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ROBERT L. COWLES

**Wisconsin State Senator
2nd Senate District**

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**Senate Committee on Government Operations, Public Works, and
Telecommunications**

**February 6, 2014
425 Southwest, State Capitol**

Testimony on SB 547 by Senator Cowles

Thank you for the opportunity to testify today on SB 547 relating to the discharge of phosphorus into the waters of the state. Due to phosphorus and sediment loading, Green Bay, for example 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, as an example, an estimated two-thirds of the total phosphorus load is due to non-point 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. Senate Bill 547 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 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.

After the public hearing last week on Assembly Bill 680, the companion to SB 547, it has come to my attention that some modifications to the bill seem warranted. Several individuals and organizations provided thoughtful testimony that I feel needs to be analyzed and reviewed. The changes we are researching would increase the effectiveness of this bill to make the necessary strides in water quality improvement for the state.

Our fishery, tourism industry and local economies are at stake. 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. Senate Bill 547 does offer 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.



Amy Loudenbeck

REPRESENTING WISCONSIN'S 31ST ASSEMBLY DISTRICT

Senate Committee on Government, Public Works, and Telecommunications

Public Hearing on Senate Bill 547

February 6, 2014

Good morning Senators, and thank you Chairman Farrow for holding a public hearing on Senate Bill 547.

In my Assembly District, there are many beautiful lakes, rivers, and creeks - including the mighty Rock River, the meandering Turtle Creek, and the majestic Geneva Lake.

I fully appreciate the aesthetic, recreational, and economic value that the waters of the state contribute to the communities I represent and to all of Wisconsin.

I also recognize that phosphorus poses a threat to Wisconsin waterways, many of which are presently listed as impaired. Phosphorus causes unsightly algae blooms which under certain conditions can become dangerous to humans, aquatic life, and pets. Reducing phosphorus impacts is a priority that I expect all members of this committee can appreciate.

There are many sources of phosphorus. The easiest way to measure and monitor phosphorus discharge is at the point of discharge – such as a pipe discharging directly into a waterway. These are called “point sources”. The harder to measure and monitor sources are called “non-point sources”. An estimated 70 to 80% of phosphorus is generated by non-point sources. The point sources contribute an estimated 20 to 30%.

Non-Point Phosphorus sources include:

- Agriculture – from crop fertilizer and animal manure
- Forestry – from earthwork and decomposition
- Households – detergents, lawn fertilizer, human and pet waste
- Urban runoff - runoff from parking lots and streets, yard waste decomposition

Point Phosphorus sources include:

- Industry – paper, food processing and cheesemaking
- Municipal wastewater treatment plants – household and industrial customers

Efforts are being made in both the point and non-point community to reduce phosphorus discharges.

Presently three options exist for point source permittees that are regulated under the phosphorus water quality standard in the Wisconsin Pollutant Discharge Elimination System to achieve required reductions. These options include:

1. Install new technology to remove more phosphorus from wastewater flows;
2. Utilize adaptive management or water quality trading; OR
3. Seek a traditional variance.

The proposed Senate Bill 547 creates a fourth option for point source dischargers - opt into a legislated variance. **The bill does not change the existing phosphorus water quality standard; it just creates a new option for compliance.**

Under the bill, a permittee that opts into the legislated variance option would not need to make an individual showing of hardship as required for a traditional variance. Instead, the State of Wisconsin would first demonstrate to the Environmental Protection Agency (EPA) that the phosphorus standard creates a statewide hardship. **EPA approval would be required before the multi-discharger variance option could be requested.**

Under the terms of the proposed legislated variance, participants must reduce phosphorus concentrations to an interim limit for four permit terms. In addition, the phosphorus reduction measures from which a permittee that receives the variance may choose are:

1. Constructing a project or implementing a plan, approved by DNR, to reduce phosphorus from other sources into the basin in which the source is located in an amount equal to the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill;
2. Having another person construct such a project or implement such a plan, also approved by the DNR; OR
3. Making payments to counties in the basin to provide cost sharing for projects to reduce the amount of phosphorus entering the waters of the state or for staff to implement projects to reduce the amount of phosphorus entering the waters of the state from nonpoint sources. The bill also specifies that to the extent practicable, a county shall provide cost sharing for projects in the county that the county has identified as having the greatest potential, to reduce the amount of phosphorus per acre entering the waters of the state.

