John Nygren
WISCONSIN STATE REPRESENTATIVE ★ 89TH ASSEMBLY DISTRICT

Assembly Bills 842 and 843 Testimony
State Rep. John Nygren
February 6, 2020

Chairman Kitchens and Members of the Assembly Committee on Environment,

Thank you for the opportunity to speak in favor of Assembly Bills 842 and 843, legislation Senator Dave Hansen and I have introduced in response to the per-and-polyfluoroalkyl substance (PFAS) contamination in communities we represent in northeast Wisconsin.

PFAS environmental contamination is a complex issue that continues to evolve in numerous areas around the state. Marinette and Peshtigo unfortunately represent the epicenter of this problem, in part due to decades of poorly contained testing and use of aqueous film-forming foam (AFFF) containing PFAS. Elevated concentrations of these chemicals entered the groundwater and have contaminated private drinking wells.

I grew up in Marinette and have spent most of my adult life in the area. The groundwater contamination plume is also within half a mile of where I reside. For me, and several others in the room today, this issue hits close to home, both literally and figuratively.

Unfortunately, this contamination is not unique to northeast Wisconsin. Historic testing, training, and use of AFFF at airports has affected other areas of the state such as Madison, Milwaukee, and Rhinelander. Given the prevalence of PFAS in a wide variety of consumer products that are eventually discarded, this issue will undoubtedly pose challenges for the public, regulators, industry, and policymakers for some time.

Our goal through this legislation is to take a reasonable and meaningful step toward addressing the contamination in northeast Wisconsin and elsewhere, providing funding for remediation activities, prompting research on safely destroying PFAS, providing personnel to state agencies charged with responding to this issue, and more.

Late last year, Sen. Hansen and I agreed to work together on a PFAS bill that helps our constituents and helps the state in its response to this complex issue. AB 842 and AB 843 are a result of those discussions.

There is not one singular bill that is going to resolve all the challenges PFAS pose, but we hope this legislation is a strong building block for the future.

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WISCONSIN STATE SENATE
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TESTIMONY: AB-842/843
Assembly Committee on the Environment
2/6/20

Thank you Chairman Kitchens and members of the committee for the opportunity to speak in support of Assembly Bills 841 and 842 which seek to address the growing crisis of PFAS in our water and our environment.

As many of you know, Rep. Nygren and I represent what is, at the moment, the major hot spot for PFAS contamination in the state.

For several years now our constituents in the Town of Peshtigo, the City of Marinette, the City of Peshtigo and Town of Porterfield and surrounding area have been dealing with a growing crisis of PFAS contamination caused by JCI/Tyco's operations in the City of Marinette. At first it was found in groundwater and wells for drinking water, then it was found in the soil, streams, sediment, the Bay, the air and in the sludge that has been spread on farm fields likely for decades. If you find a little you are more than likely to find a lot and in places you don't expect.

It was first found on Tyco's property in 2013 but Tyco did not notify the DNR until around 2017 when it was found in wells off Tyco's property.
At a recent listening session, Rep, Nygren and I heard hundreds of our constituents get up in front of their neighbors and reveal the most intimate details about their health and the health of their children and families. We heard from more constituents than I can count who have been struck with testicular cancer, thyroid disease and thyroid cancer, pregnancy problems, and colon cancer. All diseases that are linked to these toxic compounds.

At the request of and help from our constituents I worked with Senator Miller to draft and introduce the CLEAR Act. I expected there to be concern from across the aisle and I didn't expect much to happen with that bill. So I was surprised, in a good way, to hear from Rep. Nygren asking if I would be willing to work try to find a compromise. And since early October he and I and our staff have been working tirelessly to find a compromise that we could both agree on that will do the most good, not just for our constituents but for people around the state who are knowingly dealing with this contamination or who are drinking this poison and do not even know it yet.

I won't go into all the specific details of what's in the bills before you today. I'll leave that to staff from the DNR. But I do want to point out a few key provisions in the bill:

I believe we have a bill that will protect our constituents and families around the state by directing DNR to set an emergency standard for PFAS and PFOS in groundwater.

Our bill will provide grants to communities who are struggling to address PFAS contamination where a responsible party has not been found.

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Our bill also protects taxpayers by allowing DNR to require proof of financial responsibility from polluters to make sure they have the money to pay for cleaning up the damage they've caused.

