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ROBERT L. COWLES

**Wisconsin State Senator
2nd Senate District**

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Assembly Committee on Environment and Forestry

January 30, 2014

417 North, GAR Hall, State Capitol

Testimony on AB 680 by Senator Cowles

Thank you for the opportunity to testify today on AB 680 relating to the discharge of phosphorus into the waters of the state. Due to phosphorus and sediment loading, Green Bay now has an identified dead zone similar to sections of Lake Erie and the Gulf of Mexico, where there's so little oxygen that fish and aquatic organisms struggle to survive.

Current water quality standards require significant phosphorus reductions over time. However, industry and municipalities already have substantial controls in place and would not generate the large phosphorus reductions necessary to improve water quality. A better option would be to concentrate our efforts and resources on the largest phosphorus contributors, the nonpoint sources like agriculture and urban stormwater.

In the lower Fox River basin an estimated two-thirds of the total phosphorus load is due to nonpoint sources. Meeting the new phosphorus effluent standards would require point sources to spend exorbitant amounts of money on advanced filtration technology to clean up very little of the problem while nonpoint sources continue to contribute significant phosphorus loading to our waters.

This bill seeks to remedy this unbalanced and costly situation by providing another tool for regulated facilities, one with a real chance of improving the water quality in the state. Under this proposal, the state would benefit greatly by achieving greater phosphorus compliance by targeting nonpoint sources. This bill creates a formula where point sources pay \$50 per pound of phosphorus discharged to participating counties in their basin to implement nonpoint source controls.

According to the DNR's Nonpoint Source Program Management Plan for fiscal year 2011-2015, the "greatest barrier to the implementation of the nonpoint performance standards continues to be insufficient staff levels and the lack of cost-share dollars."

This bill can help to remedy the department's long-term obstacles by providing an opportunity to increase county nonpoint funding for on-the-ground practices. If this regulatory option is selected, point source facilities would still have to meet interim end-of-pipe regulatory limits on their own discharges over the next 20 years in addition to the annual county payments for nonpoint reductions.

Our fishery, tourism industry and local economies are at stake here. Phosphorus is a problem and we must make better decisions that tackle these issues head on. This bill does not change or replace other mechanisms developed to meet the phosphorus standards, but it offers an additional tool which allows the regulated community the flexibility to maximize their financial commitments to reduce the greatest amount of phosphorus into the waters of the state.



Department of Natural Resources Testimony – 2013 AB 680

Assembly Committee on Environment and Forestry, January 29, 2014

Russ Rasmussen, Deputy Administrator
Water Division
Department of Natural Resources

Subject: AB 680 – Variances to phosphorus discharge limits

Good afternoon Chairman Mursau and committee members. Thank you for the opportunity to testify on Assembly Bill 680, which provides for variances to phosphorus limits in water discharge permits issued by the department upon a finding of substantial and widespread adverse social and economic impacts on a statewide basis by the Department of Administration. Today I am testifying for informational purposes on behalf of the Department of Natural Resources.

Under current law, an applicant for a water pollution discharge permit may apply for a variance from a permit limit if the department can make a finding that the compliance with the proposed limit for the pollutant would cause widespread adverse social and economic impact. A common example is if a municipality would be required to upgrade its treatment facility at a cost that would cause sewer rates in the community to rise to unreasonably high levels. Under federal law, any proposed variance to a permit limit must also be approved by the U.S. Environmental Protection Agency (US EPA) before it can be included in the permit. Variances are made on a case-by-case and permit-by-permit basis and allow for less stringent interim permit limits that allow for less costly compliance

AB 680 requires the Department of Administration, in consultation with the Department of Natural Resources, to make a determination whether compliance with permit limits for phosphorus, required to meet water-quality based standards, result in widespread adverse social and economic impact on a statewide, as opposed to an individual permit basis. If this determination is made, the bill provides for a variance for any facilities covered by a permit before the water quality based standard for phosphorus took effect. This is conditioned on the permittee certifying that they cannot comply with the permit effluent limitation without a major facility upgrade. If a statewide variance is granted, any qualifying facilities will have permits that contain less stringent interim effluent limitations that may gradually become more stringent over the course of four permit terms or twenty years. In return for the less stringent phosphorus limits, facilities may implement one of several phosphorus reduction strategies including payments to counties in the same watershed to implement nonpoint source pollutant reduction practices. It should be noted however, that any variance, just as under current law, will need to be reviewed and approved by US EPA.

AB 680 also amends an existing water quality standard implementation mechanism called adaptive management. Under the current rule, adaptive management can only be used for compliance with phosphorus water quality standards and provides that compliance with the water quality standard in the receiving water must be accomplished over the course of three permit terms or fifteen years. AB680 extends the compliance time to four permit terms, or 20 years, and adds total suspended solids (TSS) as an eligible pollutant for this approach. The department believes that the US EPA may consider this a change to the state's water quality standards. If this is the case, then under the federal Clean Water Act, this provision would be required to be approved by US EPA before it could be implemented in permits that would be determined equivalent to those required by federal law.

AB 680 provides an additional tool for the department to work with point and nonpoint sources of phosphorus to reduce this source with a cost-effective approach. However, as stated above, variances and changes to state water-quality standards must be approved by US EPA or the permits that contain these provisions may be held to be invalid to comply with the federal Clean Water Act. The department would recommend that implementation of this proposal include mechanisms by which federal approval can be accomplished.

I thank you for providing me with the opportunity to testify on this bill today and I would be happy to offer any additional information or answer any questions.

Before the Assembly Committee on Environment and Forestry

**Testimony of Paul G. Kent on behalf of
The Municipal Environmental Group – Wastewater Division,
In support of AB 680**

January 30, 2014

My name is Paul Kent and I am here today on behalf of the Municipal Environmental Group Wastewater Division. We are an organization of over 100 municipalities statewide who own and operate wastewater treatment plants.

Municipalities have already removed over 90% of the phosphorus in their discharges, and many have removed upwards of 97%. Treating that last few percent comes at an enormous cost because it requires new filtration technologies. At the same time, because point sources have already removed most of their phosphorus, these sources are responsible for a relatively small percentage of the phosphorus in our waters. The primary issue is nonpoint pollution. To spend tens or hundreds of millions of dollars on treatment that reduce only a small percent of phosphorus is not cost effective and produces little water quality improvement. That is why in 2010 MEG supported alternative compliance options such as trading and adaptive management. These programs have the potential to facilitate nonpoint reductions while avoiding the millions of dollars required for immediate treatment plant upgrades.

