Mark Miller
Senator Robert Wirsch
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.

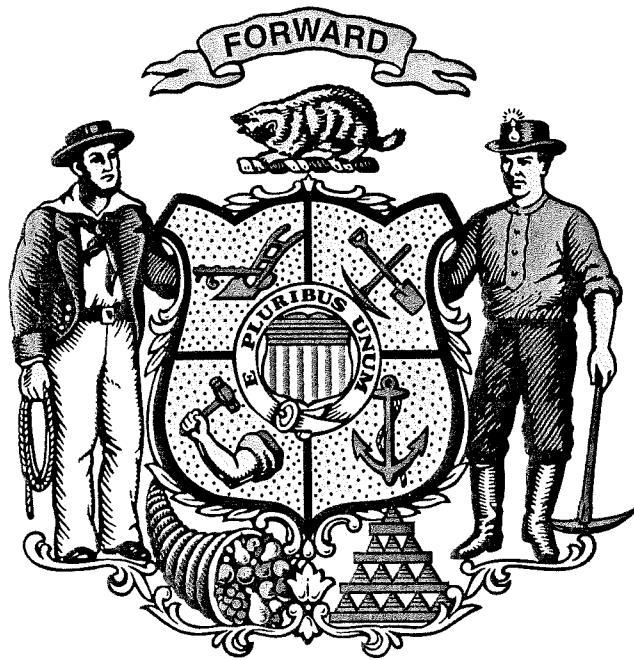
Thank you for reviewing our position. Please feel free to contact me if you have any questions.

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.



**Lake Sinissippi Improvement District
PO Box 89
Hustisford, WI 53034**

**Senate Committee on Environment and Natural Resources
Public Hearing on SB 197
Tuesday, August 28, 2007, 10:00 AM, Room 300 Southeast, State Capitol**

**Testimony of Gregory M. Farnham, Commissioner
In support of SB 197 relating to: restrictions on use and sale of fertilizer
containing phosphorus and other lawn fertilizer and providing a penalty.**

Chairman Miller and Committee Members:

I am a commissioner of Lake Sinissippi Improvement District in Dodge County, Wisconsin, a public inland lake protection and rehabilitation district.

The water quality of Lake Sinissippi is very poor as reflected in undesirable blooms of both green and blue-green algae, low water clarity, high values of chlorophyll *a* and low concentrations of dissolved oxygen. During a previous summer I had the opportunity to fly over Lake Sinissippi, Beaver Dam Lake and Fox Lake and observe the algal blooms in full effect. Our lakes appear pea-soup green even from 3,000 feet!

Water quality data developed by the Lake District and earlier data of the US Geological Survey and Wisconsin Department of Natural Resources present a compelling and unequivocal case to substantiate the fact that Lake Sinissippi, the Rock River and other tributary waters are impaired by nutrient enrichment resulting from excessive levels of phosphorus.

Total phosphorus concentrations in excess of 150 ug/l generally indicate very poor water quality. Phosphorus values in our lake range from 230 to 400 ug/l, more than twice the benchmark concentration. Phosphorus values in the Rock River north of the lake are also very high, ranging from 320 to 380 ug/l.

Lake Sinissippi is one of many impaired waterways in the state that appear on the 303(d) list of the Federal Water Pollution Control Act for reasons of water quality impairments due to pollution from phosphorus.

Our Lake District has worked on the local level for the past 3 years to encourage Dodge County to enact an ordinance to limit sale and use of phosphorus-containing lawn fertilizer. We are aware that similar actions have been attempted in Jefferson County and other counties. This follows the successful work in 2004 by Dane County to restrict sale and use of lawn fertilizer with phosphorus and thereby reduce the amount of phosphorus runoff into streams and lakes.

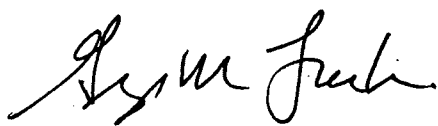
In May 2007 the Dodge County board passed a resolution requesting state action to ban use of phosphorus lawn fertilizer. Action on a county ordinance has not been forthcoming, however, due to the fact that corporation counsel does not believe that our county has the same statutory basis as Dane County to pass an ordinance to protect our surface waters from excessive phosphorus runoff. This is most unfortunate. The water resources of Dodge County and of the other 70 counties of Wisconsin need the same care and protection as those of Dane County.

You are undoubtedly aware that Minnesota has had a statewide restriction on use of phosphorus lawn fertilizer since 2005. We have seen reports from Minnesota, as well as from Dane County, that significant improvement in the quality of surface water occurs in areas where the use of lawn fertilizer containing phosphorus is restricted.

