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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

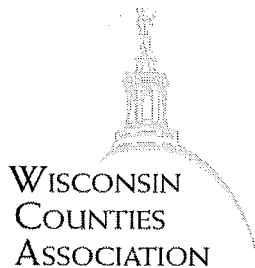
COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (September 2013)



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MEMORANDUM

TO: Honorable Members of the Senate Committee on Environment

FROM: Monica Groves Batiza, Legislative Associate

DATE: February 9, 2009

SUBJECT: Support for Senate Bill 5

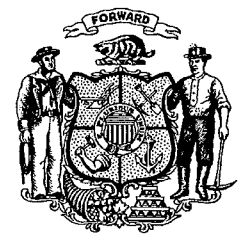
The Wisconsin Counties Association (WCA) supports Senate Bill 5 (SB 5), relating to restrictions on the use and sale of fertilizer containing phosphorus and other lawn fertilizer and providing a penalty.

In short, SB 5 bans the sale and use of lawn fertilizers that contain phosphorus for most residential applications. Under the bill, the use of fertilizer containing phosphorus is authorized to establish grass during the first growing season and in areas where soil tests show a phosphorus deficiency.

It should be noted that the restrictions created in SB 5 do not apply to agricultural land.

The negative effects of phosphorus have been found in lawn runoff, our lakes, rivers and streams, residential properties and public parks. For example, a single pound of phosphorus in runoff can cause up to 500 pounds of algae growth, and the accelerated growth of weeds and algae causes deterioration in water quality. This common sense legislation will protect Wisconsin's ground and surface water and reduce the presence of algae.

Thank you for considering our comments. Please contact me if you have any questions.





WISCONSIN LEGISLATIVE COUNCIL

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

TO: REPRESENTATIVE SPENCER BLACK

FROM: Rachel E. Letzing, Senior Staff Attorney

RE: Exemptions From Restrictions on Use, Sale, and Display of Fertilizer Containing Phosphorus in 2009 Assembly Bill 3

DATE: February 9, 2009

2009 Assembly Bill 3, introduced by you, Senator Mark Miller, and others, generally prohibits any person from applying turf fertilizer that is labeled as containing phosphorus. The bill also generally prohibits any person from selling at retail turf fertilizer that is labeled as containing phosphorous and any person who sells fertilizer at retail from displaying turf fertilizer that is labeled as containing phosphorous. In addition, the bill prohibits any person from applying fertilizer, manipulated animal or vegetable manure or finished sewage sludge product to turf when the ground is frozen or intentionally applying any of these materials to an impervious surface.

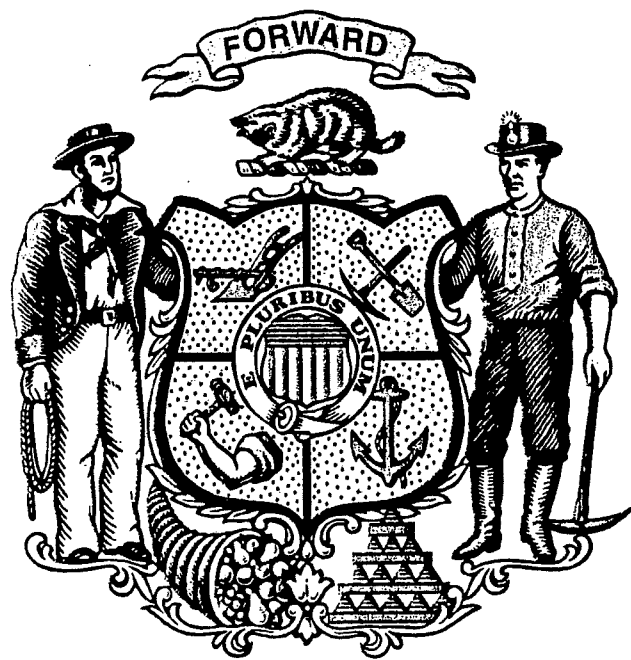
For purposes of the restrictions in the bill, the bill creates the following definitions:

- “Fertilizer” is defined to be a subset of “fertilizer” under the general fertilizer statute (s. 94.64, Stats.), excluding from the general definition “manipulated animal or vegetable manure” and “finished sewage sludge product.”
- “Manipulated,” as used in the phrase “manipulated animal or vegetable manure,” is defined to mean treated by mechanical drying, grinding, or pelletizing.
- “Finished sewage sludge product” is defined the same as in the general fertilizer statute, that is a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by one of the specified means.