The overarching goal of this legislation is to provide a limited number of point source permittees, for which technology is not economically or practically feasible, to contribute significant resources to meaningful reductions in nonpoint sources within the same basin.

In summary, this bill provides another reasonable compliance option to a statewide problem, which will likely result in a greater return on investment for each pollution prevention dollar invested.

Thank you for your consideration.

**Before the Senate Committee on
Government Operations, Public Works, and Telecommunications**

**Testimony of Paul G. Kent on behalf of
The Municipal Environmental Group – Wastewater Division,
In support of SB 547**

February 6, 2014

My name is Paul Kent and I am here today in support of this bill 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 approximately 90% of the phosphorus in their discharges, and many have removed upwards of 97%. Treating that last few percent comes at an enormous cost because it requires new filtration technologies. At the same time, because point sources have already removed most of their phosphorus, these sources are responsible for a relatively small percentage of the phosphorus in our waters. The primary issue is nonpoint pollution.

Let me give you a specific example that was provided by Tim Reel of the City of Whitewater when he testified at the Assembly hearing last week. Whitewater is a community of about 14,700 people. In 1996 the City spent 1.3 million dollars to meet a limit of 1.0mg/l phosphorus. For that investment the City was able to remove 60 of the 68 pounds of phosphorus it receives. To meet the new limit, the City would need to remove an additional 7.4 pounds of the 8.0 pounds remaining. The cost to treat for that

last seven pounds is \$5.5 to 8.9 million in capital costs and when operating costs are considered 8.3 to 13.0 million dollars for a 20 year project design life.

For large and small communities the story is the same. The City of Elroy has a population of 1400. Preliminary estimates are that filtration would cost \$3.7 million to build plus significant annual operating costs to meet the new standards. Tom Sigmund, director of the Green Bay Metropolitan Sewerage District, New Water stated, "For NEW Water to add treatment facilities to meet water quality standards would cost in excess of \$200 million and have little impact on the water quality of the Fox River."

There is little dispute that we need to address phosphorus in our waters. The question is how to most effectively accomplish that goal. To spend tens or hundreds of millions of dollars on treatment that reduces only a small percent of phosphorus is not cost effective and produces little water quality improvement. That is not the answer.

The answer is in finding mechanisms that require reasonable reductions from point sources over time and focus resources on nonpoint programs. When the phosphorus rule was first adopted in 2010 we supported the rule because it contained alternative compliance options such as trading and adaptive management. We still support those programs and in some cases those programs will have the potential to facilitate nonpoint reductions while avoiding the millions of dollars required for immediate treatment plant upgrades.

But what we have learned in the last few years as communities have begun to look at those options more closely, is that for many communities they are not viable options. Some communities are at the headwaters of a stream and have no one with whom to

trade. Others discharge to a water that is not likely to achieve water quality standards even if an adaptive management program is successful, and they face the risk of spending money on adaptive management and still having to build. 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.

In essence, adaptive management is a do-it-yourself nonpoint program requiring nine major stages. In cases where an EPA contractor has spent 3-5 years developing data as part of a TMDL and you have administrative capacity and you have partnerships with nonpoint sources and other local governments, it has great promise. But for most cities and villages this is a daunting and uncertain task. These communities know how to operate wastewater treatment plants not develop nonpoint programs.

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. Under this bill the interim limits would decrease over time to 0.5 mg/l, a level 50% lower than the historic standard of 1.0 mg/l. In addition, this bill creates a unique but simple mechanism for point sources to direct funds to the existing nonpoint program – one with staff, standards, administrative capability and accountability. It does not force communities like Elroy and Whitewater to reinvent the wheel of nonpoint programs. And while this provides a simple mechanism it is not an

inexpensive option. This option will require many participating municipalities to direct tens or hundreds of thousands of dollars into the nonpoint program each year.

Two other points. First, while the bill provides a variance up to four permit terms, it also requires on-going review to determine whether the variance is needed. If the cost of compliance with the new limits drops because technology improves or other states around Wisconsin develop numeric phosphorus standards equivalent to Wisconsin's, the need for the variance could end.