But it is now 2014. There are now hundreds of discharge permits that require permittees to evaluate these options. What we have learned in the last few years as communities begin that evaluation, is that for many communities, trading and adaptive management are not viable options. Some communities are at the headwaters of a stream and have no one to trade with, or they do not meet the prerequisites for adaptive management. For many other communities, especially those outside major urban areas, they do not have the data, the staff or the administrative capability to effectively undertake adaptive management or trades. And there remains, even after four years, many unanswered regulatory questions. The adaptive management guidance contains over 100 pages of material for communities to review and we are only now in the pilot stages for a few of these projects.

Many communities are now under permit requirements to make a choice. These are communities like the Town of Yorkville, the Eagle Lake Sanitary District, or the City of Elroy. Elroy has a population of 1400 and a 333,000 gallon per day wastewater facility. Preliminary estimates are that filtration would cost \$3.7 million to build plus there are significant annual operating costs. These communities do not have the resources or time to invest in options such as adaptive management and trading which are complex and uncertain. For these entities the only real choice is to spend millions building plants that have little water quality benefit or to challenge the permit.

As a result of these real world constraints, we began looking for another option. The current bill requires continued improvement by point sources and directs significant resources into nonpoint programs. Instead of creating a new program for nonpoint

reductions, this bill creates a mechanism for point sources to direct funds to the existing nonpoint program – one with staff, standards, administrative capability and accountability. This is not an inexpensive option or a means to delay phosphorus reduction. This option will require any participating municipality to direct tens or hundreds of thousands of dollars into the nonpoint program each year and achieve real environmental improvement. It will however provide a simple and certain way for point sources to satisfy the new phosphorus requirements.

At the same time, this bill was designed to support adaptive management efforts in two key respects. The timeframe for adaptive management is extended so there is a better chance that those programs can succeed in reaching water quality standards and it allows for total suspended solids to be part of an adaptive management plan. This latter point is critical to point sources in the Rock and Fox River basins. The proposed legislation is another option; it does not remove adaptive management or trading for those that wish to pursue them.

MEG has supported adaptive management and trading options, but where those are not viable options, there needs to be another tool in the tool box that allows for nonpoint reduction while avoiding unnecessary costs to ratepayers. This bill is designed to accomplish that objective. For these reasons our organization supports this bill

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



Wisconsin Land and Water Conservation Association, Inc.

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WLWCA Testimony to the Assembly Committee on Environment and Forestry in Support of Assembly Bill 680 – January 30, 2014

I am Jim VandenBrook, Executive Director for the Wisconsin Land and Water Conservation Association and I represent County Land Conservation Committees and Departments. Our association and its members have a 60-year history working collaboratively and almost always voluntarily with farmers and other landowners to conserve soil and water resources and to reduce phosphorus runoff. This bill recognizes, as do we, that it will take whole communities in a watershed, urban dwellers and rural landowners working together, to clean up Wisconsin's waters. While our association generally supports AB 680, we have identified an important oversight that we hope can be remedied by the language we suggest today. We urge you to vote for the bill as amended with the attached proposal.

We recognize the long-standing investments that municipal waste water treatment facilities and other permittees have made to reduce phosphorus discharges. Assembly Bill 680 allows permittees the option of seeking phosphorus reductions from non-point sources in their basin, essentially working together with farmers and others to jointly reduce phosphorus runoff, often at far less cost than adding new technology to reduce phosphorus discharges from the facility. Funding to counties makes sense. The state has developed and supported programmatically the expertise of county land conservation departments to work on precisely the conservation practices needed to reduce polluted run-off. As a reminder, the counties must follow state conservation standards and show their progress in meeting phosphorus reductions through annual reporting as a provision of this bill.

Accountability for the funds given to counties and for the phosphorus reductions they help landowners achieve is good policy. But here is the point of concern: while counties must follow state standards and annually report progress, the bill does not require that same accountability for the two other non-county options as set forth under what would be sec. 283.16 (6) (b) 2. and 3. at page 12 of the bill. Further, those options do not include any requirement to coordinate the proposed phosphorus reduction efforts with county programming. This will lead to confusion and harm relationships with the farming community. These omissions must be addressed for full county support of this proposal.

We have attached language which if added to the bill would only strengthen the proposal and provide for the accountability and coordination that Wisconsin citizens expect of public policy. We also include the most recent Wisconsin Land and Water Annual Progress report from DATCP and DNR showing county commitment to water resource protection.

The Wisconsin Land and Water Conservation Association is committed to working with DNR, DATCP, municipalities, other permit holders, and landowners to make the clean up of watersheds a reasonable, efficient, and cost-effective option for all. Mr. Chairman and Committee members, thank you for your time today and I would be happy to take any questions.

Wisconsin Land and Water Conservation Association

Proposed amendment to AB 680 to ensure accountability and coordination

At page 12, after line 12, insert the following:

(c) Before approving an agreement under par. (b) 2. or 3., the department shall provide a copy of the proposed agreement to each county in which sources affected by the phosphorus reduction plan are located, and shall consult with that county on the proposed approval. A plan approved under par. (b) 2. or 3. does not exempt any nonpoint source from applicable nonpoint pollution control standards or practices promulgated under s. 281.16, or from applicable state or local conservation requirements promulgated under ch. 92, Stats.



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Testimony regarding AB 680
Elizabeth Katt-Reinders, Policy & Communications Director

Thank you Chairman Mursau and committee members for the opportunity to testify. My name is Elizabeth Katt-Reinders, and I'm the Policy and Communications Director for the Clean Lakes Alliance. We are a local nonprofit whose main focus is reducing phosphorus in the Yahara River watershed, which includes the Madison-area lakes. Our boards and supporters comprise a very diverse group of private and public stakeholders, including large local businesses – like Spectrum Brands and Lands' End, dairy, hog and grain farmers, realtors, utilities, lake user groups, lakeshore property owners, and state, county and local government entities. Our group is focused on non-partisan collaboration. We are a quality of life organization, and we believe healthy lakes, healthy communities and a healthy economy go hand in hand.