The restrictions in the bill identified above regarding the use, retail sale, and retail display of turf fertilizer labeled as containing phosphorus only apply to products that meet the bill’s definition of “fertilizer” and specifically do not apply to “manipulated animal or vegetable manure” and “finished sewage sludge product” as defined in the bill.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

REL:jal



To: Senate Natural Resources Committee

Fr: Steve Boston, Buyer for Agricultural Products
Blain's Farm and Fleet
Scott Stenger for the Alliance of Wisconsin Retailers, 608-287-0403

Re: Senate Bill 5

Date: February 11, 2009

As a Member of the Alliance of Wisconsin Retailers, Blain's Farm and Fleet would like to raise a few concerns we have with Senate Bill 5 and request the Committee amend the bill to address these concerns to make it workable for Wisconsin retailers who sell turf fertilizer.

Details of Senate Bill 5:

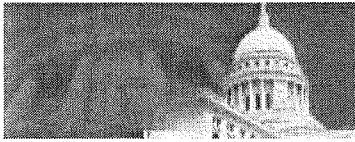
- Prohibits the retail sale of turf fertilizer containing phosphorus unless the fertilizer is used for land for agricultural production, the prohibition does not apply to the use of manure that is mechanically dried, ground, or pelletized, or to a finished sewage sludge product or turf fertilizer with phosphorus can be used to establish grass until the first growing season or it can be used if a soil test shows the soil in the area is deficient in phosphorus.
- Prohibits retailers from displaying turf fertilizer that contains phosphorus.
- Allows retailers to post a sign stating that turf fertilizer containing phosphorus is available upon request for the purposes outlined in the bill.
- Fines for violation: \$50 for a first violation and \$200 to \$500 for a second or subsequent violation.

Concerns:

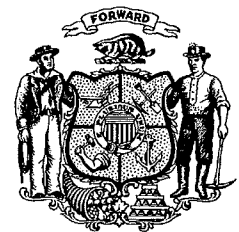
1. The terms "turf fertilizer" and "fertilizer" are used interchangeably in the bill. This is a problem because without the word "turf" included, the bill could be applied to any fertilizer product whether it is garden fertilizer, plant food, enriched potting soil or any other soil enhancement of any kind that contains phosphorus.
2. The cost for retailers to comply with the provisions of the bill is significant as it would require an employee to accompany the customer to the stockroom to get a bag of turf fertilizer for every transaction of turf fertilizer with phosphorus. While it may not seem like a burden to the retailer, on any given Spring Saturday Blains will sell hundreds of bags of turf fertilizer permitted under the bill. The additional work for our staff will add to our costs which we will likely pass on to the customer.

We would suggest an amendment to the bill to require point of sale signage clearly identifying the restrictions of use for turf fertilizer with phosphorus.

We understand the desire to move quickly on this bill and urge the committee to amend the bill to make it more workable for Wisconsin's retailers who sell turf fertilizer. Blain's Farm and Fleet has store locations in the following Wisconsin cities: Madison, Verona, Janesville, Baraboo, La Crosse, Chippewa Falls, Rice Lake, Watertown, Waukesha, Oak Creek, Monroe, Dodgeville, Platteville and Sturtevant.



WISCONSIN STATE LEGISLATURE



Department of Agriculture, Trade and Consumer Protection Testimony

Senate Committee on Environment

Public Hearing relating to SB 5, restrictions on use and sale of fertilizers containing phosphates February 11, 2009

Chairman Miller and Committee members, thank you for the opportunity to comment today on Senate Bill 5. I am Lori Bowman, Director of the Agri-Chemical Management Bureau, representing Secretary Nilsestuen and the Department of Agriculture, Trade and Consumer Protection. The comments of the Department of Agriculture, Trade and Consumer Protection are intended for information only as you deliberate the bill.

It is our desire at DATCP to assist in protecting water quality while also working with consumers and businesses to comply with state standards. The bill's intent to reduce phosphorus loading to Wisconsin's waters is worthy. We would also suggest a few small modifications to the bill that will ease administrative burden on the department.

Wisconsin's existing fertilizer laws are first and foremost consumer protection programs that guarantee consumers get—at a minimum--the nutrients the label says are present. There are no labeling regulations related to maximum levels of the primary plant nutrients. What this means is that fertilizer legally can be labeled as having 0.0 percent available phosphate and still contain available phosphate. While it is unlikely that fertilizer labeled as 0.0% available phosphate would contain amounts significantly above this, I wanted to make sure you understand that our label regulations are minimum nutrient guarantees. I also wanted you to be aware that it is impossible to guarantee available phosphate or phosphorus in any substance at 0.0. Even corn gluten meal, which is a popular, EPA-recognized safe broadleaf herbicide used as an alternative to registered pesticides, contains small amounts of phosphorus. This bill could unintentionally restrict this eco-friendly approach to weed control.

Second, I wanted to let you know that the department does not currently regulate to whom fertilizer may be sold or how it may be used. We are unclear about expectations on the enforcement of the provisions in the bill. Even if the department enforced the provisions on a complaint-only basis, it would require additional state resources. The bill also could require new recordkeeping requirements on retailers and agricultural cooperatives.

