Testimony of Gordon Stevenson
Chief, Runoff Management Section
Wisconsin Department of Natural Resources
July 28, 2010

NR 151, NR 153, and NR 155 Hearings
Senate Committee on Agriculture and Higher Education

1. Runoff pollution is a major cause of nuisance algae blooms in lakes, streams and along the coast of Lake Michigan, including those that result in toxic conditions. Runoff pollution also causes fish kills, contaminated wells and other problems fueled by pollutants running off urban areas and farm fields and entering Wisconsin lakes, rivers and groundwater.
2. These changes to DNR's runoff rules will enhance our ability to tackle those problems and to update two grant programs (NR 153 and NR 155) that help pay for those controls.
3. Phosphorus in both runoff pollution and point source pollution is one of the top reasons why 700 lakes and river segments are impaired in Wisconsin.
4. NR 151 addresses phosphorus from runoff or nonpoint sources while NR 102 and NR 217 address phosphorus from point sources. While NR 102 and NR 217 are not under consideration at this hearing, it is important to understand that NR 151, NR 102 and NR 217 will address all sources of phosphorus pollution to our waters.
5. For agriculture, NR 151 reduces the potential of croplands, pastures and winter grazing areas to contribute phosphorus to Wisconsin's lakes and rivers.
    a. Farmers would have to meet a maximum average level of phosphorus allowed to come off their fields. DNR estimates that 80 percent of cropped fields in Wisconsin are already in compliance.
    b. There also would be a cap on how much phosphorus can come off agricultural fields field in any individual year to prevent catastrophic runoff events.
    c. Farmers in watersheds where an impaired lake or river has an approved cleanup plan (tmdl) may be required to meet more stringent standards after a public rule-making process has occurred.
    d. Other proposals affecting farmers would prohibit them from plowing too close to lakes and streams to keep stream banks stable and less vulnerable to erosion.
6. For building developers, NR 151 revisions strengthen what must be done after construction is finished to keep water from running off. The changes would encourage efforts to let the water soak in and stay on the site instead of running off the land or off paved areas as polluted runoff.
7. Proposed NR 151 revisions affecting municipalities would let some of them have more time to meet a 2013 deadline to reduce urban runoff by 40 percent of the pollutants carried in storm water.
8. NR 151 will provide us with additional tools to better implement a balanced point source-nonpoint source approach that is needed for all of Wisconsin's water resources and in particular, many of our impaired waters, and it will enhance our ability to provide clean water that our citizens expect.

State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

July 28, 2010

Senator Kathleen Vinehout
Chair, Senate Committee on Agriculture and Higher Education
Room 104 South
State Capitol
P.O. Box 8953
Madison, WI

Subject: Clearinghouse Rule 09-112

Relating to runoff pollution performance standards and prohibitions, the targeted runoff management grant program and the urban nonpoint source and storm water management grant programs, and affecting small business.

Dear Chairperson Vinehout,

The need to update this rule is real from both water quality and agricultural perspectives. The Department of Agriculture, Trade and Consumer Protection believes that the proposed changes address environmental concerns while ensuring that agriculture can comply in cost-effective ways.

The proposed revisions to NR 151 and 153 seek to address gaps in current law related to implementing water quality improvement plans (TMDLs), a tillage setback to streams, ensuring compliance with nutrient management plans, and expanding the definition of direct discharges to include runoff from production areas. DNR conducted statewide hearings and numerous meetings with stakeholders, including DATCP, to address concerns related to this rule.

DNR resolved all the issues of significance to the Department in its final draft of the rules. We commend DNR for its willingness to cooperate with the Department and to support Wisconsin agriculture with these needed and useful changes.

Sincerely,

Randy Romanski
Deputy Secretary

Wisconsin Wildlife Federation

Testimony Before the Senate Agriculture Committee on CR-09-112---Runoff Performanc Standards and Prohibitions

Chair Vinehout, members of the Senate Agriculture Committee, thank you for the opportunity to present brief comments today on behalf of the Wisconsin Wildlife Federation and the 168 hunting, fishing, trapping and forestry-related organizations that belong to the Federation. Our many members who hunt, fish and trap are strong supporters of efforts to increase the water quality in the many lakes and streams in this state that do not meet water quality standards as a result of excessive nutrients. The result of excessive weed and algae growth in Wisconsin lakes and streams has a wide range of damaging impacts to hunting, fishing and trapping in Wisconsin waters. These include significant degradation to fisheries habitat, the danger of blue-green algae to the health of our hunting dogs, to actual loss of the ability to navigate in certain waters at times of the year.

