



ALEX A. DALLMAN

STATE REPRESENTATIVE • 41ST ASSEMBLY DISTRICT

September 27, 2023

Testimony in favor of Assembly Bill 318

Assembly Committee on Environment

Good morning Chairman Oldenburg and members of the committee and thank you for allowing me to testify in favor of Assembly Bill 318. This bill will exempt certain private ponds from the Department of Natural Resources (DNR) permitting process for aquatic plant management (APM).

Wisconsin is home to thousands of small bodies of water such as ponds. Ponds across Wisconsin are everywhere – both in urban and rural areas – and are used for a wide range of purposes including landscaping and other recreation such as swimming. But properly managing these small Wisconsin ponds for invasive and non-invasive species has grown to become an onerous process.

Owners of small private ponds must hire professional applicators to treat invasive plant species. These applicators must pay a fee and obtain a permit from the DNR in order to control invasive plant species. Under current law, applicators are required to use chemical treatments to maintain these ponds. The DNR also reports that there has been an uptick in permit applications due to owners of private ponds being unaware of the permitting requirements under NR 107.

AB 318 will change this process slightly and make it easier for those individuals who own a private pond – one that is located entirely on the land of the owner, with no surface water discharge, and without access to the public – are able to manage their aquatic plants in a less burdensome way. This bill will exempt a person from requiring a permit from the DNR if:

- They are treating a pond as a commercial applicator by the Department of Agriculture, Trade, and Consumer Protection
- Use only chemicals labeled and registered by the U.S. Environmental Protection Agency
- Follow EPA directions for appropriate application rates and methods

This bill also clarifies what a private pond is defined as under Wisconsin Statutes. The definition of a private pond is, “a waterbody located entirely on the land of an applicant, with no surface water discharge, and without access to the public.” This is problematic because it doesn’t define how large a private pond is and it also doesn’t take into consideration ponds that surround one or more owners such as a retention pond. AB 318 will also update the current definition of a private

pond to include those that are surrounded by one or more individuals and that are less than 10 acres.

Lastly, Wisconsin's neighboring states currently provide permitting exemptions for aquatic plant management in private ponds. This bill will put Wisconsin in-line with our neighbor states. Simply put, AB 318 will remove unnecessary burdens and restore the rights of property owners while ensuring Wisconsin's private bodies of water are maintained.

A handwritten signature in black ink, appearing to read 'Alex Dallman', with a long horizontal flourish extending to the right.

Alex Dallman
State Representative
41st Assembly District



DAN FEYEN

STATE SENATOR

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To: The Assembly Committee on Environment
From: Sen. Dan Feyen
Re: Assembly Bill 318

Hello Chairman Oldenburg and members of the committee, thank you for taking the time to hear testimony on AB 318.

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.

Senate Hearing Testimony
Scott Schara, The Pond People
September 28, 2023

Practical

- People care more about their ponds than the DNR.
- If the DNR has a real budget, time and money, doesn't the 80/20 rule apply?
- All ponds in Wisconsin would fit inside Lake Petenwell (23173 acres 44' max) – 1 of 15000 Wisconsin lakes; there are about 45000 ponds, average size ½ acre – we have 2/3 of the state mapped and extrapolated this data). We would like to see our state resources used wisely and exempting private ponds aligns Wisconsin with the surrounding states. This bill frees up resources to be used on higher priorities. As citizens, we care about spending our money wisely.
- How do pond management companies, which should be your allies, plan when the regulatory agency is trying to control them? Walk through a new client call. Stories about what people do and believe.

Factual

- Near 100% of the permits are issued to licensed applicators, who need the least regulation (see Technical).
- Micromanagement – to construct a pond, need a tracking pad and silt fence but the 80-farm field next door doesn't (this bill isn't about construction, but giving context of what's happening).
- Permit doesn't allow for certain treatments that make sense – winter treatments of CLP, for example.
- You need a stocking permit to stock fish in a private pond – why?
- You need a license to fish in your own pond – multiple examples.

