

## Wisconsin takes first step to shield taxpayers from toxic cleanup cost

By STEVEN VERBURG - Jan 13, 2019



Wisconsin's DNR is concerned about a state program allowing landowners to shift pollution cleanup liability to taxpayers as toxic fluorinated chemicals emerge in soil and drinking water in more and more states. Above, equipment used to test for PFAS (per- and polyfluoroalkyl substances) in drinking water is seen at Trident Laboratories in Holland, Mich.

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Wisconsin has taken the first step toward scaling back liability protections for the owners of contaminated properties, a move that could save taxpayers from potential pollution cleanup costs that have run into the hundreds of millions of dollars in other states.

A re-examination of Wisconsin policies for exempting landowners from future pollution cleanups was prompted by heightened awareness of toxic fluorinated compounds that have emerged in soil, fish and drinking water over the last two decades.

But an influential business lobby said any

changes to cleanup exemption programs should be subject to the state's lengthy administrative rule-making process.

Despite that resistance, the Department of Natural Resources has stopped exempting landowners from future cleanups of fluorinated compounds without tests that show the material isn't present.

DNR managers say more changes may be needed in the Wisconsin economic development program — among the nation's most generous to property owners — that shifts legal responsibility for future cleanups to the public.

Many states offer cleanup incentives to promote investment in old industrial sites, but Wisconsin gives owners of polluted land broader guarantees of protection than 28 other states that responded to a survey conducted for DNR last year.

For a landowner who voluntarily cleans up known pollutants, Wisconsin's more than 20-year-old Voluntary Party Liability Exemption program delivers a nearly unlimited release from future responsibility for any pollutants that were in the ground but undetected.

"Our biggest concern was how wide open our release from liability was, and what we were seeing in the news about Michigan and Minnesota," said Christine Haag, a DNR manager in the exemption program.

Michigan and Minnesota are among the states that have faced hundreds of millions of dollars in cleanups of toxic fluorinated chemicals — referred to by the acronym PFAS — that leached into drinking water from places such as factories and military bases.

Until recently, it wasn't a high-profile issue in Wisconsin, and there has been very little testing for it in the state.

"Our knowledge of the types of contamination that are out there wasn't keeping up," said Darsi Foss, DNR remediation and redevelopment director. "Tyco was a real eye opener."

In 2017 the chemicals were found in drinking water near Tyco Fire Products, a Marinette company that manufactured and tested PFAS-based firefighting foam.

PFAS concentrations in 15 private wells exceeded an EPA health advisory. An additional 41 wells had lower levels. The company is providing replacement water and continuing to investigate.

Around that same time, PFAS compounds were [detected below the EPA advisory level in Madison drinking water](#). The probable [source is Truax Air National Guard base, where heavy concentrations began to be detected at least three years ago](#) in shallow soil and groundwater.

PFAS has also been found in groundwater at [other military bases, a former industrial site and a gravel pit in Wisconsin](#). The DNR is overseeing investigations that could lead to cleanups.

[PFAS compounds were used for decades](#) to make firefighting foam, nonstick pans and stain-resistant products. The chemicals are associated with [cancer and other serious health problems](#).

## **Walker administration agreed**

Under Wisconsin's Voluntary Party Liability Exemption program, a landowner who agrees to clean up certain known contaminants is released from almost all future cleanup responsibility.

Unlike many other states, in Wisconsin the landowner is exempt from responsibility for cleaning up new contaminants that were not part of the agreement with the DNR.

The landowner is exempt from additional costs if, for example, undiscovered pollutants are found later, or when new medical knowledge leads to tighter regulations on pollutants, or research causes new restrictions on contaminants that weren't regulated at the time DNR certified a voluntary cleanup was complete.

Last year the DNR began discussing possible changes in the exemption program. It was discussed at several meetings of the agency's [Brownfields Study Group](#), which is made up of government and business representatives who advise the program, Foss said.

By late summer, DNR managers saw [news from Michigan about PFAS contamination of a water supply for 3,100 people near a paper mill](#). The paper industry has used PFAS to make grease-resistant food containers and laminated paper.

Someone at the DNR recognized that two Wisconsin landowners were close to completing work that would have earned them pollution cleanup exemptions for sites that had been used by the paper industry, Foss said.

"We said, 'Oh my. Some of these may look alike,'" Foss said.

In the past, the department had routinely awarded blanket cleanup exemptions without testing for PFAS. But now it was clear there was too much risk that the state would end up paying for a cleanup if the chemicals were found, Foss said.