Third, you may not be aware that the department currently does not certify soil testing laboratories for turf nutrient management purposes. There are a total of seven University of Wisconsin and commercial laboratories certified under ATCP 50 to conduct soil tests for agricultural nutrient management purposes. Some, but not all of these labs, also provide turf nutrient analysis, which requires different analytical methodology. To meet the bill's requirement, the department would need to revise and expand its laboratory certification program, which would require additional state resources. A suggested alternative to the certification requirement—such as requiring laboratories to use DNR's turf nutrient management standard when making nutrient recommendations--may be workable, but will require additional discussions with DNR, the University of Wisconsin and other soil testing laboratories.

I also am recommending two important technical changes to the bill.

First, by statute and rule, DATCP's fertilizer program regulates guarantees for available phosphate on labels, not phosphorus. We recommend replacing all references to "fertilizer labeled as containing phosphorus" to "fertilizer labeled as containing available phosphate" to ensure consistency with existing regulations.

Second, the definition of manipulated manure in the bill is different than that already in rule. I will not read that definition in full, but recommend replacing the definition of manipulated manure in the bill with the definition of manipulated manure used in ATCP 40.02, Wis. Adm. Code. We will be happy to provide this language to the Chair and committee to assist with your consideration of this possible change.

Chairman Miller and committee members, I thank you for this opportunity to address you regarding Senate Bill 5 and appreciate your interest in protecting our state's surface waters. My staff and I are available and willing to work with you on the bill to ensure it is consistent with existing programs, able to be implemented by the department and meets your intent to reduce the amount of phosphorus entering Wisconsin's waters.

**Department of Agriculture, Trade and Consumer Protection
Comments on AB 3 / SB 5**

General

- The DATCP fertilizer program (ATCP 40, Wis. Admin. Code) only regulates guarantees of available phosphate (P_2O_5) on labels, not phosphorus.

We recommend replacing all references to “fertilizer labeled as containing phosphorus” to “fertilizer labeled as containing available phosphate.”

-cross reference?

Proposed 94.643 (ar)

- The definition of manipulated manure is different than that already in statute and rule.

We recommend replacing the definition of manipulated manure in the bill with the definition of manipulated manure in ATCP 40.02 (20), Wis. Adm. Code., that reads,

“Manipulated manure means manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances or otherwise treated in a manner designed to facilitate sale or distribution as a fertilizer or soil or plant additive. Manipulated manure does not include unpackaged manure that is modified solely as an incidental result of normal on-farm practices such as the following:

- (a) Addition of bedding, sand or water for purposes of animal husbandry or barn cleaning.*
- (b) Shredding, grinding or agitating for purposes of manure handling or removal from a manure storage system.*
- (c) Drying incidental to mechanical ventilation of animal confinement areas.”*

Proposed 94.643 (2)(a)

- ATCP 40, Wis. Adm. Code. regulates labels' *minimum* guarantees of plant nutrients in fertilizer. DATCP does not regulate maximum levels of primary plant nutrients.
 - Fertilizer can contain available phosphate and be labeled as having 0.0 percent available phosphate.
 - Available phosphate (or elemental phosphorus) in any substance cannot be guaranteed at “zero.”
 - Corn gluten meal (CGM) is an EPA recognized “safe” broadleaf herbicide used as an alternative to registered pesticides. It's highly popular with private citizens who want to use safe methods on their lawns. A small amount (.5% to .66%) of phosphorus is found in corn gluten meal.

We wanted you to be aware that DATCP's fertilizer program is a consumer protection program that guarantees that consumers get--at a minimum-- the nutrients the label says are present. While legal, it is unlikely that a fertilizer labeled 0.0 percent available phosphate would contain significant amounts of available phosphate. In addition, we wanted you to be aware that the proposed bill could restrict an eco-friendly approach to weed control.

Proposed 94.643(3) and 95.643 (5)

- Currently, 94.64 and ATCP 40 neither regulate to whom fertilizer may be sold nor how the fertilizer may be used. This bill would create an entirely new fertilizer use law.

We wanted you to know that there are no existing fertilizer use regulations—beyond the labeling guarantees-- that DATCP must enforce. To enforce the provisions of this bill on even a complaint-only basis would require additional state resources.

The department also has concerns about how to enforce the provisions in the bill. For example, how would the department enforce a situation in which a fertilizer containing available phosphate is legally added to bare spots in a lawn but also gets applied, even inadvertently, to surrounding areas? Also, would retailers be responsible for substantiating the exemptions stated in the proposal before the sale of fertilizer containing available phosphate could occur? Would the department be expected to routinely inspect records? This bill potentially would place costly new requirements on retailers, agricultural cooperatives and the department.