Our bill also directs DNR to adopt permanent rules for PFAS compounds that DHS recommends health advisory limits for.

And last but not least, our bill creates a pilot program in our area to that requires DHS to provide our constituents with free blood testing so they can decide whether or not they have reason to consult their doctor about possible health issues that could result from having high concentrations of PFAS in their blood. The pilot program also requires DHS to conduct a cancer cluster study to help find out if there is above average rates of cancers that could be a result of the PFAs contamination. In both cases JCI/Tyco will be responsible for reimbursing the state for the cost of these two provisions.

This bill does not include key provisions that our constituents and I believe would provide stronger protections for our water, environment and most importantly human health.

But that is what compromise is all about. And I am proud of the work we have done together and I am proud of the work, time and effort our constituents have put into this effort as well.

Last July 12 sites around the state had been identified as having PFAs contamination. That number is now over 30. And there will be more sites. It's just a matter of time. This compromise that is before you I believe represents our best chance to get ahead of this growing crisis.

In closing, on behalf of our constituents, I want to thank Rep. Nygren again for working with me on this important legislation and Chairman Kitchens for giving our bill this hearing today.

Thank you.

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Assembly Committee on Environment

2019 Assembly Bill 842 and Assembly Bill 843

PFAS Funding and PFAS Standards and Grant Program

February 6, 2020

Good morning Chair Kitchens and members of the Committee. My name is Darsi Foss, and I am Administrator of the Environmental Management Division with the Wisconsin Department of Natural Resources. With me today is DNR Deputy Secretary Beth Bier to assist with this testimony and to answer any questions you may have. We thank you for the opportunity to testify on these two PFAS bills. We are testifying in support of these bills.

PFAS has become one of the defining environmental issues of the 2020's. At one time, we considered PFAS a specialty chemical that had limited geographic impacts – mostly associated with 3M in the Twin Cities in Minnesota or as a result of Dupont operations in Parkersburg, West Virginia. As recent as three years ago, Wisconsin could point to no known, major sources of PFAS contamination in this state. Fast forward three years. Our understanding of the nature and scope of PFAS contamination in Wisconsin and concerns associated with exposure to PFAS has increased by orders of magnitude.

PFAS are often referred to as forever chemicals in that they persist in the environment and bioaccumulate in mammals, fish, and wildlife. In other words, they do not naturally break down into less harmful substances in the environment. The EPA has concluded that continued exposure to certain types of PFAS above a certain chemical concentration may lead to adverse health effects. According to the EPA, most people in the United States have been exposed to PFAS. PFAS is an international issue, with many countries banning the use of PFAS in products or PFAS foam use at airports. In Wisconsin, elevated levels of PFOA or PFOS – the most studied 8-chain carbon (C8) PFAS compounds – have been found in Wisconsin fishermen, diving ducks, in eaglets along the Wisconsin River, fish in the Mississippi River, and most recently in surface water and fish in Madison's Starkweather Creek and Lake Monona.

In our own backyard, at the University of Wisconsin, resides the National Atmospheric Deposition Program, an internationally recognized lab that studies deposition of chemical contaminants – like acid rain and mercury – through the air transport pathway. In the last few months, NADP published a national study in which they sampled 30 sites across the U.S. in the spring and summer of 2019 for 36 PFAS compounds in rainwater. All site samples contained at least one type of PFAS; the second highest total level of PFAS in a rainwater sample was from the monitoring station located near Devils Lake State Park, in Wisconsin.

Further, the DNR has identified over 30 contaminated sites in the state where PFAS has impacted the air, land, or water. These sites represent the traditional sources of where PFAS has been found

nationally: commercial airports, military sites (state and federal), refineries, cookware manufacturers, and electroplaters. While our neighbor of Michigan has over 75 identified sites, Michigan has been more systematic in their efforts to identify sources of PFAS contamination. Given Wisconsin's manufacturing history and the general improvements in the science of analyzing environmental samples, we can expect PFAS impacts to soil, groundwater, drinking water, and surface water to be much more common in communities across the state in the coming years.

