



JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Testimony for the Assembly Committee on Local Government

Assembly Bill 113

Wednesday, June 19, 2019

Thank you Chairman Novak and fellow committee members for holding a public hearing and giving me the opportunity to testify on Assembly Bill 113, bipartisan legislation that is designed to reduce the amount of contaminants in our state's water by creating a system for buying and selling pollution credits through a third-party central clearinghouse.

For those unfamiliar with the issue, point sources of pollution are those that discharge from a pipe, such as factories, paper mills and sewage treatment plants. Nonpoint sources are those such as farm fields, golf courses and street runoff. The EPA regulates the discharge of point sources through permits but not nonpoint sources, even though nonpoint sources frequently contribute more pollutants to a particular water body.

Pollutant trading is a sound strategy that is recognized by the federal Clean Water Act, whereby a point source can essentially pay a nonpoint source to reduce a pollutant by an amount greater than what is required under their permit. The point source thereby may avoid what can be extremely expensive upgrades and the overall positive impact on the environment is greater than what would have occurred had they simply met the permit requirements.

An example of how this works would be the Green Bay Wastewater Treatment Facility. In order to meet the new standards of their wastewater discharge permit, they would need to spend more than \$200M to install a filter which would reduce their phosphorous output into Green Bay very marginally. This is then passed on to all the ratepayers. Through trading, they could pay a smaller sum to local farmers to implement things such as buffer strips and cover crops which would achieve a greater phosphorous reduction for far less money.

The problem with our existing pollutant trading program is that it's being underutilized because most point and nonpoint pollution sources do not have the resources or relationships to seek out trading partners. As a result, we have not been getting the desired outcomes. Since the program was created more than 20 years ago as part of the 1997-98 biennial budget act, only 40 facilities have either used or selected water quality trading as a compliance strategy to meet required pollution standards. That simply is not enough, and I know we can do better.

We intend to accomplish that with AB 113, which introduces a third-party clearinghouse to the program to streamline and improve the pollutant trading process. Under the bill, the Department of Natural Resources would be authorized to give a point source permit holder an alternative to marginal EPA-mandated discharge reductions of a pollutant by purchasing credits from a clearinghouse or other third-

party brokers certified by the DNR. Those credits come from nonpoint sources that have taken steps to reduce their pollutants.

It's important to note that this bill establishes a minimum credit trading ratio of 1.2 to 1 for trades made through the clearinghouse, so each transaction must result in an improvement in water quality. In other words, for each pound of pollutant required in the permit, at least 1.2 pounds of the pollutant must be reduced through the credits. Trades must occur within the same hydrologic area and involve the same pollutants and water quality standards.

This legislation follows my own philosophy of including all sides in the conversation so everyone has a seat at the table and skin in the game. In Kewaunee County, we have made significant progress in addressing our groundwater concerns through this approach. We need to continue to work toward these partnerships that lead to all parties benefiting and contributing to Wisconsin's success.

I am confident AB 113 will be a tremendous asset to our state by giving farmers, industries and municipalities the tools and financial incentives they need to work cooperatively toward our common goal of protecting our state's essential ground and surface water. Plus, the cost to state taxpayers is so minimal the DNR says it can absorb the additional expenses within its budget.

Is AB 113 a magic bullet that will solve all of our water pollution issues? It would be naïve to believe so. But I can assure you that this is not the end of our efforts this session to improve our state's water quality, but only the beginning.

We have an obligation as lawmakers to protect our constituents and neighbors by doing everything in our power to make sure they have access to clean water, which is essential to our economy and our health. AB 113 is only one piece of that puzzle.

Since this bill was first referred to committee, the Senate unanimously passed the Senate companion with a few amendments. I am introducing those same amendments to make AB 113 consistent with the Senate companion.

The amendments make the following changes to the AB 113:

- Requires the contract between DOA and the clearinghouse to be approved by the DNR, rather than a consultation requirement under the bill.
- Specifies that, for purposes of the contract between DOA and the clearinghouse, "credits" refer to credits through the DNR's trading program.
- Removes language authorizing the clearinghouse to "establish" methods for determining credit amounts, and clarifies that the clearinghouse must use methods established by the DNR.
- Requires the clearinghouse to establish a maintenance schedule for credits, and to verify credits with the DNR, subject to a 45-day DNR review period, before making credits available for sale.
- Applies the directive to allow trades over the largest possible geographic area to trades negotiated by third parties, rather than just the clearinghouse.
- Requires the DNR to evaluate the clearinghouse within four years.
- Specifies that, if the clearinghouse ceases to function, the DNR will continue to administer all credits then in effect until a new clearinghouse is established or contracts expire.

- Directs the DNR to consult with the EPA regarding the possibility of allowing long-term or permanent credits in more situations than are currently allowed in an area subject to an EPA-approved total maximum daily load (TMDL).

This legislation is co-sponsored by a bipartisan mix of nearly 50 legislators and is supported by numerous groups representing a wide array of stakeholders, including the League of Wisconsin Municipalities, Dairy Business Association, Clean Wisconsin, Wisconsin Cheesemakers Association, Wisconsin Manufacturers and Commerce, Wisconsin Potato and Vegetable Growers Association and the Nature Conservancy.

If AB 113 is passed by the full Assembly and signed into law by the governor, we will become the first state in the nation to create a statewide clearinghouse that serves as a broker and manager of their pollutant trading system. I cannot wait to lead the way and show the rest of the country what solutions our Legislature has to offer regarding the very serious issue of water pollution.

Thank you for taking the time to listen to my testimony, and I ask that you please consider supporting this bipartisan legislation. I would also like to thank Sen. Cowles and Sen. Petrowski and their staff for all the hard work they put into this bill. I will now answer any questions if you have them.

Testimony on 2019 Assembly Bill 113

P3: Pollution Prevention Partnership ~ Wisconsin's Trading Marketplace

Senator Robert Cowles

Assembly Committee on Local Government – June 19, 2019

Good afternoon, Chairman Novak and Committee Members. I appreciate your time today to hear my testimony on 2019 Assembly Bill 113 relating to third-party water quality trading. This bill, named P3: Wisconsin's Trading Marketplace, creates an opportunity to merge more advanced land and water management with some financial stability for farmers and other nonpoint sources dealing with the uncertainty of today's markets. P3 stands for Pollution Prevention Partnership. Simply put, Assembly Bill 113 can increase the amount of water quality trades by introducing a third-party to create a marketplace for trading credits to be used in nutrient reduction requirements for point sources.

Assembly Bill 113 has strong bipartisan support, with 50 legislators from both parties including several members on this Committee joining this effort as co-sponsors. In addition, the bill has the support of dozens of groups representing agriculture, business, local government, and natural resources. Assembly Bill 113's companion, Senate Bill 91, has already passed the full Senate as amended with a unanimous vote.