We applaud the efforts of the Department staff who have worked long and hard to make the improvements to the requirements of NR 151, 153 and 155. They have done a fine job in advancing the reduction of phosphorus in our waters. It was difficult to bring all of the different groups of interest together to come up with a set of rules that virtually all can live with. It took many years and great skill to do this.

However, these regulations, as good as they are, will not restore water quality in the hundreds of nutrient impaired lakes and streams in this state unless there is substantially increased funding for cost-sharing for crop and livestock producers to implement the requirements. As you know, there is a statutory requirement that a producer does not have to implement these practices unless there is seventy-percent cost sharing provided. We recognize the need to have this cost-sharing for producers. But, until there are dramatic increases in cost-sharing budgets, these regulations are only words on paper.

To be more specific, at the current rate of funding for cost share dollars, there will be excessive nutrient loadings to our lakes and streams and they will not meet state and federal water quality standards during the lifetime of your children and possibly your grandchildren. The need for increased cost share funding is one that closely unites the agriculture, municipal, and conservation communities. As legislative leaders in the agriculture community, please make an increase in such funding a high priority as you deliberate future state budgets. Our lakes and streams are an important part of Wisconsin's economy and tradition. These important state assets need to be restored to meet water quality standards for our citizens and the tourists we rely on for revenue.

Thank you again for the opportunity to testify here today on behalf of the Wildlife Federation.

Submitted by: Emily Schneider---Staff Intern
Wisconsin Wildlife Federation---~~June~~ July 28, 2010

Testimony by David H. Thompson, Ph.D.
July 28, 2010, before the WI Senate Agricultural Committee
On the
Proposal to revise NR 151 Non-Point Runoff Rules

My qualifications and experience

Ph.D. in Zoology
Formerly taught conservation in the UW Center System, Washington Co.
Former consultant in Wildlife Biology to US Corps of Army Engineers
Former Education Director at the International Crane Foundation
Board Member of Friends of Lake Wingra
For the last two months, I have been regularly inspecting and photographing about 15 constructions sites in Madison for my blog
Recently retired

Testimony

My comments pertain only to the provisions for construction site erosion. I generally support a tightening of the rules, and I support flexibility. But I do not support the kind of flexibility that will allow municipalities to indefinitely postpone or dilute erosion control measures.

With tourism being one of the largest industries in Wisconsin, the quality of our waters are central to the health of our economy. You cannot base a tourism industry on polluted water. And construction site erosion is one of the principal threats to water quality, with 19% of the phosphorus polluting lakes in Madison coming from construction site erosion. While 19% seems minor, this source should be more amenable to control than other non-point sources, because of the command and control structure of the construction industry.

Our waters have been polluted for so long that the public has lost its appreciation of the values of clean water, and that clean water is in fact possible. That's why Wisconsin needs forceful leadership and improved regulations for clean water from its leaders.

I have found in Madison that construction companies are the last major polluters that are allowed to dump their waste (sediment and nutrients) into the public waterways with insufficient restraint. About 12 of the 15 sites I have inspected are regularly out of compliance. Only three sites show good erosion control compliance, and even those sites allow some muddy water to escape. Common sense often is not applied--for example, clean runoff flowing into the site is seldom deflected before it enters. A sediment pond under construction was allowed to fill before it was finished, so that it nearly failed and nearly caused a major sediment spill.

While there are regulations to control construction site erosion on the books, these regulations depend on erosion control plans that are poor, which use BMPs which are often ineffective, and then applied and inspected with disinterest. In Madison, fines are almost never levied, and there is a very friendly relationship between contractors and inspectors which works against deterrence of breaking the rules.

In rewriting the rules, it is important to make them as clear as possible, with clear lines of responsibility. At many construction sites in Madison, especially at the University, the lines of responsibility are so convoluted that it is hard for anyone to know who is responsible. Consequently, construction sites on the University are some of the worst offenders.

Perhaps the biggest problem in Madison is that the City sets the bar too low for erosion control. They do not require contractors to prepare for moderately heavy storms. The resulting damage to construction sites and waterways is just accepted as an act of nature, not something that should be planned for and controlled. This "low bar" is justified as a cost-saving measure--but it forces others to pick up the bill for harm to our lakes and streams.

Madison is justifying many projects with the need for 40% reduction by 2013. Yet as they build these projects using poor erosion control, they are dumping large amounts of sediment into the lakes in advance of the 2013 deadline. One example is the Hillcrest-Upland Greenway project, to begin Oct. 4, 2010. This project takes place in a ravine that empties a half-mile-long urban basin. Fixing bank erosion in the ravine (to meet 40% by 2013) was one of the justifications for this project. And yet, the erosion control measures planned for this difficult ravine are so inadequate that a major sediment spill could result. All this shows that we need to tighten regulations in a way that will ensure compliance by municipalities.