Second, 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 option that allows for nonpoint reduction while avoiding unnecessary costs to ratepayers. As Tom Sigmund noted, "We are looking at various compliance options including trading and adaptive management, but having another tool in the tool box is critical." 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



Department of Natural Resources Testimony – 2013 SB 547

Senate Committee on Government Operations, Public Works and Telecommunications, February 6, 2014

Russ Rasmussen, Deputy Administrator
Water Division
Department of Natural Resources

Subject: SB 547 – Variances to phosphorus discharge limits

Good morning Chairman Farrow and committee members. Thank you for the opportunity to testify on Senate Bill 547, 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

SB 547 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.

SB 547 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. SB 547 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.

SB 547 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.



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To: Senate Committee on Government Operations, Public Works, and Telecommunications
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: February 5, 2014
Re: **SB 547, Creating an Alternative Option for Complying with Phosphorus Regulations**

The League of Wisconsin Municipalities supports SB 547, creating an alternative compliance option for municipal wastewater treatment plants struggling to comply with the state's stringent phosphorus water quality standards. This bill may, and I emphasize the word "may," provide a less expensive and more practical alternative to the three options under current law for complying with the phosphorus regulations.

Above all, municipalities are anxious to avoid having to make large capital expenditures on facility upgrades in order to comply with the phosphorus regulations. The potential statewide costs of making the necessary municipal wastewater treatment facilities upgrades are staggering. Appleton, for example, could face a \$40 million bill to upgrade its wastewater treatment plant to meet the mandated phosphorus standards. In Green Bay, the NEW Water system would have to spend more than \$200 million to install a new filtration system at its plants in De Pere and Green Bay.

Under current law, municipalities have two alternatives to making facilities upgrades: adaptive management and water quality trading. While both options may offer a less expensive path to compliance, they are new concepts that are proving difficult for communities to arrange and manage over the long term.

This bill creates a third option for communities to consider. The third option is a statewide variance with interim compliance steps. One of the interim compliance options under the bill involves making payments to the county to provide cost sharing for projects that enable farmers to comply with state standards for reducing runoff. This option might prove more cost effective for some municipalities. Also, it may provide communities with more certainty for planning and implementation than either adaptive management or trading.

We urge you to recommend passage of SB 547. Thanks for considering our comments.



CITY OF BURLINGTON

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February 6, 2014

To: Senate Committee on Government Operations, Public Works and Telecommunications
From: Kevin Lahner, City Administrator

Re: Comments in Support of SB 547

Honorable Chairman Farrow and Members of the Committee:

My name is Kevin Lahner, and I currently serve as the City Administrator of Burlington. I am speaking today in support of SB 547 because I believe that this is a very pragmatic approach to reducing phosphorous impacts in rivers and lakes, while providing entities such as municipalities more flexibility and cost-effective options to meet the standards.

Currently, the City of Burlington is in the permit renewal process for our WPDES permit for discharge into the (Illinois) Fox River. According to our engineers, the City could be faced with spending \$10 million to remove phosphorous from our waste stream to meet the current standards. The reason why we are faced with this expenditure is that the Illinois Fox's median phosphorous value was .111 mg/L. This is .11 mg/L above the limit. Additionally, the Illinois Fox meets the current phosphorous standards downstream of Burlington at New Munster.

So in other words, the City of Burlington will have to increase wastewater rates to our residents and businesses because the median value of phosphorous on the Fox River is .11 mg/L above the standard, and in spite of the fact that it fully meets the .1 mg/L standard downstream. This has real impacts to our local economy, as two of our largest employers are Nestle Foods and Echo Lake Foods, two companies that will be greatly impacted by significant increases in wastewater rates. This just doesn't make sense to a guy like me.

Under the bill, a more regional approach could be taken to reduce overall phosphorous from point-sources like the City of Burlington. We could more easily work with our regional partners to improve overall water quality in the Fox River watershed, and actually meet the environmental goals in a more efficient and cost effective manner. We can ramp up our phosphorous treatment over the course of several years, rather than be faced with one huge capital expense up front. Under the bill, we will also assist in reducing non-point sources of phosphorous, which is by and large the largest contributor to phosphorous pollution in our rivers and streams.