Statewide Fishing Restrictions

IT IS ILLEGAL —

LICENSES

It is illegal:

- to fish in any waters of this state without a Wisconsin fishing license and stamp privilege as required. You must be able to present your fishing license to a warden on request. Even waters with no public access (including most private ponds) are considered waters of the state and the appropriate license, tag or stamp is still generally required. *Note: An angler fishing in a man-made artificial pond that is not connected to any other waters of the state located entirely on private lands of one owner does not need a fishing license if the owner has given the angler permission to fish in that pond. All other rules apply.*
- It seems like regulating is about control and taking away property rights than caring about 'waters of the state.'

Technical (compare to a dentist)

1. As certified professionals:
 - a. We must use Best Management Practices to mitigate chemicals leaving the client's pond.
 - b. We must follow chemical label rates prescribed by the EPA.
 - c. Another layer of regulation adds an unnecessary redundant burden.
 - d. We must maintain a log of all treatments due to general permit from WDATCP.
2. Regulation adds the permit process and monitoring – there's no purpose.

Conclusion: The bill's proposed language facilitates removing a burden, without compromising water quality, by specifically only exempting 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.

Passing this bill is a no brainer and shows the desire to work together with the professionals on the front lines.



TO: Members, Assembly Committee on Environment

FROM: Craig Summerfield, Director of Environmental and Energy Policy

DATE: September 28, 2023

RE: Support for Assembly Bill 318, permit exemption for private ponds

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in support of Assembly Bill 318. We especially appreciate the work of Representative Dallman 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 318 exempts qualifying private ponds from the DNR's permitting requirements for treating invasive or nuisance plants. Specifically, the bill provides an exemption from permitting requirements for private ponds under 10 acres only if all of the following criteria are met:

- The herbicide applicator is certified by DATCP
- Only EPA-registered products are used
- The applicator follows all EPA requirements for application rates and methods

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

It should be noted that similar legislation (2021 SB 494) passed the Legislature last session, but unfortunately was vetoed by Governor Evers. Last session, the DNR was working on a broad aquatic plant management administrative rule (CR 22-002), and concerns were raised the legislation would disrupt the DNR's rulemaking process. Following that veto, that rule was ultimately withdrawn by the DNR, and there is no pending rulemaking to disrupt.

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 318.



Assembly Committee on Environment

2023 Assembly Bill 318

Aquatic Plant Management Plans and Permit Exemptions

September 28, 2023

Good afternoon, Chair Oldenburg, 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 Attorney Michael Kowalkowski. Thank you for the opportunity to testify, in opposition, to Assembly Bill 318 (AB 318), related to aquatic plant management (APM).

AB 318 makes significant changes to the department's duties to protect and regulate the control of aquatic plants. The bill's proposed changes are not consistent with the purpose of current law to protect and develop diverse and stable communities of native aquatic plants. The bill is also inconsistent with the state's duty to protect the public interest in navigable waters.

First, AB 318 emphasizes the suppression or eradication of invasive or nuisance species to the greatest extent possible. At first glance this may seem like a desirable outcome. However, eradicating aquatic plants can have significant negative effects on water quality, fish and wildlife, and the ecological health of Wisconsin waters. Current law already allows for eradicating new or susceptible populations of invasive species. It also allows the use of chemicals as practical to manage aquatic plants. The approach under this bill conflicts with the best practices to reasonably manage state waters.

Second, the bill does not provide protection for waterbodies under 10 acres. Many of these waterbodies are natural, navigable waters held in trust for the public. These waters provide important habitat for fish and wildlife, as well as threatened and endangered species. The department is supportive of reducing the regulatory burden for the owners of small, manmade private ponds, such as landscape and ornamental ponds. However, this bill goes much further and affects natural waterbodies such as lakes.

Finally, the bill may result in unintended implications for Wisconsin's Pollution Elimination Discharge System program and the state's legal obligations to the Ojibwe Bands within the Ceded Territory.

For these reasons, the department must oppose this bill as written.

Eradication Language

AB 318 sets eradication as the primary management goal for all waterbodies. However, management goals should be waterbody specific and set by local groups. By setting eradication as the goal of aquatic plant management, this bill limits options, and is likely to create ecological, social, and economic impacts as a result.