The goal of Assembly Bill 113 is to improve water quality in a more efficient and less onerous manner. By introducing a third-party clearinghouse to help facilitate water quality trades, we can achieve actual water quality improvements by partnering with nonpoint sources to reduce nutrients and sediment from reaching receiving surface waters. Third-party trading provides a liaison which is approved by the Department of Natural Resources (DNR) to contract and certify credits generated by a nonpoint source and sell credits that have been verified and certified to a point source. This partnership is focused on creating a greater water quality improvement than is possible under the current regulatory structure which focuses solely on point source dischargers.

It is very important to note, that using the clearinghouse for third-party trading is an additional voluntary option created in this legislation, and whether the option is used as a compliance mechanism is up to each individual permit holder. Third-party trading would be added to the list of the currently available methods for compliance including bilateral trading, adaptive management and the multi-discharge variance. All of these methods work to incorporate nonpoint sources into the calculation for water quality solutions.

Providing options to include nonpoint partners is important because the federal Clean Water Act (1972) was not designed to regulate these diffuse sources. Nevertheless, the Environmental Protection Agency (EPA) has long recognized the need to incorporate all actors into any workable and effective water quality plan. Since nonpoint sources are not required to employ nutrient management practices unless cost sharing is provided, trading is one way to encourage all the pieces of the water quality puzzle are included. That is why in 2003 and again in February of this year, the EPA has allowed and encouraged increased flexibility in meeting national water quality effluent limits through pollutant trading. By using the standards implemented for point sources through Wisconsin Pollutant Discharge Elimination System (WPDES) permits, the bill creates a market-based solution to benefit both point and nonpoint sources while achieving the goal of improving water quality.

Water quality trading was first created in the 1997-1999 budget. In over 20 years, 40 point sources have used water quality trading or have selected trading as a compliance strategy to meet phosphorus requirements. In 2010, Wisconsin passed more restrictive phosphorus standards, so it was expected that trading would advance as a preferred option. However, due to permit reissuance timing, many facilities haven't been required to follow new phosphorus effluent limits until between 2017 and 2024. Therefore, now is the time to provide permit holders another flexibility option. Creating a means to remove some of the risk and liability associated with credit transactions for permittees and nonpoint sources would greatly increase the potential of water quality trading as a valid compliance mechanism.

Success of a resilient trading program is not only in the best interest of permittees, but under these mutually beneficial water quality trades, nonpoint sources, such as family farms, would also benefit. By reducing pollutants and run-off from entering a waterbody through the use of various technologies and practices, the reduction would be quantified as credits and sold through the clearinghouse. In this transaction, the nonpoint source receives an economic incentive for the sale of the credits. These incentives can help curtail the market loss from unstable commodity market prices that farms are currently experiencing. Doing so while reducing water pollution would be a welcome change for family farms throughout Wisconsin.

Not only does Assembly Bill 113 provide a sustainable income stream for nonpoint credit generators, but it also simplifies the current challenges encountered when executing trades today. Securing a nonpoint partner for a trade is onerous and time consuming. Cheese factories, municipal wastewater utilities, and other businesses are not positioned to unilaterally find an unregulated farm in a stringently defined area to identify practices the farm can employ to reduce runoff to meet their permit terms. Additionally, farmers are in the business of cows and crops and are not always capable of carrying the risk associated with a point source's WPDES permit requirements.

This bill achieves a win-win by alleviating these burdens and creating an independent marketplace for the generation and sale of pollution credits. The marketplace will follow the economics of supply and demand. Credits will be generated and priced due to the demand in a more flexible hydrologic area. Liability and risk would be reduced by the certification and verification of the generated credits through the clearinghouse to give point and nonpoint sources alike peace of mind. Furthermore, water quality trades under the P3 Marketplace are designed to always result in a net benefit to water quality. Trades must exchange the same pollutant or the same water quality standard. For a trade to be facilitated, pollutants will have to be avoided at a minimum of 1.2 to 1.0 ratio to generate a credit. This ratio not only ensures a net water quality benefit, but also considers the uncertainty inherent in landscape practices. Conditions such as slopes and soil types could require different credit ratios that are quantified through tables and modeling, currently in use by the DNR. The ratios are required to be able to guarantee compliance under the point source permit.

Additionally, the clearinghouse would be statutorily responsible for:

1. Maintaining a bank of certified credits;
2. Selling credits;
3. Establishing methods for determining the quantities of credits produced through modeling, and scientific protocols;
4. Executing contracts with the parties to undertake pollution prevention practices and services;
5. Maintaining a centralized registry on an internet-based platform to simplify transactions, and;
6. Ensuring that transaction costs are minimized.

The contract for the clearinghouse would run through the Department of Administration, like any other procurement contract, but would require that the clearinghouse is capable of facilitating contract terms and conditions, hold a reasonable amount of financial reserves, insurance, a reserve credit pool, and have a developed fee structure. The contract must also be approved by the DNR as the EPA delegated regulatory entity for the WPDES permitting program.

Additional third-party independent brokers, not the central clearinghouse, could also facilitate credit sales. They could establish themselves anywhere in the state. These brokers are statutorily required to be approved individually by the DNR and are required to notify and report to the clearinghouse with trade information to maintain the operation of the internet based registry. These independent brokers will serve a major role in encouraging that the marketplace function statewide.

While creating Pollution Prevention Partnerships is in the state's best interest, we recognized after the Senate Natural Resources and Energy Committee public hearing that additional work on the concept of the marketplace was necessary, so we worked with stakeholders to address concerns with the original bill. Assembly Amendment 1 provides additional certainty and reliability for permittees seeking to utilize this opportunity to meet regulatory compliance while also ensuring better water quality in lakes, rivers, and streams in Wisconsin. Assembly Amendment 1 provides technical changes for a better functioning third-party trading marketplace by:

1. Providing a safeguard in the event the clearinghouse should cease to exist, including a hold harmless provision for permittees;
2. Requiring DNR approval of the clearinghouse contract which will ensure that all elements necessary to produce viable credits are addressed in the contract leading to industry certainty when purchasing credits;
3. Requiring a maintenance schedule and DNR approval of a maintenance plan to ensure credit generation is fulfilled and will continue for the life of the credits reducing permittee risk for compliance;
4. Introducing a verification process which will increase certainty in the credit generation so that point sources can rely on the credits produced by nonpoint partners;
5. Implementing a credit certification process to provide certainty in credits purchased through the clearinghouse, and;
6. Directing the DNR to consult with EPA regarding the potential to utilize permanent credits, instead of temporary credits, in federally approved Total Maximum Daily Load (TMDL) areas. TMDL's can have even more restrictive phosphorus or total suspended solids requirements.