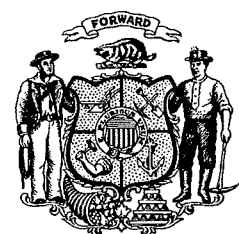
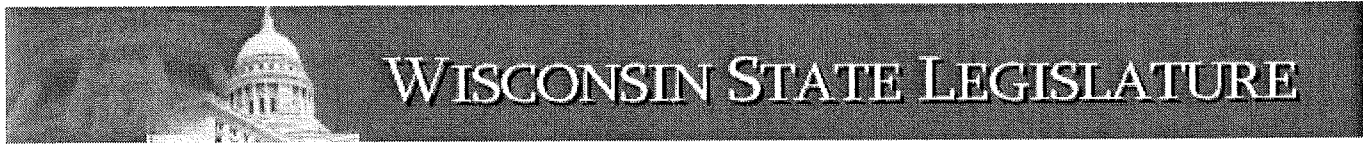
The water conservation policy of our state, as articulated in Chapter 92, Wis. Stats., is to halt and reverse the pollution of state water resources. Action to limit sale and use of phosphorus-containing lawn fertilizer would represent a critical step forward to help improve the health and quality of our streams, rivers and lakes.

We support Senate Bill 197 to restrict use and sale of lawn fertilizer containing phosphorus on a statewide basis.

Thank you for the opportunity to provide comments.

A handwritten signature in black ink, appearing to read "Gregory M. Farnham". The signature is written in a cursive style with a large initial "G".

Gregory M. Farnham
Commissioner





Wisconsin Manufacturers & Commerce

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

James S. Haney
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

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.

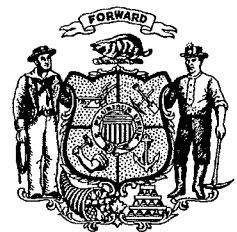
To address these concerns, WMC supports the amendment offered by a broad coalition of agricultural and industry stakeholder groups. The amendment would generally prohibit local governments from enacting ordinances to prohibit or otherwise regulate fertilizers.

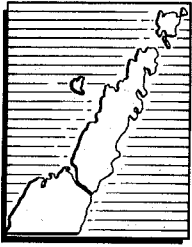
The amendment would give the Department of Agriculture, Trade & Consumer Protection (DATCP) oversight authority over proposed ordinances. WMC believes that DATCP's experience enforcing the existing pesticide preemption law makes the agency well-suited to enforce a similar law with respect to fertilizer. 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 STATE LEGISLATURE





**DOOR COUNTY
Soil & Water
Conservation Department**

421 Nebraska Street
Sturgeon Bay, Wisconsin 54235
(920) 746-2214
FAX: (920) 746-2369
E-mail: SWCD@co.door.wi.us

**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:

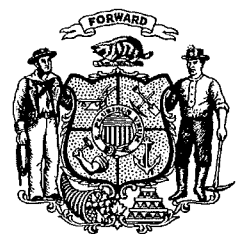
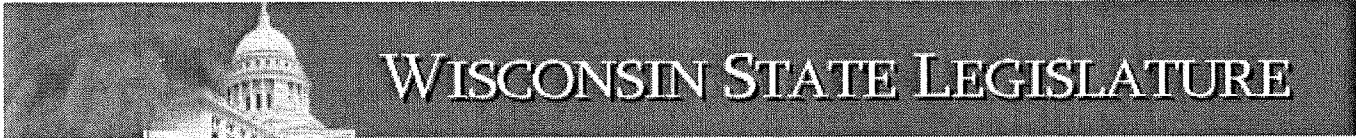
- It is important that local units of government are empowered to enforce the regulation if they so chose. Enforcement authority should not be limited to the Wisconsin Department of Natural Resources and/or the Wisconsin Department of Agricultural Trade & Consumer Protection. Both agencies have limited 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.

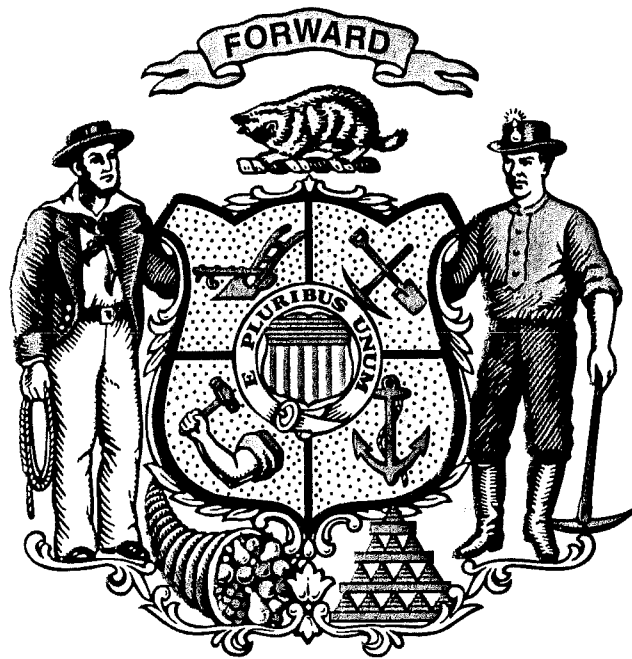
I'd be pleased to answer any questions that you may have of me at this time.

