



JIM STEINEKE

MAJORITY LEADER

STATE REPRESENTATIVE • 5th ASSEMBLY DISTRICT

(608) 266-2401
Toll-Free: (888) 534-0005
Rep.Steineke@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

Testimony on Assembly Bill 505
Assembly Committee on Environment
Wednesday, October 6, 2021

Chairman Kitchens and members,

It's no secret: Wisconsin is home to some of the best bodies of water in the country and even the world. With two Great Lakes helping to draw our borders and thousands of lakes of all shapes and sizes scattered throughout our state, Wisconsin is home to an array of pristine waters.

And while we're home to some of the world's largest bodies of fresh water, we are certainly home to many, many smaller bodies as well. Often referred to as "ponds," it's these smaller bodies of water that I'm here to discuss with you today.

Ponds – especially private ponds – can be found in areas both urban and rural and can serve a number of purposes. Touring my district, or even a short drive from the building where we sit now, you're likely to find ponds that add beauty to landscaping, assist with drainage and storm water mitigation, and even ponds designed simply for recreation, like fishing or swimming.

Maintaining the health of these waters is something we're here to discuss today.

Oftentimes, management is required to prevent the spread of invasive and noninvasive plant species that may have negative impact on the water quality. Already within the purview of the Department of Natural Resources (DNR), the agency is tasked with all efforts surrounding the management of aquatic plants – whether they be native or invasive.

To ensure this management is being done to the best of our state's abilities, Senate Bill (SB) 494 would direct the department to utilize widely-accepted methods for such management that are supported by peer-reviewed scientists.

Further, this bill would make changes to the process now in place for those individuals looking to have their ponds treated.

Currently, many pond owners will turn to a professional applicator when seeking assistance in treating invasive plant species. These applicators are required by law to apply for a DNR permit and pay a fee for each of these treatments.

AB 505 would alter this current process slightly, allowing for a treatment to occur without a DNR permit, if the following requirements are met:

- The individual treating the pond is certified as a commercial applicator by the state Department of Ag, Trade and Consumer Protection;



JIM STEINEKE

MAJORITY LEADER

STATE REPRESENTATIVE • 5th ASSEMBLY DISTRICT

(608) 266-2401
Toll-Free: (888) 534-0005
Rep.Steineke@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

- Any chemicals used must be labeled and registered for aquatic plant control by the U.S. Environmental Protection Agency (EPA); and
- The chemicals are applied in full compliance with any prescribed EPA guidance and rates.

Lastly, the bill aims to clarify the definition of a private pond. Currently, via DNR administrative rule, a private pond is defined as “a waterbody located entirely on the land of an applicant, with no surface water discharge, and without public access.” This is problematic as it does not take into account a body of water which is surrounded by the private property of more than a single owner.

AB 505 would update and codify this definition by taking the currently used definition by the DNR and allowing for the land of one or more private property owners to surround the body, while also capping defined size of a private pond as being no more than 10 acres.

Chairman Kitchens and members, you’re about to hear from a number of individuals, some of which are my constituents, that either own private ponds themselves or professional work to treat and maintain these bodies of water around our state.

The suggested changes I’ve outlined today in my testimony today would help bring Wisconsin closer in line with similar regulations in our neighboring states. But more importantly, they would help take an important step towards removing unnecessary burdens and restoring the rights of property owners across the state. Thank you for your consideration today.



DAN FEYEN

STATE SENATOR

18th Senate District
(608) 266-5300
Sen.Feyen@legis.wi.gov

PO Box 7882, Madison, WI 53707-7882
<http://legis.wisconsin.gov/senate/18/feyen>

To: The Assembly Committee on Environment
From: Sen. Dan Feyen
Re: Assembly Bill 505

Hello members of the committee, thank you for taking the time to hear testimony on AB 505.

In Wisconsin, many property owners have constructed small, private ponds for their own enjoyment. Whether for landscaping, swimming, fishing, or drainage, many of these ponds add to the beauty of our state.

In order to maintain the original intent of these ponds, property owners oftentimes turn to licensed applicators in order to control invasive plant species and water quality. Unfortunately, these applicators and property owners are often met with high costs and bureaucratic red tape that can delay or sometimes stop the active management of these ponds.

Under current law, an applicator must obtain a DNR permit for every single pond that they treat. This can create a financially burdensome and time consuming regulatory process.

This bill more closely aligns the State's private pond aquatic plant management with neighboring states, by exempting applicators from needing a DNR permit if they are a DATCP certified commercial applicator, use only chemicals registered by the EPA for treatment of aquatic plants, and follow all EPA directions for application.

These provisions protect our environment by ensuring applicators continue to be highly trained and follow all guidelines and instructions approved by the EPA.

This bill also creates a definition of "private ponds" to include a pond that is less than 10 acres, is surrounded by the private property of one or more owners, does not have public access, and does not have a surface water discharge. Expanding this definition to include multiple property owners allows invasive species and water quality management to be more efficient in places such as subdivisions where multiple properties may share a boundary with a small pond.

This bill streamlines private pond management and gets government out of the way of private property owners, all while continuing to maintain our commitment to Wisconsin's environment.

Thank you very much for holding a public hearing on this bill.



Assembly Committee on Environment

2021 Assembly Bill 505

Aquatic Plant Management Plans and Permit Exemptions

October 6, 2021

Good morning Chair Kitchens and members of the Committee. My name is Madi Johansen, and I am the Aquatic Plant Management Team Leader for the Wisconsin Department of Natural Resources. With me today to assist with questions is DNR Legal Services Attorney Mike Kowalkowski. Thank you for the opportunity to testify in opposition to Assembly Bill 505 (AB 505), related to Aquatic Plant Management (APM).

AB 505 makes numerous and substantial changes relating to the department's duties to protect and regulate the control of aquatic plants. The changes proposed in this bill do not appear to be consistent with the purposes of existing statutes intended to protect and develop diverse and stable communities of native aquatic plants and to regulate how aquatic plants are managed.

As written, the bill removes the department's fundamental role in using science to carry out sound resource management of state waters and to fulfill the state's obligation to protect the public interest in navigable waters. Our concerns are focused on the ecological, social, and economic impacts of eradication strategies for invasive and native aquatic plants, insufficient safeguards for small waterbodies under 10 acres, and an overemphasis on chemical control without proper oversight by those vested in protecting the waters of the state.

The eradication and removal of regulatory oversight of a significant number of waterbodies will have implications for the state's responsibilities to Native American Tribes and the federal government. The state has a legal obligation to offer to consult with the Ojibwe Bands on matters where wild rice located within the Ceded Territory may be impacted. Without a permit process, there is no opportunity for the department to engage in consultation where required, and a focus on eradication may lead to adverse impacts to wild rice communities. This could negatively impact our relationship with the Ojibwe Bands, who hold a strong cultural connection to wild rice. In addition, Wisconsin's delegated Clean Water Act regulatory program requires integrated pest management in the Wisconsin Pollutant Discharge Elimination System (WPDES) permits required of chemical applicators. Eradication and broad authorization for chemical control are not consistent with this requirement.

Eradication Language

AB 505 pre-determines management goals of eradication for all groups. However, management goals should be situation-dependent, set by local groups, and appropriate for each individual context. By setting eradication as the only acceptable goal of aquatic plant management, this legislation requires resource managers to ignore important situational considerations, limits options for lake groups, and is likely to create unacceptable ecological, social, and economic impacts as a result.

Wisconsin residents and visitors share our waters for fishing, hunting, boating, swimming, irrigation, and visual enjoyment. One person's aquatic plant nuisance could be a component of another's prime fishing spot. Our native aquatic plants provide wildlife habitat, deliver water quality and ecological health benefits, and prevent shoreline erosion. Eradication or suppression of "nuisance" native aquatic plants to the greatest extent possible will cause direct harm to waters of the state, a large driver of tourism. Incorporating this language is contrary to our mandate to protect and develop diverse native aquatic plant communities.

