



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0944/P2
MCP:skw

DOA:.....Potts, BB0320 - PFAS standards

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

PFAS standards

This bill requires DNR to establish and enforce various standards for per- and poly-fluoroalkyl substances (PFAS). The PFAS group of substances includes several thousand chemicals; two of the most well known are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

The bill requires DNR to establish, by rule, acceptable levels and standards, monitoring requirements, and required response actions for any PFAS 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), and perfluorobutane sulfonic acid (PFBS).

The bill also requires DNR to establish air emission standards for PFAS to provide adequate protection for public health and welfare, taking into account energy, economic, and environmental impacts and other costs related to the emission source.

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, 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, DHS 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.

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 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.

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.

Finally, 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.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 160.07 (4) (f) of the statutes is created to read:

160.07 (4) (f) In recommending an 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.

SECTION 2. 160.07 (7) of the statutes is created to read:

160.07 (7) If the department of health services recommends an enforcement standard for a perfluoroalkyl or polyfluoroalkyl substance or a group or class of such substances under this section, the department shall apply the standard as an interim

enforcement standard for that substance, including through sampling, monitoring, and testing, and any other actions required by rules promulgated by the department, unless emergency or permanent rules that establish an enforcement standard for that substance are in effect.

SECTION 3. 160.15 (4) of the statutes is created to read:

160.15 (4) Notwithstanding sub. (1), if an interim enforcement standard for a perfluoroalkyl or polyfluoroalkyl substance is applied under s. 160.07 (7), the department shall apply an interim preventive action limit for that substance of 20 percent of the concentration established as the interim enforcement standard, unless emergency or permanent rules that establish a preventive action limit for that substance are in effect.

SECTION 4. 281.17 (8) (c) of the statutes is created to read:

281.17 (8) (c) If the department of health services recommends an enforcement standard for a perfluoroalkyl or polyfluoroalkyl substance or a group or class of such substances under s. 160.07, the department shall apply the standard as an interim maximum contaminant level for public water systems, water suppliers, and laboratories certified to analyze drinking water, in accordance with rules promulgated by the department, unless emergency or permanent rules that establish maximum contaminant levels for that substance are in effect.

SECTION 5. 285.27 (2) (bm) of the statutes is created to read:

285.27 (2) (bm) *Standards for PFAS.* Emission standards for known perfluoroalkyl or polyfluoroalkyl substances are needed to provide adequate protection for public health and welfare under par. (b). The department shall promulgate emission standards for any known perfluoroalkyl or polyfluoroalkyl substances to provide adequate protection for public health and welfare, taking into

account energy, economic, and environmental impacts and other costs related to the emission source.

SECTION 6. 292.31 (1) (d) (intro.) of the statutes is amended to read:

292.31 (1) (d) *Access to information.* (intro.) Upon the request of any officer, employee, or authorized representative of the department, any person who generated, transported, treated, stored, or disposed of solid or hazardous waste ~~which that~~ may have been disposed of at a site or facility under investigation by the department and any person who generated solid or hazardous waste at a site or facility under investigation by the department that was transported to, treated at, stored at, or disposed of at another site, facility, or location shall provide the officer, employee, or authorized representative access to any records or documents in that person's custody, possession, or control which relate to:

SECTION 7. 292.31 (1) (d) 1m. of the statutes is created to read:

292.31 (1) (d) 1m. The type and quantity of waste generated at the site or facility that was transported to, treated at, stored at, or disposed of at another site, facility, or location, and the dates and locations of these activities.

SECTION 8. 292.74 of the statutes is created to read:

292.74 Financial responsibility for PFAS. The department may, if it determines doing so is necessary to protect human health or the environment, require a person who possesses or controls a perfluoroalkyl or polyfluoroalkyl substance to provide proof of financial responsibility for conducting emergency response actions, remedial actions, environmental repair, and long-term care to address contamination by a potential discharge of perfluoroalkyl or polyfluoroalkyl substances or environmental pollution that may be caused by a discharge of such substances. The department shall establish, by rule, the procedure for determining

whether requiring a proof of financial responsibility is necessary to protect human health or the environment, and may establish requirements for types of financial responsibility, methods for calculating amounts of financial responsibility, access and default, bankruptcy notifications, and any other requirements the department determines are necessary under this section. The proof of financial responsibility required under this section shall be in addition to any other proof of financial responsibility or financial assurance required under this chapter.