Wisconsin residents and visitors share our waters for fishing, hunting, boating, swimming, irrigation, and the enjoyment of natural scenic beauty. One person's aquatic plant nuisance could be 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 and local economies. Incorporating this language is contrary to the present mandate to protect and develop diverse native aquatic plant communities.

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 WPDES requirements.

The eradication language in this bill also limits practical management options. Eradication is possible in limited circumstances for prohibited invasive species. Eradication is not economically or ecologically possible for established invasive species. Over nine million dollars is spent annually on APM in Wisconsin. Half of that investment comes from lake associations and districts, local governments, and riparian property owners. In 2019, over 29,000 liquid gallons and over 29,000 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 and cost-effective to focus control efforts on aquatic plants that are causing an 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. A minimum of 45,000 waters of the state would be removed from the department's protective oversight. Many of these are natural navigable waters. 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 removal of regulatory oversight and broad eradication strategies will have implications for the state's responsibilities to Native American Tribes. The state has a legal obligation to offer to consult with the Ojibwe Bands on matters where wild rice may be affected within the Ceded Territory. 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.

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 have the opportunity to provide their input before any chemicals are applied to the water.

Without oversight, there would be no way to confirm if surface water discharge was controlled or if all homeowners around a waterbody were notified 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 coordination through a permit process, multiple chemical applications could take place by multiple property owners. Multiple chemical applications could inadvertently over-treat 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. In 2022, roughly 1,300 private ponds were permitted in the state. Under the current definition, private ponds are waters on the land of one owner, with no surface water discharge and no public access. The APM permit fee for ponds is \$20. Permits are issued within 15 business days after a complete application is submitted. This includes 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. 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

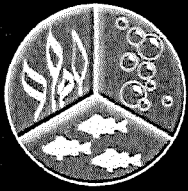
Equal consideration of chemical control is contrary to integrated pest management (IPM). IPM is Wisconsin's solution to manage the impacts of aquatic invasive species. Chemicals are a tool in the aquatic plant management toolbox, but with repetitive overuse, chemicals may become less effective. IPM is valuable because it asks resource managers to consider all the tools in the toolbox and to respond to changes in the field.

In addition, equal consideration of chemical control is not necessary to authorize chemical treatment. Approximately 90 percent of the 2,100 permits the department issues every year are for chemical management of waters of the state.

Conclusion and Alternatives

In conclusion, the bill proposed today has the potential to negatively impact water quality and degrade fish and wildlife habitat. These adverse effects may in turn impact fishing, hunting, and recreation. The approach under this bill also conflicts with practical and ecologically sound aquatic plant management. The department agrees there are ways to improve the efficiency of the aquatic plant management program, particularly for private ponds as defined in current law. The department would welcome the opportunity to discuss legislative or other solutions that can increase efficiency and efficacy while maintaining the vital protection of Wisconsin waters.

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.



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TO: Members, Assembly Committee on Environment
FROM: Jeff Stelzer – Owner/Senior Biologist – Lake and Pond Solutions, LLC
DATE: September 27, 2023
RE: Support for Assembly Bill 318

Thank you for allowing me to submit testimony in **support of Assembly Bill 318**, which provides a permit exemption for private ponds.

My name is Jeff Stelzer and I'm the owner of Lake and Pond Solutions, LLC. I have a Watershed Management degree from UW-Stevens Point and have been managing lakes and ponds as a DATCP certified applicator in the aquatics/mosquito category for 21 years. Additional experience in this field includes:

- Current member of the Midwest Aquatic Plant Management Society (MAPMS) and Accredited Business Member of the Society of Lake Management Professionals (SLMP)
- Supporter of Aquatic Ecosystem Restoration Foundation (AERF) and Responsible Industry for a Sound Environment (RISE)
- Presentations at multiple MAPMS annual meetings regarding invasive starry stonewort control
- Involved in Pontoon Classrooms, a learning experience for high school students in Waterford, WI
- Former member of Root-Pike Watershed Initiative Network
- Former President of the UW-Stevens Point (UWSP) student chapter of American Water Resources Association (AWRA)
- Former Lake Project Manager for the Environmental Task Force at UWSP
- Multiple state and national conference presentations including first place designations at UWSP's Undergraduate Research Symposium and WI AWRA Conference.