The mandate to eradicate or suppress invasive aquatic plants to the greatest extent possible is also problematic from a practical standpoint. Eradication is possible in limited circumstances for prohibited invasive species, but it is not economically or ecologically possible for established invasive species. Over nine million dollars is spent annually on APM in Wisconsin, with half of that investment coming from lake associations and districts, local governments, and riparian property owners. In 2019, 29,632 liquid gallons and 29,678 granular pounds of pesticide were applied to waters of the state. Eradication or suppression to the greatest extent possible will likely add millions in spending on APM and a large increase in the amount of pesticide applied to state waters. It is far more practical to focus control efforts when restricted aquatic invasive species are causing a documented ecological or recreational problem. Where eradication is appropriate, the department currently has the tools to evaluate and authorize this management approach.

Waters Under 10 Acres

This bill would remove social and ecological safeguards for waters under 10 acres without public access and surface water discharge. These waters range from small backyard ponds to natural navigable waters, many of these are named public inland lakes. A minimum of 45,000 waters of the state would be removed from the department's protective oversight. These waterbodies often provide important habitat for a variety of wildlife including amphibians, a class of animals broadly considered in peril from loss of habitat. In addition, safeguards for threatened and endangered species will be eliminated for these waterbodies. The department conducts a Natural Heritage Inventory (NHI) review of all pond permits to screen for endangered, threatened, and special concern species. Without an NHI review of each waterbody, these important species may be inadvertently harmed, or their habitat eliminated. Wild rice beds could be inadvertently eliminated as well.

The permit process also provides important notice of proposed chemical treatment for adjacent landowners who may not favor chemical treatment or who otherwise wish to protect their private rights and interests. Under the current process, if a waterbody has multiple owners, each owner within range of the chemical control is given a copy of the permit so they are aware of what is happening on the water they live on.

Without oversight, there would be no way to confirm if surface water discharge was controlled or if all homeowners around a waterbody are aware of one person's choice to apply chemicals to the water. For context, a 10-acre lake could have as many as 24 homeowners along its shoreline. Without review of the waterbody, multiple chemical applications could take place by multiple property owners, inadvertently over-treating the waterbody, which could eliminate all plants and potentially harm aquatic resources. Additionally, there would be no public record of where, when, and how much pesticide is applied to any of those 45,000 waters of the state.

The current APM permit process protects public and private interests. There are currently around 1,200 private ponds permitted in the state, which are defined as waters on the land of one owner, with no surface water discharge and no public access. The APM permit fee is \$20 and permits are issued within 15 business days after confirmation that a waterbody meets the definition of a private pond and after completion of a Natural Heritage Inventory review for endangered, threatened, and special concern species. If the control will impact a large part of a waterbody, and it isn't a private pond, public notice is conducted so water users who may not live on the water are aware of the pending activity. Ninety-eight percent of all APM permits are approved, often with the department providing feedback to ensure adequate resource protection.

Equal Consideration to Chemical Control

Equal consideration of chemical control is contrary to integrated pest management (IPM). IPM is an internationally recognized sustainable approach to invasive and problematic species management. IPM is Wisconsin's modern solution to manage the impacts of aquatic invasive species. Chemicals are a tool in the aquatic plant management toolbox, but with repetitive overuse and without switching up the type of chemical or method, chemicals may become less effective. IPM is valuable because it asks resource managers to consider all the tools in the toolbox and to switch up strategies to control the impacts of invasive species over the long term rather than relying on one tool.

In addition, equal consideration of chemical control is not necessary to authorize chemical treatment where and when it's appropriate and may inadvertently imply favoritism of that control method, which may lead to increased chemical use and harm to our natural resources. Approximately 90% of the 1,900-2,000 permits the department issues every year are for chemical management of waters of the state.

Administrative Rule Development

As you are likely aware, the department is currently undergoing rule revisions for NR 107 and 109. This effort will allow the department to recognize and incorporate some of the intended goals in this bill for more streamlined regulations for ponds, consideration of all control options, and clear goals for the state's approach to APM in a manner that protects the ecological and social value of Wisconsin waters. In addition, the rule process ensures the state's ability to meet its legal obligations to the Ojibwe Bands and the Clean Water Act.

The rule drafting process over the last 16 months has included four public meetings and multiple opportunities for public input from lake associations and their representatives, individual riparian owners, small business owners including chemical applicators and mechanical harvesting operators, conservation organizations, business representatives, tribal staff, and aquatic plant management industry representatives. All stakeholders can participate in the ongoing (September 27 - November 10) public comment period for the draft economic impact analysis and will have the opportunity to comment on the draft board order of repealed and revised NR 107 this winter.

On behalf of the Department of Natural Resources, we thank you for your time today. We are happy to answer any questions you may have.

October 6, 2021

RE: Assembly Bill 505 (AB505)

Good morning: My name is Cory Zickert, a small business owner in WI. I have been a certified commercial pesticide applicator in WI for 31 years, 24 of those years in the aquatics and mosquito category. Our business, Wisconsin Lake & Pond Resource was started in 2005. Our primary business consists of managing, maintaining, and building aquatic resources throughout WI. One of the primary services we offer is pesticide applications to waters of the state.

I'm here today to support AB505. Our company manages approximately 500+ waterbodies in WI annually. Integrated Pest Management or IPM is a common practice in our company. IPM is a strategy of implementing a combination of techniques to manage a pest. Techniques in aquatics include nutrient mitigation, watershed management, structural improvements of the lake or pond, biological and proactive activities, pesticide applications, among many others. In order for us to utilize EPA registered pesticides on waters of the state we are required to apply for and obtain an NR 107 permit from the DNR, or when qualified, a Fish Farm License from the WI DATCP. The majority of the waterbodies we manage are private ponds. Over the course of my career, our staff has been responsible for applying for and obtaining over 4000 NR 107 permits. Many of those permits are for the exact same pond year after year.

AB505 will allow certified commercial applicators the ability to apply EPA registered pesticides according to label rates to private ponds of 10 acres or less without having to obtain an NR 107 permit from the DNR. Having the ability to treat qualified ponds in WI without obtaining an NR 107 permit through the DNR has been occurring for decades. By registering your qualified waterbody as a private fish farm through DATCP, non-restricted use Pesticides can be applied to those waterbodies without obtaining an NR 107 permit. Fish farm license holders are not restricted to using certified commercial applicators for applying pesticides to their water body which results in many homeowners self-applying the pesticides on their own with no formal training.

AB505 will only exempt certified commercial applicators from having to obtain a permit from the department. As a certified commercial applicator with the DATCP, we are required to complete and obtain treatment records for every pesticide application we perform. The information required on a treatment record includes items such as applicator information, pesticide name and EPA registration number, rates, date and time of treatment, site(s) applied, post application restrictions and site conditions. One copy is given to the customer for their records and one copy is kept for 2 years at our office. These detailed records must be readily available in the event DATCP inspectors request them to investigate pesticide spills or off-site detection.

Over my years of visiting lake and pond owners, it is concerning the amount of pesticides that have been purchased by common homeowners and lake property owners. I've walked into many garden sheds

that contain an arsenal of aquatic pesticides with the owners having no formal training or knowledge of how to use those products, yet they are readily sold in stores and over the internet. In 24 years of servicing ponds, I've yet to talk to a private pond owner that has obtained an NR 107 permit on their own to treat their pond. The unknown number of private applicators applying pesticides to waterbodies in the state of WI is alarming. Adding more restrictions, making processes more difficult, and having to wait to hire a company to treat your pond while permits are being processed will only encourage more self-applications by untrained and unlicensed applicators.

There is an excessive financial burden on our company due to the DNR permitting process that can be avoided with AB505. For example, we spend approximately 2 hours + per permit every year often times for the same pond which includes completing applications online, reviewing the completed permit for restrictions or alterations by the DNR, filing, organizing and documenting additional requirements outside the pesticide label so our applicators can more easily identify those alterations to avoid unnecessary regulatory actions by the department, and completing duplicated treatment records on DNR forms which are already required by the DATCP. This accounts for over \$21,000 for our small business just to manage DNR permits for private ponds.