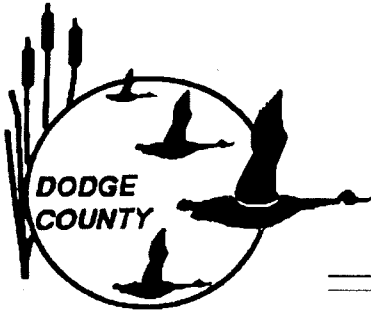
William E Schuster
County Conservationist
Door County Soil & Water Conservation Department
421 Nebraska
Sturgeon Bay, WI 54235
(920) 746-2214
wschuster@co.door.wi.us











LCD
Dodge County Land Conservation Department
127 E Oak Street Juneau WI 53039-1329
(920) 386-3660
Email: landcons@co.dodge.wi.us

August 28, 2007

Senator Mark Miller, Chair
Senate Natural Resources Committee
Room 409 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Miller;

On behalf of the Dodge County Land Conservation Committee, I want to encourage you and other members of the Senate Natural Resources Committee to support Senate Bill 197 (Phosphorus Lawn Fertilizer Ban Bill).

The Dodge County Board of Supervisors passed a resolution on May 15, 2007 requesting that the state legislature and the Governor pass new legislation that would restrict the sale and application of lawn fertilizers containing phosphorus. One source of nonpoint source water pollution in Dodge County and around the state is the widespread sale and application of lawn fertilizers containing phosphorus. It can be shown that most established lawns and turf grass areas test high or excessively high in phosphorus, and therefore usually do not need phosphorus fertilizers additions. The unnecessary applications of phosphorus to these grass areas can result in surface and subsurface discharges of phosphorus to water resources. Also, many times phosphorus lawn fertilizers are spread across city sidewalks, driveways, and streets resulting in a direct discharge to storm sewers and ultimately surface waters during rain events.

We believe that Senate Bill 197 will effectively control the unnecessary purchase and application of phosphorus fertilizers to lawns and other turf grass areas, and thereby assist us in our efforts to control nonpoint source water pollution in Dodge County. Once again, we encourage you to support Senate Bill 197.

Thank you for your time in consideration of this matter.

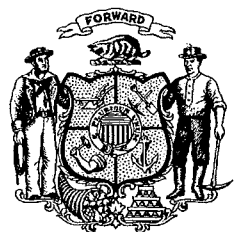
Sincerely,

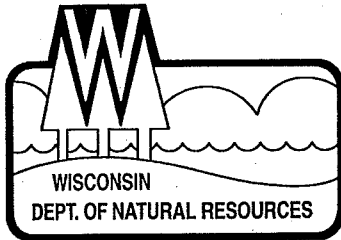
Robert Krueger, Chair
Dodge County Land Conservation Committee

cc. Wisconsin Association of Lakes



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

August 28, 2007

Senator Mark Miller
409 South
WI State Capitol

Representative Garey Bies
125 West
WI State Capitol

Dear Senator Miller and Representative Bies:

I am writing today to comment on Senate Bill 197 and Assembly Bill 396, legislation to implement a statewide phosphorus ban.

The Department of Natural Resources (DNR) appreciates the attention that these bills bring to issues regarding water quality. Phosphorus can cause algae and weed growth and reduced clarity and oxygen levels in inland lakes. A ban is one potential approach to curtail the runoff of phosphorus from small (less than five acres) individual lawns into our lakes.

Please note that nutrient loading from turf areas over five acres is addressed by the current non-agricultural performance standards under ss. NR 151.13 and NR 151.14. These standards require that nutrients be applied in accordance with site specific requirements needed to maintain optimal turf health. To implement the state standard, the State Standards Oversight Council convened a technical work group to develop a technical standard, which was completed in May 2006. This technical standard (1100 - INTERIM TURF NUTRIENT MANAGEMENT) applies primarily to large turf parcels. You can find a copy of this standard at: <http://dnr.wi.gov/org/water/wm/nps/pdf/stormwater/techstds/dnr1100-TurfNutrientManagement.pdf>.

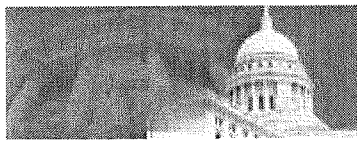
The Fox River and Green Bay management plans both have as a target a reduction of phosphorus loading by 50 percent. The Lake Michigan Lake-wide Management Plan also recommends that phosphorus loadings to the lake be reduced. In addition, recent investigations by researchers at the Water Resources Institute identified phosphorus cycling in the near-shore waters of Lake Michigan as key to the control of Cladophora growth and the associated Cladophora and bacterial problems along Lake Michigan beaches.

In the past, the Legislature has enacted similar legislation - Wis. Stat. § 100.28, which limits phosphorus content in detergents. In addition, local government can currently enact urban storm water management standards more stringent than state regulations. In general, these local standards may be justified in some circumstances based on local water resource conditions.

