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To: The Senate Committee on Natural Resources and Energy
From: Sen. Dan Feyen
Re: Senate Bill 494

Hello members of the committee, thank you for taking the time to hear testimony on SB 494.

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.



JIM STEINEKE

MAJORITY LEADER

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Testimony on Senate Bill 494

*Senate Committee on Natural Resources and Energy
Wednesday, August 18, 2021*

Chairman Cowles 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.

SB 494 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;
- 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.

SB 494 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 Cowles 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.



Senate Committee on Natural Resources and Energy

2021 Senate Bill 494

Aquatic Plant Management Plans and Permit Exemptions

August 18, 2021

Good afternoon Chair Cowles 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 Senate Bill 494 (SB 494), related to Aquatic Plant Management (APM).

SB 494 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

SB 494 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. 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 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 15 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 will have the opportunity to participate in the upcoming public comment periods for the draft economic impact analysis and the draft board order of repealed and revised NR 107 this fall and 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.



TO: Members, Senate Committee on Natural Resources & Energy

FROM: Scott Manley, Executive Vice President

DATE: August 18, 2021

RE: Support for Senate Bill 494, permit exemption for ponds

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in support of Senate Bill 494. 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.

Senate Bill 494 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 SB 494.

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



Wisconsin Conservation Voters

**Oppose SB 494
Testimony of Peter Burress
Wisconsin Conservation Voters
August 18, 2021**

Good afternoon Chairman Cowles and members of the committee. My name is Peter Burress and I am the Government Affairs Manager with Wisconsin Conservation Voters. We have offices in Madison, Milwaukee, Eau Claire, and Green Bay, where we work with our network of over 40,000 members and supporters to engage voters to protect our environment. We also work in close partnership with many local conservation groups around the state. Thank you for this opportunity to testify in opposition to Senate Bill 494.

Across every corner of our state, Wisconsinites are facing a myriad of threats related to unsafe drinking water. From lead pipes, to PFAS, to nitrates, people are growing frustrated with the lack of attention to our public health. We know anything that threatens our surface water can also end up impacting our drinking water. With that in mind, we need common-sense legislation that protects our surface water. Senate Bill 494 takes us in the wrong direction by changing permit requirements for aquatic plant management and making it easier for unchecked pollution to end up in our water.

Wisconsinites understand that we need to stop putting potentially dangerous chemicals into our water and that *if* certain chemicals are being added to our water, we have the right to know what they are and who is responsible for them. Senate Bill 494 undermines these understandings by redefining “private ponds”, creating new exemptions for aquatic plant management permits, and complicating DNR rulemaking around aquatic plant management.

Under NR 107, private ponds are understood to be a body of water located entirely on the land of a permit applicant. Senate Bill 494 would redefine our understanding of “private pond” to include multiple homeowner developments. Imagine living in a multiple homeowner community with a shared pond, and not knowing whether a neighbor was adding chemicals to that shared water. Would you want to live in that community? Would you want to raise kids in that community?

Senate Bill 494 also removes an important check on chemical-based aquatic plant management by exempting certain commercial applicators, chemicals, and methods. We at Wisconsin Conservation Voters understand the need to improve Wisconsin’s process for aquatic plant management. That said, it is critical that we avoid exclusively focusing on eradication through chemicals, and instead focus on integrated management that centers public health, science-based standards.

The DNR is currently working toward rule revisions for Wisconsin’s Aquatic Plant Management Program with input from all interested parties. Given these efforts, why would we push through new legislation that complicates the DNR’s approach? It is the DNR’s responsibility to work with

all parties to manage the natural resources in the best interests of everyone. We should allow that process to continue, rather than pass new legislation that complicates it.

To build a Wisconsin where every person has equal access to clean water, we need to first-and-foremost center people and their public health. Senate Bill 494 does not do that. We urge the members of this committee to oppose the bill.

Thank you for your time.

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Wisconsin Conservation Voters is a nonprofit, nonpartisan organization dedicated to engaging voters to protect Wisconsin's environment. For more information, contact Government Affairs Manager Peter Burress at peter@conservationvoters.org or 920-321-3601.



Wisconsin Wetlands Association Testimony on Senate Bill 494

Jennifer Western Hauser, Policy Liaison

Thank you for the opportunity to comment on Senate Bill (SB) 494 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.*

Senate Bill 494 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 SB 494 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 SB 494.

Jennifer Western Hauser, Policy Liaison

Jennifer.westernhauser@wisconsinwetlands.org

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August 18, 2021: Scott Schara testimony before Senate Committee on Natural Resources and Energy

- A. My background – founder of The Pond People; for 20 years we’ve been improving water quality through proactive methods. We’ve developed good bacteria to eliminate muck, mitigate phosphorus, nitrogen and ammonia, metabolize copper, kill zebra mussels and starve blue green algae. Our warehouse and manufacturing facility are near Bonduel. We manufacture three proprietary products at this location.
- B. Our businesses
 - 1. Our businesses are responsible for 8 families.
 - 2. We pay over \$250K annually in taxes and average of \$25K annually on research.
- C. Our expertise
 - 1. We are professionally managing about 300 client ponds with good bacteria products and EPA approved chemicals. We’ve been physically on thousands of ponds so have a good perspective of this segment of water quality. We work on the cause of problems pond owners experience, so we focus in on improving water quality.
 - 2. The manager of Clear Water Testing in Appleton told us the quality of the pond water they’ve tested for us is like drinking water.
 - 3. We’ve done thousands of successful chemical treatments, without incident.
 - 4. All of our applicators are certified by Wisconsin Department of Agriculture, Trade, and Consumer Protection. DATCP’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.
- D. Everyone is concerned with water quality – practically and technically
 - 1. 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. [Practical perspective]
 - 2. As certified professionals: [Technical perspective]
 - 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.
 - 3. 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.
- E. The bill helps our clients because the bill allows them to add biological agents and dye, to improve water quality, without the need for a permit. Additionally, many clients have expressed concerns with the overregulation taking away their property rights. In short, the clients care more about their ponds than any regulator could.