Please support SB 547. I am happy to answer any questions you may have.



**Testimony of Amber Meyer Smith, Director of Programs and Government Relations
SB 547
Senate Government Operations, Publics Works and Telecommunications Committee
February 6, 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 SB 547 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. The state Department of Natural Resources has just proposed adding 192 new lakes, rivers and streams to the impaired waters list because they fail to meet state water quality standards, most of them for having excessive levels phosphorus.



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, SB 547 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 SB 547 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.

Good Morning, my name is John Leonhard. I am here as a member of the Municipal Environmental Group (MEG) steering committee and as the Wastewater Operations Manager for the Fond du Lac Regional Wastewater Treatment Facility. We service the City of Fond du Lac and 15 Sanitary Districts surrounding the lower half of Lake Winnebago, about 57,000 people.

We have had a Phosphorus limit of 1.0 mg/L for over 40 years and remove approximately 300 pounds of Phosphorus per day from the water before it goes in to the Lake. This currently costs our rate payers \$4.66 per pound to remove. Our proposed limit is 0.04 mg/L and it is projected to cost our rate payers \$70 to \$250 per pound depending on which type of additional treatment system has to be installed to treat to this new limit. The cost of those new treatment systems are estimated to be \$20-\$40 million to build.

While the State has given us options like Adaptive Management and Nutrient Trading, these programs are not likely to be very helpful for us. Adaptive management requires that we have the staff to develop watershed plans, successfully recruit nonpoint sources, develop a monitoring network and a host of other tasks. Developing such a program from scratch is not something we have any experience doing. And even if we are successful, at the end, we will probably still need to build a new plant given the fact that we discharge into Lake Winnebago. Showing water quality improvement to meet adaptive management standards is unlikely even under the best of circumstances, given the amount of phosphorus in the sediment.

This bill allows us to avoid the very expensive cost of advanced treatment systems which would be needed to meet these new water quality standards until technology improves and the costs would be lower.

This bill would allow us to improve our water quality gradually as well as help the nonpoint dischargers improve their water quality so that together we can improve the water quality of Lake Winnebago.

The Fond du Lac Regional Wastewater Treatment Facility and the City of Fond du Lac would like to **Support this Bill** and the additional option it provides.



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Testimony regarding SB 547

*Elizabeth Katt-Reinders, Policy & Communications Director
Clean Lakes Alliance*

February 6, 2014

Thank you Senator Farrow and committee members. My name is Elizabeth Katt-Reinders, and I'm the Policy and Communications Director for the Clean Lakes Alliance. We are a nonprofit whose main focus is reducing phosphorus in the Yahara River watershed, which includes the Madison-area lakes. We are a non-partisan quality of life organization comprising a very diverse coalition of private and public stakeholders from businesses to farmers, realtors to residents. We believe healthy lakes, healthy communities and a healthy economy go hand in hand.

I'm here today to ask this committee to urge the authors of the SB 547 to address what we believe are unintended consequences of the bill. To be clear, the bill's intention to improve water quality while promoting statewide economic growth is a worthy goal, and one we share. Unfortunately, as drafted, the bill threatens to undercut the progress we have made in phosphorus reductions in this watershed.

The primary problem with the bill is that, as written, 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 as written, the bill does not make clear that a permittee should have to show that adaptive management is not feasible before obtaining the variance.

Here's what the bill could do in the Yahara watershed. We are currently in the second year of a three-year adaptive management pilot project in the northern part of the watershed. Funds coming from Madison Metropolitan Sewerage District through the adaptive management pilot are being leveraged by funds from the Clean Lakes Alliance, Dane County, municipalities, private donors, and even farmers to implement phosphorus reduction projects and programs where they'll have the biggest bang for the buck -- in both urban and rural areas. As a coalition, we are working our way through a list of actions that have been identified as necessary to reduce phosphorus and improve water quality in our watershed.

Just two years ago, the Clean Lakes Alliance and its community 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 are already beginning to implement these actions. We are seeing success with the adaptive management pilot

project, and Madison Met has stated that they intend to pursue adaptive management full scale in 2016.