In addition, Assembly Amendment 2 changes the date for the DNR to certify credits from 30 days to 45 days. This change better reflects the timeline the Department felt was feasible. Adopting the modifications in the amendments increases the level of certainty for point sources and nonpoint sources and ensures that a reliable marketplace will be created under the clearinghouse contract.

Despite best intentions, the economic threats the agricultural industry face often make it economically challenging to deploy new manure management technologies, remove land from production for buffer strips, or implement other land and water stewardship practices. Furthermore, a point source's regulatory compliance can be both costly and complicated to achieve. Passage of this legislation would be an important step forward in advancing water quality in Wisconsin while also alleviating the stresses for agriculture and industry. Third-party trading could save some communities from passing multi-million dollar wastewater treatment plant upgrade costs onto residents for little water quality improvement, help keep manufacturers and food producers open and operating, and, perhaps best of all, help family farms with supplemental income. In short, this bill would establish Pollution Prevention Partnerships across Wisconsin and provide another cost effective permit compliance option for point sources. Thank you for your time today. We would be willing to take any questions you may have at this time.

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Assembly Committee on Local Government

2019 Assembly Bill 113 *Pollution Credit Trading Clearinghouse* *June 19, 2019*

Good morning Chairman Novak and members of the Committee. My name is Ben Van Pelt and I am the Legislative Liaison for the Wisconsin Department of Natural Resources (DNR). I am joined today by Kevin Kirsch, who is a Water Resource Engineer in the Bureau of Water Quality and one of the statewide trading coordinators for the Department. Thank you for the opportunity to testify for informational purposes on Assembly Bill 113, which would authorize the establishment of a central clearinghouse for the trading of water pollution credits.

The Department had the opportunity to work with the bill's authors during the development of AB 113's companion, Senate Bill 91, and the subsequent amendments that were offered and adopted in the Senate Committee on Natural Resources and Energy. These modifications were made to ensure that the operation of a clearinghouse will mesh with the DNR's permitting authority and federal Clean Water Act responsibilities. As you are aware, SB 91 passed the Senate on May 15th. The Department is supportive of the version of SB 91 that ultimately passed and would request the amendments offered by Representative Kitchens to AB 113 be adopted to mirror SB 91, or that the committee moves forward with the Senate version of the bill.

As passed, Senate Bill 91 contains some crucial elements to ensure both federal Clean Water Act and state water quality requirements are met. The bill specifies that the production and purchase of credits must result in an improvement in water quality and must take place within the same applicable hydrologic area to ensure compliance with water quality standards. SB 91 maintains the use of trade ratios, with a minimum value, which provides an economic equalizer for practices of varying cost and effectiveness while ensuring improvements in water quality are attained.

Trading water pollution credits can be mutually beneficial to both point and nonpoint sources. Trading potentially allows a point source discharger to meet their permit limits without potential major investments in treatment infrastructure at their facility. Nonpoint sources have an opportunity to access a source of revenue to install management practices by selling generated credits. Beyond the monetary benefits, a reduction in pollutants entering a waterbody results in improved water quality, which benefits everyone.

Current law authorizes the buying and selling of credits to meet required water quality standards; however, SB 91 and AB 113 can provide an opportunity for a third-party to establish a clearinghouse to facilitate trading. The Department sees the value of a clearinghouse acting as a third party that can assemble credits from potential credit generators and offer them to potential buyers who may otherwise

have found it challenging to find their own trading partners. The clearinghouse would be established via contract with the Department of Administration, in consultation and with approvals from the DNR. This type of mechanism would be a welcome addition to the existing water quality compliance toolbox.

In this Year of Clean Drinking Water, we look forward to continuing to partner with the authors of this bill as we work toward our shared goal of healthy waters in Wisconsin.

On behalf of the Department of Natural Resources, we would like to thank you for your time today and would be happy to answer any questions you may have.

Good afternoon,

My name is Brian Dolski. I'm the Chief Financial Officer for the Pagel Family Businesses. We milk approximately 9,300 cows at two dairies in NE Wisconsin along with raising approximately 9,800 calves and heifers at two additional locations in NE Wisconsin. We are currently actively evaluating potential nutrient recovery systems for our facilities, and we are here to support your efforts to provide economic incentives to encourage capital investments to improving water quality in our state.

Prior to my current position, I spent the last 10 years in the renewable energy industry, where my primary responsibilities were related to compliance with two market based regulatory programs that used credits as a mechanism to reduce greenhouse gas emissions and improve air quality. I see a lot of similarities with renewable energy credits and water pollution credits, so I hope that sharing my experience with you will be beneficial.

The Energy Policy Act of 2005 took much different approaches to creating subsidies for renewable energy to compete with fossil fuel in the transportation fuel and electric generation industries. For the transportation fuel industry, a market-based credit program called the Renewable Fuel Standard was implemented, versus a fixed or static tax credit for renewable electric generation. I think it's important to compare the differences and results achieved from each approach.

For the electric generation industry an Investment Tax Credit (ITC) was implemented for various renewable electricity production technologies. The ITC amount was a percentage (typically 10-30%) of the projects capital expenditures, and the amounts varied over time as market conditions changed and renewable energy became more cost competitive with fossil fuels. Having economic certainty as to the value of the subsidy accelerated project development, capital investment, and growth for the industry. As a result, the program has been very successful. In 2018 renewable electricity made up 16% of US electricity generation. More importantly, today more than 60% of all new electric generation capacity comes from renewables, so renewables are continuing to gain significant market share even as the ITC has been winding down and will be phased out in the next couple years.

For the transportation fuel industry, the Renewable Fuel Standard (federal RIN credit program or RFS) was created. The RFS is very similar to the water pollution credit program contemplated in Senate Bill 91, whereby a marketplace was created where buyers and sellers register to generate, purchase, and sell credits. Under the RFS there are what's called obligated parties, which are required to blend renewable fuels into their product sales mix, or purchase credits from renewable fuel producers. The program did establish production mandates for various types of renewable fuel. However, since the program lacked economic certainty as to the value of the credit (subsidy), industry participants struggled to obtain project financing, capital investment was stunted, and as a result the industry has not experienced nearly the same level of success. In 2018 biofuels made up only 5% of all transportation fuels, so market penetration has been a fraction (approximately 1/3) of what the renewable electric generation industry achieved. Another contributing factor that limited the RFS were constant legal challenges on the interpretation of the law, and layers and layers of new rules trying to clarify and interpret the original intent of the law. This added to the level of uncertainty that inhibits capital investment while at the same time significantly increasing compliance costs for all market participants.

In summary, while on the surface a market-based program theoretically is the most efficient way to incentivize emission or pollution reductions, the devil is in the details. Judging by the current state of

renewable energy in the transportation fuel and electric generation industries, practically speaking I think the evidence is compelling that the simplified ITC approach for the electric industry yielded significantly better progress towards achieving the underlying objective.