Our applicators are at increased unnecessary regulatory burden. We spend hundreds of hours each year with our applicators doing initial and recurrent training. This includes working with manufactures and product reps, attending trade shows, in house review of applicable regulations, product label review and updates, and commercial applicator requirements. In addition, we have spent \$50,000 to have a customized program developed that can help us track and view permits in the field; track permit restrictions; create treatment records and client notifications, and store records per DATCP requirements. One problem we continually encounter is the DNR will change, delete, or add in permit conditions on private ponds outside EPA, DATCP, and product labels. We have to try to highlight those on almost 400 permits for 10 commercial applicators. Inadvertently missing an unreasonable permit restriction could result in unnecessary enforcement by the department. AB505 would put the regulations back where they should be and in line with standard training and licensing protocol.

In summary, AB505 would not put undue risk to our precious waters of Wisconsin. 100's if not 1000's of unpermitted applications have been occurring legally and ethically for over 30 years through private fish farm licenses. AB505 would be more restrictive of what's already occurring by only exempting trained and licensed commercial applicators to apply EPA registered products to private ponds 10 acres or less. It seems silly to allow private untrained individuals the ability to treat their private fish farm pond without the DNR involvement; however a licensed, trained, certified applicator is required to obtain a DNR permit to treat the exact type of private pond that is not already licensed as a fish farm. There would be significantly less red tape small businesses would be required to go through and reduce unnecessary internal expenses trying to manage 100's of permits each year.

Thank you for your time.



cleanwisconsin

YOUR ENVIRONMENTAL VOICE SINCE 1970

DATE: October 6, 2021
TO: Members of the Assembly Committee on Environment
FROM: Clean Wisconsin
RE: Assembly Bill 505 – Aquatic Plant Management

Chairman Kitchens, Vice-Chairman Tusler, Ranking Member Hebl, and Committee Members,
Thank you for the opportunity to testify on Assembly Bill 505. My name is Erik Kanter. I am the Government Relations Director at Clean Wisconsin.

Clean Wisconsin works to preserve and protect our state's clean air, clean water and natural heritage. For over 50 years, legislators on both sides of the aisle, policy makers and the general public have turned to Clean Wisconsin for reliable, evidenced-based analysis of legislative and administrative proposals.

Today Clean Wisconsin joins our partner organizations in opposing Assembly Bill 505. The testimony submitted in opposition to its companion bill, Senate Bill 494, by the Department of Natural Resources, Wisconsin Lakes and others powerfully lays out the myriad substantive problems that this proposal would create.¹ The bill's purpose to elevate chemical application and suppression or eradication over other management strategies would prevent the DNR from employing the balanced, locally-specific and science based approach appropriate to unique circumstances. We are also concerned by the radically broad exemption for lakes under ten acres.

The bulk of our testimony today, however, highlights the bill's overriding intent, which is to jettison a rulemaking process that attempted to balance the interests of *all* stakeholders in favor of legislation benefitting industry interests.

As several opponents to SB 494 note in their August 18, 2021 testimony, the agency is nearly a year and a half into a process of revising Wisconsin Administrative Code Chapters NR 107 and NR 109 relating to aquatic plants. Among the goals of this process is to resolve many of the issues purportedly addressed by AB 505/SB494. In contrast to whatever process attended the

1

https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sb494/sb0494_2021_08_18.pdf

development of this bill, the Department engaged a broad range of stakeholders in the rulemaking process. The process has already included four public meetings, nine whitepapers and numerous other opportunities for stakeholder input. The Department has reviewed public comments received to date and is preparing to develop the economic impact statement.

Several additional opportunities for public input are still to come in the rulemaking process, but these would be complicated and perhaps eliminated by the proposed legislation.

Tellingly, none of the testimony offered in support of SB 494 even mentions this rulemaking process.

The Department also explains in its testimony that the rulemaking process ensures the State of Wisconsin's commitment to meet its obligations to Ojibwe Bands under United States treaties. As an organization committed to environmental justice and the paramount obligation of our state to observe the rights of indigenous nations, Clean Wisconsin is deeply concerned by any attempt to circumvent a process well suited to uphold those rights. For all the invocations of "property rights" in the testimony of supporters of SB 494, there is not a single mention of the usufructuary rights that the Ojibwe people hold in wild rice throughout the Ceded Territories.

For these reasons, and for the reasons articulated by our partner organizations, Clean Wisconsin opposes Assembly Bill 505.

Aquatic
Biologists, inc.
SINCE 1977

Specialists in Lake & Pond Management, Consulting, Services & Supplies

N4828 Highway 45 S.
Fond du Lac, WI 54937
1-800-442-6648
(920) 921-6827 Fax: (920) 921-1690
info@aquaticbiologists.com
www.aquaticbiologists.com

October 6, 2021

Good morning and thank you for the opportunity to be here in support of Assembly Bill 505 (AB 505). Like many of those speaking today, this bill will directly affect my day-to-day business concerning private pond property owners. But as a citizen of Wisconsin, I also am fearful of the negative consequences that continued restrictions will produce.

My name is Robb Langjahr and I am the Owner of Aquatic Biologists, Incorporated (ABI) My father, a fish and water biologist, started the business in 1977 and worked for the DNR prior to starting the business. I have always loved the water and realized the importance of water resources since I was a little kid. Not only do we work on the water most days, I also recreate most weekends with my family enjoying water sports. In the last 20 years, like so many of you, I have witnessed a drastic change in the water quality here in Wisconsin that has directly impacted our activities. Water quality is a passion of mine. It pains me to see lakes and ponds that are managed incorrectly.

ABI is a lake and pond management, consulting, service and supply company that prides itself in water quality. Our motto is "The quality of water reflects the quality of management". Our goal is to reduce or eliminate herbicide and algaecide applications. We have countless working relationships with over a dozen companies, some worldwide, who are on the cutting edge of technology with science-based tools and peer reviewed research. Unfortunately, we continually see the DNR undermine their data and disregard the recommended label and manufacturer application recommendations. The DNR continues to suggest that going in at lower rates is somehow advantageous to the environment. What we often see are unfavorable short-term results, increased plant and algae tolerances and more resistant or hybrid species.

We are the voice of thousands of concerned private pond owners that need services for problems they cannot legally manage. We work on their behalf to observe the law and provide the best possible aquatic solution. I am in favor of aquatic plant management permits for all public waterbodies; however, I have witnessed the negative stigma that the permitting process has with private pond owners. Once the APM permitting process is mentioned it becomes a barrier. This is when property owners bypass businesses such as ABI and instead take matters into their own hands, buying products through out of state, online or from agricultural supply stores. The DNR's attempt to further regulate private ponds through permitting, actually produces even greater unregulated Hodge Podge "do it

"THE QUALITY OF THE WATER REFLECTS THE QUALITY OF MANAGEMENT"

yourself” type treatments. It isn’t illegal for customers to purchase the products, but it is illegal for the customers to apply the products as they often don’t know it.

Furthermore, the timeline that such permitting requires, just isn’t feasible. Despite best practices and good intentions, the bureaucratic nature of the process is not responsive enough to be effective for new small private ponds where an algae bloom can take over the entire waterbody in a few days.

For nearly 45 years, ABI and companies like ours, have been serving as a conduit between the state and private property owners. We are certified, degreed and trained professionals through DATCP and are licensed through the state to apply selective EPA approved herbicides and algacides. Further permitting requirements only continue to dismantle our relationships and what's more, the water quality problems grow worse. Homeowners, have and will continue to apply herbicides and fertilizers at their own discretion with greater frequency if permitting restrictions discourage them from using our professional services.

As certified, degreed and trained professionals, we feel that if the private pond owners didn’t have to deal with a DNR permit then they would be more willing to comply with all the rules and regulations of DATCP and EPA. The sad and unfortunate part is that I believe that private pond owners apply more products than all of the certified professional firms in Wisconsin.

Finally, private water bodies that have multiple owners should not be subject to the rules that govern public waters. The riparian owners of a private pond all work towards the same goal. Notifications can be done in a variety of ways and is extremely easy with technology. We also are required to post regulatory “warning” signs of treatment showing the date and any restrictions similar to what lawn care companies do when they treat subdivision common areas and parks.