Proposed 94.643 (2)(b)(2)

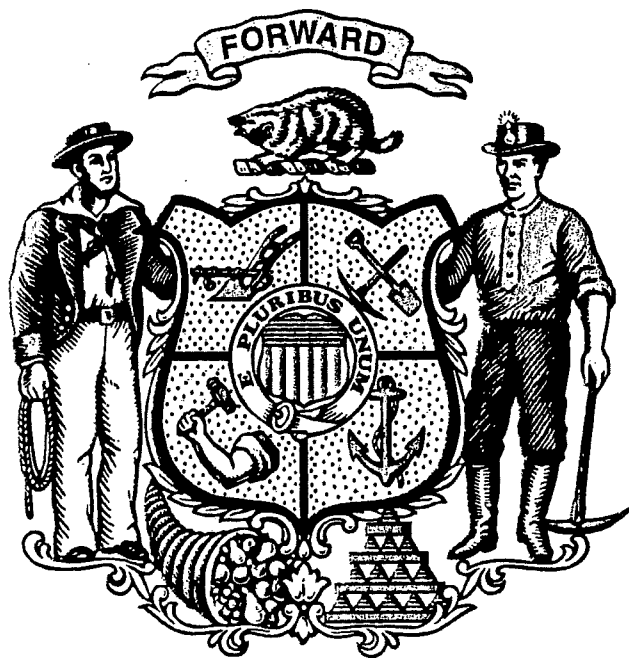
- The department does not currently certify soil testing laboratories for *turf* nutrient management purposes. A total of seven University of Wisconsin and commercial laboratories in Wisconsin are certified under ATCP 50.50 Wis. Adm. Code to conduct soil tests for *agricultural* nutrient management purposes. Soil testing laboratories (for nutrient purposes) also are not required to be certified under NR 149, Wis. Adm. Code., which regulates most environmental laboratories.

We recommend the bill specify that laboratories be required to use the DNR technical standard 1100: Turf Nutrient Management when making turf nutrient recommendations for use in Wisconsin. We also recommend removing the requirement to use a laboratory certified by the department. If the laboratory certification requirement remains, new methodology and performance criteria may need to be established to certify soil testing laboratories for non-agricultural purposes, and additional laboratories will need to be certified, which would require additional state resources.

-soil scientists say stop at tot, certification not necessary

-DNR has standards for over 5 acres

- or have tests named





John Muir Chapter

Sierra Club - John Muir Chapter
222 South Hamilton Street, Suite 1, Madison, Wisconsin 53703-3201
Telephone: (608) 256-0565 Fax: (608) 256-4562
shahla.werner@sierraclub.org <http://wisconsin.sierraclub.org>

Support SB 5, The Clean Lakes Bill Before the Senate Committee on Natural Resources, 02/11/09 By Jim Connors, Volunteer Lobbyist, Sierra Club- John Muir Chapter

Thank you for holding this hearing on the Clean Lakes Bill (SB 5) and for accepting comments on behalf of our 15,000 Sierra Club members in Wisconsin. The Sierra Club urges you to support this common sense legislation.

The Sierra Club believes that the Clean Lakes bill (SB 5) to restrict phosphorus in lawn fertilizer is needed to help reduce runoff that contributes to nutrient pollution in Wisconsin's aquatic habitats. Twenty six peer-reviewed research papers published since 1975 support the idea that overuse of phosphorus lawn fertilizer is linked with decreased water quality. Excess phosphorus contributes to algal blooms and eutrophication that seriously threaten Wisconsin's \$2.75 billion dollar per year sport fishing industry and our \$13 billion dollar per year tourism industry.

SB 5 allows for reasonable exceptions. Namely, phosphorus fertilizer is allowed for establishing new turf and for areas found to be deficient in this essential plant macro-mineral following a soil test. In Wisconsin, the average residential lawn is rarely lacking in phosphorus, with an average of 105 parts per million, or five times the phosphorus needed to support healthy turf. SB 5 also bans the spreading of fertilizer, manure or sludge on frozen ground or impervious surfaces, practices that obviously contribute to runoff.

This bill is modeled after Dane County's existing ordinance that restricts phosphorus lawn fertilizer. An analysis of Minnesota's phosphorus restriction law, passed in 2002, found that this law has effectively reduced the over-use of phosphorus lawn fertilizers. It also found that phosphorus-free lawn fertilizers are readily available at no additional cost to consumers.

A recent editorial in the Wisconsin State Journal referenced past efforts by Rep. Spencer Black and former State Senator Midge Miller to restrict phosphorus in detergents. This reminded me how this successful policy prompted industry to produce products that were more environmentally-friendly while being just as effective at meeting consumer needs. The editorial also points out that we still have work to do to finish the job of cleaning up our lakes. Sierra Club concludes that we will get one step closer to this goal by passing the Clean Lakes bill. We urge you to adopt SB 5 as soon as possible without weakening amendments.