I would like to finish with a list of the reasons why erosion control measures at construction sites in Madison don't work. There is no one big reason. Rather, it is "**slippage at every step**:"

(Listed with most "systemic" problems higher on list; local problems lower on list.)

1. Private enterprise is poorly suited to coping with a "commons" (our lakes). Few incentives.
2. Erosion control is an art rather than a science. Every construction site and storm is unique.
3. Construction sites are constantly & rapidly changing; erosion control is a moving target.
4. Erosion control at the watershed level is a complex task, which must involve community and requires strong leadership.
5. Bureaucracies focus on rules rather than outcome (which is clean lakes); complex tasks must focus on outcomes.
6. Culture of engineers--likes certainty, doesn't like to engage community. Weather not certain.
7. Construction sites are very cramped, so solutions are difficult (unless storm water is exported)
8. Everyone (public, officials, contractors) is focused on short-term goals and outcomes
9. People (public, contractors, officials) seldom see the invisible damage caused by erosion
10. Apathetic public doesn't understand the issues or causes of lake problems
11. Ideological clash between "grey infrastructure" and "green infrastructure" concepts
12. Entrenched, insular bureaucracy (Engineering Dept. and Board of Public Works)
13. Aldermen have power if they work with Engineering, but little power individually to oppose.
14. Resistance to change; traditions of Engineering--respond to complaints, "work with"
15. Budgetary constraints--too few inspectors; too little budget for robust erosion control
16. To compete for contracts, contractors underbid on erosion control items. The City permits this.
17. Contractors need better understanding of erosion control basics

18. Low priority given to erosion control plans (they get much less attention than the project plan)
19. Watershed approach to storm water is "not my job"
20. Poor communication between agencies (a fragmented view of watershed; conflicting goals)
21. Hoping for good weather, rather than planning for storms
22. Byzantine division of responsibilities enable passing the buck
23. Some BMPs (like tire washing) are dismissed out of hand; reluctance to adopt new ones.
24. Wording of regulations is flawed: "Streets will be swept daily OR as ordered by the City."
25. Lack of leadership at highest levels concerning the issues and goals for City
26. Contractors and city would rather pay the fines or fill the gullies than prevent them
27. Conflicting motivations (or departments) in City. Save time, save money, or save the lakes?
28. Engineers have to "work with" contractors, and so can't be enforcers, who relate differently
29. Unwritten Department policy that only small storms will be planned for
30. Current enforcement is too "cozy," with self-inspections, few fines, and warnings of inspections. More reliance on "deterrence" is needed.

In summary, poor results are the outcome of **slippage at every step** of the erosion control process: Poor erosion control plans, depending on not very effective BMPs, applied by reluctant contractors who, are seldom inspected by overly permissive inspectors, and so on.

David H. Thompson
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Madison, WI 53711

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RIVER ALLIANCE of Wisconsin

July 28, 2010

Statement by Denny Caneff, Executive Director, to the Senate Agriculture Committee in Support of Clearinghouse Rule 09-112 (natural resources administrative rules regarding polluted runoff)

The River Alliance of Wisconsin supports this rule that builds upon and strengthens administrative rules NR 151, 153, and 155.

After mercury, phosphorus is the most serious and challenging pollutant for surface waters in Wisconsin. The results of phosphorus pollution, especially from agriculture, are evident in the algae blooms that occur this time of year across the state, from Lake Michigan to the St. Croix River. If there is one water quality issue that concern, and frustrate, our members, it is the algae blooms caused by polluted runoff.

The aspects of the rule that deal with polluted runoff from agriculture are of particular interest to us, because for the first time, there is a target number set by this rule that farmers have to hit for each of their fields. This so-called "phosphorus index" can be measured through the nutrient management planning that every farm is required by law to do, and if the index is high for a particular field, the remedies are generally not complicated, though they could be expensive. As for expense, these new rules do NOT change the statutory requirement that 70% of the cost of a pollution control on a farm is shared with the farmer by another party – usually state or county government.

Your approval of these rules now is critical, as it comes at the same time as another set of rules – phosphorus standards for rivers and lakes that must be met by "point" sources such as factories and cities – are being reviewed and (we hope) approved by the legislature's natural resources and environment committees. While these are two separate rule packages, these non-point rules are the other side of the same coin of controlling phosphorus pollution. The promise of one of these rules cannot be fulfilled without the implementation of the other.

