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Testimony on Assembly Bill 794

Assembly Committee on Government Accountability and Oversight
Representative Mary Felzkowski
35th Assembly District
January 29, 2020

Good morning Chairman Steffen and Committee Members,

Thank you for taking the time to hear testimony on Assembly Bill 794, which will mandate the Department of Natural Resources and the Department of Health Services to have mandatory 21-day public comment periods during their development of the list of substances they identify as public health concerns.

One of the most crucial aspects of our democracy is the opportunity provided to every citizen to voice their opinion and be heard on matters that concern them. Public comment periods, in whatever format, are a staple of the decision-making process of our state government. Within the complex process of administrative rule making, a mandated public comment period is all the more needed because these rules can have significant impacts on Wisconsin businesses and industries. You will hear from some of these businesses shortly.

Under current law, DNR submits the list of substances identified as a public health concerns to DHS, who in turn develops enforcement standards for those substances, which DNR then incorporates into its rules.

Under this bill, the DNR must provide a 21-day public comment period to allow for comments on the substances included on the list given to DHS. The bill also requires DHS, upon developing a recommended enforcement standard for a substance identified as a public health risk, to provide public notice and a 21-day public comment period on the proposed recommendation, before submitting the recommendation to DNR.

I would like to note that this bill does not change the process by which DNR and DHS develop their enforcement standards- it simply guarantees that the people, farmers and businesses of Wisconsin have a voice and an opportunity to share their input.

I would like to thank my colleagues on the Speaker's Task Force on Water Quality for their partnership as we travelled the state listening to experts and collaborated on ways to address our the future of Wisconsin's water quality. I look forward to any questions you may have.

ANDRÉ JACQUE
STATE SENATOR • 1ST SENATE DISTRICT

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Testimony before the Assembly Committee on Government Accountability and Oversight
Senator André Jacque
January 29, 2020

Chairman Steffen and Committee Members,

Thank you for holding this hearing on Assembly Bill 794, relating to public notice and comment period for certain groundwater standards.

This legislation is part of a package of recommendations from the Speaker's Task Force on Water Quality. The bipartisan and bicameral task force was created in February of 2019 and has traveled the state holding 14 hearings across the state. Members of the task force heard from hundreds of citizens, over 70 organizations, and traveled thousands of miles gathering information to address Wisconsin's water quality challenges.

One of the most crucial aspects of our democracy is the opportunity provided to every citizen to voice their opinion and be heard on matters that concern them.

Public comment periods, in whatever format, are a staple of the decision-making process of our state government. Within the complex process of administrative rule making, a mandated public comment period is all the more needed because these rules can have significant impacts on Wisconsin businesses and industries.

Under this bill, the Department of Natural Resources must provide a 21-day public comment period to allow for feedback on their list of substances identified to pose a public health concern, and additionally requires the Department of Health Services (which develops enforcement standards for these substances) to provide public notice and a 21-day public comment period on their proposed recommendations.

Thank you for your consideration of Assembly Bill 794.

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Assembly Committee on Government Accountability and Oversight

2019 Assembly Bill 794

Public Notice and Comment Period for Certain Groundwater Standards

January 29, 2020

Good morning Chairman Steffen and members of the Committee. My name is Todd Ambs, and I am the Assistant Deputy Secretary for the Department of Natural Resources. Thank you for the opportunity to present testimony today, for informational purposes, on Assembly Bill 794 (AB 794).

AB 794 would add an additional public comment period to the DNR's process of compiling a list of substances of public health and welfare concern and to the Department of Health Services (DHS) process of developing and recommending an enforcement standard for a substance identified by the DNR as a public health risk. Public input opportunities already exist under current state law, and in existing DNR and DHS practices and procedures, for both the list of substances and the DHS recommended standards.

Under current state law, DNR works jointly with DHS to set numeric groundwater standards in NR 140 for substances of public health or welfare concern to be protective of human health and the environment. In accordance with Chapter 160, Stats., the DNR submits to DHS a categorized and ranked list of substances that are detected in or have a reasonable probability of entering the groundwater resources of the state. When the list of substances of public health concern is transmitted to DHS, the transmittal letter and list of substances of public health concern are posted and accessible on the internet through both DNR and DHS websites.

A robust public input provision already exists in s.160.05(2), Stats. Any person may petition the DNR to add or remove a substance from the list and, within a reasonable period of time after the receipt of a petition, the DNR shall either deny the petition in writing or submit the name of the substance to the department. If the regulatory agency denies the petition, it shall give notice of the denial promptly to the person who filed the petition, including a statement of its reasons for the denial.