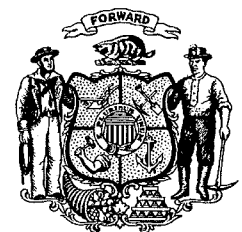
26 Peer-reviewed papers on phosphorus fertilizer and runoff into surface water bodies.

Prepared by Jerry Spetzman Minnesota Department of Agriculture, <http://www.maine.gov/dep/blwq/doclake/fert/research.htm>

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3. Sources of Pollutants in Wisconsin Stormwater, Water Science Technology 28: 241-259, R.T. Bannerman, 1993.
4. Relationship between Phosphorus Levels in Three Ultisols and Phosphorus Concentrations in Runoff, Journal of Environmental Quality 28:170-175, D.H.Pote, 1999.
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6. Phosphorus Leaching from Soils Containing Different Phosphorus Concentrations, J. of Environmental Quality 24: 904-910, G. Heckrath, 1995.
7. Sources of Phosphorus in Stormwater and Street Dirt from Two Urban Residential Basins in Madison, Wisconsin, 1994-95, US Geological Survey, R.J. Waschbusch, 1999. <http://wi.water.usgs.gov/pubs/WRIR-99-4021/index.html>
8. Nutrients and Sediment in Runoff from Creeping Bentgrass and Perennial Ryegrass Turfs, Journal of Environmental Quality 26:1248-1254, Douglas Linde, 1997
9. Determining Environmentally Sound Soil Phosphorus Levels, Journal of Soil and Water Conservation 51(2): 160-166, Andrew Sharpley 1996.
10. Depth of Surface Soil-runoff Interaction as Affected by Rainfall, Soil Slope, and Management, Soil Science Society of America Journal 49: 1010-1015, A.N Sharpley, 1985.
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13. Surface Runoff Losses of Phosphorus and other Nutrient Elements from Fertilized Grassland, Norwegian Journal of Agricultural Sciences 3: 47-55, Gotfred Uhlen, 1988.
14. Bioavailable phosphorus dynamics in agricultural soils and effects on water quality, Geoderma 67: 1-15, Andrew Sharpley, 1995.
15. Modeling the Impacts of Management Practices on Agricultural Phosphorus Losses to Surface Waters of Finland, Water Science Technology 12: 265-272, S. Rekolainen, 1999.
16. Loading Rates of Nutrients Discharging from a Golf Course and a Neighboring Forested Basin, Water Science Technology 39: 99-107, Takao Kunimatsu,, 1999.
17. Influence of Buffers on Pesticide and Nutrient Runoff from Bermudagrass Turf, J. of Environmental Quality 26: 1589-1598, J.T. Cole, 1997.
18. The Transport of Bioavailable Phosphorus in Agricultural Runoff, J. of Environmental Quality 21: 30-35, Andrew Sharpley, 1992.
19. Best Management Practices to Reduce Pesticide and Nutrient Runoff from Turf, ACS, C. 16, J.H. Baird, 2000.
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21. Turfgrass, Number 32 in the series AGRONOMY, S.H. Mickelson, 1992
22. Agricultural Phosphorus and Eutrophication: A Symposium Overview, J. of Environmental Quality 27: 251-257, T.C. Daniel, 1998.
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24. Phosphorus Export from a Low-density Residential Watershed and an Adjacent Forested Watershed. Lake and Reservoir Management, Volume II, J. Dennis, 1986.
25. Nutrient Movement from Septic Tanks and Lawn Fertilization. Tech. Bull. 73-5 Department of Natural Resources, Lansing, Michigan, B. Ellis and K. Childs 1973.
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WISCONSIN STATE LEGISLATURE



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

**Senate Committee on Environment
Public Hearing on SB 5
Wednesday, February 11, 2009, 10:30 AM, Room 201 Southeast, State Capitol**

**Testimony of Gregory M. Farnham, Commissioner
In support of SB 5 relating to: restrictions on the use and sale of fertilizer
containing phosphorus and other turf fertilizer and providing a penalty.**

Chairman Miller and Committee Members:

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

The water quality of Lake Sinissippi is very poor as reflected in undesirable blooms of both green and blue-green algae, low water clarity, high values of chlorophyll *a* and low concentrations of dissolved oxygen.

During a previous summer I had the opportunity to fly over Lake Sinissippi, Beaver Dam Lake and Fox Lake and observe the algal blooms in full effect. Our lakes appear pea-soup green even from 3,000 feet!

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


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

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

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

We support Senate Bill 5 to restrict use and sale of lawn fertilizer containing phosphorus on a statewide basis.