The two rule packages, in tandem, represent a real breakthrough in managing what is a persistent and, in some cases, increasingly dangerous pollutant for Wisconsin. (Some algae are toxic.) We urge the Senate Agriculture Committee's approval of Clearinghouse Rule 09-112.

306 E. Wilson St., 2W • Madison WI, 53703 • (608) 257-2424 • www.wisconsinrivers.org • wisrivers@wisconsinrivers.org

dba | KEEPING THE COWS IN WISCONSIN™
DAIRY BUSINESS ASSOCIATION

July 27, 2010

The Honorable Kathleen Vinehout, Chair
Senate Committee on Agriculture and Higher Education
104 South State Capitol
Madison, Wisconsin 53708

Dear Senator Vinehout:

The Dairy Business Association (DBA) hereby submits written comments in support of the revisions to NR 151 of the Wisconsin Administrative Code **(Clearinghouse Rule 09-112)**.

DBA represents milk producers, processors, dairy professionals and associated vendors in Wisconsin. Our goal is to ensure Wisconsin title as "America's Dairyland" by developing and growing the state's dairy industry and related infrastructure. Our mission statement is simple: "Keeping the Cows in Wisconsin."

During the public hearing process, we submitted substantial written comments to the Department of Natural Resources (DNR) in opposition to proposed revisions of NR 151. We were concerned that the DNR did not have an adequate scientific basis upon which to justify the rules as proposed. We were also concerned that stakeholders had not been adequately engaged in this rulemaking process. DBA identified a number of specific concerns with the proposed revisions and requested that the Department engage stakeholders before moving the rulemaking package forward.

After the public comment period closed, the DNR did reach out to a number of stakeholder groups including DBA. They proceeded to schedule several stakeholder meetings and engage us in effective discussions on our concerns as well as the concerns of other stakeholders. We would like to thank Secretary Frank for his commitment to this process. We would also like to acknowledge our appreciation for the willingness of the Secretary's Office and DNR staff to address our specific concerns with the proposed revisions.

We believe these agricultural performance standards hold much promise for improving our water quality while allowing adequate flexibility for practical on-farm implementation. We note, however, that water quality improvements will only happen if the DNR takes steps to actively and effectively implement this regulation.

We intend to use our leadership position within the dairy industry to ensure that Wisconsin's dairy farmers understand their duties and comply with the new regulatory requirements.

Sincerely,

David Jelinski, Government Affairs Director
Dairy Business Association

WISCONSIN LIQUID WASTE CARRIERS ASSOCIATION, INC.

16 N. Carroll Street, Suite 900, Madison, WI 53703
Telephone: (608) 255-2770
Fax: (608) 251-8192

RESPONSIBLE RECYCLING BY RESPONSIBLE CARRIERS

July 28, 2010

Senate Agriculture and Higher Education Committee
c/o Senator Kathleen Vinehout
Room 104 South, State Capitol
Madison, WI 53707

Dear Committee Members,

The Wisconsin Liquid Waste Carriers Association is a nonprofit trade association comprised of approximately 200 septage servicing companies throughout the state. Although the Liquid Waste Carriers Association understands that tighter regulations pertaining to phosphorus – both at wastewater treatment plants and nonpoint sources – are on the horizon, we have concerns about how these rules will indirectly affect our industry.

In 2009, an estimated 800 million gallons of septage were removed from an estimated 732,000 private onsite wastewater treatment systems such as holding tanks and septic tanks in the state of Wisconsin. This waste can be disposed of at a municipal wastewater treatment plant or via land application. However, it is not uncommon to see some treatment plants in the state refuse to accept waste from private septage carriers - they either do not have the capacity to accept outside waste, or they simply do not want to "deal with it." And with phosphorus rules pending that would require treatment plants to reduce their phosphorus output, we anticipate that more and more treatment plants will simply refuse to accept septage from private carriers.

Meanwhile, landspreading options are dwindling as well. Urban sprawl is taking away agricultural land for landspreading, and the DNR is becoming more restrictive with land application site approvals. Clearinghouse Rule 09-112 will further exacerbate the problem, as increased nutrient management standards for farmers will potentially squeeze out septage disposal companies from agricultural sites.

If septage haulers are not welcome at treatment plants AND landspreading is further restricted, what solution do state leaders have for the disposal of this waste?

These rules could greatly impact not only our industry, but the hundreds of thousands of homeowners who have private onsite wastewater systems in their yards. We foresee a septage disposal crisis in coming years that must be addressed. The Wisconsin Liquid Waste Carriers Association believes that increased use of septage storage facilities is one possible answer, and we would like to see the DNR revise its rules to ease permitting requirements for septage storage facilities.