Efforts to address our industry concerns and the attempts at collaborative efforts between our branch and the DNR have been disappointing. We have the same objectives and yet, our industry seems to be vilified. I am hopeful that today we can take the necessary steps to move forward and protect private ponds from being subject to individual yearly permits.

Thank you for your time.



WISCONSIN LAKES

We Speak for Lakes!

PO Box 7723 / Madison WI 53590

608.661.4313

info@wisconsinlakes.org

October 6, 2021

TESTIMONY TO ASSEMBLY COMMITTEE ON ENVIRONMENT ON AB505: IN OPPOSITION

Aquatic plant management is a crucial component of the care of Wisconsin's waters. The Department of Natural Resources, charged in section 23.24 of the Wisconsin statutes with protecting and developing "diverse and stable communities of native aquatic plants" is in the midst of a rulemaking that incorporates a holistic, integrated approach to APM that is based on current science and favors plans designed to manage plant communities for the long haul rather than simply treat the symptoms of a problem without getting at the root causes. The department has, in the opinion of Wisconsin Lakes, gone out of the way to consult with and react to the needs of a diverse group of stakeholders, including representatives from industry, local lake organizations, conservation groups, and waterfront property owners themselves. We are confident that this process will lead to a rule that, while not perfect in anyone's view, will best meet the goal set out in sec. 23.24.

Wisconsin Lakes was disappointed, therefore, to see a bill introduced that would subvert that rulemaking, limit the focus of APM to the suppression or eradication of aquatic invasive or nuisance plants, create an unfair economic advantage for one segment of the lake management industry by favoring chemical applications over other methods, and take potentially thousands of waterbodies out of the APM permitting process through an overly broad exemption.

For these reasons, discussed further below, Wisconsin Lakes is opposed to AB505.

But before delving into the minutiae of the bill we want to make clear that our objections are not with the use of herbicidal applications or biological treatments per se. Both methods of treatment have their place in the toolbox of APM. As we have expressed to DNR in the course of the rulemaking, we agree with others that the permitting process for small water bodies with no public access, often called "private ponds," should be simplified, expedited, and be done for as little cost as possible. And we believe that what DNR is proposing (though we are in the process of reviewing the draft language) is likely to do just that within the rule itself.

This bill, in our opinion, takes those reasonable reforms and simply goes too far to retain our support.

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 nearly 30 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection, and restoration of Wisconsin's lake resources.



The Big Picture

While much of this proposal deals with an exemption for chemical treatments for private ponds, it also contains major structural changes to the APM program in Wisconsin as a whole that would reach all lakes in the state, in a way we find highly problematic. Our specific objections include the following:

1) *Destroying AIS (and other bothersome vegetation) at all costs.* If passed, AB505 would fundamentally change the way DNR approaches aquatic plant management. Rather than foster plans that manage for the benefit of the native community over the long term, plans would now focus on suppression or eradication of the unwanted vegetation, regardless of whether those actions were to the benefit of the native communities. The intent of the program would become “attack the invasives” rather than keep native communities stable and healthy.

Furthermore, it would stretch that focus beyond just invasive aquatic vegetation, to an undefined category of “nuisance” vegetation. “Nuisance” could mean many things, but it has in some cases been used to designate vegetation that gets in the way of navigation. While we don’t by any means argue that navigational channels don’t need to be periodically cleared or that it is unreasonable to allow a waterfront homeowner to gain access to the greater lake from their shore, this bill flips the APM script by allowing access and clearing to be the priority over a balanced approach that considers the overall health of the plant community.

Current science is showing us more and more that sometimes even an invasive species is managed best by letting the native species fight off the invader. Attempts at absolute eradication sometimes are ineffective, and other courses of action are more likely to lead to a desired outcome that is best for the plant community, the lake environment, and those using the lake. This bill would make it much less likely to get to those sorts of outcomes.

2) *Keep the playing field level.* Why is it necessary to specifically call out in statutory language one method of control, chemical treatment, for “equal consideration” over other equally suitable methods in statute? If one method is mentioned, shouldn’t other methods be mentioned so it is clear the Legislature is not favoring one method over another?

Frankly, in some circumstances, chemical treatment might not be the best tool to use. Writing it into the law is, ultimately, a political decision that will force DNR to favor certain proposals which may very well be at odds with the “widely accepted methods that are supported by peer-reviewed science” that the bill also directs the agency to follow.

Calling out chemical treatment, along with a shift towards getting rid of the plants that are unwanted over managing for the health of the “okay” plants, also creates an unfair advantage for chemical applicators over other small businesses that use different methods. If one is called out in statute, then all methods should be because they all deserve equal consideration.

3) *When is a burden “unfair”?* We also find the provision that “plan requirements may not impose an undue financial burden on permit applicants or property owners” to be overly vague as it is

unclear what constitutes an “undue financial burden.” Of course plan costs should be minimized. But a cheaper, shorter term treatment that ultimately will need to be repeated, possibly multiple times is not necessarily in the long run less of a financial burden on the property owner than a comprehensive long term management strategy. “Undue financial burden” is simply too ambiguous a term to be useful here.

Again, we are not arguing that chemical treatment does not deserve a place in the toolbox, we simply believe it doesn’t deserve any higher priority than any other treatment and in the end plans should be viewed as to whether they will, in the long run, keep aquatic plant communities stable and healthy rather than whether they are geared simply to defeat an invader or clear out a nuisance.

The Private Pond Exemption

As expressed above, Wisconsin Lakes recognizes that some changes are needed to simplify and expedite the permitting process for APM treatments on private ponds. For very small ponds with one private owner or perhaps where multiple properties are managed jointly, a full exemption might be warranted. But in the interest of safety and transparency, Wisconsinites deserve to know when chemicals are being used in our waters and a permit, albeit a simple, expedited one, should be required for treatments on most ponds to meet that need.

In addition to not supporting a broad exemption for permitting of chemical treatments on private ponds, Wisconsin Lakes also has the following comments on these sections of the bill:

- *10 acres or less:* A 10 acre lake is not as small as one might think. At the minimum lot size standards for unsewered or sewerred lots, a 10 acre lake could conceivably have as many as 15-20 private residences or properties on its shore. 10 acres would flood 7.5 football fields or 150 tennis courts.

Wisconsin Lakes is not necessarily opposed to using a 10 acres or less criteria for a private pond, but the larger the water body the more complicated the management issues become and that has to be taken into account, which again speaks to requiring a permit for these size waterbodies.

- *Multiple private owners.* Exempting lakes & ponds with multiple private shoreland owners is problematic for a couple of reasons:
 - First, one property owner could decide to treat the lake without any consultation or notice to other property owners. This could cause safety and liability issues if, for instance, someone’s grandkids swam in the lake while it was being treated and got sick. One can also easily see a situation where multiple owners use chemicals at the same time without knowing what the other is doing.
 - Second, the bill doesn’t define a “private owner” or clarify “public access.” If a private owner includes a bar, campground, or resort, it might expose members of the public to unknown dangers even if technically the waterbody has no “public access”

- *“Controlling” surface water discharge inevitably fails:* By including in the private pond definition lakes or ponds that are hydrologically connected to other surface waters but where a surface water discharge “may be controlled” an enormous number of waterbodies would suddenly fall into the private pond definition. According to a search of the DNR’s Lake List, Wisconsin has 8,388 lakes 10 acres or less without public landings, beaches, or parks. Without knowing what “may be controlled” specifically means, it’s possible thousands of lakes would be exempt from the permitting requirement.

In addition, we are skeptical that controlling discharges from connected waterbodies is even feasible. We all know from examples like the leakage of pollutants like PFAS or manure pit failures that controls can and do fail. If chemical treatments to the waterbodies in this definition are exempt from permits, the public might never know that a chemical is in their water if a breach occurs.