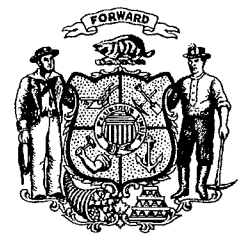
The Department stands ready to address questions regarding SB 197 and AB 396, and appreciates the attention to these water quality issues.

Sincerely,

Scott Hassett
Secretary



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR MARK MILLER

FROM: Mark C. Patrosky, Senior Staff Attorney *mcp*

RE: Amendment to 2007 Senate Bill 197, Relating to Lawn Fertilizer Containing Phosphorous

DATE: September 18, 2007

Attached to this memorandum is a copy of WLC: 0152/2, prepared according to your request for an amendment to address several issues in 2007 Senate Bill 197, a bill pertaining to lawn fertilizer that contains phosphorous.

The amendment *adds definitions* of "finished sewage sludge product" and "sewage sludge." The cross-referenced definition of "finished sewage sludge product" is as follows:

94.64 (1) (fm) "Finished sewage sludge product" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment or other means.

The cross-referenced definition of "sewage sludge" is as follows:

94.64 (1) (pm) "Sewage sludge" means the residue material resulting from the treatment of sewage. In this paragraph, "sewage" has the meaning specified in s. 281.01 (13). [The definition of "sewage" means the water-carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (12), with such surface water or groundwater as may be present.]

The amendment creates *several exceptions* from the requirements of the bill for finished sewage sludge products such as Milorganite. With these exceptions, a finished sewage sludge product, even though it is labeled as containing phosphorous, can be applied to turf as a fertilizer, may be sold at retail as a lawn fertilizer, and may be displayed as a lawn fertilizer by a person who sells fertilizer at retail.

The amendment *does not create an exemption* for finished sewage sludge products from the requirements of the bill that a person may not apply fertilizer to turf when the ground is frozen, may not intentionally apply lawn fertilizer to an impervious surface, and must immediately remove the fertilizer if the person accidentally applies lawn fertilizer to an impervious surface.

You ask whether products such as *composted animal manure* that are used as lawn fertilizer are subject to the requirements of the bill. The definition of "fertilizer," as used in the bill, excludes any "unmanipulated animal or vegetable manures." This term is defined as 94.64 (1) (t):

"Unmanipulated animal or vegetable manure" means animal or vegetable manure which has not been treated by mechanical drying, grinding or pelletizing, by adding a substance or by any other means.

Therefore, composted animal manure is excluded from the definition of fertilizer and is not subject to the restrictions in the bill.

Finally, you asked about *local enforcement*. Under current law, local units of government (cities, villages, towns, and counties) are not precluded by state law from regulating fertilizer sale and use. A local unit of government would most likely choose to adopt an ordinance regarding fertilizer sale and use.

If I can provide any further information on this subject, please feel free to contact me.

MCP:jb:jal

Attachment

**SENATE AMENDMENT ,
TO 2007 SENATE BILL 197**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 4: after that line insert:

3 “(ag) “Finished sewage sludge product” has the meaning given in s. 94.64 (1) (fm).

4 “(ar) “Sewage sludge” has the meaning given in s. 94.64 (1) (pm).”.

5 **2.** Page 2, line 17: after that line insert:

6 “3. Paragraph (a) does not apply to fertilizer that consists of finished sewage sludge
7 product that contains only phosphorus derived from the sewage sludge.”.

8 **3.** Page 3, line 1: after the period insert “(a)”.

9 **4.** Page 3, line 4: substitute “1.” for “(a)”.

10 **5.** Page 3, line 6: substitute “2.” for “(b)”.

11 **6.** Page 3, line 9: substitute “3.” for “(c)”.

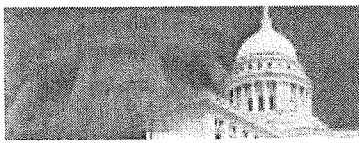
12 **7.** Page 3, line 10: after that line insert:

13 “(b) This subsection does not apply to fertilizer that consists of finished sewage sludge
14 product that contains only phosphorus derived from the sewage sludge.”.

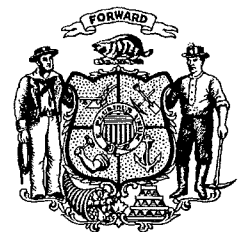
15 **8.** Page 3, line 14: after the period insert: “This subsection does not apply to fertilizer
16 that consists of finished sewage sludge product that contains only phosphorus derived from
17 the sewage sludge.”.

18

(END)



WISCONSIN STATE LEGISLATURE



The Scotts Company

and Subsidiaries



September 21, 2007

The Honorable Mark Miller
Chair, Committee on Environment and Natural Resources
Wisconsin State Senate
State Capitol
Room 409 South
P.O. Box 8952
Madison, WI 53708

Re: Follow-up on SB-197: Restrictions on phosphorus.

Dear Senator Miller,

Thank you for your interest in hearing additional information regarding SB197 and the proposed ban on phosphorus in lawn fertilizers. We sincerely appreciate meeting with you and your aide, Beth Biers, on this pending legislation.