Sincerely,
Ann Gryphan, Association Manager

Before the Assembly Committee on Agriculture
Testimony of ~~Paul G. Kent~~ Elisabeth Howard
On behalf of the Municipal Environmental Group – Wastewater Division

Regarding Clearinghouse Rule 09-112 NR 151
July 21, 2010

I am testifying today on behalf of the Municipal Environmental Group – Wastewater Division (MEG). MEG has more than 90 municipal members statewide who own and operate municipal wastewater treatment plants. Our members range in size from some of the largest metropolitan areas to some of the smallest communities in rural areas in the state. Our members attended and testified at the public hearings held throughout the state in support of the changes in NR 151, 153, and 155. We worked with the Department of Natural Resources and other stakeholders to come up with an integrated approach to address phosphorus in our waters.

The Regulatory Context

The proposed revisions to NR 151 occur in a broad regulatory context. Contemporaneously with this rule package, the Natural Resources Board considered and approved rules to establish water quality standards for phosphorus in NR 102 and phosphorus effluent limitations for point sources such as municipal plants in NR 217. In addition, DNR and EPA are currently developing total maximum daily loads (TMDLs) for the Lower Fox and Rock River basins that will also limit phosphorus discharges. Because municipal treatment plants are point sources, those limits are placed into permits and are enforceable without cost sharing.

Throughout the rule process, MEG has insisted that new regulations on phosphorus adopt a watershed approach that addresses both point and nonpoint sources. This is critical if we are to see any real water quality improvements because only 20% of the phosphorus in our waters comes from point sources. In addition, further reductions of phosphorus from point sources to meet the new water quality limits will require advanced technologies, such as filtration, that come at an enormous cost. This is because municipalities have already removed 90% of the phosphorus from their discharges and meeting the new low phosphorus limits requires advanced treatment. To remove additional phosphorus from point sources ranges from $240 to $304 per pound of phosphorus removed. That is more than 10 times the cost of removing phosphorus from nonpoint sources. On an aggregate basis, statewide filtration technology would cost affected municipalities billions of dollars.

The Need for Watershed Based Approaches

Successful and cost-effective reductions of phosphorus will only be achieved when the watershed is looked at as a whole, and all sources are required to work together. MEG worked with DNR and other stakeholders to build mechanisms into NR 217 that allow for such watershed approaches. Those provisions include adaptive management provisions and the use of watershed based trading to provide a cost-effective means to reduce total phosphorus in our watershed. But there must be some incentive for agricultural interests to work with municipalities. Therefore, MEG supported the changes to NR 151 that create a phosphorus index that will serve to limit the amount of phosphorus runoff from agricultural lands.

Even with NR 151, municipalities still bear a disproportionate regulatory burden. Municipalities have permits and compliance schedules and do not have cost share dollars to fund those requirements. Nevertheless, MEG has not opposed the NR 217 provisions provided that the changes to NR 151 are made and that the DNR commits itself to develop trading protocols and implementation provisions. Thus, we are willing to accept NR 151 as a starting point from which to move forward in a collaborative watershed based manner to address phosphorus in our waters.

Munis signed off on costs?

- new to issue
- understanding: 1) there will be significant costs
  2) munis don't agree w/ having to incur those costs
  3) BUT the proposed NR 217 rule package is better than the alternative of dealing with the EPA

cleanwisconsin

122 State Street, Suite 200, Madison, Wisconsin 53703-2500
Telephone: 608.251.7020 Fax: 608.251.1655
Website: www.cleanwisconsin.org
(Formerly Wisconsin's Environmental Decade)

Testimony of Amber Meyer Smith, Program Director, Clean Wisconsin
Clearinghouse Rule 09-112
Revisions to NR 151 pertaining to performance standards to address polluted runoff
Senate Committee on Agriculture and Higher Education
July 28, 2010

Clean Wisconsin is the largest state environmental organization with thousands of members, and was founded as Wisconsin's Environmental Decade. We focus on clean air, clean energy and clean water issues, and celebrated our 40th anniversary in April.

Thank you for the opportunity to comment on this proposed rule revision today. Clean Wisconsin supports both the revisions to NR 151 and the phosphorus rule revisions that the Senate and Assembly Environment Committees are considering. The two rules, when combined, address the two major sources of phosphorus and are a step forward in addressing polluted runoff into our waterways.