Thank you for the opportunity to provide comments.

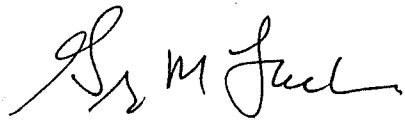
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Gregory M. Farnham
Commissioner

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We support Senate Bill 5 to restrict use and sale of lawn fertilizer containing phosphorus on a statewide basis.

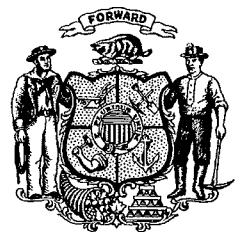
Thank you for the opportunity to provide comments.

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Gregory M. Farnham
Commissioner



WISCONSIN STATE LEGISLATURE





COUNTY OF DOOR
SOIL & WATER CONSERVATION DEPT
COUNTY GOVERNMENT CENTER
421 NEBRASKA STREET
STURGEON BAY, WI 54235

PHONE: (920) 746-2214
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PUBLIC HEARING: Senate Committee on Environment
February 11, 2009
Senate Bill 5 – Restrictions on the Use and Sale of Fertilizer Containing Phosphorus

Good morning. Thank you Mr. Chairman and Members of the Committee for holding a public hearing on Senate Bill - 5. My name is Shelby Giguere and I am a Conservationist with the Door County Soil and Water Conservation Department. I am here to speak on behalf of the Door County Board of Supervisors, the Door County Land Conservation Committee, the Door County Soil and Water Conservation Department, William Schuster, the County Conservationist and Michael Serpe, the Door County Administrator. I appreciate the opportunity to discuss SB-5 and to state our strong support of this important bill.

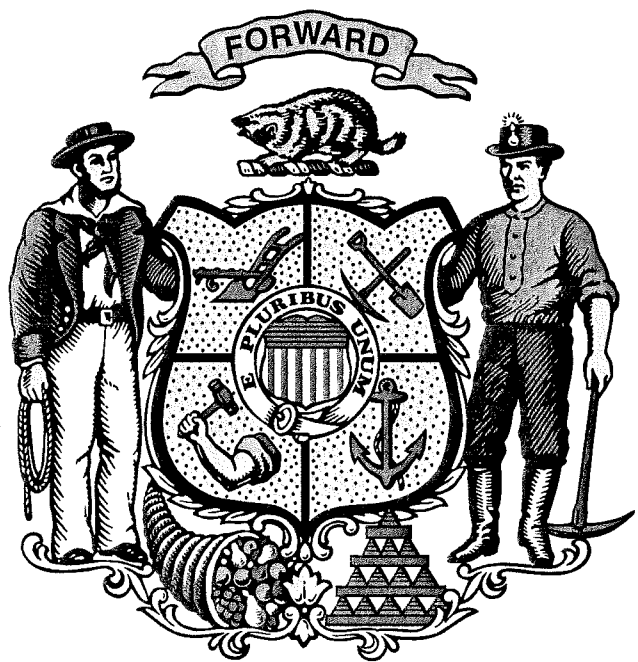
The premise of this bill is straight-forward, sound and just. If the nutrient requirements for a healthy lawn are already found in the soil, the consumer should not apply unnecessary fertilizers. However, if a lawn's nutrient requirements have been depleted from the soil, a simple soil test will demonstrate this deficiency and the consumer will be well within their right to purchase and apply the necessary fertilizers. Currently, most citizens spread phosphorus on their lawns without knowing if it is needed. This bill would implement a basic form of nutrient management for the everyday consumer.

Agricultural nutrient management is a requirement of farmers state-wide via NR 151 (Agricultural Nonpoint Standards and Prohibitions). The amount of nutrients farmers apply to cropland depends on the crop to be grown and the results of soil samples; farmers have been regulated so as not to apply more fertilizer than the crops will use. This is common sense to most farmers, though it does take some extra work and pre-planning on their part to implement. I work closely with farmers to emphasize the importance of nutrient management to a healthy environment and the effects of nutrient excess in our surface waters. Most farmers agree to follow a nutrient management plan in order to comply with State standards and protect the environment. Invariably, in my conversations with them, farmers will often point out that the collective of non-agricultural citizens may be causing more environmental damage than the farmers themselves. Many farmers believe agricultural nutrient management is ineffective as long as unregulated, and in many cases unnecessary, fertilizing of lawns is occurring. They feel it is unfair for them to be targeted as the sole perpetrators of phosphorus-laden waters. While I disagree that their part does not make a difference, I do agree that both of the greatest sources of phosphorus loading must be regulated in order to make the greatest impact.