We commend you for formally starting the important dialogue on the importance of water quality and the impact good environmental stewardship practices can have on this issue. The Scotts Company recognizes the importance of stewardship and has embraced these principles. We need to ensure our products, their use patterns, and environmental impact are not mischaracterized or portrayed in conflict with existing state usage data and university research data.

The amount of fertilizer applied by homeowner in WI is less than 2% of the state total and less than 1% of the total phosphorus applied in the state. While the homeowner use of fertilizer is small, we understand the significance of this issue and are collaborating with stakeholders to educate our consumers and the public on water quality and have reduced the phosphorus level in our products by 50% as part of the initiative.

We have attached a slide (titled *2007/2008 Turf Builder Line*) illustrating the products in our complete line of fertilizers and the phosphorus levels in each product. Some products have had the phosphorus reduced by 30% while other products have eliminated phosphorus completely. The line is designed to ensure that low frequency users (1 application per year) receive maintenance levels of

phosphorus and frequent users (2 or more applications) are not applying phosphorus with each application. These products are being offered nationwide, including the State of Wisconsin.

Note: Fifty-percent of household do not fertilize their lawn. Of those that apply lawn fertilizer, eighty-four percent (84%) apply only 1-2 applications per year.

In response to your question regarding the fate of phosphorus when clippings are returned, phosphorus applied to turf is utilized in one of the following ways:

- Phosphorus is taken up by the grass plant and utilized for root and leaf development. A portion is subsequently returned to the lawn when the turf is mowed and the clippings are returned.
- Phosphorus is utilized by shrubs, trees and bushes and becomes part of the biomass. Some phosphorus is removed from the lawn area when leaves are collected.
- Phosphorus reacts with other ions, called fixation, and later becomes available to the grass plant. A portion moves below the root zone and is not available to the plant.

While Wisconsin soils are rich in phosphorus, they not "saturated" with phosphorus and will not become saturated as a result of the amounts applied in turf fertilizers. Alternative products that the bill seeks to exempt (biosolids and some organic based products) provide much higher levels of phosphorus than current products (5-12 times as much phosphorus in a single application). This exemption runs counter to the supporting theory of the proposed ban.

We are interested in seeking collaborative initiatives with the state, consumers, and other interested stakeholders to raise awareness of water quality and best management practices. The low homeowner usage rates have been corroborated by data from WI State Department of Agriculture as well as Scotts internal sales data. Model state programs like Florida or the Chesapeake Bay states provide a more sustainable model than the proposed legislation. These states have placed strict limits on phosphorus based on agronomic and environmental considerations.

As promised, we have included sales information for Scotts grass seed products in WI, sales information for Starter Fertilizer in Dane County, and the letter that was submitted to Dane County Commissioners earlier this year requesting allowance for display of Starter® type fertilizers. This request was made since these products are needed for seed establishment and retailers were de-listing them due to the display ban.

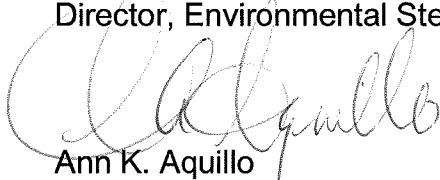
We remain committed to providing products that meet both the environmental needs and the consumer needs. We are not interested in preserving the status quo. We have found that collaborative efforts are more fruitful and generate sustainable partnerships that make ongoing impressions and impacts with the public.

We are very appreciative of your time and efforts and we hereby commit our resources to help address this important issue. Please feel free to contact us if you need additional information on this matter or any other matter related to our company.

Respectfully,



Chris Wible
Director, Environmental Stewardship

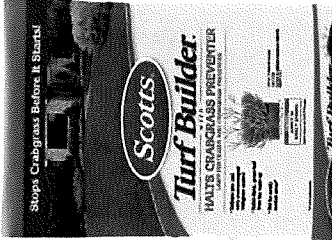


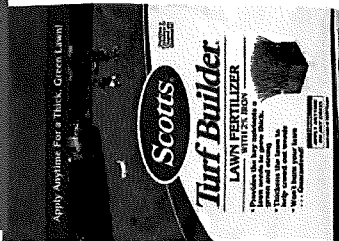
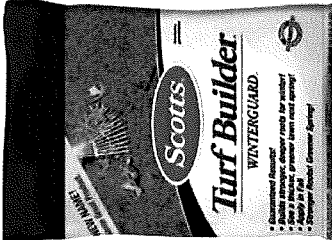


Ann K. Aquillo
Manager, Government and Community Affairs

Enclosures: 2007/2008 Turf Builder Line (Phosphorus Reduction Slide)
Sales information for Scotts grass seed/Starter Products in
Wisconsin/Dane County
Letter to Dane County Commissioners RE: Display of Starter
Fertilizer