But SB 547 – as drafted – threatens to stall this collaborative progress and steer our community away from adaptive management, even though it provides a cost-effective means to reduce phosphorus and improve water quality. Madison Met has estimated that it would cost more than a hundred million dollars for a facility upgrade at its plant to meet water quality standards. Using the adaptive management option that the Clean Lakes Alliance supports, they will only need to spend about \$400,000 per year while achieving better water quality results than a bricks and mortar solution.

However - 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 moving forward with the adaptive management option. \$50,000 per year will not move the dial on cleaning up our lakes.

There are two reasons why this variance funding amount would be too low for this watershed. First, our engineering report determined that it would cost an average of \$85 per pound to reduce phosphorus; the bill sets the price at \$50 per pound. Second, the difference between Madison Met's current discharge levels and the target level in the bill is so minimal that it essentially renders the funding mechanism of the variance meaningless. A target based on TMDLs for point sources that already have average discharge concentrations well below all of the bill's interim limits may be a more appropriate target.

We have been meeting with several of the supporters of this bill and have appreciated their willingness to hear our concerns. We ask this committee to encourage all sides to sit down and find a compromise that can 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.

Our requests are reasonable and consistent with the bill's intent. With smart compromises and common sense, we can make this bill good for all of Wisconsin's waters. Thank you for your consideration.

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Middleton, WI 53562-1431
P.O. Box 620992
Middleton, WI 53562-0992
(608) 275-3340



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.



**Testimony to the Senate Committee on
Government Operations, Public Works & Telecommunications**

**Wisconsin Cheese Makers Association
Thursday, February 6, 2104**

Good day Chairman Farrow and members of the Committee. My name is John Umhoefer and I am Executive Director of the Wisconsin Cheese Makers Association. The Cheese Makers Association, representing more than 200 companies in Wisconsin that make and market and support our world-famous dairy products, strongly supports SB 547 – a practical solution to reducing phosphorus in Wisconsin’s waters.

SB 547 allows Wisconsin to reach the Environmental Protection Agency water quality standards for phosphorus but in a time frame that recognizes common sense. Prior to the implementation of Wisconsin's new phosphorus regulations, 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 spend \$3-\$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. This final fraction of phosphorus removal required in Wisconsin's new phosphorus regulations amounts to spending millions of dollars to remove a handful of phosphorus per day.

SB 547 gives Wisconsin cheese makers and our technology 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 stands at 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 manufacturers that make us less competitive than other states. Thank you for your efforts on this important legislation.



RIVER ALLIANCE
of WISCONSIN

February 6, 2014

**Testimony to the Senate Committee on Government Operations, Public Works and
Telecommunications**
Re: SB 547 (Phosphorus Rule Changes)

Denny Caneff, Executive Director

The River Alliance of Wisconsin supports the basic premise of SB 54 , 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 and 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 Senate Committee on Government Operations,
Public Works, and Telecommunications

FROM: Daniel Bahr, Government Affairs Associate *DB*

DATE: February 6, 2014

SUBJECT: Support for Assembly Bill 547

The Wisconsin Counties Association (WCA) supports Senate Bill 547, 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. 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 Senate Bill 547.

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

WMC

WISCONSIN MANUFACTURERS
& COMMERCE

To: Members, Senate Committee on Government Operations, Public Works,
and Telecommunications
From: Eric Bott, Director of Environmental and Energy Policy, Wisconsin
Manufacturers & Commerce
Date: February 6, 2014
Re: Support for Senate Bill 547

Chairman Farrow and Members of the Committee:

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 Senate Bill 547 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, Wisconsin Cheese Makers Association, Wisconsin Agri-Business Association, and Metropolitan Milwaukee Association of Commerce 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, Dane County Cities and Villages Association, and others in supporting SB 547 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 lead 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 SB 547

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. SB 547 as an Additional Compliance Option

WMC greets the proposal for an additional compliance option found in SB 547 with strong support.

Under SB 547, 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, SB 547 closely mirrors a 20 year variance plan that has received preliminary support in Montana from EPA Region 8. In most other respects SB 547 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 SB 547. 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 Senate Committee on Government Operations, Public Works, and Telecommunications recommend passage of Senate Bill 547.