Unfortunately, as drafted, AB 680 threatens to undercut the non-partisan progress we have made in this watershed. To be clear, the bill's intention to improve water quality while simultaneously promoting statewide economic growth is absolutely a worthy goal, and one shared by the Clean Lakes Alliance and its supporters. But we don't want to see a bill that was meant to provide solutions for certain regions of the state, unintentionally jeopardize the solutions that our broad coalition of stakeholders have already identified as critical to improving water quality and in which they've made significant private investment.

Just two years ago, the Clean Lakes Alliance and many of its corporate supporters spent over \$200,000 on an independent engineering report to assess how best to reduce phosphorus in this watershed. That report identified the quickest ways to reduce phosphorus and then ranked them based on cost-effectiveness, putting timelines and dollar signs to the actions needed to improve our lakes. We have already begun to implement these actions.

AB 680 threatens to stall this collaborative progress because, as written, the bill would undermine the adaptive management option, which this community needs to ensure that the lakes get cleaned up. The Alliance and its partners believe that the adaptive management option will work well in this watershed. We are currently in year two of a three-year adaptive management pilot project in the northern part of our watershed, and we are seeing success.

The primary problem with the bill is that, as drafted, it allows point sources to obtain the variance even in areas where adaptive management can and will work at a reasonable cost. According to the bill's authors, the variance is intended only for areas where adaptive management will not work. But the bill as written does not make clear that a permittee should have to show that adaptive management is not a feasible option before obtaining the variance.

I'd like to share an example from the Yahara watershed. The Madison Metropolitan Sewerage District has estimated that it would cost more than a hundred million dollars to install phosphorus reduction equipment at its plant to meet water quality standards. Using the adaptive management option that the Clean Lakes Alliance supports, Madison Met has estimated that it will only need to spend about \$400,000 per year to reduce phosphorus pollution instead of the hundred million dollar option. And adaptive management will lead to better water quality results than a bricks and mortar solution. But if Madison Met is able to obtain a variance under the bill, it could pay as little as about \$50,000 per year to reduce phosphorus for the next twenty years instead of choosing the adaptive management option. \$50,000 per year will not make a significant dent in the phosphorus going into our lakes.

Another concern with the bill lies in how funding is calculated. There are two reasons why the variance funding amount would be too low for this watershed. First, our independent engineering report determined that it would cost approximately \$85 per pound to reduce phosphorus - but the bill sets the price at \$50 per pound.

Second, the funding level is determined based on a target level that is too high for this watershed. We urge you to consider a more appropriate target level for those point sources that already have average discharge concentrations well below all of the interim limits defined in the bill.

The Clean Lakes Alliance is also aware of additional concerns, such as a lack of accountability and whether these variances and changes to adaptive management timelines will be approved by the EPA; however, our primary concerns can be addressed by ensuring that the variance is unavailable in areas where the adaptive management option will work.

Over the last week, we have met with several of the supporters of this bill and have appreciated their willingness to hear our concerns. However, we ask this committee to encourage all sides to sit down and find a compromise that could address these unintended consequences before going forward. Please consider amendments that would first clarify and make explicit the intention we understand is behind this bill -- that for those for whom adaptive management is feasible, this variance should not be an option; and second, provide target limits and fees that ensure those who choose to utilize this variance would contribute meaningful funds towards nonpoint phosphorus reduction.

To that end, we are submitting two attachments with this testimony. The first is a letter supporting this testimony from the CEO of Spectrum Brands. The second is a short mark-up of two paragraphs in the bill, which we think would solve our concerns.

Together, with smart compromises and common sense, we can make this bill good for Wisconsin's waters. Thank you for your consideration.

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David R. Lumley
CEO

January 30, 2014

As the CEO of Spectrum Brands and a member of the Clean Lakes Alliance's Community Board, I echo the Clean Lakes Alliance's concerns related to Assembly Bill 680. Spectrum Brands, which is headquartered in Madison, has been a Wisconsin business since 1906 and currently employs approximately 1,000 people throughout the state. We at the company believe that the Madison-area lakes are the centerpiece of this community, which is why Spectrum Brands has worked so hard with the Alliance over the last few years to help clean up the phosphorus pollution that has been plaguing our lakes.

As written, AB 680 would hurt these collaborative efforts and slow the progress we have made in this watershed. My company and many others in the private sector have invested significant financial resources to spearhead public-private partnerships that are aimed at reducing phosphorus in the Madison-area lakes, and we do not want this bill to undercut our progress.

The lakes in our watershed are drivers of the local economy and contribute to our quality of life. We need clean lakes to recruit and retain our employees, to attract top talent, and to offer beautiful lakeshore homes and recreational opportunities. We've invested too much to let unintended consequences from this bill undermine our progress.

We ask you to work with the Clean Lakes Alliance to ensure that its concerns are addressed prior to adopting the bill. Please do not let solutions for some areas of the state create unintended problems here in Madison.

A handwritten signature in black ink that reads "David R. Lumley".

David R. Lumley, CEO

Clean Lakes Alliance proposed amendments to AB 680

Amend 283.16(1)(h) as follows:

“Target value” ~~means~~ has one of the following meanings, depending on the point source’s historical effluent discharge level: (1) if the point source’s three-year average concentration of phosphorus in the effluent discharged in calendar years 2011, 2012, and 2013 was less than 0.28 milligrams per liter, the “target value” is the number of pounds of phosphorus that would be discharged from a point source during a year if the average concentration of phosphorus in the effluent discharged by the point source during the year was 0.13 milligrams per liter; (2) for all other point sources, the “target value” is the number of pounds of phosphorus that would be discharged from a point source during a year if the average concentration of phosphorus in the effluent discharged by the point source during the year was 0.2 milligrams per liter.

Amend 283.16(4)(a) as follows:

When a determination under sub. (2)(a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible is in effect, a permittee is eligible for a variance to the water quality standard for phosphorus for an existing source if the permittee certifies that the existing source cannot achieve compliance with the water quality based effluent limitation for phosphorus without a major facility upgrade ~~and, the permittee agrees to comply with the requirements under sub. (6), and the department determines that compliance with the water quality based effluent limitation for phosphorus by using, or participating in, an adaptive management option is not feasible.~~



Wisconsin Rural Water Association
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January 30, 2014

Assembly Committee on Environment and Forestry
Representative Mursau, Chair
Representative Krug, Vice-Chair
Representative Czaja
Representative Loudenbeck

Representative Stroebel
Representative Danou
Representative Milroy
Representative Clark

Representatives,

On behalf of the Wisconsin Rural Water Association (WRWA) and our 585 municipal members, we'd like to express our support for AB 680.