We strongly believe that the definition of private ponds should be limited to those not hydrologically connected to other surface waters

- *The definition of private pond should also include:*
 - A requirement that no endangered or threatened species are present
 - A requirement that the waterbody is not itself a wetland or that it is not connected to a wetland

A definition of private pond Wisconsin Lakes could support

Wisconsin Lakes is not opposed to a more precise definition of a private pond that would entail a simplified, expedited, and low cost permit option for chemical treatment of aquatic plants. This definition could include:

- A lake or pond 10 acres in size or less,
- With no hydrologic connection to other surface waters,
- Without wetlands present or connected,
- Without the presence of endangered or threatened species

For very small ponds with a single private owner, an exemption from permitting would be appropriate.

For all other lakes and ponds that fit the definition, including those with multiple private property owners, a simplified, expedited permitting process would be appropriate. Such a process should include a requirement that all property owners on the private property owner be provided sufficient notice of the upcoming application.

Management of aquatic plant communities to be stable and healthy is a crucial component of the state’s duty to protect our waters. The rulemaking currently working its way through DNR aims to do just that while balancing the needs of all stakeholders. This bill would shift the focus of APM in Wisconsin and undercut that rulemaking. Wisconsin Lakes is opposed to AB505.

WMC

Wisconsin's Chamber

TO: Members, Assembly Committee on Environment

FROM: Craig Summerfield, Director of Environmental and Energy Policy

DATE: October 6, 2021

RE: Support for Assembly Bill 505, permit exemption for ponds

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in support of Assembly Bill 505. We especially appreciate the work of Representative Steineke and Senator Feyen to bring forward this legislation.

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. That mission includes supporting legislation that removes unnecessary red tape that impedes the ability of businesses to operate in the state.

Assembly Bill 505 exempts qualifying private ponds from the DNR's permitting requirements for aquatic plant management. Targeted herbicide applications are a proven technique to remove nuisance plants, especially invasive species, and an important tool in the proper management of lakes and ponds.

Specifically, the bill provides an exemption from permitting requirements for small, private ponds (under 10 acres) if the herbicide applicator is certified by DATCP, only EPA-registered products are used, and the applicator follows all EPA requirements for application rates and methods. The proposal utilizes a definition of private pond similar to what is found in the DNR's current administrative code regulating aquatic plants.

Neighboring Michigan, Minnesota, Illinois, and Iowa already exempt small, private bodies of water from permitting requirements for herbicide treatments. Surprisingly, there is no similar exemption allowed under Wisconsin law.

This legislation is a reasonable and common-sense approach to align Wisconsin's law for treating invasive plants in private ponds with those of our surrounding states. WMC urges committee members to support AB 505.

Thank you for the opportunity to testify. I am happy to answer any questions.



Wisconsin Wetlands Association Testimony on Assembly Bill 505

Jennifer Western Hauser, Policy Liaison

Thank you for the opportunity to comment on Assembly Bill (AB) 505 related to the aquatic plant management program operated by the Department of Natural Resources. On behalf of the Wisconsin Wetlands Association (WWA), we appreciate the opportunity to comment.

WWA is a statewide nonprofit organization dedicated to the protection, restoration, and enjoyment of wetlands. Our focus is on promoting wetlands for all the solutions they offer to problems across the landscape. These are problems nobody wants – flooding, drought, declining water quality and fisheries, and habitat destruction. *For wetlands to help us address these problems, we need enough wetlands in good condition to provide vital storage and filtering capabilities.*

Assembly Bill 505 defines a private pond as a surface water less than 10 acres in size that is surrounded by the private property of one or more owners, with no public access to the water, and that has either no surface water discharge or surface water discharge that can be controlled.

Though likely unintentional, this definition encompasses wetlands that fit these characteristics. Approximately 20% of Wisconsin's wetlands (~ 1 million acres), are not directly connected to surface waters and most are less than 10 acres in size, demonstrating the potential extent of this exemption.

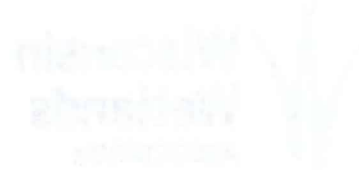
Wisconsin Statute 23.32(1) defines “wetland” as an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation *and* which has soils indicative of wet conditions. As implied by this definition and in other statutes and code, surface waters include wetlands.

Manual, mechanical, chemical, and biological treatments are important parts of effective aquatic plant management strategies in ponds and wetlands. However, because of the diversity of wetland types, conditions, and situations, vegetation management in wetlands can involve very different considerations than those involved for vegetation management in ponds. For example, wetlands have more and different plants, including some that are rare. Because of this, it is appropriate to treat the oversight of their management separately.

To ensure the definition of private ponds in AB 505 doesn't include wetlands, we recommend adding language to the private pond definition clarifying that such ponds also do not meet the definition of wetland under Wisconsin Statute 23.32(1).¹

WWA is interested in ensuring that wetland aquatic plant management is at once an efficient, cost-effective, and deliberate process so that the best work is done for the resource and agree that some adjustments may be needed. For this reason, we have been participating in the DNR's early stages of gathering input on potential revisions to NR 107 (Chemical Aquatics Plant Management) and NR 109 (Manual and Mechanical Aquatic Plant Management). As part of that, we have recruited private sector consultants from our membership to participate in DNR's efforts to collect input from professionals trained comprehensively in wetland management.

¹ WWA does not have reservations in a more streamlined process applying to aquatic plant management in areas that meet the definition of “artificial wetland” under Wisconsin Statute 281.36(4n). These artificial wetlands tend to be created in developed areas for stormwater management.



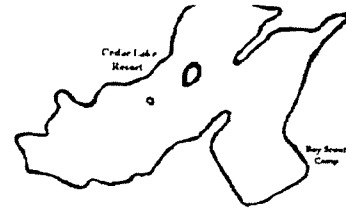
We will continue to work with WDNR to improve the wetland aspect of the Aquatic Plant Management program under their jurisdiction and continue to be available if the Legislature has questions or concerns on wetland-specific aquatic plant management policies.

We appreciate the opportunity to offer these comments and suggestions on AB 505.

Jennifer Western Hauser, Policy Liaison

Jennifer.westernhauser@wisconsinwetlands.org

608-692-8640



Cedar Lake Improvement Association

Assembly Committee on Environment

2021 Assembly Bill 505

Relating to Aquatic Plant Management Plans and Permit Exemptions

Committee on Environment Clerk: Adam Tobias
Adam.Tobias@legis.wisconsin.gov

Cc: Committee on Environment Chairman; Rep. Kitchens
Rep.Kitchens@legis.wisconsin.gov

October 6, 2021

Please accept this document submitting testimony IN FAVOR of AB 505. In addition, we request the document be distributed to the Members of the Committee and included in the Committee Record.

The Cedar Lake Improvement Association (CLIA) and the Town of Schleswig Sanitary District 1 Cedar Lake members are made up of the riparian owners of Cedar Lake in Manitowoc County, Wisconsin and members of the Town of Schleswig Sanitary District 1 that surrounds Cedar Lake.

Our lake organization was denied the opportunity to properly treat and manage Cedar Lake by the DNR. In addition to exempting private ponds from permitting requirements, AB 505 would force the DNR to utilize peer-reviewed science and give equal consideration to herbicide treatments, which are a proven method to manage invasive species like Eurasian Watermilfoil. We urge members of the Committee on Environment to pass this commonsense reform so that our lake is not overrun by invasive plants

Cedar Lake is approximately 136 acres with a maximum depth of 21 feet. It is the largest public lake in Manitowoc County and is consistently the cleanest lake in Manitowoc County. As Lake organizations, we have worked diligently for more than 10 years to keep invasive species out of Cedar Lake. We have done this through weed cutting, hand pulling, chemical application to invasives, and many weekends of lake residents monitoring the boat landing for Clean Boats Clean Water.

To date we have the following documented invasive species in our lake: Banded Mystery Snail, Eurasian Water Milfoil, Yellow Iris, Zebra Mussel. These have been identified through a full lake study done in 2016, in conjunction with our Weed Cutting permit.