Following its rigorous scientific review of the list of substances, DHS sends the DNR its recommendations for groundwater quality enforcement standards for substances of public health concern. The DNR in turn must propose rulemaking under NR 140, Wis. Adm. Code to add or revise the recommended enforcement standards. Under Ch. 160., DHS prepares a public information document describing the information and methodology used in establishing each recommended groundwater standard and that document is made available for public review and comment. Additionally, Chapter 227 of the Statutes, which governs all agency rulemaking, mandates public notice of proposed rules, a public hearing, and opportunities for public comment on both specific proposed rule language and on the economic impact of adoption of proposed rules. Any rulemaking proposed by the

Department of Natural Resources is also subject to review by the Natural Resources Board. This process establishes a second layer of public input and discussion, which is highly influential in the final policies adopted by the Department. In short, the existing transparent, scientific, statutorily driven process already includes opportunity for public input – and it has worked well for over 35 years.

The additional public input requirements under this bill would add additional administrative complexity where input opportunities already exist and already provide DNR with meaningful public feedback. These requirements would also create discrepancies among the multiple options for public input on the DNR list of substances, creating confusion as to which provision the input was provided under, and the differing responses required by the competing sections of the statute.

On behalf of the Wisconsin DNR, I would like to thank you for your time today. I would be happy to answer any questions you may have.

DNR PERMANENT ADMINISTRATIVE RULE PROMULGATION PROCEDURE

[When Governor approval of scope received after April 2013] Rev. 7/10/18

8. Green Sheet package is prepared to request NRB approval of scope statement and conditional approval of the Notices.

9. NRB meeting is held for approval of the scope statement and conditional approval of the notices.

PHASE II – Rule Development

10. Proposed rule language is prepared in Board Order format.

11. Complete the analysis section of the board order.

12. Does the rule require incorporation by reference? If yes, be sure to update analysis. See step 23.

PHASE III – Soliciting Comments on Economic Impact

13. Solicitation Notice is prepared for seeking comments on economic impacts of the proposed rule.

14. Drafting bureau meets with the Department Economist to determine Economic Impact level.

15. Fiscal estimate and Economic Impact Analysis (FE/EIA) prepared using Fiscal Estimate form DOA-249.

16. Solicitation Memo to NRB is prepared informing the Board of the department's intent to seek comments on economic impact.

17. Solicitation Memo and other documents are routed, then approved by the Secretary's office and submitted to NRB.

18. Solicitation Notice and other documents are sent by the drafting bureau to affected businesses, interested parties; rules officer posts on the DNR website.

PHASE IV – Public Hearings

19. Public hearing documents are prepared for 15-day passive review by the NRB.

20. Rule documents sent to the Legislative Council for their 20-working day review; docs also sent to DOA and Chief Clerks for referral to JCRAR, 2017 WI Act 57

21. The public hearing notice is published in the Administrative Register.

22. Public hearing is held and public comment period closes.

PHASE V – Final Rule Adopted by NRB and Governor

23. Board order for proposed rule may be modified as necessary based on public comments received and Incorporation by Reference if needed.

24. Yellow Sheet is prepared to hold a place on NRB agenda for adoption of proposed rule.

25. Green Sheet package is prepared and approved by the Secretary to request NRB adoption of the proposed rule.

26. NRB meeting is held requesting adoption of final rule.

27. Final rule and rule checklist is submitted by the rule officer requesting Governor approval.

28. The rule officer notifies JCRAR that the Department has submitted a rule to the Governor for approval.

PHASE VI – Legislative Review This is the 30 month deadline. The end result is that rulemaking must go from scope statement publication to legislative review within 30 months. 2017 WI ACT 57.

29. Report to Legislature and Notices prepared and submitted to Assembly and Senate Chief Clerks.

30. Standing Committee's review completed. (30 days; an additional 30 days can be requested by the committees).

31. JCRAR Reviews the rule and can object to the rule in whole or in part, or just review. Usually a 30 day review. Rule officer notes the final date of the review time period.

32. The Department rule officer prints the rule and it is signed by the Secretary; the rule officer files with LRB.

33. Rule proof received from LRB, the program reviews the proof copy and it's returned to the LRB by rule officer.

34. Final Rule is published in the end of month Administrative Register.

35. Rule becomes effective the first day of the month following publication in the Administrative Register.

WISCONSIN PAPER COUNCIL

January 29, 2020

ASSEMBLY COMMITTEE ON GOVERNMENT ACCOUNTABILITY AND OVERSIGHT

TESTIMONY ON ASSEMBLY BILL 794: PUBLIC NOTICE AND COMMENT PERIOD FOR CERTAIN GROUNDWATER STANDARDS

I. INTRODUCTION

Chair Steffen, Vice-Chair Brandtjen, and committee members, thank you for the opportunity to testify on behalf of the Wisconsin Paper Council. Our members are proud stewards of the environment. We rely on renewable energy , provide charitable support to our local communities, and strive to be national leaders in sustainability all while providing employment to over 30,000 highly skilled men and women.