To: Chairman Farrow and Honorable Members of the Committee on
Government Operations, Public Works, and Telecommunications
From: Mr. Doug Osterberg, President and CEO
Appleton Coated, Combined Locks, WI
Re: Senate Bill 547
Date: February 6, 2014

We at Appleton Coated would like to thank Senator Cowles for his efforts to find a common sense, environmentally friendly, workable solution to provide an additional compliance option for both municipal and industrial point sources to reduce effluent discharges.

Appleton Coated is proud to be part of Wisconsin's historic papermaking tradition. We work hard to support good family-supporting jobs, which help to enrich our local and state economy. Additionally, we deeply value our precious environment and are always looking to find better, smarter methods of producing the best possible environmental outcome. We believe this additional compliance option does just that.

Senator Cowles has developed an additional tool for compliance that provides a reasonable level of certainty for papermakers for planning and implementation to meet the state's numerical standards for treatment of phosphorus.

We applaud Senator Cowles and his Assembly and Senate co-authors for working together to create a fee-in-lieu program that will help improve the environmental return on our compliance investment and, at the same time, make real improvements in nonpoint phosphorus discharge. We know how deeply Senator Cowles cares about our state's water quality and we appreciate his thoughtful, cooperative approach to this important issue.

We believe this cooperative, balanced approach provides a compliance option that will allow companies like ours to remain competitive by working together with nonpoint sources to reduce phosphorus without altering Wisconsin's water quality standards.

Thank you very much for allowing us to provide this esteemed committee with our input on Senate Bill 547.



To: Honorable Members of the Committee on
Government Operations, Public Works, and Telecommunications
From: Scott Suder, Vice President of Government Relations,
Wisconsin Paper Council
Date: February 6, 2014
Re: Testimony in Support of Senate Bill 547

Chairman Farrow and Members of the Senate Committee on Government
Operations, Public Works and Telecommunications:

Thank you for the opportunity to testify today on behalf of the Wisconsin Paper Council (WPC). The Wisconsin Paper Council advocates for and represents the state's papermaking industry. As you may know, Wisconsin is the #1 papermaking state in the United States and our members employ over 31,000 employees throughout our great state. In fact, the paper industry's output earns Wisconsin the #1 rank in the United States for total payroll, value of paper shipments and for total paper production. Papermakers are dedicated to providing good family supporting jobs as well as being environmentally responsible community partners.

The WPC would like to express our sincere appreciation to Senator Cowles for bringing forth this common sense, balanced compliance option for both municipal and industrial point sources struggling to meet the state's stringent phosphorus effluent standards. We appreciate all the time, hard work, and outreach efforts he and his staff have put into SB 547.

This important bill provides an additional tool to assist our members in complying with state law without jeopardizing jobs or decreasing competitiveness. Without an additional compliance option, many of our members will be forced to spend millions of dollars in engineering and large capital and operating costs; making us less competitive than other states which do not have such standards. Unfortunately, Wisconsin's rules require paper mills to add new and costly treatment technology to reduce their phosphorus discharges even further than they already have, even though most of the phosphorus in our waters is generated by "nonpoint" sources.

5485 Grande Market Drive,
Suite B
Appleton, WI 54913
Phone: (920) 574-3752
www.wipapercouncil.org

February 6, 2014

While papermaking is alive and strong in Wisconsin, costly, burdensome regulations have a chilling affect on maintaining competitiveness. Paper mills are facing costs ranging from \$3 million to upwards of \$30 million to engineer and install new advanced filtration capital projects. Not only are these projects extremely expensive, the ongoing operating costs can be as high as \$7 million per year.

Clearly another option is needed for paper mills and other point sources to achieve cost effective reductions while making environmental improvements.

The fact is that a great many of our mills have already removed most of the phosphorus in our discharge. Spending hundreds of millions of dollars on treatment that reduces only a small fraction of the phosphorus in our waters is not cost effective and does very little to improve overall water quality.

Our industry is not asking for any of the standards to be reduced, nor are we asking to be exempt from these standards. We are simply asking for your support for this measure, which provides our mills with more certainty, and reasonable time for planning and implementation in order to comply with the current phosphorus rule.