Cedar Lake Improvement Association

By far, the most difficult to control has been Eurasian Water- Milfoil (EWM). We spend approximately 4 hours 5 days a week cutting throughout the summer. While this “trims” the tops of the plant, it does not eradicate it, and it adds to further spread of the plant as cut pieces float throughout the lake only to grow elsewhere. We have yearly performed chemical treatment to stop and deter the growth utilizing WDNR permits.

Approximately 3 years ago we obtained a permit to “pull” the plants by the roots through what is called the DASH program. This is where scuba divers use a suction tube at the bottom of the lake to remove the plant. The divers took over a ton of weeds out from only one of three areas, and barely moved from the spot they started at. Their assessment was the area was too big for them to handle.

In 2021, we had the Lake Plan/Study updated by Wisconsin Lakes and Ponds Research LLC, an aquatic engineering firm who utilizes biologists with degrees in aquatic management or a biology related field. In spring of 2021 they completed a full lake survey identifying approximately 11.5 acres of EWM in Cedar Lake. Approximately 8% of the lake has been affected.

They recommended multiyear approach of a chemical application to the 11.5 acres in summer of 2021 and a follow up of the lake status for the next several years to mitigate the spread of the invasive. As with most public lakes, the ability to eradicate EWM entirely is not in our future. Mitigation is the best we can achieve.

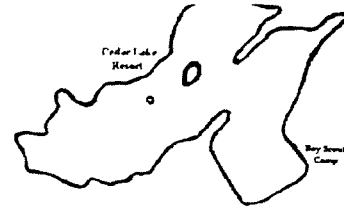
The choice of chemical was ProcellaCor EC herbicide was selected, it has a 40x-100x active ingredient that eradicates the invasive aquatic weed and won't impact native aquatic species. This chemical was registered for aquatic use by the EPA in 2017. There are no restrictions on swimming, eating fish from treated waterbodies, or water for drinking water after application. Attached is the WDNR Chemical Fact sheet for the product.

The Staff at Wisconsin Lakes and Ponds applied for 11.5 acres of treatment, we received a permit for only 5.4 for those acres. Only half of what was needed. The treatment of the 5.4 ac was successful, and results were- no EWM and native plants thriving in the treated area. While we were not permitted for the entire 11.5 acres, we will continue working with Wisconsin Lakes and Ponds to obtain permits from WDNR and continue to mitigate EWM in Cedar Lake.

What have we learned:

- Lake management for EWM needs to have the ability to utilize Chemical/Herbicide products as required. **Without equal consideration of chemical application, invasives such as EWM will continue to spread out of control.**

TOWN OF
SCHLESWIG
Sanitary District 1 Cedar Lake



Cedar Lake Improvement Association

- The option of “pulling” or DASH programs are useful for small areas that are not dense. They are expensive and very time consuming. Trying to “hand pull” or suction acres of EWM is not feasible. We experienced that firsthand.
- The option of cutting EWM is time consuming, costly, and actually spreads the invasive.
 - Constant cutting is required due to the fast-growing nature of the plant and the cutting depth which is limited by the permit
 - Cutting is also limited by the path allowed to cut per the permit. EWM does not follow the “permitted path”, it roots randomly throughout the lake.

The WDNR has noted in their comments of SB 494 Aquatic Plant Management Plans and Permit Exemptions, “ Approximately 90% of the 1,900-2,000 permits the department issues every year are for chemical management of the waters of the state.”

This statement makes logical sense, however, should not be viewed as a negative. Only large lakes with financial resources will have the ability to purchase, run and maintain a Mechanical Weed Harvester. The cost of one unit can be upwards of 200K, plus maintenance and wages to harvest. Sanitary Districts or Lake Districts can levy taxes to pay for Harvester, however even at the size of our Lake/Sanitary District we could not do it without the support of our Town and the ability to obtain grants. Notably, mechanical harvesting **does not** stop EWM – it just trims the tops. Hand pulling/ DASH is only viable for small areas that are not dense. While it removes the plant, it is not viable for many lake applications.

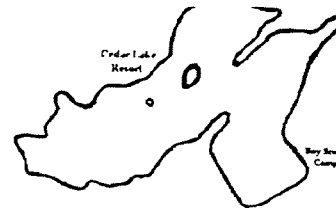
This would leave Chemical/Herbicide, as the predominant and necessary method of stemming the growth of EWM. This would and it should not be a surprise it is the most used method for EWM mitigation on applications to the WNDR for a permit.

The WDNR has also noted in their comments of SB 494 Aquatic Plant Management Plans and Permit Exemptions, “ in 2019, 29,632 liquid gallons and 29,678 granular pounds of pesticide were applied to waters of the state.”

Let’s put this in perspective.

- Wisconsin has over 15,000 lakes and 84,000 miles of rivers and streams that not including Lake Michigan or Lake Superior. <https://dnr.wisconsin.gov/topic/Rivers/FactsResources.html>
- There are approximately 666 BILLION gallons of water in Lake Winnebago alone. <https://dnr.wisconsin.gov/topic/WaterUse/WithdrawalSummary.html>
- 30,000 gallons- the amount of chemicals/herbicide put into Wisconsin lakes - **is equal to the amount of water in a 20 x 40 ft pool with average depth of 5”** . https://www.akronohio.gov/cms/resource_library/files/3d08454d34bf59ab/calculateswimmipool_2015.pdf

TOWN OF
SCHLESWIG
Sanitary District 1 Cedar Lake



Cedar Lake Improvement Association

- Granular pellets are applied in varying levels. For example Aquacide (2,4-D) pellets 50 lbs treats .5 acres. 30,000 pounds would treat 300 acres. Lake Winnebago is 131,939 acres. 30,000 pounds would treat approximately .2% of Lake Winnebago. Or approximately two time the acres of Cedar Lake. <https://www.killlakeweeds.com/products/aquacide-pellets>

The amount of treatment applied is a very small amount in respect to the volume and acreage of lakes and streams in Wisconsin.

While the WDNR requests the ability to use integrated pest management (IPM) in dealing with invasive species, they also need to recognize there is little in the “toolbox” to effectively deal with the adverse effects of EWM and other invasives. Targeted treatment utilizing Chemicals/herbicides have proven to eradicate EWM without damaging plants, fish, or the quality of the water. This eradication “ clears the table” for healthy lake plants to once again grow .

Sanitary District, Lake Districts, Lake Associations, Riparian landowners need to have the ability to properly take care of mitigating invasive species in their lakes. We ask you to pass AB 505 to provide the surety we need to obtain the proper permitting of Chemicals/Herbicides needed to allow our lakes to be enjoyed by all citizens of Wisconsin.

Micheal Strebe
Town of Schleswig
Sanitary District 1
Chairman

Josh Knuth
Cedar Lake Improvement Association
President

I'm the founder of The Pond People. For 20 years we've been improving water quality through proactive methods. Additionally, we've completed thousands of successful chemical treatments, without incident. Each of our applicators are certified by Wisconsin Department of Agriculture, Trade, and Consumer Protection. WDATCP's website states, "Our mission is to partner with all the citizens of Wisconsin to grow the economy by promoting quality food, healthy plants and animals, sound use of land and water resources, and a fair marketplace." We believe in this mission.

In 2001 we started by thinking we would serve both lake and pond clients. Early that first summer we were referred to a lake association and ultimately invited to a meeting that was attended by a DNR representative. The priority topic on the agenda was eradicating Eurasian Water Milfoil (EWM) in the lake. The lake had been mapped and all the EWM beds were known. Accordingly, even as a newbie to the profession, I knew the 2,4-D protocol provided a realistic opportunity to eradicate EWM without eliminating native species. The lake association wanted to proceed with the obvious strategy, but the DNR representative objected and instead proposed harvesting, supported by a grant to cover half of the harvester cost. EWM spreads by fragmentation, so this recommendation made no sense whatsoever. However, the DNR representative had the only vote that mattered, and the lake association proceeded accordingly. That meeting was an eye-opener as to how much control the DNR has with lakes. That day I decided The Pond People would only focus on private ponds.

Fast forward to 2021. In the past 20 years, the example above has mutated itself into the DNR denying permits for no rational reason, calling anything added to Wisconsin waters 'pollutants', and micromanaging situations to such a ridiculous level that they have proposed a complete rewrite of NR107 - apparently based on the false belief that only the DNR cares about water quality and if everyone listened to them the planet would be a better place.