The Wisconsin Paper Council supports Senate Bill 708. The regulated community should never be surprised or confused by a new regulation. Our administrative law has been carefully crafted by this legislature to allow regulatory agencies to work together with stakeholders and the public to develop common-sense, science-based regulations that balance environmental protection and economic impact.

However, the groundwater standard process is unique because it is specifically laid out in statute. When the rulemaking process was updated to include transparency and public input, this statutory process was not updated with it. This bill updates the antiquated process by adding transparency and an opportunity for input to an otherwise opaque process.

II. CURRENT PROCESS

Currently, the process for determining groundwater standards is set in Chapter 160. The Department of Natural Resources (DNR) independently decides which substances require a health-based or public welfare-based ground water standard, with no input from stakeholders.[1] Then, DNR sends the list of substances to the Department of Health Services (DHS).[2]

DHS then develops recommended enforcement standards, again with no required stakeholder input.[3] Generally, DHS is required to adopt the "federal number" if one exists.[4] Whether a federal standard or advisory limit meets the definition of "federal number" is a decision made by DHS with no public input.

Even if a federal number exists, DHS can choose to stray from that number if there is "significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which [DHS] concludes…with a reasonable scientific certainty" that a different standard is justified.[5] All of the decision points in that requirement – 1) whether there exists significant technical information, 2) whether it is scientifically valid, 3) whether it was considered when the federal number was established, and 4) whether it justifies a different standard with reasonable scientific certainty – are

[1] Wis. Stats. § 160.05(1)
[2] Wis. Stats. § 160.07(2)
[3] Wis. Stats. § 160.07
[4] Wis. Stats. § 160.07(4)(a)
[5] Wis. Stats. § 160.07(4)(e)

decisions made at DHS with no public or outside expert input. In fact, the public does not even know when the process is happening.

For example, the most recent recommendations, Cycle 10, for 37 new or revised standards were requested from DHS by DNR on March 2, 2018. I understand there was some initial discussion with external scientists on the topic, but before long, DHS went radio-silent. Not only could stakeholders not get any information about the process, but legislators were also left in the dark for nearly 16 months, leading to a proposed law that would have forced DHS to make recommendations on a specific timeline. Finally, on June 21, 2019, DHS sent recommended standards to DNR.

On the Cycle 10 list were two PFAS compound: PFOA and PFOS. Notably, a federal number did exist for those compounds when the request was made of DHS. EPA had determined a no-adverse effect level, or Lifetime Health Advisory level, of 70 parts per trillion (ppt) in May 2016. However, DHS unilaterally decided that number was not sufficient, and spent 16 month reviewing additional studies.

If DHS decides to calculate its own standard, the agency has significant discretion to decide on which studies to rely, what uncertainty factor should be used, and the acceptable risk level. None of these decisions have legislative oversight, invite public input, or even require DHS to keep the public informed.

III. PFOA STUDY BY DHS

The toxicologists at DHS are well trained scientists. But even the brightest scientists disagree on research, which is why it is vital to have transparency in this process. It does not take a PhD to follow the process, ask questions, or provide valuable input.

Going back to our example, DHS recommended a combined standard for PFOA and PFOS of 20 ppt, with a Preventive Action Limit (PAL),[6] an enforceable limit, of 2 ppt. To get to this recommendation, DHS chose five critical toxicity studies for PFOA.[7] This decision was once again made with no input or transparency. From those studies, DHS estimated safe levels of 25,000 ppt, 30,000 ppt, 250,000 ppt, and 6200 ppt.[8] DHS also determined additional uncertainty factors ranging from 100 to 1000. But then, DHS apparently ignored those numbers.[9]

Instead, DHS relied on one single pharmacokinetic study for PFOA.[10] This study was intended to estimate the impact of PFOA on breastfed infants.[11] The starting point was mice who were given PFOA every day during their pregnancy.[12] The lowest dosage with an actual measured impact was at 10 million ppt (or 10 ppm).[13] At that dosage, some baby mice had lower bone density in their phalanges or accelerated puberty.[14] There were no signs of cancer reported. This is the same base study that EPA relied on when determining the 70 ppt advisory level.[15]

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[6] A PAL is enforceable in the same manner as an enforcement standard. *See* NR 140.24(5).