Lake and Pond Solutions, LLC started 22 years ago with a simple goal: Utilize high quality pond products and superior service to provide exceptional and environmentally sound lake and pond management. We have two branch locations in Wisconsin which employ 12 full-time employees and 4-6 college interns each year. Our degreed biologists manage over 2500+ waterbodies in Wisconsin and Illinois



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annually and have over 70 years of combined management experience. Management includes aeration, fountains, weed/algae control, beneficial bacteria, nutrient abatement, fish stocking, water sampling, plant surveys, aquatic plant management (APM) plans, and stormwater pond surveys.

Assembly Bill 318 exempts eligible private ponds from the DNR's permitting requirements for aquatic plant management. Importantly, **this exception would only apply to private ponds treated by licensed herbicide applicators that follow all EPA requirements.**

It is first important to point out that neighboring states including Michigan, Minnesota, Illinois, and Iowa already exempt small, private bodies of water from permitting requirements for herbicide treatments. This bill would add a similar, commonsense exception for Wisconsin.

Lake and Pond Solutions, LLC works in both Illinois and Wisconsin and can directly speak to the undue burden created here. In Illinois, we spend no time in permitting private ponds so there is zero financial burden. Pond issues that we are called in to solve can be dealt with immediately. In Wisconsin, it is estimated that we spend upwards of 2 hours per private pond permit to complete permit applications, review approved permits and cover letters, organize info for field crews, and document necessary parameters...and much of this time is for pond permits that are unchanged year after year. This results in hundreds of hours and over \$40,000 annually to comply with rules that don't exist in any neighboring states. Additionally, when we visit a private pond for the first time in Illinois, we can immediately deal with any observed issues. When we see a pond in Wisconsin for the first time, we now must quote the cost of a permit to the client who likely takes management into their own hands since they don't want to wait 3 weeks to get a permit to manage the problem. This leads to many untrained and unexperienced applications by pond owners that result in unchecked pesticide use and potential fish kills. It costs our small business tens of thousands if not hundreds of thousands in lost revenue. For the Wisconsin pond owners that decide to wait three weeks for a permit, it can potentially lead to unmanageable conditions that result in invasive species spread, use restrictions due to nuisance or blue-green algae growth, and even fish kills due to dissolved oxygen swings. The reality is that current burdensome private pond permitting is leading to more reckless pesticide use by private owners that could otherwise have been performed under the experienced watchful eye of registered aquatics companies with DATCP certified applicators.

We'd also be remised if we didn't mention and respond to some of the comments in opposition of this bill when it passed the assembly and senate last year before ultimately being vetoed by the Governor (Assembly Bill 505 and Senate Bill 494).



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Opposition to the bill previous mentioned:

- **“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.”**. This point is difficult to wrap our head around as Section 2.23.24 (2)(a)(1) is amended to read: “Implement efforts to protect and develop diverse and stable communities of native aquatic plants using widely accepted methods that are supported by peer-reviewed science to suppress or eradicate invasive or nuisance aquatic plants.”. AB318 specifically states there should be sound science used to manage waters of the state (note that this opposition is mostly related to public waters, NOT private ponds).
- **There is an overemphasis on chemical control without proper oversight.** The perceived notion that there is an overemphasis on chemical control is baseless as Section 23.24(3)(b) states: “The department shall give equal consideration to plans that will suppress or eradicate invasive or nuisance aquatic plants by use of chemicals....”. There is no overemphasis on chemical control, only a request for equal consideration due to the biases our industry has received in the past. Our company and others like us utilize many tools (mentioned above) to manage water that doesn’t get listed on a permit. This is what is considered Integrated Pest Management (IPM). When it comes to private ponds, there is currently very little oversight occurring. Most of the private pond permits have been submitted for years (some as long as 20+ years) and permitting is essentially a 3-week delay to managing a pond. This delay results in untrained pond owners taking management into their hands and out of experienced professionals. Even “hits” on the National Heritage Inventory (NHI) reviews for private ponds result only in “recommendations” and not actual restrictions. For example, actual language on permit approval cover letters for an NHI “hit” states: *“Special concern species may be found in this waterbody. Although not legally required because the species are special concern, the department recommends the permittee conduct minimal treatments to accomplish treatment goals in order to avoid potential impacts to species of concern. Chemicals toxic to herps are recommended not to be used.”* The NHI review doesn’t guarantee that a species is present in that specific pond and the department says they can’t legally restrict us, so arguing that they lose oversight doesn’t make a lot of sense. There are also no advanced notifications prior to treatment for private ponds and no DNR supervisions. So it leaves us wondering, why permit private ponds at all?
- **Many of the waters under 10 acres are named public inland lakes.** Remember, to meet the exemption in AB318, there can be no public access or uncontrolled outflow. We manage over 2500 waterbodies and can only think of 1 public named lake under 10 acres and it wouldn’t fit the criteria laid out since it has an uncontrolled outflow and public access.
- **45,000 waterbodies would be removed from department oversight.** They stated that there are only 1200 private pond permits which might result in 2400 – 3600 private ponds (assuming an average of 2-3 ponds per permit). How can 45000 waterbodies be removed from their oversight when less than 8% are currently under review? We don’t know of any actual study showing the number of private ponds in WI. Also, many private ponds can be permitted as DATCP Fish Farms,