During that same 20 years, we've worked hard to become an asset to the pond owners we have as clients. To that end, we:

1. Developed a healthy bacterium to metabolize copper.
2. Developed a healthy bacterium to eliminate blue green algae.
3. Developed a healthy bacterium to eradicate zebra mussels.
4. Developed a healthy bacterium to eliminate muck as well as mitigate phosphorus, nitrogen and ammonia.
5. Invested over \$200,000 in research related to bacterium formulations (referenced above) and chemical methods to successfully manage watermeal, aquatic moss, and algae strains that produce their own food source.
6. Invested \$1,000,000 in the manufacturing facility and process for the natural microbial products used in our business. We manufacture two proprietary products from this facility in Shawano County.
7. Have purchased 100% of all products and raw materials from U.S. sources since day one.
8. Pay over \$250,000 annually in taxes.

Other lake and pond management companies are doing similar things. Why? Because we care about the water resources we've been hired to manage. Our clients, their children, and their grandchildren swim and fish in the water we and other professional management companies manage. We further realize that, in a fair marketplace, property owners have rights, and unilaterally taking away rights is wrong.

Drilling down to the specific exemption for private ponds, called out in AB 505 and the related Senate Bill, I would like to share a related example. When a dentist receives his training and license to practice, does he/she need a permit to remove mercury fillings from the patient? After the filling is removed, does he/she need to file a report as to anesthesia used to facilitate removal of the mercury filling? Obviously, no. That level of regulation would be laughed at. He/she is expected to follow the rules of his/her practice and license.

As pond professionals, we are asking for the same treatment. From a technical perspective,

- a. We are responsible to use Best Management Practices to mitigate chemicals leaving the client's pond.
- b. We are responsible to follow chemical label rates prescribed by the EPA.
- c. We are licensed by WDATCP.

AB 505's proposed language facilitates removing an expense and burden to the taxpayer, without compromising water quality, by specifically only exempting professionally managed private ponds from chemical permitting if: a) The applicator is certified by WDATCP; b) The applicator only uses EPA approved products for chemical treatments; and c) The applicator follows the EPA approved product label for the chemical. Adding the need for a professional to obtain a DNR permit, and then file the related follow up report after the treatment, adds a level of micromanagement and redundancy that is *not required in other professions*.

Finally, there are practical reasons to exempt private ponds under professional management. As several of our clients have expressed in written testimony, they care about their ponds more than anyone from the DNR could ever do. More practical than this obvious fact is that there are 15074 lakes in Wisconsin and approximately 45,000 ponds. The DNR currently issues 1200 pond permits, annually, to companies like ours. The 45,000 ponds would all fit inside of Lake Petenwell and the 1200 permitted ponds are only 2.7% of the total ponds. Anyone reading this, and hearing the related DNR objections, must be wondering why the DNR would be putting up such a fuss over something that makes so much sense.

Respectfully submitted October 6, 2021.

Scott Schara, President
The Pond People

To: Representative Joel Kitchens, Chair, Assembly Committee on Environment
RE: Written remarks in support of AB 505 (Private Pond Exemption Legislation) for submission for the committee record

Comments submitted via e-mail to Scott Schara, CEO, the Pond People (www.pondpeopleonline.com)

There is plenty you could say. How important it is to maintain a healthy pond for the fish, other wildlife and for family and friends who come to swim and play in the water. Add to that how necessary it is to manage a pond to keep it free from invasive and destructive water and shoreline plants that would otherwise turn it into a stagnant, dead body of water rather than a vibrant life force. The use of aeration to keep oxygenation at appropriate levels, the addition of safe products to reduce algae growth, decrease muck buildup and inhibit the spread of invasive plant species are all important aspects of providing the best course of action to achieve the desired outcome of a clean, healthy and user friendly body of water.

Hope this helps,

Wendy Bemis
7123 Cedarview Road
Cleveland, WI 53015

Hi Scott

Thanks for the email. As pond owners, we care for our ponds and the wildlife that relies on those ponds for survival. We don't need politicians to regulate what we can and cannot do with our property. Property rights is something that is sacred and we are continually losing it a little at a time. I fear there's many more people out there that have no idea that big government is coming for their private property.

Thanks,

Teresa Claerbout
N5612 Meadowlark Road
Sheboygan Falls, WI 53085

Hi,

My husband and myself would like to encourage you to remove the restrictions on private ponds that are on private lands. The concerns that you have for these bodies of water are valid, but private pond owners are way ahead of you.

We don't think that our lawmakers realize that we treat the creatures that reside in our ponds with great affection. Deer, turkey, sandhill cranes, egrets, blue herons, all drink from our pond! Every year we have many ducklings, and goslings that are raised in the waters of our ponds. Many different species

of turtles and frogs are also in our ponds. Can't forget the fish! If our water wasn't clean, we wouldn't have this traffic.

All these creatures have very delicate eco systems they require, clean water that's treated by professionals that understand that we care about all the inhabitants in our pond. We have many companies that are proficient at providing these services at a very reasonable cost.

Our children who play in these ponds, and occasionally drink a bit of water! We want that water to be safe. We also don't want the bottom of our ponds to release nasty chemicals that get stirred up with every step. By using high quality natural substances, the professionals do our ponds a great service.

In our part of NE Wisconsin so many homeowners have ponds, every one that we talk to, they care and want their ponds to be safe for wildlife and children.

In our state, the use of tax dollars to regulate these privately owned ponds, in our eyes is a waste. We are very sure that other areas could benefit from the money spent.

The lawmakers of Wisconsin should trust the private pond owners who have put many thousands of dollars into developing these sanctuaries, for the wildlife and their families. We keep them safe on our own, without the overreach from the State of Wisconsin.

Thank you
Dan & Sue McGraw
3905 Sugar Bush Road
Lena, WI 54139

Dear Scott:

Thanks for the heads up on the pending legislation to curb some of the overreach that is involved with private ponds. Please feel free to share my thoughts.

First, let me thank you and your company for everything you have helped us achieve on our farm property. The thought of having to apply and reapply for permits every time something changes or simply needs to be done is absurd. Time delays, inefficiency and a bunch of extra cost results. We would feel much better spending our efforts on results and not stroking the ego of some little unaccountable bureaucrat by providing applications and reports that no one probably reads. To be honest, I am deeply offended that the powers that be treat land owners as the enemy. They seem to think they are the only ones that know what is best. They are on the public payroll (i.e., using our money) to tell us how to manage our property. When their day is done, they go home with their paycheck and benefits. We are home. This is where we live and we put our heart and soul into our properties. We spend sweat, blood, tears and our own cash to improve our property. To somehow imply that we want to, in any way, harm the land that we will pass on to our children and grandchildren is an insult.

If these people had any record of true success, I may be inclined to listen to them. However, I am a 70 year old Wisconsin native who happens to live on the banks of the Oconto River. I purchased my property there in 1990. Since then, we have slowly but surely watched the invasion of Eurasian

milfoil. We have attempted to work through our advancement association to lessen the problem. The Wisconsin DNR has provided roadblocks and damaging information. This year, after several years of effort, the water level has been drawn down in an effort to reduce the out of control weeds. The problem is that the water was not lowered enough to actually do anything. We are seeing a weed crop like never before flourishing on the newly created mud flats. It reminds me of the rice paddies I saw in Viet Nam. Same principle.

So... to the people who brought us Eurasian milfoil and phragmite, I say...Let us alone and let us take care of our property without your help. We will do just fine.

Thank you.

Terry Weyers
Happy Lane Farm, LLC
W4270 Happy Lane
Bonduel, WI 54107

Scott Schara – The Pond People
Assembly Committee on Environment
Wednesday, October 6, 2021

Testimony in Favor of Assembly Bill 505

I'm the founder of The Pond People. For 20 years we've been improving water quality through proactive methods. Additionally, we've completed thousands of successful chemical treatments, without incident. Each of our applicators are certified by Wisconsin Department of Agriculture, Trade, and Consumer Protection. WDATCP's website states, "Our mission is to partner with all the citizens of Wisconsin to grow the economy by promoting quality food, healthy plants and animals, sound use of land and water resources, and a fair marketplace." We believe in this mission.