In August, top executives in the DNR secretary's office decided to stop offering blanket exemptions without testing for PFAS. The decision was made recognizing that new Gov. Tony Evers and the state Legislature may not want to allow the policy change to stand.

The DNR contacted both landowners and offered to pay for PFAS testing of their sites. Neither one wanted the testing done, Foss said.

DNR officials told the landowners they couldn't issue an exemption that could put the state on the hook for a future PFAS cleanup, Foss said. One owner withdrew from the exemption application process. The other hasn't formerly withdrawn but also hasn't taken further steps to complete the process, she said.

Since August, the DNR has issued several exemptions that don't release the landowner from responsibility if PFAS is someday found at the site, because no PFAS testing was done, Foss said.

If tests had been conducted and no PFAS found, the landowner would have been exempt from future PFAS cleanup costs, she said.

The ["interim decision" on blanket exemptions was posted on the DNR website](#) and announced in a newsletter this month.

## **Is drinking water safe?**

For now, it's unknown how much PFAS is in Wisconsin's soil and water.

Contaminants on abandoned industrial sites are often found when soil or groundwater tests are conducted prior to the sale of a parcel of land.

The U.S. Environmental Protection Agency has ordered PFAS testing of some public water supplies, but the prescribed method has been criticized for failing to detect very small amounts that signal the need for additional monitoring.

After finding nothing using the EPA method in 2015, the Madison Water Utility [used a more sensitive technique and found PFAS below the EPA advisory level](#) in two wells in 2017.

The DNR is looking to other states as it considers how to find PFAS contamination in Wisconsin. The department could look in drinking water, or check near likely sources, Foss said.

A systematic search would help residents to know how much risk they face from their drinking water, Foss said.

[In Minnesota, serious PFAS pollution](#) was linked to 3M, a major manufacturer of the compounds. After the discovery of contaminated drinking water and fish, the state sought \$5 billion in damages from the company and [settled for \\$185 million last year](#) after winning \$40 million in 2007.

## **More changes sought**

Under Wisconsin's 1994 hazardous spills law, the DNR has issued 186 cleanup exemptions. About 80 more are pending.

Typical applicants are owners of large, abandoned industrial or commercial properties. Often they want to sell or develop the land, and need to assure investors they won't one day face a huge cleanup bill.

In Madison, exemptions helped pave the way for homes and businesses being built on the former Royster-Clark site on Cottage Grove Road, and for the Union Corners development on the old Rayovac property on East Washington Avenue.

The DNR has certified tens of thousands of other cleanups — including smaller ones at gas stations and dry-cleaning sites — that carry no exemptions for landowners. The traditional cleanups aren't considered voluntary. Owners are required to look for and clean up only pollutants whose presence is evident because of a visible spill or contaminants in nearby water.

The voluntary exemption program requires a search of available records and an examination of the site. Efforts are made to find and clean up or cap any pollutants that have been spilled.

## **Business lobby wants more say**

Foss said additional changes should be considered for the exemption program to protect taxpayers from future cleanup costs. She expects those will continue to be discussed by the study group. The Evers administration and lawmakers may also be interested.

"We're big advocates for brownfields, and we want to be positive and constructive about redevelopment," Foss said. "But the DNR felt this option of giving PFAS (cleanup exemptions) when we didn't sample for it wasn't in the best interest of taxpayers."

However, the state business lobby is objecting, saying the DNR has overstepped its authority.

The DNR shouldn't have changed the exemption program without first consulting regulated businesses as part of a formal rule change, which typically takes about two years, said Scott Manley, vice president of government relations for Wisconsin Manufacturers and Commerce.

"If DNR thinks it wants to regulate these compounds, they need to go through rule-making ... and allow the stakeholders to take part in the process," Manley said.

Despite decades of research linking PFAS with health hazards, the federal government hasn't set an enforceable standard.

Several states have set standards or advisories for the pollutant. Wisconsin has a standard for PFAS soil that [DNR attorneys have concluded is authorized by state law](#), Foss said. Setting PFAS standards for water will take longer because of the way state law is written, she said.

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Online at

[https://madison.com/wsj/news/local/govt-and-politics/wisconsin-takes-first-step-to-shield-taxpayers-from-toxic-cleanup/article\\_e40ea686-11ff-5db3-af44-0d020f30a5da.html](https://madison.com/wsj/news/local/govt-and-politics/wisconsin-takes-first-step-to-shield-taxpayers-from-toxic-cleanup/article_e40ea686-11ff-5db3-af44-0d020f30a5da.html)