If this Bill is passed, for the first time since the current phosphorus reduction regulations were enacted in 2010, smaller, rural, municipal communities will have an affordable option to meet requirements that are currently some of the strictest in the nation, and in most cases unattainable without a great deal of cost.

Estimated costs for point sources in our state to comply with the current regulations are over \$4 billion. And sadly, this expenditure would lead to negligible improvement in water quality statewide as point sources account for only a small percentage of the phosphorus currently being introduced into Wisconsin's waterways. Although other compliance options including adaptive management and trading do exist, in reality they're only viable options for a small number of point sources in the state.

SB 680 offers a realistic option that provides funding to counties in order to develop and undertake phosphorus reduction activities that are fully accountable to both the state Department of Natural Resources and the entities providing funding for those activities. And with the continued development of water treatment technology in the coming years, this legislation also allows time for more cost effective treatment technology to be developed and utilized by communities to meet the compliance levels included in the bill.

In closing, Wisconsin's communities are proud of the fact that we've already spent hundreds of millions of dollars reducing our phosphorus discharges into Wisconsin's waterways. We ask for your support and approval of AB 680, a bill that will improve water quality at a reasonable and affordable cost to many of Wisconsin's residents.

Thank You,

A handwritten signature in blue ink, appearing to read "David Lawrence", is written over a faint, larger version of the signature.

David Lawrence
Executive Director
Wisconsin Rural Water Association



**Testimony of Amber Meyer Smith, Director of Programs and Government Relations
AB 680
Assembly Environment and Forestry Committee
January 30, 2014**

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air and clean energy issues. We were founded forty four years ago as Wisconsin's Environmental Decade and have 20,000 members and supporters around the state.

We are glad to appear here to continue the discussions about the problems of phosphorus pollution for our waterways. We were part of the stakeholder group that came up with the current compromise phosphorus rule, and have been working since it was enacted to help get it implemented on the ground.

While we feel that AB 680 has merit, we must oppose it as written. We applaud the intention of the bill, which continues the laudable goal developed in the original rule – point source dischargers helping nonpoint dischargers to realize to the greatest amount of phosphorus reductions at the least cost. However, we oppose the bill as written because it lacks accountability, is overly broad and will delay waterway cleanup. But with some changes, we think this bill could actually be a way to capture even more nonpoint reductions, and could be a bill we could support.

There is no doubt that phosphorus is a huge problem plaguing our waterways - nearly half of our waterways are so polluted due to runoff that they are federally listed as impaired. In fact in 2012 alone, the EPA added 147 new waters to Wisconsin's impaired waters list due to phosphorus, mercury and total suspended solids pollution. It only takes one pound of phosphorus to generate 500 pounds of algae, which contributes to the dead zone in Green Bay, and chokes our lakes in the summer - closing beaches and waterfront resorts, and driving people away from our waterways.



When algae blooms die and rot they deplete oxygen in the water, and create a dead zone where fish and other aquatic life can't live. In addition to harming ecosystems, blue-green algae can harm humans, pets and livestock. Blue-green algae can be toxic, resulting in dozens of illnesses every year and even dog deaths.

Algae impacts our tourism and fishing economies throughout the state. Tourism takes a hit from polluted runoff in terms of lost beach days, lost boating revenue, and lost fishing and related revenue, and more. In 2009, in Madison alone there were 10 beaches closed for a total of 90 days – all by

July 17th – because of potentially dangerous algae blooms. The economic impact of fishing in Wisconsin is roughly \$2.75 billion, employing 300,000 people across the state, and water-related tourism adds even more jobs and dollars to our economy. A study DNR released in 2012 showed the current phosphorus rule and its adaptive management option would be a net benefit to Wisconsin's economy, providing \$596.7 million in improved recreational opportunities.

Polluted waterways also have a negative impact on property values. Many Wisconsin residents pay a premium to live on or near waterways, and several studies have shown the direct link between increased water clarity and increased lakefront property values. The 2012 DNR study showed a \$1.1 billion increase in property values with the phosphorus rules.

It is these costs of phosphorus pollution that brought many stakeholders together several years ago to come up with Wisconsin's current phosphorus rules. The rules are based on 20 years of data collection and include the "adaptive management option" as a cost-effective and innovative way for dischargers to partner with nonpoint sources (like agriculture) to address phosphorus pollution. At the same time, an update to NR 151, the nonpoint runoff rules, was passed that placed stricter limitations on agricultural nonpoint pollution.

Multiple communities across Wisconsin have already begun evaluating and implementing the adaptive management option of the phosphorus rule. In Dane County, Madison Metropolitan Sewerage District is several years into an adaptive management pilot project northwest of Madison and has implemented runoff-reducing best management practices through cooperation with farmers, local municipalities and other partners. Lodi has determined that the adaptive management option is the most cost-effective strategy for meeting its phosphorus requirements and is planning for implementation of this option. Clean Wisconsin is currently spending a lot of time and effort on the ground as the Fox River communities begin evaluating their options. Other facilities are exploring variances if compliance is too expensive. These efforts are certainly in their infancy, and need time and cooperation to be able to work the way they were intended. Unfortunately, AB 680 as it's currently written could undermine those efforts, ultimately delaying the cleanup of our waters.

We share a goal of focusing money to nonpoint runoff where it can make the most impact, but AB 680 threatens to undermine cleanup efforts because the nonpoint system does not have the same level of focus on reaching water quality standards as existing phosphorus compliance options, particularly the adaptive management option. We are concerned this bill delays compliance without verifiable phosphorus reductions, while still resulting in the need to install technologies down the road. It also allows DOA, rather than the natural resource professionals at DNR to set quality limits and determine the necessity for variances.