Once again I am here to support your efforts towards providing economic incentives towards improving water quality in our state. When finalizing this legislation I ask that you try your best to remove impediments to growth by providing some level of certainty as to the value of the incentive while minimizing unnecessary expenses.

Regards,

Brian Dolski

CFO for the Pagel Family Businesses

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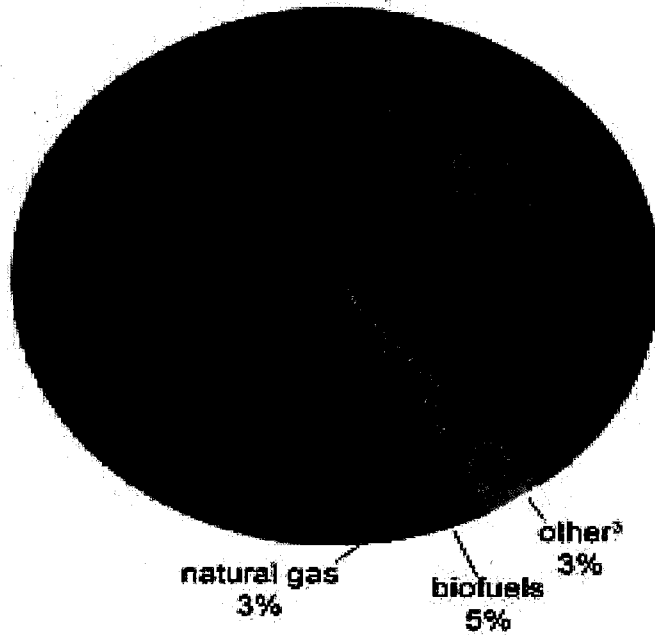
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U.S. transportation energy sources/fuels, 2018¹



¹ Based on energy content

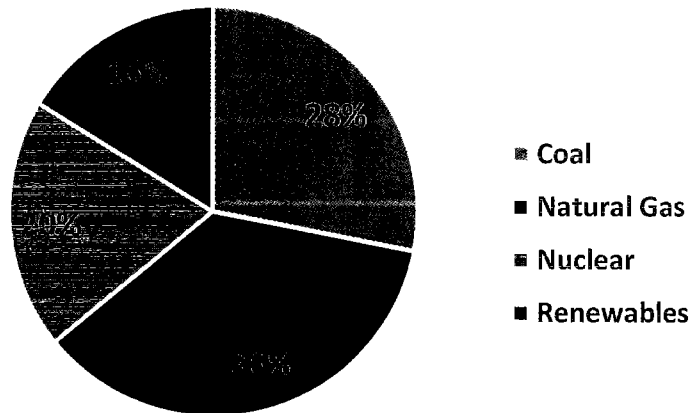
² Motor gasoline and aviation gas; excludes ethanol

³ Includes residual fuel oil, lubricants, hydrocarbon gas liquids (mostly propane), and electricity (includes electrical system energy losses)

Note: Sum of individual components may not equal 100% because of independent rounding

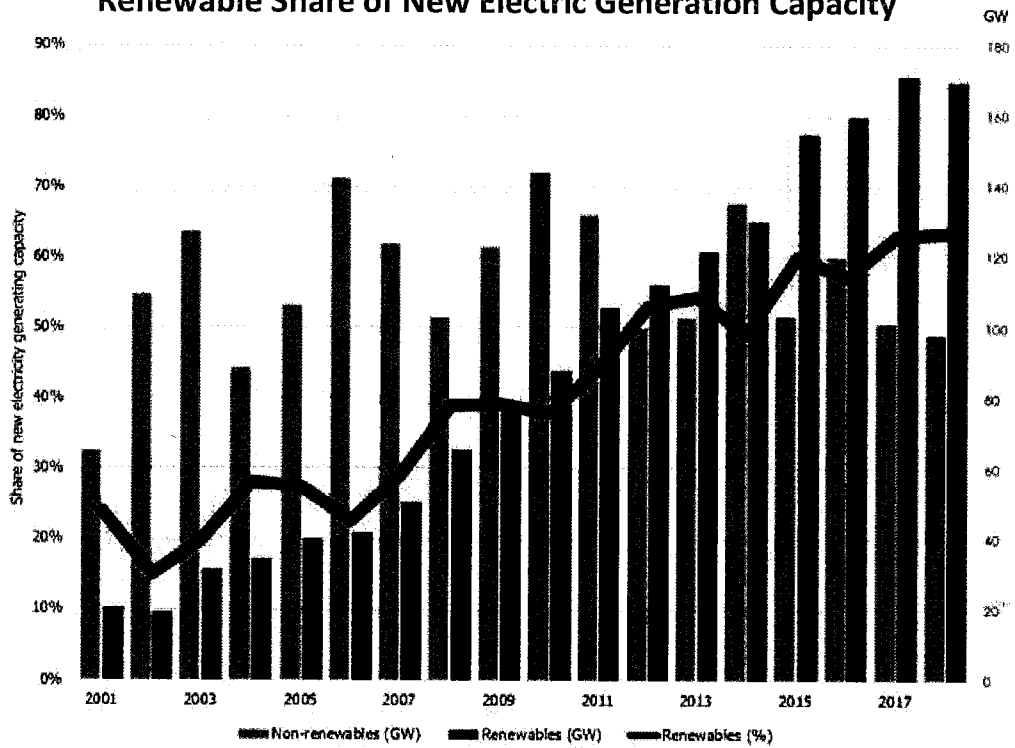
Source: U.S. Energy Information Administration, *Monthly Energy Review*, Tables 2.5, 3.8c, and 10.2b, April 2019, preliminary data

US Electric Generation by Source (2018)



Data Source: US Energy Information Administration

Renewable Share of New Electric Generation Capacity



Data Source: US Energy Information Administration



I. Introduction

The Wisconsin Paper Council appreciates the opportunity to testify on Assembly Bill 113, which creates a clearinghouse for water quality credit trading among and between point and non-point sources. The papermaking industry is a key economic driver for Wisconsin - employing over 35,000 highly skilled men and women whose efforts continue to make us the number one papermaking state in the United States. The Wisconsin Paper Council is the premier trade association which advocates for our entire industry – an industry which is focused on sustainability and strong environmental stewardship. Our industry prides itself on its continual scientific advancement to produce products that are renewable, recyclable, and sustainable.

The Wisconsin Paper Council supports the creation of a viable water credit trading program. The concept of a water credit trading program to reduce cost of compliance with rigorous numeric water quality criteria (e.g., phosphorus) is a good one. Wisconsin's program would be the first of its kind in the nation, so it is imperative that it be successful and serve as a model for other states.