THE **Scotts Miracle-Gro**
COMPANY

2007/2008 Turf Builder Line

Product Name	Image	Use Time	Coverage	Net Weight (lbs)	Fertilizer N-P-K Analysis 2008	P205 lbs/1,000	P lbs/1,000
Turf Builder Halts Crabgrass Preventer		Early Spring	5,000 Sq. Ft.	14.06	30-0-4	0	0
Turf Builder Plus 2 Weed Control		Late Spring	5,000 Sq. Ft.	14.29	28-2-3	0.057	0.03
Turf Builder SummerGuard		Summer	5,000 Sq. Ft.	13.35	28-0-8	0	0
Turf Builder Lawn Fertilizer		Early Fall / Any Time	5,000 Sq. Ft.	15.52	29-2-4	0.062	0.03
Turf Builder WinterGuard and WinterGuard+2		Late Fall	5,000 Sq. Ft.	14.23/14.29	22-2-14/26-2-12	0.057 / 0.057	0.03 / 0.03

Some products have had the phosphorus reduced by 30% while other products have eliminated phosphorus. The line is designed to ensure that low frequency users (1 application per year) receive maintenance levels of phosphorus and more frequent users (2 or more applications) are not applying phosphorus with each application. These products are being offered nationwide, including the State of Wisconsin.

*Note: Eighty-Four percent (84%) of consumers that apply fertilizer make only 1-2 applications per year.

Supporting Data for Retail Display of Scotts Starter® Fertilizer

Table 1. Statewide Grass Seed Sales in Wisconsin: The Scotts Company Jan-Dec, 2006

82 SKUs	82 SKUs offered in WI, includes multiple package sizes
354,774 bags sold to consumers	Sizes range from 3 lb packages to 20 lb packages
2,089,819 pounds	Total pounds of Scotts grass seed sold to consumers in WI

Table 2. Unit sales of Scotts Starter® Fertilizer at The Home Depot stores in Dane County, WI 2004-2006.

Product Name	2006 Units	2005 Units	2004 Units
SCOTTS STARTER® FERT 12M	373	416	354
SCOTTS STARTER® FERT 14M	29		
SCOTTS STARTER® FERTILIZER 5M	448	578	587
TOTAL	850	994	941

Note: Scotts Starter® Fertilizer (as well as competitor brands) remained on display following the 2004 ordinance. Dane County informed registrants and retailers in 2007 that these products were not exempted from the display prohibition and they were subsequently de-listed. Sales remained flat prior to and after the ordinance which indicates that consumers are using the products appropriately (for establishment of newly seeded areas).



May 4, 2007

Kirsti Sorsa
Madison & Dane County Department of Public Health
Environmental Technical Services
210 Martin Luther King Jr. Blvd., Room 507
Madison, WI 53703

Re: Retail display of "Starter Fertilizer" products in Madison & Dane County

Dear Ms. Sorsa:

Retail establishments in Dane County have responded to the Phosphorus Ordinance by eliminating phosphorus containing products from their inventory rather than stocking dual inventories. The requirement to maintain phosphorus containing products away from the retail display area placed an unmanageable burden on retailers. Only phosphorus free lawn products are currently offered. Unfortunately, this prohibition from retail display of lawn fertilizers has also resulted in lack of availability of "starter fertilizers" which are required for establishment of new seed and which is specifically allowed per exemption in the ordinance. We request the County consider an alternate display requirement for starter fertilizers that would enable retailers to stock the products with current resources and make these important products available to consumers in Dane County who invest in establishment of turf grass lawns from seed.

The Scotts Company proposes the County provide clarity and explicitly exempt starter fertilizers from the retail display prohibitions provided that:

- Starter fertilizers must be displayed in association with grass seed products only.
- A sign must be posted with the starter fertilizers instructing consumers that the products must only be used when establishing new turf and directing consumers to the phosphorus-free products if they are maintaining an established lawn.

It is important that consumers have starter fertilizers available when establishing new turf from seed. This period of growth and root development requires supplemental rates of phosphorus for the grass plants to become established and for consumers to achieve success. Attempting turf establishment without phosphorus results in unsatisfactory results for the consumer, poor turf quality, and increased potential for run-off and soil erosion.

Retailers are unable to add the additional resources required to stock these products away from the retail selling area. Keeping the products in the back of the store requires retailers to reconfigure these areas from their current uses and requires additional time commitments and time constraints for store associates. As a result, retailers choose to de-list these items rather than incur the additional burdens and inefficiencies.

Kirsti Sorsa
May 4, 2007
Page 2

The proposed solution, allowing retail display in association with grass seed products only and in association with signage, is a win-win situation for the consumer, the retailer, and the county. The consumer wins by achieving success with the new lawn seed investment; retailers win by providing the products to allow consumers to succeed, and the County wins by ensuring establishment of turf grass lawns that prevent run-off and soil erosion which lead to off-site nutrient movement.

In areas that have enacted similar phosphorus lawn fertilizer ordinances, retail sales volumes of starter fertilizers have remained consistent before and after enactment. This data demonstrates that consumer have and continue to select and use starter fertilizers for the intended purpose: establishment of new turf grass lawns.