Right now, Wisconsin's waterways are in trouble. Nearly half of our waterways are so polluted due to runoff that they are federally listed as impaired. Polluted runoff contains dirt and nutrients like phosphorus. Combined, phosphorus and sediment degrade water quality and impair ecosystems. Perhaps worst of all, they cause algae in many cases; one pound of phosphorus can cause 500 pounds of algae to grow.

Algae, especially blue-green algae, is becoming a serious water quality issue across the state. Blue-green algae is harmful to aquatic ecosystems, and is harmful to human and animal health. Once algae blooms, it dies and rots. During that process, it uses oxygen in the water, and creates a dead zone where fish and other aquatic life can't live. As this occurs more frequently, it changes the nature of the ecosystem. Blue-green algae is toxic for human, pets and wildlife. There have been reports of dog deaths due to swimming through blue-green algae blooms in recent years, and people have been getting sick from coming in contact with it or breathing in fumes from it.

Problems with blue-green algae aren't limited to environmental and human health; these problems are affecting our tourism and fishing economies throughout the state. Tourism takes a hit from polluted runoff in terms of lost beach days and related economic activity, lost boating revenue, lost fishing and related revenue, and more. Last year in Madison alone there were 10 beaches closed for a total of 90 days – all by July 17th – because of potentially dangerous algae blooms.

Fortunately, this is a problem we can do something about as a state. On average, 80% of polluted runoff comes from agricultural fields. Polluted runoff comes off of fields when rain or snowmelt runs off, carrying dirt and pollutants with it. The amount of runoff pollution from fields depends on soil type, slope of the field, type of crop, type of soil management practices, the amount of

phosphorus in the soils, and more. Many of these factors can be managed by farmers, and across an agricultural operation, you frequently will see a wide variation of runoff from fields.

As you know, all of these practices will require cost-share dollars to be implemented. This rule allows the most polluting farm fields to be targeted, and get help cleaning up. In Dane County, for instance, they have targeted a few farms that have serious manure pollution problems, and are helping pay to clean them up. This rule will give communities another tool in making sure appropriate pollution controls are put in place. Very few farms will be affected by this rule, and the farms that will be affected are the farms that most need to control pollution.

Clean Wisconsin supports this rule as a positive step forward, but as with all compromises there are things we think could be stronger in the package before you.

Having a Phosphorus Index of 6 is not an impressive standard. The Phosphorus Index is a tool to predict runoff from agricultural fields, and allows a farmer to make predictions based on certain practices; the number of the PI is the pounds of phosphorus predicted to runoff of each acre in a normal weather year. The Wisconsin Phosphorus Index homepage, run by the UW and UW-Extension, categorized a PI of 6 as one that has can result in "excessive likelihood of runoff." Clean Wisconsin does not believe adequate protections for our waterway should allow for an excessive likelihood of pollution.

Secondly, a five foot tillage setback is not protective enough of water quality. It is unfortunate that this rule does not set a more protective standard such as those recommended by the buffer initiative.

We support the rule with its PI of 6 and cap of 12 and its 5 foot tillage setback because it will set a standard of improvement for some of the most problematic fields in the state. As I noted earlier, this rule package is a positive step forward in an area where Wisconsin has to do better in protecting our waters. We urge you to support this rule.

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Senate Committee on Agriculture
July 28, 2010

STATEMENT IN SUPPORT
Clearinghouse Rule 09 -112

Toni Herkert
Policy Director
608-661-4313

Dear Senator Vinehout and Committee members:

Thank you for the opportunity to voice our support for runoff pollution performance standards contained in Clearinghouse Rule 09-112. Wisconsin Lakes is a statewide, nonprofit organization that works to conserve, enhance and restore the lake resources in this state. We are comprised of over 365 lake associations and management districts representing over 25,000 citizens in addition to nearly 1000 individual members who believe that the lake resources in this state are important assets and deserve protection and restoration. It is in the best interest of lakes and all the people who enjoy boating, fishing, swimming, and living on lakes to have clean water, healthy fisheries and proactive, sustainable management of our lake resources so generations to come can enjoy Wisconsin Lakes.

Nonpoint source runoff continues to be the major cause of water pollution in the Midwest and around the country. Nutrients, sediment, and bacteria from agricultural lands; bacteria, toxic chemicals, oil and grease, and heavy metals from urban stormwater; and sediment from construction sites lead to the majority of water quality impairments in Wisconsin.

The two elements of most importance to WI Lakes that are included in this rule are the Phosphorus Index and the tillage setback. We were very happy to see that the Natural Resources Board attempt to increase the tillage setback to 20 feet with a reduction to 5 feet for specific circumstances. Unfortunately the motion failed and the setback remains 5 feet. Our water resources would be better served if the setback was increased and consistency in statewide programs would be maintained if that distance was 35 feet.