SECTION 9. 299.15 (2m) of the statutes is created to read:

299.15 (2m) The department shall consider all known perfluoroalkyl or polyfluoroalkyl substances to be air contaminants for purposes of sub. (2) (a) 2. The reporting level for these substances is zero pounds per year.

SECTION 9132. Nonstatutory provisions; Natural Resources.

(1) EMERGENCY RULES FOR PFAS IN DRINKING WATER, GROUNDWATER, SURFACE WATER, SOLID WASTE, BEDS OF NAVIGABLE WATERS, AND CONTAMINATED SOIL AND SEDIMENT.

(a) The department of natural resources shall promulgate emergency rules under s. 227.24 establishing acceptable levels and standards, performance standards, monitoring requirements, and required response actions for any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances that the department determines may be harmful to human health or the environment in the following:

1. Drinking water under s. 281.17 (8).
2. Groundwater under ss. 160.07 (5) and 160.15.
3. Surface water from point sources under ss. 283.11 (4) and 283.21 and from nonpoint sources under s. 281.16.

4. Air under s. 285.27 (2) (bm), if the standards are needed to provide adequate protection for public health or welfare.

5. Solid waste and solid waste facilities under chs. 289 and 291.

6. Beds of navigable waters under s. 30.20.

7. Soil and sediment under chs. 289 and 292.

(b) The department of natural resources shall promulgate emergency rules under s. 227.24 to do all of the following:

1. Add any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances that the department determines may be harmful to human health or the environment to the list of toxic pollutants under s. 283.21 (1) (a) for purposes of setting toxic effluent standards or prohibitions under s. 283.11 (4).

2. Add to the list of hazardous constituents under s. 291.05 (4) any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances for which the department determines that the listing is necessary to protect public health, safety, or welfare.

3. Administer and enforce ch. 292 in relation to remedial actions involving perfluoroalkyl or polyfluoroalkyl substances or a group or class of such substances.

(c) Notwithstanding any finding required under par. (a) or (b), emergency rules promulgated under pars. (a) and (b) shall include, at a minimum, perfluorooctane sulfonic acid, perfluorooctanoic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluorobutane sulfonic acid and shall include provisions for enforcing these standards, including requiring sampling, monitoring, testing, and response actions.

(d) Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under pars. (a) and (b) remain in effect until July 1, 2022, or the date on which

permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural resources is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(2) **WATER QUALITY STANDARDS FOR PFAS.** The department of natural resources shall promulgate, under s. 281.15, water quality standards for perfluorooctane sulfonic acid, perfluorooctanoic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluorobutane sulfonic acid and any other perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances that the department determines may be harmful to human health and necessary to protect a water's designated use.

(3) **LIST OF GROUNDWATER CONTAMINANTS.** The department of natural resources shall add to the list of groundwater contaminants under s. 160.05 any perfluoroalkyl and polyfluoroalkyl substance or group or class of such substances that is shown to involve public health concerns and that has a reasonable probability of entering the groundwater and shall categorize and rank those substances according to the provisions of s. 160.05.

(4) **TESTING LABORATORIES; EMERGENCY RULES.**

(a) The department of natural resources shall promulgate emergency rules under s. 227.24 establishing criteria for certifying laboratories to test for any perfluoroalkyl or polyfluoroalkyl substances, including the standards and methods for such testing, and shall certify laboratories that meet these criteria. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until July 1, 2022, or the date on which permanent rules

take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural resources is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(b) Before emergency rules are promulgated under par. (a), the department of natural resources may require testing for a perfluoroalkyl or polyfluoroalkyl substance to be done according to any nationally recognized procedures.

SECTION 9432. Effective dates; Natural Resources.

(1) INTERIM MAXIMUM CONTAMINANT LEVELS FOR PFAS. The treatment of s. 281.17 (8) (c) takes effect on the first day of the 7th month beginning after publication.

(END)