We respectfully request the County consider the proposed retail display option for starter fertilizers. We propose working in collaboration with the County to develop signage language that provides direction to consumers at retail that both reinforces the goals of the ordinance and ensures that consumer needs are met at the time of seeding.

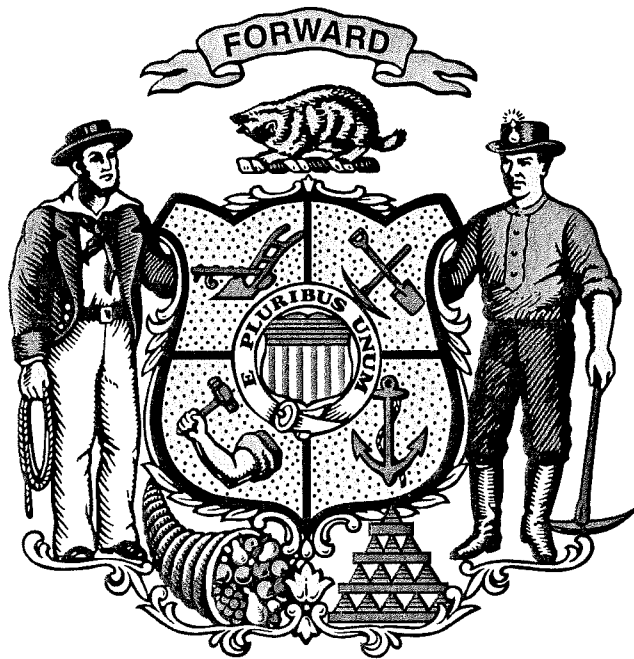
I look forward to your response and consideration of this proposed solution. I may be reached at (937) 644-7012.

Respectfully,



Chris J. Wible
Director Regulatory Affairs North America
The Scotts Company LLC

CC: Thomas Baumberger
Eric Olson





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR MARK MILLER

FROM: Mark Patrosky, Senior Staff Attorney

mcp

RE: Draft Amendments to 2007 Senate Bill 197, Pertaining to Restrictions on the Sale and Use of Fertilizer Containing Phosphorous

DATE: September 25, 2007

Attached to this memorandum are four draft amendments to Senate Bill 197, relating to the use and sale of fertilizer containing phosphorous. Each of the draft amendments contains a NOTE that explains the effect of the amendment. The amendments have been drafted separately in order to make them easier to read. Following review of these amendments, some or all can be sent to the Legislative Reference Bureau for incorporation into Senate Bill 197 as a substitute amendment.

If I can provide further information on this subject or assistance with drafting, please feel free to contact me.

MCP:wu

Attachments

SENATE AMENDMENT ,
TO 2007 SENATE BILL 197

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 2, line 4: delete that line and substitute:
- 3 "(a) "Animal or vegetable manure" means animal or vegetable manure which has been
- 4 treated by mechanical drying, grinding or pelletizing.
- 5 (ab) "Fertilizer" means any substance, containing one or more plant nutrients, which
- 6 is used for its plant nutrient content and which is designed for use or claimed to have value
- 7 in promoting plant growth, except that this term does not include animal or vegetable manure,
- 8 or finished sewage sludge product. "Fertilizer" includes fertilizer materials, mixed fertilizers,
- 9 custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of
- 10 fertilizers, regardless of type or form.
- 11 (am) "Finished sewage sludge product" has the meaning given in s. 94.64 (1) (fm).
- 12 (ar) "Sewage sludge" has the meaning given in s. 94.64 (1) (pm)."
- 13 **2.** Page 2, line 18: after "fertilizer" insert ", animal or vegetable manure, or finished
- 14 sewage sludge product".
- 15 **3.** Page 2, line 19: delete "lawn fertilizer" and substitute "fertilizer, animal or
- 16 vegetable manure, or finished sewage sludge product".
- 17 **4.** Page 2, line 20: delete "lawn fertilizer" and substitute "fertilizer, animal or
- 18 vegetable manure, or finished sewage sludge product".
- 19 **5.** Page 2, line 21: delete "the fertilizer" and substitute "it".

NOTE: Senate bill 197 uses the current statutory definition of "fertilizer" by cross-reference. The current statutory definition of "fertilizer" includes both animal or vegetable manure that has been treated by mechanical drying, grinding, or pelletizing (such as Chickety Doo Doo) and finished sewage sludge product (such as Milorganite).

The consequence of using the cross-referenced definition in senate bill 197 is that both the animal or vegetable manure products and the finished sewage sludge products are subject to the sale and use prohibition in the bill.

This amendment separates out the definition of animal or vegetable manure and the definition of finished sewage sludge product from the definition of fertilizer. The amendment provides that all 3 types of product (fertilizer, manure, and sludge) may not be applied to frozen ground or an impervious surface. (See items 2. to 5. of the amendment.) The amendment does not make changes in the restrictions on sale or restrictions on display, which apply to "fertilizer" in the bill. (See page 3, lines 1 to 14 of the bill.) Therefore, the amendment makes these provisions of the bill apply only to fertilizer and do not apply to animal or vegetable manure or finished sewage sludge product.