[7] Wisconsin Department of Health Services Recommended Public Health Groundwater Quality Standards Scientific Support Documents for Cycle 10 Substances, June 2019, p. 165. Accessed at https://www.dhs.wisconsin.gov/publications/p02434v.pdf

[8] *Id.* at 166. Estimates were converted from mg/kg-day based on Wis. Stat. § 160.13(2)(c) which requires DHS to consider 1 liter/10 kg-day of intake.

[9] *Id.*

[10] *Id.* at 169

[11] Kieskamp KK, Worley RR, McLanahan ED, Verner MA. Incorporation of fetal and child PFOA dosimetry in the derivation of health-based toxicity values. *Environ Int*. 2018. Accessed at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6234970/.

[12] *Id.*

[13] *Id.*, Fig. 1. The dosage was converted from mg/kg-day based on Wis. Stat. § 160.13(2)(c).

[14] *Id.*

[15] *Id.*

Using the data from the 10 million ppt dose, the researchers ran a computer simulated mouse model to estimate what additional impact breast feeding might have on the baby mice. Then, the study used the output from that computer model as input in another computer model – a human simulation – to estimate a human equivalent dosage.[16]

The researchers ran 24,000 different human simulations to account for all of the relevant factors and to account for inter-individual variability, or the difference in humans, and uncertainty.[17] The study then proposed acceptable human dosages depending on the different factors.

DHS chose the dosage associated with 12-months of breastfeeding, which was 5,400 ppt.[18] It's important to note that the statutes requires DHS to make a recommendation based on a 10kg (22 pound) person drinking one liter of contaminated water a day where that water is the only source of the contaminant.[19] That statutory requirement means two things: 1) This means an average 165 pound person is assumed to drink 7.5 liters, or roughly 2 gallons of untreated water every day for life, and 2) DHS cannot consider breastfeeding as an additional source of the contaminant. In any event, DHS again did this analysis with no transparency, so there was no ability for the public to question or challenge the method. The dose chosen by DHS, 5400 ppt, means that even vulnerable babies would be safe after 12 months of breastfeeding if the mother drinks nearly two gallons of untreated water every day for her entire life. That is a very conservative standard.

However, even though the study had uncertainty already accounted for, DHS choose to divide that dose by 300 to account for further uncertainty, which resulted in a recommended standard of 18 ppt.[20] DHS then apparently rounded up to 20 ppt. DHS also unilaterally determined the substance was oncogenic, despite EPA's finding that any risk of cancer was already controlled when setting limits for potential developmental impacts.[21] That determination led to an enforceable PAL of 10%, or 2ppt.

In summary, the lowest actual measured impact on baby mice was at 10 million ppt, but through simulations and added uncertainty factors, DHS proposed an enforceable limit of 2 ppt. The point is that reasonable scientists can disagree on any step of this process, which could result in drastically different numbers. There are many points during this analysis where stakeholders should have been able to ask questions, provide input, and follow DHS's methodology, but no such opportunity exists so the analysis was completed behind closed doors.

IV. CURRENT OPPORTUNITY FOR INPUT

Once DHS has formulated its recommendation, with no input or transparency, it sends that recommendation to DNR. DNR is then required to propose rules to enforce that standard.[22] Well into DNR's rulemaking process, when the rule has been drafted and submitted to the legislature, the agency is required to hold a hearing on that rule.[23] That is the first time that DNR and DHS are *required* to provide information and the methodology used by DHS in formulating the recommended standard.[24] Moreover, the current statute

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[16] *Id.*
[17] *Id.*
[18] DHS Support Document for Cycle 10, p. 169.
[19] Wis. Stats. § 160.13(2)(c)
[20] DHS Support Document for Cycle 10, p. 169.
[21] EPA Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA), May 2016. Accessed at https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_health_advisory_final-plain.pdf
[22] Wis. Stats. § 160.07(5)
[23] Wis. Stats. § 227.17
[24] Wis. Stats. § 160.11

allows the public to ask questions on the information provided, but does not appear to allow DNR to make changes according to input received.[25]

There are many questions we have on the example discussed earlier. Why did DHS stray from the federal number and then rely on the same study EPA relied upon when determining that federal number? Why did DHS rely on breastmilk intake rather than the one liter per 10 kg requirement despite the statute prohibiting that? Why did DHS disregard the plethora of additional studies that resulted in much higher safe dosages? Why did DHS add an additional safety factor of 300 despite uncertainty already being considered? Why did DHS round up from by 2ppt from 18 ppt to 20 ppt, but then recommend a preventive action limit of 2ppt? But by the time we have an opportunity to ask these questions, the recommended 20ppt limit will be accepted by many as good science simply because it came from DHS.