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which excludes them from DNR permitting. So, there is already a legal channel to exclude them from permitting (albeit more red tape which we argue is unnecessary).

- **There would be no NHI review so important species may be inadvertently harmed.** As mentioned above, when an NHI review reveals a "hit", it only means a species may be located in a general area, not in the specific pond. The DNR also states that they legally can't limit products, so this argument is invalid.
- **The permit process now provides important notice of proposed treatment for adjacent landowners.** This is currently true for public ponds but not for private ponds which don't require notice since they are single owner only. The new definition does allow for multiple owner ponds to be included in the private pond category, but it also states that *"if the private pond abuts multiple parcels, the owners of all parcels that abut the private pond shall be notified of the application to chemical treatment to the private pond"*. So, this argument is invalid.
- **No way to confirm if surface water discharge was controlled.** The department has no way under current private pond permitting to confirm if surface water discharge was controlled so there would be no change.
- **A 10-acre lake could have 24 homeowner so with no department review, multiple owners could treat.** This is already occurring under the current rule via illegal treatments and would be no different under the proposed rule as these would also be illegal treatments. Remember that AB318 DOES NOT allow for multiple uncertified pond owners to treat legally.
- **No public record on any of the 45,000 waters of the state.** Again, we dispute the number they use but no matter how many "private ponds" there are in Wisconsin, the DNR only has public record on 2400 – 3600 ponds (assuming an average of 2-3 ponds per permit). Ponds permitted with DATCP don't have public record and none of the other unpermitted ponds have public record. We'd make the case that private ponds don't have broad public interest so there isn't a need to provide public record. Do you submit a public record for treatments to your lawn? How about pest treatments on your property? Do you even keep a treatment record personally for these applications? All lake and pond treatments legally have to have an associated treatment record on file for 2 years. Again, this seems like an overreach for private ponds with no broad public interest.
- **DNR was undergoing rule revision for NR107 and NR109** – Following overwhelming opposition to the referenced rule from licensed applicators, lake associations, homeowners, and other stakeholders, the DNR ultimately withdrew the rule (CR22-002) last August and never advanced it to the Legislature. Constituents have spoken loudly about their displeasure with unnecessary and over-reaching regulation.

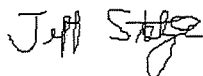


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To summarize; AB318 would not put any undue risk on the waters of Wisconsin and would align private pond management with the surrounding states. There are already many unpermitted applications occurring in Wisconsin, either legally through a DATCP Fish Farm registration or illegally as a result of pond owner frustration with the permitting process. Passage of AB318 helps small businesses like ours by reducing regulatory burden and will also allow weary pond owners to act on issues immediately with a certified applicator instead of taking management into their own hands. Thank you for the opportunity to submit testimony. Please **support** Assembly Bill 318.

Sincerely,



Jeff Stelzer – Owner/Senior Biologist
Lake and Pond Solutions, LLC
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