However, we have several concerns with the current bill draft. Much like the current credit trading structure, this proposal has flaws that may result in program failure. We are continuing to work with other stakeholders on addressing these flaws, but want to make the committee aware of these concerns, as well.

II. The Current Language is Flawed and Will Not Result in a Viable Market

Under current law, permit holders can enter credit trading agreements to buy credits rather than add end-of-pipe control technology. However, the program has little appeal because of the high risk to permit holders, as well as the significant reduction in value of created credits due to the inflated credit trading ratios. This bill exacerbates many flaws that exist in current law. It sets a minimum credit trading ratio in law, and it uses the veil of a clearinghouse to increase DNR's discretion, decrease transparency, and perhaps allow the agency to avoid administrative processes such as rulemaking. In addition, the mere existence of this program could be used to justify DNR denial of a multi-discharger variance, or MDV, which many point sources rely on to comply with permit limits. In other words, the clearinghouse may seem like a voluntary program but, as a practical matter, point sources could be forced to participate in lieu of an MDV.

A free market approach is the only way to make such a program work, which means getting the buy-in of those who would sell into and those who would buy from the market. This bill as proposed may have buy-in from potential credit producers, but as drafted, it does not have buy-in from the major credit buyers, particularly the large point sources in the paper industry.

a. The Minimum Credit Trading Ratio is Unnecessary and Higher than Current Practice

First, the bill sets a statutory minimum credit trading ratio of 1.2 pounds of reduction for 1 credit. The credit trading ratio is the amount a credit is reduced in value according to the location and uncertainty surrounding its method of creation. For example, 100 pounds of phosphorus could be reduced from a

nearby farm, but 100 credits are not created. DNR uses a formula with several factors that reduce the value of that reduction, including the location, the method of reduction, and a general uncertainty factor that, alone, can reduce the credit value by as much as half.

This 1.2:1 minimum trading ratio is based on DNR's flawed interpretation of Wis. Stat. § 283.84(1m)(a) which states that the current credit trading program must result in "an improvement in water quality." DNR, in guidance that was never fully vetted with stakeholders, has interpreted that to mean that a credit trading program must require more reductions than direct compliance. That interpretation is not consistent with the plain language of the law and should not be adopted by including a minimum credit trading ratio of 1.2:1 in statute.

Moreover, the ratio in current guidance for point sources producing credits is 1.1:1, and this would raise that, which discourages point sources from reducing emissions beyond what is required in their permits.

WPC could not find any other state that has a minimum credit trading ratio set in statute. Moreover, even a 1:1 ratio would result in more reduction than direct compliance from point sources. This is because only a portion of the phosphorous discharged from pulp and paper mill sources is 'bioavailable' meaning available for algae growth, whereas all phosphorous in agricultural runoff is bioavailable. For example, studies have demonstrated that only 80-90 percent of the phosphorus in paper mill effluent is bioavailable. Consequently, a 100-pound reduction in the amount of total phosphorus discharged from a paper mill equates to 80-90 pounds of bio-available phosphorous – that which is available for algae growth. However, 100-pound reduction from agricultural runoff removes 100 pounds of phosphorous from being available for algae growth. For our industry, a 1:1 credit ratio provides an inherent premium in terms of improving water quality. Therefore, setting a minimum trading ratio above 1 is unnecessary and could inhibit voluntary participation in the program.

b. The Bill Does Not Give the Clearinghouse the Necessary Autonomy for Success

Second, the bill allows a third-party clearinghouse to facilitate market trading but in reality DNR retains all authority to control the clearinghouse's actions and administer the program. Ideally, the clearinghouse would facilitate a free-market model of supply and demand based on formulas, prescribed by DNR through rulemaking, that would determine the value of reductions efforts. The clearinghouse would know precisely when credits would or would not be certified for sale by DNR because that, too, would be clearly laid out in a combination of rules and guidance. There would be predictability for all market participants, and no entity, including DNR, would be able to unilaterally impact the market in any manner. This is the goal of our ongoing discussions with stakeholders.

However, as currently drafted, DNR retains all decision-making power, while insulating the agency from the requirements of administrative law that force the agency to seek input from the regulated community. The bill seems to allow DNR to bypass rulemaking that would otherwise be required by:

- Allowing DNR to develop/approve methods to determine production of credits (credit trading ratios), with no transparency or stakeholder input;
- Giving DNR unfettered authority to approve (or disapprove) the clearinghouse's contract;
- Giving DNR authority to certify credits before they are sold into the market.

Currently, the bill creates a veil between DNR and the regulated community in the form of a clearinghouse. DNR retains all authority but no transparency or input requirements, and could unilaterally influence the market based on changing policies or ideals at the agency.

c. There are Unintentional Negative Consequences of the Current Language

Finally, as mentioned above, the bill will be relied upon by DNR to deny Multi-Discharger Variances. At a recent industry conference, a DNR staff member confirmed that the existence of credits available for purchase would be a reason to deny an applicant a Multi-Discharger Variance, or MDV. The MDV option is a well-thought-out compliance mechanism for point sources to avoid economic ruin from complying with extremely restrictive regulations. Our members rely on the certainty of the MDV option when evaluating the business risk of investing in Wisconsin.

The current bill language would allow DNR to deny an MDV application and force a permittee to buy credits from the market instead. While the bill proposes a voluntary trading program, the language allows DNR to effectively force point sources to participate in the clearinghouse market even if there is uncertainty to the cost and availability of credits over the length of a permit. Practically speaking, if a point source cannot install end-of-pipe control equipment without significant economic hardship, they would apply for an MDV. DNR could deny the MDV request and tell the permit holder to buy clearinghouse credits instead. However, the constantly changing market would mean the permit holder is forced to take on significant cost risk because there is no way to know the future cost or availability of credits over the five-year length of the permit.

Moreover, the bill opens the market to any buyer – not just permit-holders. While a free-market approach is generally supported, allowing purchase of the credits by speculators, investors, or environmental advocates could result in market chaos. The proposal is not a completely free-market. Along with the opportunity for regulator influence, it also relies on point-sources' five-year plans. For example, if several point sources submitted permits stating they will rely on credits from this market for compliance for the next five years, speculators and investors could theoretically buy credits and thereby raise the price by limiting supply.

III. Amending the Bill to Require Rulemaking, Remove the Minimum Credit Trading Ratio, and Clarify No Impact on the MDV Evaluation Would Encourage Point Source Participation

The risks explained above, combined with the different ways in which DNR could continually influence the market by changing credit trading ratios or criteria for pre-approving credits (without rulemaking or stakeholder input), makes compliance a complete guessing game for permit holders.

As written, this program will not succeed for the same reasons the current program is not working – uncertainty, lack of transparency, and high regulatory burden. The difference is that *this* program requires the state to contract with a third-party administrator. If the program fails, we will have wasted a significant amount of effort and resources on developing, procuring, and managing that contract.

