

## BILL SUMMARY: PFAS CLEAR Act - LRB-2297/2

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On May 23, 2019, Governor Evers and Secretary Cole accompanied Senators David Hansen (Green Bay) and Mark Miller (Monona) to announce one of the most comprehensive bills in the nation to address contamination by per- and poly-fluoroalkyl substances (PFAS). This bill (LRB-2297/2), if passed, will protect public health as well as the air, waters and lands of Wisconsin.

### What would the legislation do?

- This bill requires the Department of Natural Resources to establish and enforce various standards for per- and poly-fluoroalkyl substances (PFAS).
- The PFAS group of substances includes several thousand chemicals (4,000+); two of the most well-known are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).
- The bill requires DNR to establish, by rule, the following:
  - acceptable levels and standards,
  - monitoring requirements, and
  - required response actions for any PFAS.
- Applies to all media:
  - in drinking water, groundwater, surface water, air, solid waste, beds of navigable waters, and soil and sediment, if the department determines that the substance may be harmful to human health or the environment.
- These rules must cover, at a minimum, PFOA and PFOS, as well as perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluorobutane sulfonic acid (PFBS), and perfluoroheptanoic acid (PFHpA).
- In recommending a groundwater enforcement standard for a perfluoroalkyl or polyfluoroalkyl substance, the department of health services may recommend individual standards for each substance, a standard for these substances as a class, or standards for groups of these substances.
- **AIR EMISSIONS:** For air emission standards, DNR must first determine that an emission standard for a substance is needed to provide adequate protection for public health and welfare, which is also required for other hazardous air contaminants under current law. The bill also requires DNR to consider all PFAS to be air contaminants and to require reporting of any emission of PFAS.
- **GROUNDWATER:** Under current law, DNR maintains a list of substances that have a reasonable probability of entering the groundwater resources of the state and that are shown to involve public health concerns.
  - Under this bill, DNR is required to add to this list PFOA, PFOS, PFHxS, PFNA, PFBS, PFHpA, and all other PFAS that have a reasonable probability of entering the groundwater resources of the state and that are shown to involve public health concerns.
  - Under current law, the Department of Health Services recommends enforcement standards for substances on this list, which DNR then proposes as DNR rules in its rule-making process. Until DNR establishes such rules, the bill requires DNR to apply any DHS-recommended groundwater enforcement standard for any PFAS as an interim standard for groundwater and as an interim maximum containment level for drinking water.
- **DRINKING WATER:** Clarifies that DNR has authority to establish state maximum contaminant levels for drinking water, based on the DHS recommendation for groundwater.
  - DHS's interim groundwater standard is the state drinking water MCL and is enforceable 7 months after effective date of law.

- Directs DNR to adopt emergency and permanent rules.
- **WATER QUALITY:** Directs the DNR to adopt water quality standards for protection of surface water for WPDES permitting for at least the 6 identified PFAS compounds.
- **HAZARDOUS WASTE:** Requires DNR to adopt emergency rules to list PFAS compounds that may be harmful to the public health or the environment as a “hazardous constituent.” This would require generators and licensed Treatment, Storage and Disposal (TSD) facilities of hazardous waste to identify waste that may contain PFAS but would not make PFAS a characteristic or listed hazardous waste. This action will help the department to gain a better understanding of the scope of the PFAS issue as it pertains to the generation of PFAS containing hazardous waste.
- **SOLID WASTE, BEDS OF NAVIGABLE WATERS, AND SOIL AND SEDIMENT:** Requires DNR to adopt emergency and permanent rules for the media noted above if the department determines that the substance may be harmful to human health or the environment in these media.
- **RULEMAKING:** Normally, emergency rules are valid for 150 days. This bill requires that emergency rules will remain in effect until July 1, 2022, or the date on which the permanent rules take effect, whichever is sooner. If the emergency rule expires prior to the permanent rule taking effect, the interim standards established in the bill are in effect. DNR does not have to provide evidence of an emergency rule finding.
- **FINANCIAL ASSURANCE FOR PFAS CLEANUPS:** The bill also provides that DNR may, if it determines doing so is necessary to protect human health or the environment, require a person who possesses or controls PFAS contamination to provide proof of financial responsibility for remediation and long-term care to address contamination by a potential discharge of PFAS or environmental pollution that may be caused by a discharge of PFAS. Proof of financial responsibility is the process by which funds are set aside or reserved in anticipation of future costs for clean-up or maintenance of engineered controls.
- **LAB CERTIFICATION:** In addition, the bill requires DNR to set criteria for certifying laboratories to test for PFAS, and to certify laboratories that meet these criteria. Before these criteria are set, the bill allows DNR to require testing for PFAS to be done according to nationally recognized standards.
- **ACCESS TO INFORMATION:** the bill requires a person who generates solid or hazardous waste at a site or facility under investigation by DNR to provide DNR with access to information relating to any transportation to or treatment, storage, or disposal at another site, facility, or location.

#### **POSITIONS AND FUNDING:**

##### **DNR:**

- Provides DNR with 7.5 FTE and Department of Health Services with 2 FTE.
- Funding to:
  - \$150,000 to establish a model to identify and prioritize suspected and actual sites that are PFAS sources.
  - \$50,000 to conduct a survey of airports’ and fire departments’ use of AFFF foam and evaluate its impact. Assist in developing best practices for airports, fire departments and those using AFFF foams containing PFAS. Inventory AFFF and evaluate establishing clean sweep program.
  - \$87,500 annually to test landfills and leachate.
  - \$120,000 to conduct investigation of PFAS sources and provide temporary drinking water