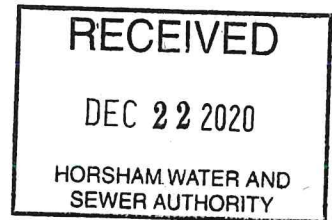


GOP Lawmakers Wipe Out Parts Of PFAS Emergency Rule

Majority eliminates metrics for contamination, claiming DNR lacks authority.

By Wisconsin Examiner States Newsroom, News Partner
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Republican lawmakers voted Friday to strip out portions of an emergency rule to regulate firefighting foam containing PFAS chemicals — an action critics charged would gut the rule.

Republicans on the Joint Committee for the Review of Administrative Rules (JCRAR) said the Department of Natural Resources (DNR) rule went outside the bounds of the legislation passed earlier this year that bans PFAS-containing firefighting foam except in limited circumstances. Democrats accused the majority of bowing to corporate pressure to "take the teeth out of a rule that the DNR has worked on so diligently," in the words of Rep. Gary Hebl (D-Sun Prairie).

Voting 6-4 on party lines, the committee suspended portions of the rule that:

- restricted the disposal of materials contaminated with PFAS chemicals;
- set benchmarks for measuring PFAS levels in wastewater after it was treated for contamination, along with requirements to meet those benchmarks;
- required PFAS spills to be reported according to state hazardous substance regulations.

All three issues were targeted by Wisconsin Manufacturers & Commerce (WMC), the state's largest business lobbying group. The DNR's "decision to exceed their statutory authority will result in significant legal and cost burdens for property owners," WMC lobbyist Scott Manley told the committee Friday.

PFAS chemicals — nicknamed "forever chemicals" because they don't break down in the environment over time — are found in thousands of products, including firefighting foam. The DNR says it's currently investigating almost 50 Wisconsin sites with PFAS contamination, including an area around Marinette and Peshtigo with PFAS contamination from a firefighting foam testing facility.

At JCRAR's hearing on Friday, Democratic lawmakers complained about advance notice that said the only witnesses would appear by invitation from the Republican co-chairs, Sen. Steve Nass (R-Whitewater) and Joan Ballweg (R-Markesan). Nass responded that he would not have turned away any witnesses who had asked to testify.

After tougher legislation to regulate PFAS chemicals foundered, the Legislature passed the more narrowly drawn law, which bans firefighting foam except in emergencies or in appropriately equipped testing facilities. When PFAS foam is used, the law requires "appropriate containment, treatment, and disposal or storage" to prevent it from being released into the environment, and directed the DNR to create rules to implement the measure.

"This emergency rule has a very narrow application," said Darsi Foss, director of the DNR's environmental management division, in testimony Friday to the committee. The requirements for "appropriate treatment measures," she said only apply to places and people testing foam firefighting systems or people who treat the foam after it has been discharged — and not in any other contexts.

The same is true of the benchmarks to measure PFAS levels in water after a cleanup. Foss said those benchmark numbers, including in a table that is part of the rule, "are measures set to ensure effective and appropriate treatment to prevent discharge of foam to the environment." Those were in keeping with the letter of the new firefighting foam law — not new regulatory standards, she said.

Foss also told the legislators that eliminating the references to foam-contaminated materials in the rule would allow people who clean up a foam spill covered by the law to dispose of substances used in the clean up — such as absorbents — by simply landfilling those items outside the regulation.

And the point of invoking the state's hazardous substance regulations, she said, was to make use of the state's 24-hour hazardous spill hotline as a way to fulfill the new law's requirement to notify the DNR of a firefighting foam spill. Removing that "leaves emergency responders with no guidance as to how to notify the department when they use foam."

Manley claimed using the hotline "will create legal liability for property owners and substantial costs for property owners." He added that in referring to materials contaminated with foam, the rule went beyond the law because it made no mention of that term.

And Manley insisted that the treatment benchmarks were effectively standards that the DNR lacked the authority to impose. He also said they weren't necessary because language remaining in the rule prescribing how to dispose of PFAS foam after a spill.

"There are extensive treatment requirements that are put into this emergency rule," Manley said. "And we are not asking for any of those treatments or requirements to be changed."

Nass said Wisconsin should be credited with being among a handful of states taking action on PFAS contamination. "It's complicated, and we need to get it right," he said. "We can't let government go rampant and decide to put additional items in a rule when the Legislature did not intend for those to be there."

But Rep. Lisa Subeck (D-Madison) said whittling down the rule would "essentially neuter" the law it was supposed to implement.

That law was already weakened from earlier attempts to address PFAS contamination, Sen. Chris Larson (D-Milwaukee) observed. When it passed, "we cleared the lowest possible bar in combating PFAS," Larson said. "Today Republicans decided to take a step backward and tripped over that bar in the process."