Make no mistake about it. This is by no means an inexpensive option for our members. This variance option will require many of our members to pay hundreds of thousands if not millions of dollars toward nonpoint cleanup. Nonetheless, the Clean Waters, Healthy Economy Act will provide an important level of certainty that will lead to better environmental outcomes. It creates a sound mechanism that will provide millions of dollars to address nonpoint problems. This measure will go a long way in helping to keep our job creators competitive.

For these reasons, our organization is pleased to join our coalition partners at WMC, the Midwest Food Processors Association, the Wisconsin Cheese Makers Association, the League of Municipalities, the Municipal Environmental Group, the Wisconsin Rural Water Association, the Wisconsin Counties Association, the Wisconsin Land and Water Conservation Association and others in support of SB547 today.

Thank you Chairman Farrow and esteemed Committee Members for the opportunity to testify before you this morning. We respectfully request that your committee recommend swift passage of Senate Bill 547.



February 6, 2014

The Honorable Paul Farrow
Chair, Committee on Government Operations, Public Works, and Telecommunications
P.O. Box 8953
Madison, WI 53708

Dear Chair and Members of the Committee:

Alliance for the Great Lakes opposes Senate Bill 547 as written and urges the committee to oppose the bill because it will undermine the effort to address nutrient pollution in Wisconsin's waterways put forth to date, and could have a detrimental rippling effect throughout the entire Great Lakes basin. Prevalence of dead zones in Green Bay and their growing size and duration is symptomatic of water quality issues facing waterways in Wisconsin and across the region.

Wisconsin is providing an example to the Great Lakes region as a leader in phosphorus pollution reduction policy and practice innovation. Wisconsin's existing policy and compliance options have been lauded for their collaborative watershed approach. Much time, money, and energy is currently focused on watershed stakeholders coming together to address this pollution through the comprehensive adaptive management compliance option. This option offers flexibility within a management framework that is driven by performance.

The bill is flawed because it will undermine much of the collaboration currently underway while providing no clear pathway to water quality improvement. It would diminish accountability for reducing pollution from a collective of watershed stakeholders that will have limited incentive for measuring actual improvements to water quality. This bill asks for activity without clearly measuring or committing to achievement of performance. Wisconsin's current **policy makes every dollar count by being measured and creating a net benefit to Wisconsin's economy by increasing** recreational opportunities and property values while at the same time reducing waterway clean-up costs, impacts to human health, tourism and wildlife.

We are committed to working with Wisconsin for phosphorus control policies that foster ownership and accountability among industry, agriculture, water managers and professionals that in turn recognize and manage their water resources in a locally driven, performance based approach. The adaptive management option is breaking down barriers between stakeholders and engendering discussion and planning across sectors previously thought not possible. This momentum should not be interrupted and confused by the policy pushed forward in this bill that will diminish state efforts to clean up waters such as the Lower Fox River and Green Bay.

Sincerely,

Joel Brammeier,
President & CEO



Wisconsin Rural Water Association
350 Water Way • Plover, Wisconsin 54467
715-344-7778 • Fax: 715-344-5555 • E-mail: wrwa@wrwa.org

February 6th, 2014

Senate Committee on Government Operations, Public Works and Telecommunications
Senator Farrow, Chair
Senator Gudex, Vice-Chair
Senator Lasee
Senator Kedzie
Senator Wirch
Senator Harris
Senator Shilling

Senators,

On behalf of the Wisconsin Rural Water Association (WRWA) and our 585 municipal members, we'd like to express our support for SB 547.

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 547 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 up to 90% of our phosphorus discharges into Wisconsin's waterways. We ask for your support and approval of SB 547, 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



John Muir Chapter

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SB 547
Oppose AB 680 to Weaken Phosphorus Rules
Before the Senate Committee on Operations, Public Works & Telecommunications
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In 2010 members of the John Muir Chapter of Sierra Club watched proudly as Wisconsin became a national leader in adopting strong phosphorus rules and numerical standards to help reduce algal blooms that have diminished swimming, fishing and boating opportunities, jeopardized public health, and lowered lakefront property values in our state. The Sierra Club therefore wishes to express our deep concerns about AB 680, which would severely weaken these rules, postponing recovery of our lakes, rivers, and streams by decades and making it harder to address the growing Green Bay dead zone.