V. CONCLUSION

While not every member of the public will read these studies, those who do deserve the opportunity to understand and provide input on the process as it happens, not after it is complete. It is very hard to influence a standard once it has already been presented as the correct answer.

As we know, once a standard or limit is set and rules are promulgated, regulated entities must undertake significant and costly control, monitoring, and reporting efforts. DNR may require a broad range of compliance efforts, including closure of a facility.[26] But it's possible that the standard could be founded on incomplete science. Waiting until the rule is drafted to evaluate the foundational science for such important regulations is unfair to the public and the regulated community.

Government transparency is never a bad thing, and we encourage this committee to support adding transparency to the groundwater standard setting process.

[25] *Id.*

[26] Wis. Stats. § 160.21

TO: **Assembly Committee on Government Accountability and Oversight**

FROM: **Jason Culotta**
President
Midwest Food Products Association

DATE: **January 29, 2020**

RE: **Support for Assembly Bill 794**

The Midwest Food Products Association (MWFPA) appreciates the opportunity to testify in support of Assembly Bill 794, which would create a public comment period for proposed regulations of substances with potential public health impact to groundwater governed by Chapter 160 of the Wisconsin State Statutes.

MWFPA is the trade association representing food processors and their allied industries throughout Illinois, Minnesota, and Wisconsin. As Governor Evers noted last week, Wisconsin is among the leading growers and processors, ranking second in the nation in vegetable production - only behind California. Many of our food processors and their contract growers, along with others in the agricultural industry, are directly impacted by the Chapter 160 rule-writing process.

Water is an essential ingredient for the agriculture and food industries. Food manufacturers use water in many products but also utilize it to clean, peel, heat, and steam raw products. Purchasing, pumping, and treating water represents a major cost to food manufacturers. While we support efforts to manage and ensure access to clean, healthy water – including groundwater, we recognize the need to proceed deliberately to ensure new regulations are effective in addressing problems where they exist.

Under the current Chapter 160 process, the Department of Health Services (DHS) develops proposed enforcement standards for substances identified by the Department of Natural Resources (DNR) as potential public health concerns impacting groundwater. These standards are developed in cycles, which we are presently in the tenth round of and plans for the eleventh are well under way.

This process would work best if the two employees at DHS who develop these standards adhered to a peer review by which the standards are established, but they do not.

A case in point is the treatment in Cycle 8 of a substance called alachlor. In 2005, the Natural Resources Board (NRB), acting on DHS' recommendation, adopted a very strict limit for this corn herbicide. The Joint Committee for Review of Administrative Rules requested that this proposed standard have an external, independent, and unbiased scientific peer review. NRB rejected this recommendation and the very low standard for alachlor was adopted in 2007.

The current Cycle 10 list covers twenty-seven substances – including eleven agricultural pesticides – which are proposed by DNR and DHS to have a lower enforcement standard or create such a standard for the first time. Most of the proposed standards are reasonable for the agriculture industry to comply with but several are lower than the guidelines recommended by national experts, particularly for imidacloprid. This crop management tool is used widely in agriculture across Wisconsin and the proposed standard, ultra-low as in the past, will likely remove this tool from the industry's toolbox.

Unfortunately, industry and other interested parties are not given an opportunity to have input on the proposed regulation of these substances, leaving those regulated by the standards to guess how a particularly standard was arrived at by the agencies and perhaps meaning that something other than science was used in making those determinations. Adopting a peer review standard, such as has been done in other large agricultural production states like California and Idaho, would be most fair.

Our group and others in the "Ag Coalition" have petitioned the NRB to challenge the proposed standard for imidacloprid, but as we have seen in the past, the Board is under no obligation to abide by this input.

Assembly Bill 794 provides the public an opportunity to comment on proposed groundwater enforcement standards initially brought forward by DNR as well as when proposed standards are offered by DHS. This is transparency-in-government legislation that allows public input.

MWFPA supports adoption of this legislation, but it is only a first step in improving the Chapter 160 process. We appeal to the authors and others on this Committee to consider introducing subsequent legislation to provide a peer review component to the Chapter 160 process to fairly and scientifically proceed with proposed new standards.

Thank you for the opportunity to comment.

cleanwisconsin
your environmental voice since 1970

Testimony – Carly Michiels
Government Affairs Director, Clean Wisconsin
Assembly Committee on Government Accountability and Oversight
Senate Committee on Government Operations, Technology, and Consumer Protection
Assembly Bill 794 and Senate Bill 708 – public notice and comment period for certain groundwater standards.
January 29, 2020

Thank you for the opportunity to provide testimony on Assembly Bill (AB) 794/Senate Bill (SB) 708, relating to public notice and comment period for certain groundwater standards.