August 18, 2021

RE: *Wisconsin TU is neutral on SB494 – has concerns regarding definition of “private pond”*

Members of the Senate Committee on Natural Resources and Energy:

My name is Mike Kuhr, I'm a small business owner, and volunteer leader for Wisconsin Trout Unlimited. Trout Unlimited is our Nation's leading cold water conservation organization. Here in Wisconsin, we're home to over 6,800 members and 21 local chapters. I'm here to express our organizations support for the concept presented in SB494 and to share our concerns with some of the bills language regarding the definition of “private pond” and aquatic plant management within them.

Our members value the recreational opportunities provided by Wisconsin's woods and waters. We recognize the threats that aquatic invasive species can pose to our waterways. We also recognize the need for chemical treatment in certain cases to control the spread and eradicate invasives in and around our waterways. We are supportive of efforts to simplify the process used by private contractors who use approved chemical treatments to manage aquatic plants in Wisconsin's private ponds.

However, language in the bill raises several concerns for our organization:

1. Process. We are aware that the DNR is currently in the rulemaking process for aquatic plant management and believe that process should be put in place and evaluated before making further changes to the management of private ponds in Wisconsin.
2. Definition of “Private Pond”. The definition in SB494 appears to greatly expand on what is currently considered a private pond. This raises several questions. Is 10 acres an arbitrary number or is there a specific reasoning for using that number as the size limit? How would this affect the management of isolated wetlands, many of which would probably meet the definition of a “pond” per SB494? We don't feel it's appropriate to include ponds with a direct connection to surface waters in the definition of a private pond and respectfully ask you to consider removing the phrase “or surface water discharge which can be controlled”.
3. Exemption from Permit. The LRB analysis states “the bill also creates exemptions from the permit requirement for the introduction of chemicals or biological agents to a private pond”. We believe the documentation of these chemical applications are important records to maintain and worry that an exemption from the permit will create a situation where we will no longer be able to track who is putting what chemicals into specific waterbodies and at what times of the year.

Wisconsin Trout Unlimited looks forward to working with the legislature to address these concerns and find a solution that is amenable to all affected parties.

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

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

The Wisconsin Council of Trout Unlimited (“WITU”) is a 501(c) 3 non-profit organization which consists of approximately 6,800 volunteer members in 21 chapters in Wisconsin working to ensure that future generations have access to cold, clean, fishable water. In a typical year, WITU and its Chapters report over 50,000 volunteer hours, working on conservation projects, youth education events, and operating veterans service programs at the VA hospitals in Milwaukee, Madison, and Green Bay.



WISCONSIN LAKES

We Speak for Lakes!

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August 18, 2021

TESTIMONY TO SENATE COMMITTEE ON NATURAL RESOURCES ON SB494: 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 SB494.

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 have not seen draft language) is likely to do just that within the rule.

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 over 20 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, SB494 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 is 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 (though a 10 acre lake is pushing that size limit),
- 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 SB494.

From: Wendy [REDACTED]
Sent: Wednesday, August 11, 2021 10:18 PM
To: Scott Schara [REDACTED]
Subject: Re: Senate Hearing on APM Bill - Wednesday, August 18

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

From: Teresa Claerbout [REDACTED]
Sent: Monday, August 9, 2021 9:13 AM
To: Scott Schara [REDACTED]
Subject: Re: Great News

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

-----Original Message-----

From: Susan McGraw [REDACTED]

Sent: Sunday, August 15, 2021 4:12 PM

To: Scott Schara [REDACTED]

Subject: Hi, hope this will help!

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

From: Lois Weyers [REDACTED]
Sent: Tuesday, August 17, 2021 11:05 AM
To: Scott Schara [REDACTED]
Subject: Legislative Hearing

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



Date: August 18, 2021

To: Members of the Senate Natural Resources and Energy Committee

From: Wisconsin's Green Fire

Re: Opposition to Senate Bill 494

Wisconsin's Green Fire is opposed to Senate Bill 494. The bill "makes numerous changes relating to the control of aquatic plants using chemicals or biological agents" according to the Bill's Legislative Analysis.

The Aquatic Plant Management (APM) program is currently undergoing rule revisions for NR 107, chemical removal, and NR 109, mechanical/manual management. The scope statement was approved in May 2020, and in November 2020, three public meetings were held to discuss nine white papers outlining the conceptual policy proposals for rule development. APM program staff are reviewing all written and verbal comments received prior to May 16, 2021, on the policy proposals within the public notification white paper.

DNR staff are early in the process - a first draft of the rule will be released and a public meeting will be held later this summer along with an economic impact analysis. A second draft of the rule and hearing are scheduled for next winter.

Senate Bill 494 was introduced and referred to the Senate Natural Resources and Energy Committee less than two weeks ago, on August 5, 2021. While I am sure the Committee will likely have an interesting and informed debate, it is simply not the way to pass good environmental policy when the rule making process is proceeding on the exact same issues. Protecting our public waters while providing opportunities for lake front owners to treat their weeds is a balancing act that the public rule making process is especially designed for.

Wisconsin's Green Fire is dedicated to using science in environmental and conservation decision making which is exactly what is happening in the APM rule making process. Please allow the rule process to do its job and vote to stop Senate Bill 494.

Sincerely,

Paul LaLiberte, Chair

Wisconsin's Green Fire's Water Resources and Environmental Work Group