Again, SB-5 is a simplified version of nutrient management for the non-agricultural resident. It does not take away a citizen's rights to phosphorus use, but simply restricts its use to needed applications. The proposed bill will create a cost-effective means for preventing phosphorus loading and will provide an educational opportunity to citizens who are unknowingly wasting resources and polluting Wisconsin's waters.

Thank you for the opportunity to speak to you today on this important topic and I appreciate your consideration in advancing SB-5. I would be happy to answer any questions that you may have at this time.

Shelby A. Giguere
Conservationist
Door County Soil and Water Conservation Department
sgiguere@co.door.wi.us





RIVER ALLIANCE of Wisconsin

February 11, 2009

Senator Mark Miller, Chair, Senate Committee on the Environment
Members of the Senate Committee on the Environment
201 Southeast
State Capitol

RE: SB 5, Clean Lakes Bill

Dear Senator Miller and Members of the Senate Committee on the Environment:

The River Alliance of Wisconsin is a non-profit, non-partisan organization representing over 3000 members and supporting over 150 watershed groups around the state. We advocate for the protection and restoration of the state's flowing waters.

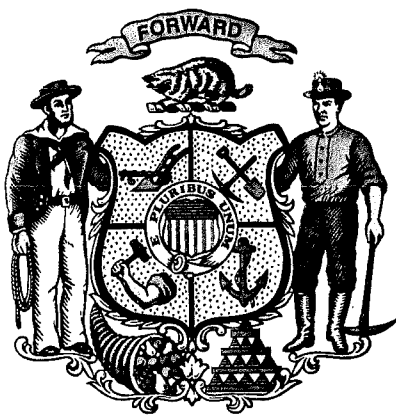
Phosphorus runoff has been recognized for over 40 years as the primary cause of weed and algae problems in lakes and rivers. Most lawns and farm soils throughout the state are already grossly overloaded with phosphorus, and the excess inevitably ends up in our waterways. Prohibiting phosphorus in lawn fertilizer is certainly not the panacea - in the central and southern portions of the state, agricultural runoff is the primary contributor of phosphorus in our waterways, and we still have a long way to go in that arena. But urban areas certainly contribute their fair share, and in the northern part of the state and around lake communities, runoff from residential development plays a proportionately larger role. Any step to reduce phosphorus runoff is one step closer to clean water.

A statewide ban on phosphorus in lawn fertilizer is a sensible, painless and fair way to help reduce phosphorus in our waterways. Implementation of the ban in Minnesota, which SB 5 closely resembles, as well as Dane County's county-wide ban, has been smooth and for most property owners, utterly unnoticed. Applying a consistent ban across the state eliminates confusion and provides certainty for the fertilizer industry and consumers.

For the sake of Wisconsin's waterways, we strongly support and urge swift passage of SB 5.

Sincerely,

Lori Grant
Water Policy Program Manager



2009 Senate Bill 5

Testimony Submitted to Senate Committee on Environment

**By Dane County Supervisor Brett Hulsey,
Chair, Dane County Lakes and Watersheds Commission
And Susan A. Jones
Director, Dane County Office of Lakes and Watersheds**

February 11, 2009

Thank you for holding this hearing and supporting SB 5. My name is Brett Hulsey and I am a Dane County Supervisor, Chair of the Lakes and Watershed Commission, and a sponsor of Dane County's ordinance to ban phosphorus in lawn fertilizers. Dane County supports this measure.

Dane County citizens enjoy more than 20,000 acres of lakes and streams, and County government and our partners like the cities, villages and towns, DNR, DATCP, and citizens are taking every possible action to control phosphorus runoff into those waters that are so important to our quality of life and our local economy. SB 5 will take the Dane County effort to reduce phosphorous to other counties and is a major step forward to protect the state's lakes and rivers.

Why are we controlling this nutrient? Phosphorus from many sources causes excessive algae growth, beach closings, and decreases water clarity, often turning lakes green. Decaying algae also depletes oxygen in the water, which can cause fish kills. In 2002, Dane County had the first human death in the nation caused by exposure to a toxin released from an algae bloom ingested by a young man while swimming in a golf pond.

Phosphorus is not needed. Dane County soils contain at least two times more phosphorus than that needed for healthy turf, according to research conducted by Dr. Elena Bennett, who sampled 236 lawns in urban, rural, and suburban locations. She found the average soil phosphorus level to be 54 parts per million. UW Extension's recommendation on the phosphorus level sufficient for healthy turf: 20 parts per million. Many other Wisconsin soils are similar.

Urban sources are significant. City of Madison studies also show that runoff from urban residential areas has high phosphorus levels and lawn fertilizer is an important component of that. In the Lake Mendota watershed, one fourth of the phosphorus pollution comes from urban sources and lawn fertilizer is a part of that.