Despite our problems with the language as it's written, we do think there are changes that could be made to the bill that would actually lead to greater water cleanup. We make the following suggestions for the bill:

- **Increase the per pound payment:** An engineering study done for the Yahara CLEAN Strategic plan for phosphorus reduction estimated clean-up costs to be \$85/lb. \$50/lb is too low for the kind of targeted practices that will be needed to make effective reductions, especially when the costs of staff to get the money out the door are factored in.
- **Allow more specific target values for water quality:** The current draft arbitrarily sets a "target limit" at 0.2 mg/L. Some waterways in the state already have lower Total Maximum Daily Load (TMDL) limits, and we should not be throwing those out in favor of an arbitrary target. For instance, Madison Metropolitan Sewerage District's discharge is already at .22, lower than all interim limits, and their TMDL requires .13. The target limit should be based on the TMDL or water quality based effluent limitation *that would apply to the source* where available.

- **Increase accountability:** While Clean Wisconsin supports the great work of the county conservationists and the nonpoint system, that system has its limitations, and does not have the same focus on reaching water quality standards as existing phosphorus compliance options. We recommend adding upstream and downstream monitoring and more specific metrics for assessing county performance by the DNR.
- **Limit eligibility:** We completely agree with the concept of targeting more efforts to reduce nonpoint pollution instead of expensive technology upgrades. But the bill as written does not limit eligibility for this “third option” only to those areas where technology upgrades are necessary. In order to avoid undermining the adaptive management option and the communities where it can work and result in the greatest reductions, the language should limit eligibility. If eligibility were in fact limited, the bill would truly succeed in improving the current phosphorus rules.
- **Eliminate Delay:** The bill as drafted will result in water cleanup delayed by at least five years, and in many instances ten years or more. When the original rule was negotiated, EPA was not a fan of allowing three permit terms for compliance through adaptive management. We were able to make the case that because we were trying something innovative, we needed adequate time to allow it to work. How EPA will react to another delay is anyone’s guess, but it could certainly be an obstacle.

In addition to these changes, we strongly support the addition of Total Suspended Solids to the adaptive management option that is included in the bill. It is another positive aspect of this bill that we would like to see implemented to help municipalities meet requirements for both phosphorus and total suspended solids with the same compliance option. The inclusion of total suspended solids actually addresses one of the questions remaining about adaptive management, rather than trying to ignore these questions by weakening accountability and verification.

Without these suggested changes, we suspect the EPA may have issues with the proposal. Phosphorus is regulated under the Clean Water Act, so EPA must approve any change to Wisconsin’s rule. While supporters point to Montana as an example that EPA would likely approve this approach, the differences between Montana and Wisconsin are vast. It is an apples to oranges comparison. Another example being pointed to is Wisconsin’s current variance for chlorides, which EPA has already identified as problematic on a list of Clean Water Act deficiencies sent to DNR in 2011. While it is impossible to predict how EPA might ultimately decide this issue, as is playing out with mining, it benefits no one to ignore the federal government’s role.

Please consider these changes so we can all work together in being partners toward cleaning water for Wisconsin, increasing our tourism economy, robust property values and swimming without fear.



To: Members, Assembly Committee on Environment and Forestry
From: Eric Bott, Director of Environmental and Energy Policy, Wisconsin
Manufacturers & Commerce
Date: January 30, 2014
Re: Support for Assembly Bill 680

Chairman Mursau and members of the Assembly Committee on Environment and Forestry:

Thank you for the opportunity to testify today on behalf of Wisconsin Manufacturers and Commerce (WMC). WMC is Wisconsin's largest general business trade association, with roughly one-fourth of the state's private sector workforce employed by a WMC member company. We represent businesses in the manufacturing, agriculture, banking, energy, health care, insurance, retail, mining and other service sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business.

We view Assembly Bill 680 as a smarter approach addressing Wisconsin's phosphorus impairment issues. The option created under the bill will allow point sources to reduce the amount of phosphorus entering our water bodies in a more economical and effective manner leading to increased job retention and creation, lower rate increases for businesses and citizens alike, and better environmental outcomes.

For these reasons, WMC is proud to join its colleagues at the Wisconsin Paper Council, Midwest Food Processors Association, and Wisconsin Cheese Makers Association as well as our counterparts in local government at the League of Wisconsin Municipalities, Municipal Environmental Group, Wisconsin Rural Water Association, Wisconsin Counties Association, Wisconsin Land and Water Conservation Association, and others in supporting AB 680 today.

I. Costs of Today's Rules on Job Creation

Employers in Wisconsin are in a uniquely disadvantaged position because of our existing phosphorus regulations. We are the only state in the Midwest and one of the only states in the country with strict numerical limits for phosphorus discharges into our water bodies. Iowa announced last year that it was pursuing a limit that is ten times higher than Wisconsin's. According to a report published by the Natural Resources Defense Council just this week, Illinois may consider a similarly less stringent limitation. When the differences in compliance costs between a 1.0 mg/L standard and a 0.1, 0.075, or 0.04 standard, as are now the cases in Wisconsin, amount to millions of dollars for a cheese plant or food processor, tens of millions of dollars for a paper mill, or hundreds of millions of dollars for a large wastewater treatment facility how can Wisconsin businesses be expected to compete?

On a statewide basis, implementation of the current phosphorus standards was predicted to cost between \$2.9 billion and \$4.9 billion by a robust study conducted by Strand Associates for the Municipal Environmental Group. What we are seeing on the ground across Wisconsin today indicates that true

costs will fall close to the higher end of that range. Another study conducted for the Dairy Industry by the Probst Group found that treatment costs for cheese makers would range from between \$1.3 million and \$4.3 million per facility. The first real life examples of costs associated with cheese makers indicate that those estimates may have been too low.

The first cheese plants required to comply with the rule are facing capital costs in the range of \$5-6 million with operating costs above \$700,000 per year. Some cheese makers in this state may not be able to absorb those kinds of increased expenses. Some paper mills are facing capital costs above \$30 million. One mill may see annual operating expenses hit \$7 million per year. At a time when federal air regulations like the EPA's Boiler MACT rule are already stressing the finances of our mills, this state driven regulation forces some of our pulp and paper mills into incredibly uncompetitive positions.

WMC is concerned about the impacts these costs will have on industrial point sources – cheese makers, food processors, and paper mills. These are foundational Wisconsin industries directly employing nearly 100,000 people and are responsible for several times that many spin off and supply chain jobs. With Wisconsin situated as a regulatory island, these employers are having a hard time competing with their counterparts in other states.

We are also alarmed about the impact these costs spikes could have on any Wisconsin employers that use significant quantities of water in their processes. We have members who have been told to expect double digit sewer rate increases into the foreseeable future as a result of this rule. The threat the existing rule poses to job retention and creation is very real.