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air, and clean energy issues. We were founded almost fifty years ago and have 20,000 members and supporters around the state. We've been working on clean water issues in Wisconsin since our founding, and while some of the particulars have changed, Wisconsin remains a state with abundant water resources but also abundant challenges in restoring and protecting those waters. Clean Wisconsin employs scientists, policy experts, and legal staff to bring all the tools at our disposal to protect and improve our state's waters.

We support transparency and robust public participation in the regulatory and rulemaking process. Public participation is important to ensure there is ample feedback and stakeholder input into any new agency rule or action. We also agree that public comment periods are a staple of the decision-making process of our state government.

AB 794/SB 708 requires the Department of Health Services (DHS) so seek input in their portion of the groundwater standard development process, for the first time ever. This would open their scientific review process to outside interference, jeopardizing their objectivity and independence in recommending groundwater standards safe for public health.

Updated groundwater standards are recommended by DHS after extensive research and scientific review to the Department of Natural Resources (DNR), the enforcement agency. DHS has a rigorous three-step process, clearly outlined in state statute.

1. Research and review literature and available scientific information.
2. Select appropriate science-based standards based on research.
3. Write documents explaining findings and recommendations for each substance.

This science-based process has never included outside input for their recommendations and has worked to protect groundwater in Wisconsin for over 35 years. Additionally, this bill seeks to unnecessarily lengthen the already lengthy rulemaking process which would delay implementation of these important health-based standards.

The most recent recommendations provided by the DHS in Cycle 10 included standards for two PFAS chemicals and will be the first time in 10 years the DNR updates its groundwater standards. The recommendations from DHS took an extensive amount of time and research to develop. We believe the

recommendations through this process met all statutory requirements, are supported with ample technical information, and reflect the primary responsibility of DHS to protect public health.

It is not lost on me how this bill was introduced after the Cycle 10 recommendations received substantial pushback from various special interest groups. This process is important and needs to be upheld and utilized properly to protect Wisconsin's waters from harmful substances. No outside, special-interest input – including from ourselves – should be allowed to inject their policy preferences into what is an objective, nonpartisan, scientific process. There are numerous opportunities for public input in approving new groundwater standards once the recommendations are submitted to the DNR and the rulemaking process begins.

Clean Wisconsin is opposed to requiring outside input in the DHS review process for recommending groundwater standards safe for public health. The objective-nature of the current process should be respected and left to the experts.

Thank you for the opportunity to testify on the bill today.

Wisconsin Conservation Voters

Testimony in Opposition to AB 794 & SB 708
Jennifer Giegerich, Government Affairs Director
January 29, 2020

Good morning. I am Jennifer Giegerich, Government Affairs Director for Wisconsin Conservation Voters. Thank you for this opportunity to testify on AB 794 & SB 708. We urge members of the committee to reject this legislation as it undermines our process for setting science-based groundwater standards.

Wisconsin's existing groundwater law was a bipartisan effort to minimize concentrations of pollution in our groundwater, which can lead to toxic drinking water. Seventy percent of our state's residents depend on groundwater for their drinking water.

Under the state groundwater law, the Department of Natural Resources (DNR) periodically compiles a list of pollutants that have come on the market and industrial pollutants that scientists find are linked to health risks. The chemicals typically have already been found in groundwater, sometimes years before they are listed. Some are flagged because they are known to move easily through groundwater. Others already have standards in place, but need to be reviewed in light of new scientific research on health risks.

Each list is sent to the state Department of Health Services (DHS), which reviews the scientific literature and calculates safe levels for each pollutant in groundwater. Current groundwater law requires the DHS to follow federal and existing state drinking water standards. If there is no current federal or state standard, the DHS must make recommendations based on the acceptable intake over an entire human lifetime. The DHS must also consider impacts to small children, because children are most susceptible to pollution as their bodies are still developing.

The DNR writes the limits into administrative rules that are subject to public comment and review by the governor and legislators. Once numeric standards are set, the state can order reduced applications where harmful concentrations are found. Standards allow quicker cleanups of spills because they minimize disputes over how extensive a cleanup must be.

Over the last 35 years, we have used the groundwater standards process to set standards for 135 chemicals in Wisconsin, most notably PCBs and mercury. There

has not been an instance of an industry going out of business or a company going bankrupt while meeting these new health-based standards.

There are several reasons why AB 794 & SB 708 are problematic:

- It unnecessarily adds more time to an already lengthy process. Currently, it takes 30 months to establish a new health standard. These pollutants are harming people and moving quickly throughout groundwater. Adding additional delays puts more people at risk.
- There are already ample opportunities for industry groups to weigh-in during the process.
- Our health depends on sound science and our state agencies provide balanced unbiased scientific review with robust public comment opportunities. Polluters have begun a push to influence the scientific review of public health impacts of groundwater. These polluters clearly have a self-interest in the outcome of such review. The current law protects this process from politics and undue influence from parties with vested interests.