Slight changes in the proposed program could result in a much more viable market, with point source participation, and will result in more water pollution reduction at a lower cost while encouraging agricultural technology development, all of which is good for Wisconsin.

WPC Testimony on 2019 AB 113

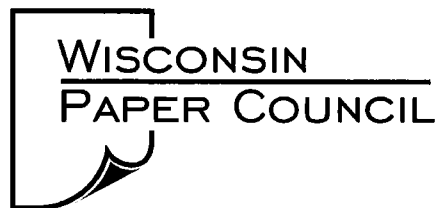
This program can work if we give the same weight to the input of potential buyers as we've given potential sellers and environmental interests. After all, the funding will come from the permitted point sources, and the market cannot exist if there is not enough demand.

To increase regulatory certainty and ensure a successful program, the bill must be amended to:

1. Remove the minimum 1.2 credit trading ratio from statutory language. This ratio is currently only found in DNR guidance, and has never been vetted with stakeholders. A statutory minimum credit trading ratio is unnecessary, and overly burdensome.
2. Require DNR to undertake rulemaking (or emergency rulemaking) for any decision points, such as:
 - a. Determining allowed reduction methods;
 - b. Determining credit trading ratios;
 - c. Determining trading areas;
 - d. Any other regulatory action requiring a rule.
3. Clarify that only NPDES permit holders can purchase credits, or at least give permit holders the first option to purchase credits.
4. Clearly explain that the intent of the bill is to provide another compliance option only. No other compliance option (such as the MDV) should be changed or impacted. Existence of a credit market cannot be relied upon in the future to further restrict limits or impact grants of multi-discharger variances.

IV. Conclusion

As noted, the Wisconsin Paper Council supports the creation of a credit trading program that could help reduce the regulatory burden while still protecting Wisconsin's water. However, as written, this program has significant flaws and is not likely to garner the participation of large point sources.



WISCONSIN INDUSTRY ECONOMIC IMPACT

EMPLOYMENT

Forestry & Logging	5,354
Wood Products	19,244
Pulp & Paper	<u>30,537</u>
Total Employment	55,135

ANNUAL PAYROLL INCOME

(in thousands of dollars)	
Forestry & Logging	\$41,144
Wood Products	\$886,463
Pulp & Paper	<u>\$2,472,111</u>
Total Compensation	\$3,399,718

NUMBER OF MANUFACTURING FACILITIES

Sawmills, Millwork, Treating	10
Engineered Wood and Panel Products	5
Other Wood Products	<u>2</u>
Total Wood Products	17
Pulp, Paper & Paperboard Mills	35
Converted Paper Products	<u>187</u>
Total Paper Manufacturing	222
Total All Segments	239

VALUE OF INDUSTRY SHIPMENTS

(in thousands of dollars)	
Wood Manufacturing	\$5,169,226
Paper Manufacturing	<u>\$13,805,709</u>
Total Value of Industry Shipments	\$18,974,935

TAX PAYMENTS

(in millions of dollars)	
Estimated State & Local Taxes	\$214

LAND AREA

(in thousands of acres)	
Total Land Area	34,661
Forests	17,074
Forests as Percent of Total	49.3%
Federal Lands	1,618
National Forest System	1,424

TIMBERLAND

(in thousands of acres)	
National Forest System	1,369
Other Federal	51
State, County and Municipal	3,296
Private Corporate	1,500
Private non-Corporate	<u>10,332</u>
Total Timberland	16,548

*Source: afandpa.org (State Industry Economic Impact Wisconsin, Aug 2018)

The Wisconsin Paper Council advocates for and represents its members in public affairs and public relations matters, serves as a center for the exchange of ideas, and disseminates news and information concerning the industry; this includes proposed legislation and job opportunities.



June 19, 2019
<http://wicouncil.tu.org>

Contact: Council Chair Mike Kuhr
(414) 588-4281

Wisconsin TU Supports AB 113

Mr. Chairman and Members of the Assembly Committee on Local Government, thank you for taking the time today to hear our comments on AB 113 regarding the establishment of a central clearinghouse to manage water pollution credit trading in Wisconsin.

My name is Mike Kuhr, I'm a small business owner and a stay-at-home father. I live across the lake, in Monona with my family. I do a lot of volunteer work for Trout Unlimited and I currently serve as Chair for the Wisconsin State Council.

Trout Unlimited is the nation's leading coldwater conservation organization, and here in Wisconsin, we have over 5,200 members working to ensure that future generations have access to cold, clean, fishable water. Last year, our members volunteered over 50,000 hours of their time working on 83 conservation projects, 91 education events, and running 3 veterans service programs at the VA hospitals in Milwaukee, Madison, and Green Bay.

We applaud Senator Cowles, Representative Kitchens and all of the other co-sponsors of AB 113 for bringing forward this innovative, market based approach to reducing water pollution in Wisconsin. We've done a pretty good job in recent years of getting point source water pollution under control. Non-point source pollution, due to the many variables on the landscape, has proven much more difficult to address. We're excited to see policy that will give our partners in the agricultural industry more tools to prevent this non-point source pollution. Anyone who knows a farming family realizes these are tough times. We believe this bill will help keep farms economically viable and ecologically responsible.

The Wisconsin Council of Trout Unlimited ("WITU") is a 501(c) 3 non-profit organization which consists of approximately 5,200 volunteer members in 21 chapters in Wisconsin working to ensure that future generations have access to cold, clean, fishable water. Last year, WITU and its Chapters reported over 50,800 volunteer hours, working on 83 conservation projects, 91 youth education events, and operating 3 veterans service programs.

Our members value the recreational opportunities that the woods and waters of Wisconsin offer. We realize that these opportunities will only be available to us if we as a society are able to keep water pollution at bay. We'd like to bring your attention to the economic impacts that trout fishing in particular, and angling in general, provide to our state. A 2013 study by the American Sportfishing Association (the "ASA") found that Wisconsin was the 3rd highest ranked state in the number of non-resident anglers. We know the fishing's good here, and apparently so does the rest of the country. According to the ASA report, angling results in over \$1.4 BILLION of retail sales each year in our state. All told, recreational angling creates over \$2.2 BILLION in annual economic impact for Wisconsin's economy.

Wisconsin Trout Unlimited understands that we all live, work, and play downstream. We're also acutely aware of the challenges posed by non-point source pollution to our watersheds and our economies. We look forward to working with the Legislature and State Agencies to develop this new approach to pollution control and reduction, thus ensuring future generations will have access to cold, clean, fishable water in Wisconsin.

Thank you for your time and for your commitment to public service.