In February of this year, Ch. NR 115, Wisconsin's Shoreland Protection Program finally completed the revision journey and went into effect. This rule, after 7 plus years of hearings, thousands of comments and advisory committee meetings requires a 35 foot vegetated buffer on all shoreland property in unincorporated, recently incorporated (as of 1994) and recently annexed areas (as of 1982) of the state. If this small subset of properties in the state are required to implement a 35

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foot vegetated buffer and these same properties contribute a relatively small amount of nonpoint runoff to the lakes of the state, it is more than reasonable to expect the agricultural community to adhere to a similar standard. Anything less seems negligent and an inequitable distribution of statewide regulations.

The members of this Committee know full well that lakes matter in Wisconsin. They provide recreation for untold numbers of anglers, boaters and swimmers. They anchor our recreational economy and the property tax bases of many Wisconsin communities. Many of you have probably seen or heard stories from constituents in relation to the unrelenting algae blooms that are all too common on our Wisconsin lakes. But I am not sure we have focused enough on the hard economic value of lakes and streams.

The Department of Revenue's property valuation records are aggregated mostly using taxing jurisdictions and property use classes (such as residential and agricultural). As a result, there is no statewide data that shows the economic significance of land on or near our lakes and streams. But WI Lakes has done some homework to help you better recognize the significance of the property bordering lakes -- lakes that are exposed to damage from polluted runoff whose impacts state lawmakers struggle to address due to the push back for the agricultural community.

To help put things into perspective one must remember that cost sharing is a component of the rule and the economic impacts that farmers will face are offset by state funding. Speaking in economic terms, we have looked at Department of Revenue assessed valuation data for a series of the state's larger town sanitary districts and lake districts located on major lakes in Southern Wisconsin. The trend would no doubt be repeated on thousands more lakes across the State. Here are some highlights:

We looked at the 2009 assessed valuation of property in the Green Lake Sanitary District, the Buffalo Lake Management District and the Lake Puckaway Management District which are located in Marquette and Green Lake Counties. Each of these special districts includes substantially all of the waterfront property on these lakes and very few nonriparian lots. Here's what we found: The Green Lake Sanitary had a 2009 assessed valuation of just under $1.1 billion. This compares with a *total value of all the taxable property in Green Lake County* of just over $2 billion. That means that the ribbon of lakefront homes and lots on Big Green Lake have a value exceeding all the rest of the property in the county and contribute more than half of the tax dollars that support the public schools, the sheriff's department, the highway department and others. Just down the road, the Lake Puckaway Management District had a 2009 valuation of $56,259,295, which totals just under half of the total value of taxable property in the entire Town of Mecan (which had a 2009 valuation of $115,403.00. A little further west, the Buffalo Lake Management District in the Montello area had a 2009 valuation of $92,868,630 in two towns and the City of Montello. Of that, $64,190,562 of property value was in the Town of Packwaukee, where the lake district property accounted for almost 36 percent of that town's property value.

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Further southeast, in Waukesha, Walworth and Kenosha Counties, the story is about the same. The Pewaukee Lake Sanitary District, Delavan Lake Sanitary District, Lauderdale Lake Management District, Fowler Lake Protection and Rehabilitation District, Camp and Center Lake Rehabilitation District and Powers Lake Management District all contribute hugely to the tax bases of the towns in which they are located, with the lake property constituting between 23 percent to 85 percent of the total value of property in the jurisdictions in which they are located.

Of course, the state's inland lakes do far more for our state's economy beyond serving as an engine of property taxes. These water resources are central to the how people in Wisconsin actually live and the reason so many of us love the state. We thank the committee for taking time out of your busy summer schedules to hear our comments on this very important set of rules. We encourage you to support these rules and take the necessary steps to move our lakes closer to becoming the prized jewels we know they can be.

Wisconsin Land and Water Conservation Association, Inc.