(END)

Lawn Fertilizer

WLC: 0155/1

Phosphorous Penalty

WLC: 0156/1

MCP:wu;wu

09/24/2007

MCP:wu;wu

09/24/2007

delete "lawned as"

SENATE AMENDMENT ,
TO 2007 SENATE BILL 197

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 3, line 1: delete "lawn fertilizer" and substitute "fertilizer for application to
- 3 turf".
- 4 **2.** Page 3, lines 2 and 3: delete "lawn fertilizer" and substitute "fertilizer for application
- 5 to turf".
- 6 **3.** Page 3, line 9: delete lines 9 and 10.
- 7 **4.** Page 3, line 12: delete "lawn fertilizer" and substitute "fertilizer for application to
- 8 turf".
- 9 **5.** Page 3, line 13: delete "lawn fertilizer" and substitute "fertilizer for application to
- 10 turf".

NOTE: Senate bill 197 defines turf as follows:

"Turf" means land, including residential property, golf courses, and publicly owned land, that is planted in closely mowed, managed grass, except that "turf" does not include pasture, land used to grow grass for sod, or any other land used for agricultural production.

The bill prohibits the application of fertilizer to turf if the fertilizer is labeled as containing phosphorous. However, elsewhere in the bill, the bill refers to "lawn fertilizer" without defining that term. (See page 3, lines 1, 2, 12, and 13.)

Rather than defining the term "lawn fertilizer", this amendment deletes all references in the bill to "lawn fertilizer" and substitutes the phrase "fertilizer for application to turf". This change is not meant to make a change in the substantive effect of the bill, but rather to use the defined terms consistently.

SENATE AMENDMENT ,
TO 2007 SENATE BILL 197

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 3, line 15: after the period insert "(a)".
- 3 **2.** Page 3, line 17: after that line insert:
- 4 "(b) The penalty in par. (a), and the general penalty provisions of ss. 94.77 and 939.61
- 5 do not apply to sub. (3)."

NOTE: Senate bill 197 imposes a penalty for violation of the new statutory section of up to \$50 for the first violation and not less than \$200 nor more than \$500 for second or subsequent violation. This amendment eliminates the penalty in the bill for the prohibition on retail sales of fertilizer for application to turf, and also makes an applicable and general penalty provisions in ch. 94, stats., and s. 939.61, stats. The penalty for the display of fertilizer is retained.

(END)

**SENATE AMENDMENT,
TO 2007 SENATE BILL 197**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 17: after that line insert:

3 "(6) LOCAL REGULATION. (a) This section is an enactment of statewide concern for the
4 purpose of providing uniform regulation of the sale and use of fertilizer that contains
5 phosphorous.

6 (b) In this section, "local governmental unit" means a political subdivision of this state,
7 a special purpose district in this state, an instrumentality or corporation of such a political
8 subdivision or special purpose district, a combination or subunit of any of the foregoing or an
9 instrumentality of the state and any of the foregoing.

10 (c) A local governmental unit may enforce this section.

11 (d) 1. A local governmental unit may by ordinance or resolution prohibit conduct that
12 is the same as that prohibited by this section, and the penalty under the ordinance or resolution
13 shall conform to the penalty in sub. (5). An ordinance or resolution that does not conform to
14 this section is void and may not be enforced.

~~X~~ **ALTERNATIVE 1**

16 2. This paragraph does not apply to an ordinance or resolution that regulates the sale
17 and use of fertilizer that contains phosphorous and that is in effect on August 28, 2007.

ALTERNATIVE 2

19 2. This paragraph applies to an ordinance or resolution enacted before, on, or after the
20 effective date of this paragraph [revisor inserts date ...]."

NOTE: This amendment relates to local regulation of the sale and use of fertilizer containing phosphorous. Paragraph (a) is an expression of legislative intent that local governmental units do not have authority to adopt regulation that differ from the state regulations. Paragraph (b) defines "local governmental unit" to mean all political subdivisions of the state (cities, villages, towns, and counties) and all special purpose districts (such as lake districts or town sanitary districts). Paragraph (c) expressly authorizes local governmental units to enforce the statute. Paragraph (d) authorizes local governmental units to adopt an ordinance or resolution that prohibits conduct that is the same as the statute and to adopt the same penalty. [As an alternative to the use of the broader term "local governmental unit", it should be considered whether this amendment should apply only to political subdivisions (cities, villages, towns, and counties).]

The first alternative at the end of the amendment allows a local governmental unit to continue enforcing an ordinance or resolution regarding the sale and use of fertilizer that contains phosphorous that was in effect on August 28, 2007, the date of the public hearing on senate bill 197. The second alternative makes the restrictions on local regulation applicable to all local governmental units, and deletes authorization to retain ordinances or resolutions enacted prior to the effective date of the legislation.

(END)