Adding insult to injury for many point sources is the fact that they are being compelled to make costly upgrades that may not have a correspondingly significant impact on the environment. Many cheese makers and paper mills would be more comfortable making the investment in costly advanced filtration technology if they were confident it would lead to significant improvement in Wisconsin's water quality but in far too many places the data indicate that it may not.

Point sources in Wisconsin had already removed upwards of 90% of the phosphorus from their wastewater to comply with Wisconsin's previous standard of 1 mg/L. In most waterways point sources are only responsible for a fraction of the phosphorus impairment with nonpoint sources generally accounting for 70-80% of the phosphorus loading.

The new rule requires point sources to spend millions of dollars to remove that final fraction from their discharges but it's silent on the remaining sources of phosphorus pollution. For the engineers who must develop and implement plans to comply with the standard, this is akin to pouring salt into an open wound.

II. Trading and Adaptive Management as Compliance Tools

It has been said that the existing compliance tools, trading and adaptive management, are adequate to assist point sources in complying with Wisconsin's uniquely stringent standard. In some cases these tools may prove helpful. The unfortunate and far more common reality, however, is that there are now

hundreds of discharge permit holders who have or are in the process of evaluating these options and have concluded that they are simply not viable.

How can a point source do a trade if they are at the headwaters of a stream or if there isn't agricultural land around them? What will the trade ratios be? What happens if their trading partners fail to follow through or maintain their share of the agreement? How long will they be able to count the credits generated toward their permit limit? The list of physical barriers and logistical challenges goes on and on leaving trading in a majority of instances as a geographical impossibility or simply unworkable due to the tremendous regulatory uncertainty and risk it carries.

Adaptive management creates similar challenges. Under the adaptive management rules found in NR 217.18 a point source must first meet all of a series of prerequisites before being permitted to pursue the option. Many point sources don't meet these eligibility criteria. How exactly does adaptive management help them meet to the standard?

Assuming a point source does pass the initial eligibility test they must then undertake a series of costly, complicated, and time consuming steps to develop an adaptive management plan. These include but are not limited to:

1. Identify other major phosphorus contributors and possible partners
 - a. Other point sources
 - b. Nonpoint sources
 - c. Local/County Governments
 - d. Funding Partners
2. Quantify their own contribution
3. Determine partner roles in the plan
4. Identify reduction strategies
 - a. These must be sufficient to reduce phosphorus by a percentage commensurate with their load or by the percentage required to achieve water quality compliance
5. Consult with partners to determine appropriate controls
6. Set implementation goals and measures to which they will be accountable
7. Validate control effectiveness and update the plan as necessary
8. Secure and maintain adequate funding to implement the plan
9. Prove they've built a coalition capable of meeting goals

While there are areas of this state where such requirements might be met, Dane County being chief among them, these onerous burdens place adaptive management well beyond the capabilities of many small and rural point sources. Even with the assistance of professional environmental consulting firms and costly attorneys it is difficult to see how a small cheese plant or municipality will be able to manage these enormous burdens. We should also keep in mind that each one of the aforementioned requirements is not only a significant challenge to overcome but an additional point of exposure to litigation, thus increasing the risk associated with pursuing the option.

These challenges are significant but they pale in comparison to the real flaws in the adaptive management rule.

First, what happens if it doesn't work? Assuming a permittee overcomes the challenges laid out and takes the leap of faith tying their permit, their very ability to operate, to the actions of multiple businesses, local governments, non-profit groups, farmers, and others – what happens if the water quality standard isn't met? Do they go through all of the associated effort and cost just to end up having to spend millions on advanced filtration years down the road?

Second, Under NR 217.18 (g) the Department has a free hand to terminate adaptive management plans for any of the following reasons:

1. Failure to implement the adaptive management actions in accordance with the approved adaptive management plan and compliance schedule established in the permit.
2. New information becomes available that changes the Department's determinations that one was eligible in the first place.
3. Circumstances beyond the permittee's control have made compliance with the applicable phosphorus criterion infeasible.
4. A determination by the Department that sufficient reductions have not been achieved in a fashion timely enough to reduce the total phosphorus necessary to meet the criteria.

The regulatory uncertainty created by these provisions doesn't require explanation. It is hard to foresee many businesses willing subject their permit to this level of risk because without that permit, they are out of business.

Just as much has been made of adaptive management being the solution to Wisconsin's phosphorus compliance challenges, much has been said of the stakeholder process that helped to create it. Had industry been welcomed into that stakeholder process some years ago, we may have been able to help craft adaptive manage in a way to avoid these risks and challenges. Instead, industry was sidelined from discussions. As such, the fact that employers don't see adaptive management as viable shouldn't come as any surprise.

What is perhaps more surprising is that many municipal sources, which were part of the process that developed adaptive management, are coming to the same conclusion that industry reached some time ago. This was evidenced by a memo sent to the legislature earlier this week by the Municipal Environmental Group, Wisconsin Rural Water Association, and the League of Wisconsin Municipalities stating, "what we have learned in the last few years is that for many communities, trading and adaptive management are not viable options."

Clearly, what was once an exciting and promising new idea has fallen victim to the unbending limitations of bureaucratic red tape. Simply put, adaptive management the idea and adaptive management as spelled out in NR 217 are two very different things.

If I haven't yet adequately made the case that water quality trading and adaptive management remain unfeasible in most situations perhaps two simple statistics will. Not one application for adaptive management has been filed with the DNR to date. Not one single trade has been approved, except for a lone DNR pilot project performed in 1997.

Not one trade nor one single adaptive management plan have been implemented to date and yet we are led to believe by opponents of this legislation that these two options are the be all and end all solutions to our problems.

III. Improvements to Adaptive Management in AB 680

Before moving on from adaptive management, there are two points related to AB 680 that should be noted. As I mentioned, adaptive management may work well in a few limited areas of the state. The Yahara Lakes area of Dane County is first among these.

AB 680 makes two important improvements to adaptive management to help ensure that it remains a viable option in the Greater Madison area and to improve its attractiveness elsewhere. First, the bill extends the timeline for adaptive management by five years. Many in the regulated community have come to the conclusion that compliance can't be met in the time period currently allowed under adaptive management. This change may make adaptive management possible in areas of the state where it currently doesn't work.