Wisconsinites have been protected for the 35 years from pollutants like PCBS and mercury thanks to our current process. Now, with the emerging threat of PFAS or "forever chemicals" that are linked to cancer, liver damage, fertility issues – and – more in our drinking water, this science-based process is more important than ever.

We urge members of the committee to oppose AB 794 & SB 708.

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Wisconsin Conservation Voters is a nonprofit, nonpartisan organization dedicated to encouraging lawmakers to champion conservation policies that effectively protect Wisconsin's public health and natural resources. For more information, contact Government Affairs Director Jennifer Giegerich at jennifer@conservationvoters.org or 608-208-1130.

Midwest Environmental Advocates

To: The Assembly Committee on Government Accountability and Oversight
From: Attorney Rob Lee, Midwest Environmental Advocates
Date: January 29, 2020
Re: Opposition to AB 794

Chairperson Steffen and Members of the Committee, thank you for the opportunity to provide testimony in opposition to AB 794. My name is Rob Lee, and I am a staff attorney at Midwest Environmental Advocates (MEA). MEA is a public interest environmental law center that has been working for over two decades to protect Wisconsin's water resources. MEA strongly supports citizens' rights to be heard on environmental policy decisions that affect public health. The current process does just that. MEA opposes AB 794 because the bill would prematurely inject special interests at a stage of the process that should remain solely based on sound science. The bill would also unnecessarily delay the implementation of health-based standards designed to protect the most precious resource of all, the people of Wisconsin.

I. Input at the stages required under the bill is inappropriate because agencies are supposed to solely consider science, not special interests.

The two additional comment periods that this bill would establish allow special interests to influence the process during the very early stages of groundwater standard development. Current law appropriately limits agencies' consideration at these stages to sound scientific information. If there is no available scientific information to review for a particular contaminant, the Department of Health Services (DHS) informs the Department of Natural Resources (DNR) and the process ends there. Under the bill, a comment period would be required when DNR merely identifies a groundwater contaminant and prioritizes it for review. At that time, DNR is already authorized under current law to solicit information about that contaminant from manufacturers and other knowledgeable sources.[1] Another comment period would be required under the bill after DHS develops a recommended enforcement standard, but before DNR proceeds to formal rulemaking, where ample opportunity for public and stakeholder input already exists.

II. The rulemaking process already contains numerous opportunities for stakeholder and citizen input.

Once the formal rulemaking process begins, public comments may be submitted up to two times just on the scope statement.[2] DNR is also required to prepare an economic impact analysis on the rule and must "solicit information and advice from businesses, associations representing businesses, local

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[1] Wis. Stat. § 160.17.

[2] Public comments may be submitted on the scope statement if the Legislature's Joint Committee for Review of Administrative Rules orders a preliminary public hearing and comment period under Wis. Stat. § 227.136, and then again directly to the Natural Resources Board before it approves the scope statement, *See* Wis. Nat. Resources Bd., Current Agenda and Meeting Materials, https://dnr.wi.gov/about/nrb/agenda.html.

governmental units, and individuals that may be affected by the proposed rule."[3] DHS and DNR must also prepare and publish "a document describing the information and methodology used and the conclusions reached in establishing each proposed enforcement standard."[4] Once DNR has prepared the proposed rule language, the department must again hold a public hearing and comment period, where stakeholders and the public have the opportunity to provide feedback on the economic impact analysis, the supporting information document, and the proposed standard itself.[5] This entire process is also subject to legislative review, and committees of the Legislature may also choose to hold public hearings during the review process.[6]

III. Creating an additional and unnecessary process will delay drinking water protections for Wisconsin families.

MEA urges this committee to reject AB 794. A main purpose of the Speaker's Task Force on Water Quality was to address urgent public health concerns with Wisconsin's drinking water, much of which comes from groundwater. This bill does absolutely nothing to improve groundwater quality. Instead, it drags out an already years long process that must be followed before enforceable groundwater standards go into effect. The Legislature should be looking to make it easier to ensure access to clean drinking water for Wisconsin families, not making it more difficult. This bill would be a step in the wrong direction.

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[3] Wis. Stat. § 227.137(3).

[4] Wis. Stat. § 160.11.

[5] Wis. Stat. §§ 227.17-.18.

[6] *See, e.g.*, Wis. Stat. § 227.19(4)(b)1.b.