Mike Kuhr
Wisconsin Trout Unlimited
Council Chair
mikek.trout@yahoo.com
(414) 588-4281

The American Sportfishing Association's report entitled "Sportfishing in America" dated January 2013 can be viewed here:
[http://asafishing.org/wp-content/uploads/Sportfishing in America January 2013.pdf](http://asafishing.org/wp-content/uploads/Sportfishing_in_America_January_2013.pdf)
Page 5 of the report shows Wisconsin Ranked 3rd in the number of Non-Resident Anglers, behind only Florida and Michigan.

The Wisconsin Council of Trout Unlimited ("WITU") is a 501(c) 3 non-profit organization which consists of approximately 5,200 volunteer members in 21 chapters in Wisconsin working to ensure that future generations have access to cold, clean, fishable water. Last year, WITU and its Chapters reported over 50,800 volunteer hours, working on 83 conservation projects, 91 youth education events, and operating 3 veterans service programs.



DAIRY BUSINESS ASSOCIATION | DAIRY FORWARD

**Dairy Business Association Testimony in Support of AB113
June 19, 2019**

Good afternoon, my name is Chad Zuleger and I'm the associate director of government affairs for the Dairy Business Association. I want to thank Chairman Novak, Ranking Member Spreitzer and the rest of this committee for the opportunity to speak to you regarding AB113 and the positive potential that nutrient trading has for our state. I also want to thank Senator Cowles and Representative Kitchens, the authors of this measure, for their continued leadership on initiatives like this.

Wisconsinites from across the political spectrum recognize the importance of water quality to our state's success. This motivated Governor Evers to declare 2019 the "Year of Water" and inspired Assembly Speaker Robin Vos to create a Water Quality Taskforce. Chairman Novak deserves a special thanks for leading this taskforce and we are watching with interest as that group continues its work this summer. DBA and our state's dairy farmers share the concern for clean water and we also share part of the burden in making it a reality for all our state's citizens. Our interest in this subject is not new. We need clean water for our families and our cattle. Our state's dairy processors also rely on clean water to make cheese and other products.

This legislation shows that work to address water quality concerns has been going on for some time. Earlier legislation authored by Senator Cowles and supported by DBA opened the door for nutrient trading. Unfortunately, this fantastic idea has not yet reached its full potential because the logistics of making nutrient trades happen have been overly cumbersome. It is our hope that this bill will help to make nutrient trading a more streamlined and predictable process that will result in far more trades occurring.

The numeric phosphorus standards with which point sources must comply are often very aggressive. Compliance could require a cheese plant, wastewater treatment plant or other industrial permittee to invest in expensive new filtration equipment. The small additional reduction in phosphorus or other nutrients that can be achieved by even more filtration at the point source is generally far more expensive than it would be to reduce the same amount of phosphorus through a partnership with local farmers. For example, a local wastewater treatment plant could spend \$10 million for new equipment that results in a nominal reduction in their phosphorus discharge. At the same time, a \$1 million investment in on-the-farm practices might be able to yield an even greater reduction in phosphorus in the same watershed. In such circumstances, it makes no sense not to encourage collaborations between points sources and the farming community. AB113 would make it easier for conservation-minded farmers and point sources to find each other and initiate the type of trades that will yield more meaningful and cost-effective improvements in water quality. The clearinghouse approach would let individual farms and farmer-led conservation groups bank credits from water quality improvement that result from practices they implement.

The members of this committee are probably already aware that dairy farmers in Wisconsin are struggling with a prolonged period of low milk prices. AB113 and the nutrient trading it would help to foster would provide a new revenue stream for dairy farmers and farmer-led watershed groups.



**DAIRY BUSINESS
ASSOCIATION** | **DAIRY
FORWARD**

DBA is also excited about this proposed legislation because we believe that farms of various types and sizes could benefit from it. Our association has a diverse membership. While more dairy CAFOs belong to DBA than any other dairy organization in Wisconsin, most of our member farms still have less than 500 cows. Our members include both organic and conventional dairies. In addition to dairy farms, half our membership is made up of allied businesses that help to support dairy farmers' success.

Some individual farms might be able to bank credits under this new system through the adoption of certain management practices or by investing in manure treatment equipment. At the same time, groups of farms could also work together to do the same. Across Wisconsin, farmer-led watershed groups have been encouraged and supported. DBA provides support and assistance to five of these groups in different parts of the state. These groups, which have members of all sizes, are well positioned to use their existing practices and programs to bank credits under this new clearinghouse system.

Dairy farming is one of the reasons why rural Wisconsin is more economically successful than rural parts of other Midwestern states. Research by Dr. David Swenson at Iowa State University has shown the important role that animal agriculture plays in creating and sustaining vibrant rural economies. Dairy is proud to play this role in much of rural Wisconsin. This underscores the importance of finding a way forward where dairy farms can be successful and water quality can be properly addressed. This bill is one way to advance both goals while helping rural economies in Wisconsin.

Nutrient trading itself should also help make rural economies stronger. If a rural community's wastewater treatment facility needs to reduce its phosphorus output, it could invest in expensive new filters that are produced far away. To pay for this new equipment, the utility will also have to increase costs for local ratepayers. This pulls money out of the local economy for the benefit of remote business interests. Nutrient trading will help utilities avoid increased costs for local ratepayers. Also, it will focus on reinvesting in the local community by helping to fund projects on farms, often with the assistance of other local agribusinesses.

Agricultural, business and environmental groups are all supportive of this legislation. This speaks to the potential that so many of us see in the future of nutrient trading and similar private-sector solutions to our water quality challenges. Please support advancing this bill. It is a practical part of the overall water quality strategy that Wisconsinites want to see. Thank you for your time and attention to this matter. I am happy to try to answer any questions the committee members might have.



WISCONSIN LAKES

We Speak for Lakes!

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June 19, 2019

TESTIMONY TO ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT ON AB113

Thank you for the opportunity to testify today in favor of AB113 as modified by Assembly Amendments 1 and 2 to the bill. My name is Michael Engleson, and I am the Executive Director of Wisconsin Lakes. Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For over 25 years, Wisconsin Lakes has advocated for the conservation, protection, and restoration of Wisconsin's lake resources.

As we all know, many lakes in Wisconsin are plagued with water quality issues, including problems related to excess amounts of phosphorus. At the worst, these issues manifest themselves in incidents such as toxic blue-green algae outbreaks that endanger pets, wildlife, and even ourselves. Poor water quality hampers the tourism and water related recreation economy and can even drive down waterfront property values, something my membership cares deeply about.

The clearinghouse and water pollution credit trading marketplace created by this bill is not a magic bullet that will solve Wisconsin's problems with phosphorus. But it is a new and creative tool that may put us on the path towards that end. If the clearinghouse makes point sources more comfortable with trading credits and thereby meeting their requirements for pollution reduction while simultaneously reducing nonpoint, polluted runoff, we believe that this is a system worth trying.