Second, the bill allows total suspended solids (TSS) to be part of an adaptive management plan. For some point sources, the regulation of TSS is proving to be as great of a challenge as phosphorus. It is unlikely that point sources would be interested in pursuing adaptive management for phosphorus only to have to do brick and mortar construction for TSS. This change may make adaptive management viable for additional point sources.

IV. AB 680 as an Additional Compliance Option

WMC greets the proposal for an additional compliance option found in AB 680 with strong support.

Under AB 680, the state will conduct an economic analysis to determine if the compliance with Wisconsin's phosphorus standard poses a widespread threat of social or economic hardship. If that determination is made and pending approval by US EPA Region 5, point sources will be able to avail themselves of a streamlined multi-discharger variance. This variance will provide them with four permit terms or 20 years to comply with Wisconsin's standard but the standard itself will remain unchanged.

In this regard, AB 680 closely mirrors a 20 year variance plan that has received preliminary support in Montana from EPA Region 8. In most other respects AB 680 is quite different as the bill requires point sources to do far more to improve the environment than the Montana approach. In exchange for the additional time granted to point sources, they must make gradual improvements at their facilities and contribute significant financial resources to Wisconsin's existing nonpoint program.

The costs of this approach are substantial, so much so that they will likely price some point sources out of this option all together. Those sources may be left with no choice but to cross their fingers and hope for an individual variance. That being said, the option will serve as a valuable tool for the vast majority of point sources in Wisconsin who will be able to make far more cost effective reductions in phosphorus under this option than they could through advanced filtration.

Moving past the nitty-gritty of the proposal and all of the rhetoric for or against the bill, what we really have here are wastewater treatment facilities and businesses asking permission to spend millions of dollars to help clean up the source of 70-80% of phosphorus pollution in this state. How can that possibly be considered to be a bad thing for the environment?

V. The Clock is Ticking

Hundreds of permit holders have until the end of this year and next to select their compliance option and practically speaking it will take some time to implement the tools in AB 680. If signed into law, the state must still conduct an economic analysis, prepare and submit a plan to US EPA, and receive approval from the federal regulator. Waiting until next session to address this issue could take this option off the table for some point sources that don't have the luxury of time to begin meeting their limit. Worse, it would have a dragging effect on our economic recovery as more and more employers are forced to pull capital from job creating projects to put into high-cost, low-reward compliance measures.

VI. Conclusion

It is our opinion that this option will help prevent layoffs and plant closures that stand a real chance of occurring if point sources aren't given relief from the current rule. It will greatly increase regulatory certainty for planning and implementation. It makes adaptive management more workable and attractive as a compliance option. It will result in lower utility rate increases for any business or citizen hooked up to most municipal sewers. It will provide millions of dollars for cleaning up the actual source of most of Wisconsin's phosphorus problems and could ultimately lead to better environmental outcomes than we will see under the existing rule.

Through this smarter approach to phosphorus reduction, everybody and the environment win.

WMC thanks the committee for its time and consideration of our testimony today and respectfully requests that the Assembly Committee on Environment and Forestry recommend passage of Assembly Bill 680.



January 30, 2014

Testimony to the Assembly Committee on Environment and Forestry

Re: AB 680 (Phosphorus Rule Changes)

Denny Caneff, Executive Director

The River Alliance of Wisconsin supports the basic premise of AB 680, but we think it could be greatly improved with changes we will suggest herein.

The River Alliance is a statewide nonprofit river conservation organization. Since polluted runoff from cities and farmland, especially farmland, is by far the greatest water pollution threat to Wisconsin's rivers, we have been active in this issue since our founding in 1993.

We have organized citizen groups in watersheds, particularly in the Wisconsin River, to draw attention to polluted runoff and to promote solutions to reduce it and, thereby, reduce the foul algae blooms that come with it. There are negative impacts on the health – physical and economic – of the people who use waters suffering from algae blooms, which are fed by polluted runoff carrying phosphorus to the rivers.

We were also very active in crafting the language for publicly supporting the new phosphorus rules passed in 2010, and at the same time good changes in NR 151, the administrative rules governing polluted runoff.

Those rules have been in effect for three and a half years now, and the proposal you are hearing about today is a response to some weaknesses in those rules. We think this proposal reflects a meaningful attempt to fix those weaknesses, but the proposal could be improved with these additions that we suggest be considered:

1. The time allowed for point source dischargers to comply with state phosphorus standards– 4 permits terms, or 20 years – is too long. We suggest that compliance time for variances of the kind proposed in this bill remain what it is under the current phosphorus rule – 3 permit terms, or 15 years.
2. There is too little oversight and scrutiny of the arrangements that would be made between counties and point sources under this option. There is a real possibility that millions of dollars could be spread around the state, and we will have no way of knowing whether or not water quality actually improved. We think this is especially true of the mysterious “other person” who could develop a project under this bill. (In fact, we suggest eliminating this language.)

We suggest that those arrangements be subject to review by an oversight body, perhaps the Wisconsin Land and Water Conservation Board, which has had such a review function of nonpoint pollution reduction expenditures for decades. Both parties would submit a plan to the oversight body, ahead of its implementation (the bill has some oversight proposed, but only after the fact) that

- explains which land is targeted for cost-share expenditures to reduce farm runoff and why
- demonstrates the tools and modeling to be used to determine targeted lands
- presents modeling or other evidence that projects likely phosphorus reductions from implementing the pollution reducing practices.

This oversight ensures the money spent to reduce pollution under this option would be optimally spent.

We like the fact that the bill calls for annual reporting by participating counties to the relevant state agencies. But a report after three years of work makes more sense; the reporting should be done to the proposed oversight body. Also, funds from participating point sources should be used to support more monitoring to be able to track changes in water quality as a result of these arrangements.

3. Finally, we foresee a rush to the exits to this new option and away from the more serious – in terms of phosphorus pollution reduction – the adaptive management and trading options available under the current rules. We'd like to see a change in the bill so that when a point source permittee applies to DNR for a variance under this proposal, that DNR's review of that application includes carefully examining whether that permittee clearly can't make the other options work. Otherwise, those options risk being undermined by this new option.

Thank you for your attention to this policy and for your service to the people of Wisconsin.