AB 680 weakens current phosphorus rules in a number of ways. First, this bill inappropriately and potentially unlawfully delegates Clean Water Act and WPDES (Water Pollution Discharge Elimination System) decisions to the Department of Administration (DOA), rather than the Department of Natural Resources (DNR) by basing a blanket variance based on DOA's analysis. Consideration of these issues on a statewide basis, as the bill anticipates, is inappropriate.

The standard for obtaining a variance under this AB 680 is far more lenient than already exists under NR 217.18. The only facility-specific obligation to obtain a variance under this bill is to "certify" that the facility "cannot achieve compliance with the water quality based effluent limitation for phosphorus without a major facility upgrade." In other words, the "widespread adverse economic and social impacts" of compliance with the standard (assuming that DOA finds that they exist), is considered to apply statewide to all facilities that may have to install a new treatment process.

AB 680 defines "major facility upgrade" as "the addition of new treatment equipment and a new treatment process." The Clean Water Act expects that some facilities will need to add new treatment equipment to meet water quality standards. Given the wide range of treatment processes and equipment that may be needed to meet the new standards for any given facility, this alone should not justify a variance.

AB 680 also allows compliance to take up to 20 years for facilities who employ adaptive management. It also allows facilities to use higher TMDL phosphorus limits, and it fails to ensure that cost-share funds from a point source are spent effectively to bring phosphorus levels down. Finally, there is no right in this bill to a contested case hearing on DNR's approval of a variance.

Although there may be some challenges to implementing the current phosphorus rules, current rules already allow for substantial flexibility. Under the current rule, variances can already be obtained on a case-by-case basis for point sources that have proven financial hardship, and adaptive management to allow point sources to fund nonpoint reductions can be used if at least 50% of the phosphorus is shown to come from nonpoint sources or the permittee shows that reductions can't be met without controlling nonpoint pollution.



Although implementing Wisconsin's phosphorus rule costs money, unchecked algal blooms jeopardize public health, reduce swimming, fishing, and boating opportunities; and are estimated to cost \$1.2 billion per year in lost fishing revenues and \$2.8 billion per year in reduced lakefront property values (Dodds et al. 2009).

Those worried about compliance costs also fail to consider the direct costs that could result from needing to treat drinking water contaminated by toxic blue-green algae. The Columbus Dispatch reported earlier this week that the City of Columbus, Ohio just spent \$723,000 to treat toxic algae that entered their drinking water after 1,700 water customers complained about rotten tasting and smelling water (a phenomenon much more typically seen in late summer rather than during one of the coldest winters in decades), and the city plans to spend \$70 million on larger scale treatment system in 2016. Other Ohio towns routinely spend large sums to remove toxic blue-green algae from their water supply, including Toledo, which spent \$3 million to keep toxic algae from Lake Erie out of their drinking water; the city of Celina, which spends \$450,000 every year; and Carroll Township, which paid \$125,000 for a treatment system. The story went on to report that although treatment with powdered carbon removes blue-green algae toxins linked to nerve and liver damage, it doesn't improve the drinking water's taste and smell. Does Wisconsin want to remain on the forefront of addressing Phosphorus pollution, or do we want to become the next Ohio by failing to reduce Phosphorus pollution but still spending millions to make toxic tap water safe - but only marginally drinkable?

The Sierra Club urges you to consider the majority of Wisconsin citizens who depend on clean water over Wisconsin Manufacturers and others who are pushing for rushed consideration and passage of AB 680, despite the fact that this proposal modifies state water quality standards and will require EPA approval if it passes. I urge legislators to instead allow for our existing strong, flexible phosphorus rule to improve water quality and public safety while also fostering economic growth.

Thank you for considering our comments on this important matter.

References:

Dodds, W.K., W.W. Bouska, J.L. Eitzmann, T.J. Pilger, K.L. Pitts, A.J. Riley, J.T. Schloesser, and D.J. Thornbrugh. 2009. Eutrophication of U.S. freshwaters: analysis of potential economic damages. *Environmental Science and Technology* 43(1):12-19.

Toxic Algae in Hoover Reservoir Cost City \$723,000

<http://www.dispatch.com/content/stories/local/2014/02/03/toxic-algae-in-hoover-cost-city-723000.html>