Wisconsin Association of Land Conservation Employees

Position Statement

July 2010

County Staffing Grants through the SWRM Program

Background

As part of a major state program redesign in 1997, county Land and Water Resource Management Plans were added to Chapter 92 State Statutes as a new method of addressing nonpoint pollution and other land conservation efforts in Wisconsin. In 1999, the statutes were further modified to describe what each county was required to include in their LWRM plans, including how they will "ensure compliance" with state promulgated nonpoint pollution performance standards and prohibitions. At the same time, $6 million in staffing grant funds were transferred from the DNR Priority Watershed Program to the DATCP Soil and Water Resource Management (SWRM) program to create a single state grant to counties to support a base level of staffing to implement LWRM plans. For direction on how future SWRM grants would be administered to counties, the legislature added the following language to section 92.16(6)(b) Wis. Statutes:

> *"...the department [DATCP] shall attempt to provide funding under this section for an average of 3 staff persons per county with full funding for the first staff person, 70% funding for the 2nd staff person, and 50% funding for any additional staff persons and to provide an average of $100,000 per county for cost-sharing grants."*

This new statutory language moved the state away from the previous "boom or bust" funding through the Priority Watershed program to a more stable "base level" of staff funding to all counties to implement their LWRM plans, with the potential to apply for additional "targeted" grants. Eight new state administrative rules were promulgated by DNR and DATCP in 2002 to carry out the new program, including ATCP 50 for SWRM grants, NR 151 for the nonpoint pollution performance standards and NR 153 for Targeted Runoff Management grants.

Program Funding Trends

During promulgation of the 2002 rule package, DATCP prepared a fiscal estimate for implementing the new nonpoint performance standards and prohibitions though county LWRM plans. At that time, DATCP estimated the need for an *annual increase of $2 - 4 million*, or a 20 - 40% increase in county staffing grants over the next 10 years. However, as illustrated in Figures 1 and 2 (attached), the opposite has occurred.

Figure 1 shows state grant amounts to counties for conservation staff before and after the above noted fund transfer from DNR to the DATCP, including subsequent state budget cuts. Figure 1 shows that there was a net loss in staffing grants of about $4 million from 1997 to 2004, while total staffing grant amounts remained relatively stagnant since 2004. This figure also illustrates the funding gap in supporting existing county land conservation staff, a stated "high priority" under s. ATCP 50.30 (Grant Priorities).

Figure 2 shows the net "buying power" of the state grants in full time equivalent (FTE) staff positions at the county level, based on actual salaries and benefits. Figure 2 illustrates the net loss in county FTE staff funding due to state budget cuts and inflation. It should be noted that state imposed levy caps on counties limit a county's ability to make up for the lost buying power, and make it very difficult for local conservation programs to compete with other core county government services, such as highways, human services, law enforcement, courts and jails. To date, this has resulted in a net loss of 40 county conservation staff positions (10%) since the program redesign began in 1997. Together, Figures 1 and 2 illustrate an unsustainable staff funding strategy for county land conservation employees, and therefore the implementation of state land conservation and clean water programs.

Looking Ahead

County land conservation staff have proven to be a cost-effective delivery system for state land conservation and nonpoint pollution abatement programs, and will continue to serve in that role. However, to meet state program goals, additional state funding for county land conservation staff is clearly needed to reverse the current downward trend in local staffing. The SWRM program is currently about $3 million short of meeting the statutory goal of an *"...average of three staff persons per county..."*. (Note: All SWRM grants are based on 2-year old staffing costs, so the 2010 allocation plan only shows a $2 million shortfall.) To address this issue, WALCE and WLWCA suggest that the state redirect existing SWRM program SEG funds to county staffing grants. We also suggest that the state reconsider current cost-sharing mandates defined in ATCP 50, particularly for nutrient management.

DATCP has occasionally proposed revisiting the above noted state law regarding the funding of local conservation staff, or creating a new staff funding "formula" that may result in each county being allocated a percentage of available funds. WALCE and WLWCA are strongly opposed to such proposals because they would hide the true impacts of reduced state grants on local staff, invite unnecessary program conflict, and divert attention away from the real issue – state funding shortfalls. (Note: This issue is well documented in a 2004 WALCE position statement on this topic.) We believe the current statutory funding formula has proven to be a fair way to meet base level conservation staff funding needs in all counties, and shows the annual impacts of state funding shortfalls. However, to significantly improve landowner compliance with state agricultural nonpoint pollution performance standards, additional incentives, cost-sharing and long-term targeted staffing grants are needed over and above the base level SWRM grants. We suggest that these be provided through the DNR's Targeted Runoff Management (TRM) grant program, and that a new segregated funding source is needed. One potential funding source that has been suggested is the elimination of the current sales tax exemption for bottled water.

Summary of WALCE/WLWCA Position

- Additional SWRM program funding is needed to sustain a base level of conservation staff in each county. We suggest this come from redirected SEG cost-sharing funds.
- Additional incentives, cost-sharing and targeted staff funding over and above the SWRM program are needed to improve landowner compliance with state agricultural nonpoint pollution performance standards. We suggest these grants should be administered through the DNR's TRM grant program, and that an additional segregated funding source is needed to implement.