MEMORANDUM

TO: Honorable Members of the Assembly Committee on Environment and Forestry

FROM: Daniel Bahr, Government Affairs Associate *D.B.*

DATE: January 30, 2014

SUBJECT: Support for Assembly Bill 680

The Wisconsin Counties Association (WCA) supports Assembly Bill 680, relating to adaptive management plans for reducing discharges of phosphorus. In 2010, the Department of Natural Resources adopted new water quality effluent standards for phosphorus. Several municipal wastewater treatment systems and industries throughout the state are having difficulty complying with the new standards. In order to meet the new standards for phosphorus discharge, point sources would be required to make significant investments in their facilities that would generate only a small improvement in overall water quality.

Point sources have already removed most of the phosphorus in their discharge. Removing the last percentages in order to be in compliance with the new rule can only be achieved through new technology such as advanced filtration, which is very expensive to taxpayers and to job creators. This large cost and small benefit is compounded by the fact that Wisconsin is the only state in this part of the country that has numeric water quality standards for all of its lakes and rivers. This bill seeks to remedy this unbalanced situation by providing another tool for regulated facilities to utilize as an interim step in meeting the new phosphorus requirements. Current administrative rules allow dischargers to complete phosphorus trading in the watershed; however, this process is relatively new and the trading banks have not been fully developed. In order to provide additional options to point sources, a new innovative option has been developed.

Under the bill, if a municipal or industrial discharger would have to undertake a major facility upgrade in order to meet the new phosphorus water quality standards, they would be eligible for a variance if that variance is approved through a process by the DOA and DNR. If a discharger chooses to opt in to the variance, it would be required to meet increasingly stringent interim limits and make payments based on the level of phosphorus it is discharging.

Payment would be provided to participating counties. The counties would utilize their current county land conservation programs to administer the funding and provide significant nonpoint source reductions in the watershed. The payments are initially \$50 times the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill. A county is not required to participate in the program or accept the payments.

WCA respectfully requests that the Committee support Assembly Bill 680.

Please feel free to contact WCA if you need additional information.



WISCONSIN
CHEESE MAKERS
ASSOCIATION
EST. 1891

**Testimony to the Assembly Committee on Environment and Forestry
Wisconsin Cheese Makers Association
Thursday, January 30, 2104**

Good afternoon Chairman Mursau and Member of the Committee. I am representing the Wisconsin Cheese Makers Association today in support of AB 680, which is legislation that relates to adaptive plans for reducing phosphorus discharge. The cheese industry in Wisconsin welcomes this important legislation and is fully supportive of this important measure.

AB 680 allows Wisconsin to reach the Environmental Protection Agency (EPA) water quality standards but in a time frame that recognizes common sense. Prior to the implementation of Wisconsin's new phosphorus regulation, the dairy industry used existing technology to remove more than 98 percent of the phosphorus found in our wastewater. But emerging technology to remove the last fraction of phosphorus is currently very expensive and has only begun to be installed in the dairy industry. A mid-sized cheese facility will need to spend \$3 million to \$5 million to install new filtration equipment and spend hundreds of thousands of dollars annually to operate this system. And in the end, this added cost will remove about 1 pound of phosphorus a day -- that final fraction of phosphorus removal required in Wisconsin's new phosphorus regulation amounts to spending millions of dollars to remove a handful of phosphorus per day.

AB 680 gives Wisconsin cheese makers and our suppliers time to create proven, affordable systems for polishing the final fraction of phosphorus from wastewater. And at the same time, the bill will allow industry to fund on-farm projects to reduce phosphorus run-off from farm fields. It is a practical bill that will help Wisconsin reach its goals for reducing phosphorus, and keep our signature state industries competitive.

We strongly urge you to pass this important legislation because cheese making is the heart of Wisconsin's economic and cultural fabric. In Wisconsin, the dairy industry generates \$26 billion of economic activity. Wisconsin should not place unique burdens on its cheese makers and manufacturers that make us less competitive.

Thank you for your efforts on this important legislation.

WISCONSIN WILDLIFE FEDERATION'S
"FORESTS, PARKS & RECREATION COMMITTEE"
1540 West James Street – Suite 500, Columbus, Wisconsin 53925

January 29, 2014

Subject: AB-680 Relating to the Management and Regulation of Phosphorus Pollution.

Representative Mursau and members of Wisconsin Environment & Forestry Committee, the Wisconsin Wildlife Federation represents some 186 Sporting Club Affiliates to include 16 statewide organizations and the thousands of outdoors enthusiasts who enjoy and put a very high value on our state's natural resources. While our various affiliates are primarily interested in hunting, fishing, trapping and the like; we are also keenly aware of our environment which supports all forms of wildlife, waterfowl, fisheries, etc.

This being said, we wish to go on-record in **opposing legislation which will weaken rules designed to manage phosphorous run-off**. We offer the following considerations"

- It took two decades, but with stakeholder input, we did come up with an "adaptive management option" which provides a cost-effective and innovative way to control discharges and partner with nonpoint sources to address phosphorous pollution.
- The Federation's members are concerned with curbing the affects of the "dead zone in the waters of Green Bay" and also with the monitoring reports that recently added 147 waters to the impaired waters list due to phosphorus, mercury & total suspended solids pollution.
- From our vantage point, this proposed legislation:
 - ➔ Delays water cleanup and slows the process by a decade or more.
 - ➔ Ignores the need for verification and monitoring that is built into "adaptive management".
 - ➔ DNR versus DOA is an issue and we strongly support the notion that our professionals at the DNR should take the lead to set water quality and determine the need for variances.
 - ➔ Adaptive Management and Variances are underway and are already part of the existing phosphorus rule to address costs.
- There is a need to reconsider the economic costs of this pollution:
 - ➔ \$1.1 billion in increased property values.
 - ➔ \$596 million in improved recreational opportunities.
 - ➔ \$5 to \$11 million in reduced cleanup costs.
 - ➔ The human health aspects where we find 62 cases of algae-related illness reports.
 - ➔ We wish to come down on the side of tourism, commercial fishing, biodiversity and all the other benefits that come with a reduction in all forms of pollution.

Again, we appreciate the opportunity to weigh in on this very important subject



Jerry Knuth, Chairman

WiWF's Forests, Parks & Recreation Committee

Cell # (715)-340-5414 or knuth0628@sbcglobal.net

CC: John Wagner, President – WiWF
George Meyer, Executive Director – WiWF
Ralph Fritsch, Chair – WiWF Wildlife Committee