As part of our effort to improve lake water quality by reducing phosphorus runoff, Dane County held extensive public input and discussion and adopted an ordinance banning unnecessary phosphorus in lawn fertilizer in April 2004 (effective January 2005). The ordinance (Chapter 80 of the Dane County Code of Ordinances) is substantially similar to the language of SB 5, and applies in every town, village and city in the County.

(Over)

The ordinance:

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

We are now into our fifth year of implementation, which has been smooth and effective. There is no doubt that much less fertilizer containing phosphorus is now being applied to Dane County lawns. Retailers were readily able to secure and offer phosphorus-free lawn fertilizer (we provided a delayed implementation date to allow for this, and for sale of existing inventory).

Our citizens who use lawn fertilizer are now purchasing the phosphorus-free product that meets their needs for healthy turf without adding to our already excessive soil phosphorus levels. We do not have any evidence of problems with lawns or runoff as a result of our ordinance. We have not received complaints from retailers either.

Modeling conducted by Dr. Steve Carpenter of the UW Center for Limnology tells us that we can expect the impact of the ordinance alone to be one to five additional low-algae days per month for Lake Mendota.

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

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

The Dane County Board and Lakes and Watersheds Commission support your efforts to protect our health, safety and lakes and urge you to adopt SB 5. For more information, contact Susan A. Jones, 608/224-3764, jones.susan@co.dane.wi.us.

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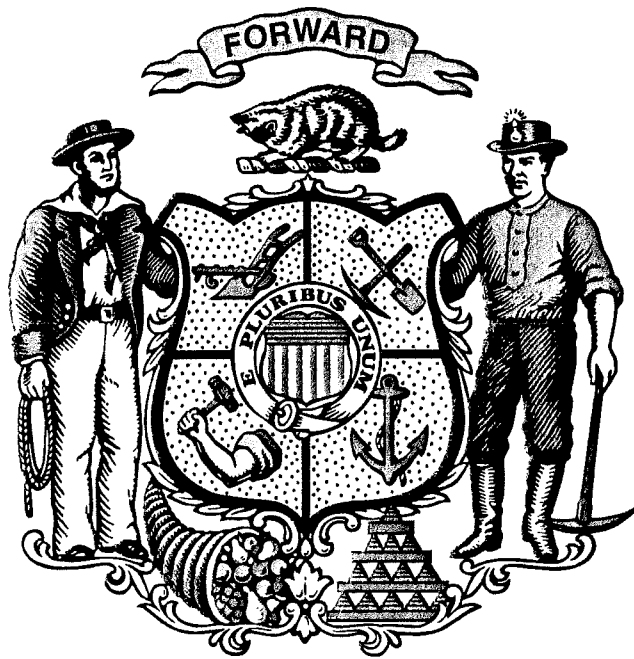
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MIDWEST HARDWARE ASSOCIATION

Serving Hardware Retailers in Illinois and Wisconsin Since 1896

February 11, 2009

MEMO

TO: Members of the Senate Committee on Environment

FROM: Douglas Johnson, General Counsel

RE: Support SB 5 (with two amendments)

The Midwest Hardware Association requests that SB 5 be amended to:

- (1) Allow fertilizer containing phosphorus to be displayed with signage noting limited permitted uses (allowing retailers to help educate consumers and to continue sound retail practices by not hiding product in the backroom);
- (2) Hold retailers/sales clerks harmless for sales to customers who then violate permitted usage rules; and
- (3) If (1) is rejected, extend the effective date from 12 months to 18 months to allow current inventories to be sold.

Thank you for your consideration.

Sen. Miller:
Please change my
slip to:
Registration in
Support...
can't testify...
thanks!

Doug

P.S. Testimony
attached for
you & committee
members,

REASONS FOR EXTENDING THE SELL-THROUGH TIME PERIOD OF FERTILIZERS CONTAINING PHOSPHOROUS

Many hardware stores place their orders for the entire line of next year's fertilizer in the fall of each year.

These orders include not only the fertilizer which sells in the spring, but also the fertilizers specifically geared for summer and fall use.

Most fertilizers are ordered and received by the pallet, not by the bag.

Ideally, hardware stores would like to completely sell-out of fertilizer. But, they also need to avoid being short of stock during each season. Ordering is not an exact science. Weather is a huge variable from one year to the next. Also, the current economy has everyone (including hardware dealers) unsure as to how much consumers will spend during this year's important spring and early summer selling season.

If retailers are unable to display product to their customers, it's common knowledge that sales of that product will drop, even to those customers wishing to legally use it.

Carryover of any inventory, especially pallets of large, bulky bags of fertilizer, is expensive and costly.

For all of these reasons, Wisconsin hardware stores should be allowed an extended period (two selling seasons) to sell-through fertilizer that has already been ordered and shipped to their stores, mindful that some of this product won't even begin to be sold until the fall of this year.