In 2001 we started by thinking we would serve both lake and pond clients. Early that first summer we were referred to a lake association and ultimately invited to a meeting that was attended by a DNR representative. The priority topic on the agenda was eradicating Eurasian Water Milfoil (EWM) in the lake. The lake had been mapped and all the EWM beds were known. Accordingly, even as a newbie to the profession, I knew the 2,4-D protocol provided a realistic opportunity to eradicate EWM without eliminating native species. The lake association wanted to proceed with the obvious strategy, but the DNR representative objected and instead proposed harvesting, supported by a grant to cover half of the harvester cost. EWM spreads by fragmentation, so this recommendation made no sense whatsoever. However, the DNR representative had the only vote that mattered, and the lake association proceeded accordingly. That meeting was an eye-opener as to how much control the DNR has with lakes. That day I decided The Pond People would only focus on private ponds.

Fast forward to 2021. In the past 20 years, the example above has mutated itself into the DNR denying permits for no rational reason, calling anything added to Wisconsin waters 'pollutants', and micromanaging situations to such a ridiculous level that they have proposed a complete rewrite of NR107 - apparently based on the false belief that only the DNR cares about water quality and if everyone listened to them the planet would be a better place.

During that same 20 years, we've worked hard to become an asset to the pond owners we have as clients. To that end, we:

1. Developed a healthy bacterium to metabolize copper.
2. Developed a healthy bacterium to eliminate blue green algae.
3. Developed a healthy bacterium to eradicate zebra mussels.
4. Developed a healthy bacterium to eliminate muck as well as mitigate phosphorus, nitrogen and ammonia.
5. Invested over \$200,000 in research related to bacterium formulations (referenced above) and chemical methods to successfully manage watermeal, aquatic moss, and algae strains that produce their own food source.
6. Invested \$1,000,000 in the manufacturing facility and process for the natural microbial products used in our business. We manufacture two proprietary products from this facility in Shawano County.
7. Have purchased 100% of all products and raw materials from U.S. sources since day one.

8. Pay over \$250,000 annually in taxes.

Other lake and pond management companies are doing similar things. Why? Because we care about the water resources we've been hired to manage. Our clients, their children, and their grandchildren swim and fish in the water we and other professional management companies manage. We further realize that, in a fair marketplace, property owners have rights, and unilaterally taking away rights is wrong.

Drilling down to the specific exemption for private ponds, called out in AB 505 and the related Senate Bill, I would like to share a related example. When a dentist receives his training and license to practice, does he/she need a permit to remove mercury fillings from the patient? After the filling is removed, does he/she need to file a report as to anesthesia used to facilitate removal of the mercury filling? Obviously, no. That level of regulation would be laughed at. He/she is expected to follow the rules of his/her practice and license.

As pond professionals, we are asking for the same treatment. From a technical perspective,

- a. We are responsible to use Best Management Practices to mitigate chemicals leaving the client's pond.
- b. We are responsible to follow chemical label rates prescribed by the EPA.
- c. We are licensed by WDATCP.

AB 505's proposed language facilitates removing an expense and burden to the taxpayer, without compromising water quality, by specifically only exempting professionally managed private ponds from chemical permitting if: a) The applicator is certified by WDATCP; b) The applicator only uses EPA approved products for chemical treatments; and c) The applicator follows the EPA approved product label for the chemical. Adding the need for a professional to obtain a DNR permit, and then file the related follow up report after the treatment, adds a level of micromanagement and redundancy that is not required in other professions.

Finally, there are practical reasons to exempt private ponds under professional management. As several of our clients have expressed in written testimony, they care about their ponds more than anyone from the DNR could ever do. More practical than this obvious fact is that there are 15074 lakes in Wisconsin and approximately 45,000 ponds. The DNR currently issues 1200 pond permits, annually, to companies like ours. The 45,000 ponds would all fit inside of Lake Petenwell and the 1200 permitted ponds are only 2.7% of the total ponds. Anyone reading this, and hearing the related DNR objections, must be wondering why the DNR would be putting up such a fuss over something that makes so much sense.

Respectfully submitted October 6, 2021.

Scott Schara, President
The Pond People

STATEMENT FOR PRESENTATION TO THE WISCONSIN
ASSEMBLY COMMITTEE FOR THE ENVIRONMENT
PUBLIC HEARING ON ASSEMBLY BILL 505/SENATE BILL 494
OCTOBER 6, 2021

Author: Thomas Greenwald on behalf of the Robert K Burns Trust

On behalf of the family of Robert Burns and Virginia Burns and the Robert K. Burns Trust and its beneficiaries, I would like to present this Statement in support of Assembly Bill 505/Senate Bill 494.

A principal goal of Assembly Bill 505 is to prohibit the imposition of undue financial burdens on property owners of private ponds via excessive and unnecessary administrative requirements imposed by the DNR. Our Trust is the “owner” of a “private pond” as defined in the bill.

As I understand the situation, the DNR intends to require any certified commercial applicator of chemical treatment to a private pond, to seek a permit from the DNR whenever any individual treatment is intended –which would include a simple pouring into the pond a blue dye which would have no possible ill effect on the pond or pond environment. This would, of course, be a costly process for the applicator, which we all know will be passed on to we, the pond owners. The DNR claims this is necessary to protect “State waters” from being harmed. By whom, I ask. Listening to the “Statement” [written beforehand and read verbatim] presented by the DNR at the Senate Public Hearing held on August 18, 2021 [she could not speak independent of the script from which she was reading which was certainly reviewed by the “powers to be” at the DNR and she had to have the DNR attorney sit next to her] erroneously conclude that without such “regulations” private pond owners would contaminate those hallowed waters indiscriminately.

That is absolutely false. Owners of private ponds that hire professional companies to maintain/improve the quality of their ponds, wish to maintain the highest quality of water in their ponds. Our Trust is a prime example.

In 1967 Robert and Virginia Burns, being very proud of their Irish heritage, purchased the first of three [3] farm properties in Aeskeaton [Holland Township - Brown County]. Bob spent the depression years growing up and attending school in Aeskeaton, Saint Patrick's Church and School -- which these properties surround.

Bob and Ginny wanted to have a place for their children, grandchildren and descendants to enjoy as family and to appreciate their Irish Heritage. The "road" began with the construction in 1970 of a 1.6 acre pond (approved and authorized by the DNR), followed by the construction of an actual replica of an "Irish Cottage". The plans for the Cottage were acquired by Bob and Ginny on a visit to Ireland -- the plan was called the "Shannon Farm House". It is unique, there is no other authentic Irish Cottage in Wisconsin or even surrounding states that we are aware of.

The pond, which was to be, and is, the center of this family retreat, was constructed in 1970. Great care and expense was exercised in creating a wonderful beach and swimming area. I am attaching an aerial view of the Cottage and the Pond. Four [4] generations of Bob and Ginny's family have enjoyed this little bit of Ireland.

The cottage, property and pond have been religiously cared for all of these years. This little bit of Ireland is loved by all -- even the one-year-old twins which are the latest addition to this "clan". To care for this place had and does require a tremendous amount of dedicated work and expenditures which the family and the Trust has so willingly provided. Just in the last five [5] years the Trust has engaged The Pond People -- a professional pond management company, to restore/maintain the pond in a pristine state, including maintaining the highest quality water anywhere. The Trust has, over those last five [5] years, paid out over \$70,000.00 to provide for the services offered by The Pond People. This certainly is NOT consistent with the expressed fears of the DNR employees that private pond owners that have their ponds professional cared for and managed, are owners that will indiscriminately contaminate their ponds.

We urge the Wisconsin Assembly and Senate to pass this legislation, especially the provisions exempting "private ponds" from the attempted over management by the DNR.

Thank You for allowing us to present this Statement.

Thomas Greenwald on behalf of the Robert K. Burns Trust