We believe the bill reasonably sets credits at 1.2 times the amount of water pollution prevention that would be achieved without a trade, and that ratio should be retained in the final bill. We also believe that it is important that the bill does not create the clearinghouse as a replacement for other trades outside of the clearinghouse structure, or inhibits adaptive management or multi-discharger variance for phosphorus activities. Wisconsin needs a variety of strategies to get at the overall problem, and all of these methods help reach nonpoint sources, which are a considerable and especially difficult to reach part of the problem.

This bill simply adds a tool that may generate positive results in the battle against overloading of phosphorus in our surface waters and move Wisconsin along the road towards clean, fishable and swimmable lakes and streams. Wisconsin Lakes therefore supports the passage of AB113 with Assembly Amendments 1 and 2.

Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For over 20 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection, and restoration of Wisconsin's lake resources.

**Statement of the
Municipal Environmental Group – Wastewater Division,
Re: Wisconsin’s Trading Clearinghouse Legislation**

**June 19, 2019
Madison, Wisconsin**

The Municipal Environmental Group – Wastewater Division, is an organization of approximately 100 municipalities statewide who own and operate wastewater treatment plants. We have a long history of supporting efforts to remove phosphorus from our state’s waters.

Because Wisconsin was an early adopter of phosphorus limits, Wisconsin municipalities have already removed approximately 90% of the phosphorus in their discharges, and many have removed upwards of 97%. It is thus not surprising that most of the phosphorus impairments in Wisconsin’s waters do not come from municipal treatment plants, but from nonpoint sources. The new phosphorus limits that require municipalities to remove even more phosphorus come at a significant increased cost for relatively little water quality improvement.

Nevertheless, MEG has continued to support measures to further reduce phosphorus from all sources. We were among the organizations who advocated for adaptive management, were a major supporter of the trading legislation 2011 Act 151, and we were a key supporter of the multi-discharger variance in 2013 Act 378. The common theme to our efforts is that we all need to help reduce phosphorus, but we need to find cost effective ways to accomplish the biggest water quality improvement for the cost.

We support the trading clearinghouse concept as another tool in the tool box for point source dischargers such as municipalities to comply with stringent phosphorus limits and to help effectuate water quality improvements. While MEG continues to support the conventional model for trading, there are a number of obstacles that often foreclose trading as a viable compliance option for municipalities. These obstacles include extensive technical and legal expertise necessary to find and develop trades, credit thresholds, trade ratios, and geographic limitations on trading partners. And while the multidischarger variance is an option for some communities, it is not a long term compliance option and many communities are foreclosed from pursuing the MDV due to restrictive economic eligibility requirements.

MEG supports AB113 because it provides another mechanism for permit compliance and reduces some of the obstacles mentioned above. In particular, the creation of a

clearinghouse that could obtain and verify credits would eliminate the time and monetary investment municipalities often face in developing trades.

MEG greatly appreciates the opportunity to submit these comments in support of AB113.

For more information contact Vanessa Wishart at vwishart@staffordlaw.com or Paul Kent at pkent@staffordlaw.com



LC → Melissa
Schmidt

Testimony on 2019 Assembly Bill 113
Assembly Committee on Local Government
June 19, 2019

Chairman Novak and Committee Members:

Thank you for the opportunity to submit testimony today on 2019 Assembly Bill 113. Wisconsin Manufacturers & Commerce (WMC) applauds the work of Senators Cowles and Petrowski and Representative Kitchens in their effort to think outside of the box and use market-based approaches to improve water quality. WMC supports the concept of water quality trading as a compliance option for often incredibly burdensome environmental standards. This is why WMC has been supportive of Assembly Bill 113 and Senate Bill 91.

WMC is the state chamber of commerce and largest general business association in Wisconsin. WMC was founded over 100 years ago, and we are proud to represent approximately 3,800 member companies of all sizes, and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business.

Setting up a well-functioning water quality trading system is complex and requires a delicate balance. The authors have been very willing to work with all interested stakeholders to get this right. While we support the concept, a potential unintended consequence of this program has come to our attention that jeopardizes our support without resolution. Further, we agree with others, that there are opportunities to improve the bill to provide more certainty for participants and greatly expand the credit market.

1. Impact on Multi Discharger Variance Program

WMC is seriously concerned about the impact of a viable credit trading program on the availability of the Multi Discharger Variance (MDV) program. At a recent presentation by the DNR, DNR staff confirmed that they could deny a point source discharger participation in the MDV program if water quality credits were available. When our members consider compliance options, an important part of their consideration is analyzing which of the options makes the most economic sense. We are concerned that the DNR could force our members who seek an MDV into the water quality credit market where compliance costs could far exceed the cost of participation in the MDV program, if the supply of credits is low and/or credit prices are high. WMC is actively working with the authors on an amendment that would keep *all* compliance options on the table. Senator Cowles has been a leader in the establishment and improvement of the MDV program and we understand that this was not the intent of this bill. WMC will continue to work with the authors to ensure *all compliance options remain available*.

2. Other opportunities to improve the program and encourage participation

a. *Ensure Point Sources are not Penalized when Generating Credits*

Currently, a point source is able to generate a credit at a 1.1:1 ratio because the "uncertainty" factor of technology used by point sources is not existent. WMC believes that in fact there is no uncertainty and the ratio should be 1:1. That aside, this bill establishes a minimum credit trading ratio of 1.2:1 for participants in the newly established credit trading clearinghouse program, which means that point sources who wish to generate credits to sell into the market are disadvantaged compared to point sources who trade outside of this clearinghouse market. Those point sources wishing to generate credits to sell to the clearinghouse must see a higher effluent reduction, meaning more work and higher cost to produce a credit. In order to encourage participation by point sources into the generation of low cost credits, it is important that point sources are able to maintain the status quo of a 1.1:1 credit generation ratio. Current law should be maintained for point source credit generation.

b. *Additional Certainty and Oversight for Greater Public Participation*

WMC represents both point sources and nonpoint sources that could benefit greatly from a well-functioning water quality trading program. We have significant concern for our members' ability to comply with effluent limits in certain parts of the state as they continue to become more restrictive. We appreciate having another compliance option based upon free market principles, however we do see some opportunity for improvement in certainty and transparency of the program that would encourage more of our point and nonpoint source members to participate, thereby creating a more robust market. We are working closely with the authors and interested stakeholders to find a way to provide additional regulatory certainty and oversight to encourage member participation, including opportunities for rulemaking.

We look forward to working with the authors and all interested stakeholders to ensure Wisconsin has an effective water quality trading program. A thriving program is a benefit to industry and the environment. Thank you for the opportunity to provide testimony on Assembly Bill 113. If you have any questions do not hesitate to contact me.

/s/ Lane Ruhland

Lane Ruhland
Director of Environmental and Energy Policy
Wisconsin Manufacturers & Commerce