WMC

WISCONSIN MANUFACTURERS & COMMERCE

To: Assembly Committee on Government Accountability & Oversight

From: Scott Manley, Executive Vice President of Government Relations

Date: January 29, 2020

Re: Support for Assembly Bill 794

Wisconsin Manufacturers and Commerce (WMC) strongly supports Assembly Bill 794, and respectfully requests that you sign on to this important bill. Implementing the reforms in this legislation will improve the quality of rulemaking related to groundwater standards by encouraging transparency and public involvement in the rulemaking process.

WMC is the state chamber of commerce and largest general business association in Wisconsin. We were founded over 100 years ago and are proud to represent approximately 3,800 member companies of all sizes and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business. One way WMC advances this mission is by advocating for a more transparent, responsive, and accessible regulatory system.

The provisions of this bill represent common sense, straightforward reforms to the process for developing groundwater standards. Under the current system, the Department of Natural Resources (DNR) begins by identifying substances that have entered or may enter the state's groundwater resources and ranks these substances based on their potential risks to public health or welfare. The Department of Health Services (DHS) then develops recommended enforcement standards for the substances identified by DNR. Finally, DNR promulgates rules for groundwater standards using DHS' recommendations.

Sometimes, this process can last many months or years, and at no point is the public afforded an opportunity to comment on the recommendations or standards as they are developed. The process is completely opaque to the general public. Even once the process has ended and rules have been promulgated, little information about how and why the standards were developed is available to the public. We believe that this process must be improved by requiring more transparency and stakeholder input.

The provisions proposed in Assembly Bill 794 would address some of the flaws in this process with a simple, well-tested solution: public comment periods. The bill adds two 21-day public comment periods to the process for developing groundwater standards:

- First, DNR would be required to seek public comment on its list of substances that may affect groundwater resources, before sending this list to DHS.

- Second, DHS would be required to seek public comment on its recommended groundwater standards, before submitting them to DNR.

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Numerous state statutes addressing a wide variety of topics require state agencies to provide public comment periods as they develop rules. Indeed, through public hearings and other means, the Legislature itself provides the public with many opportunities to comment on proposed legislation. This is to say that policymakers have long recognized the value of seeking input from stakeholders and interested members of the public. It is hard to imagine a scenario where it would be preferable for government decision makers to operate with less, rather than more, information about the opinions and preferences of the public and the regulated community.

In addition to improving the rulemaking process by requiring agencies to seek public input, Assembly Bill 794 would improve transparency and public access to information about how and why groundwater standards are developed. Under this bill, the DNR would be required to "provide public notice of the list of groundwater substances that it compiles, including by publishing such a list on its Internet site, and must include notice of the information and reasoning it used in compiling the list." For its part, DHS would be required to post similar public notice and information about its recommended standards, before submitting these to DNR.

These changes will help the public and stakeholders to better understand the process for developing groundwater standards, and will also allow them to make better-informed comments during the new public comment periods. When state government develops standards (rules that must be followed) regarding an important issue of public concern (the health and safety of state groundwater resources), the public deserves to have information about how agencies are making decisions. As with public comment periods, policymakers have long recognized the inherent value of requiring government processes to be more transparent and accessible.

For all of these reasons, WMC strongly supports this legislation and respectfully requests that you co-sponsor this bill. WMC believes that the regulatory process should be transparent, accessible, and responsive to the interests of the public and the regulated community, and we believe that implementing the provisions Assembly Bill 794 will advance this objective.

Please feel free to contact me at (608) 258-3400 if you have any questions.

January 29, 2020

Chairman Steffen
Committee on Government Accountability and Oversight
415 Northwest

RE: AB 794

Chairman Steffen and the members of the Committee on Government Accountability and Oversight,

On behalf of thousands of River Alliance of Wisconsin members-small business owners, individuals, and local watershed protection groups, we ask you to oppose Assembly Bill 794.

This bill changes the long-standing process for groundwater standards. Given that 70% of the people in Wisconsin drink groundwater this is an important process.

Currently, when the DNR determines a new chemical or pollutant needs review and standards to protect public health, they send a request to the Department of Health Services (DHS). DHS completes an independent, science-based review to determine what levels of the pollutant are safe for the public. Once this unbiased work is done, the lengthy public process begins. This is when industry and the public can weigh in on the proposed levels recommended by DHS and DNR.

The changes in this new bill will allow industry undue influence on DHS's work and will unnecessarily lengthen an already long process. Groundwater standards must remain independent of industry influence and the process should not be slowed down. Public health is at stake.

Thank you for considering our comments.

Respectfully,

Allison Werner
Policy & Advocacy Director
River Alliance of Wisconsin

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