Before you today are two bills – AB 842 and AB 843 – that represent bipartisan efforts to move Wisconsin forward in a pragmatic manner to provide resources and tools to help businesses, citizens, and communities address PFAS substances that have been discharged or are being discharged to the environment. The highlights of the bills include:

- Funds to do much-needed research on the background levels of PFAS in our environment, as well as funds to assess the impacts from sites that may be considered point sources for PFAS.
- Funds for DNR to sample municipal water systems throughout the state and other systems that may be at risk.
- $5 million in grants for local governments to investigate PFAS, supply emergency water and conduct cleanups, including treatment systems for municipal water supplies, in their communities if a responsible party cannot be located or if the local government caused the contamination due to using fire fighting foam or by land application of PFAS.
- Direction to DNR to develop consistent, statewide standards to regulate how much PFAS is safe to be discharged and how much can be left in the environment after a cleanup is done.
- Provides staffing resources to DHS and DNR to help businesses, communities, responsible parties and others to assess PFAS contamination.

Like mercury, acid rain, and PCBs, we have a history of working together in a bipartisan manner to provide our state, citizenry, and businesses with the clarity and resources needed to evaluate these far-reaching contaminants, to minimize the use of PFAS in production to the extent possible and to clean up the legacy issues caused by PFAS discharges to the air, land, and waters of the state.

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

To: Assembly Committee on Environment

From: Curt Witynski, League of Wisconsin Municipalities
Paul Kent, Municipal Environmental Group – Wastewater Division
Lawrie Kobza, Municipal Environmental Group – Water Division
Chris Groh, Wisconsin Rural Water Association
Nancy Quirk, Wisconsin Section of the American Water Works Association

Date: February 6, 2020

Re: AB 843, PFAS Regulation

The League of Wisconsin Municipalities, Wisconsin Rural Water Association, Municipal Environmental Group – Wastewater Division, the Municipal Environmental Group – Water Division, and the Wisconsin Section of the American Water Works Association (collectively, the Municipal Water Coalition) offer the following comments on AB 843 for the committee's consideration. We appreciate the work the authors have put into crafting a compromise PFAS bill. This bill is an improvement over the CLEAR Act (SB 302/AB 321). However, the Municipal Water Coalition has several concerns about the bill, which we highlight below:

Section 13. Financial responsibility. Section 13 of AB 843 gives the Department of Natural Resources (DNR) the authority to require proof of financial responsibility from a "person who possesses or controls" a PFAS substance for "emergency response actions, remedial actions, environmental repair and long-term care." Because there are no thresholds or standards, this potentially could apply to any person who owns property on which any measurable PFAS compounds are found, including, and most importantly from our perspective, farmers who allow for the land spreading of biosolids from municipal wastewater treatment plants.

With a few exceptions, nearly all municipalities in Wisconsin land apply biosolids. As a result, not only do municipalities possess or control a PFAS compound, but when land applied so would the landowner. Under this bill, municipalities are exempt from financial responsibility requirements, but landowners are not. While one would hope DNR would exercise its discretion and not require financial responsibility of persons receiving biosolids, the potential for that obligation and associated liability exists under the bill. It will create a powerful disincentive to accept biosolids going forward.

As a solution, we urge the authors to amend the bill by adding language making the financial responsibility section inapplicable to landowners who accept the land spreading of biosolids.

Section 12. Municipal grants. Although clearly well intended, as drafted this provision creates the following two problems:

1. It defines any person who possesses or controls a PFAS compound at any level to be a "responsible party." Responsible parties have the full range of liability and obligations under Wis. Stat. § 292.11 for remediation and cleanup. This definition has the potential to make every municipality a responsible party given that PFAS compounds are ubiquitous.
2. The other problem is that the grant program only applies to municipalities who are *not* responsible parties or if they are a responsible party only when the land spreading of biosolids was done *prior* to the effective date of the bill. In other words, this will not be available for any land spreading activity after the effective date. And because there are only a limited number of fields on which to land apply, most fields will be used after the effective date. The practical result is that municipalities will be deemed responsible parties but have no real ability to access any of the grant funding this section creates.

Thanks for considering our comments. We look forward to working with the authors of AB 843 on possible amendments to address our concerns.

Before the Assembly Committee on Environment
Testimony of Paul G. Kent
On behalf of the Municipal Environmental Group – Wastewater Division

Regarding 2019 Assembly Bill 843
February 6, 2020

I am here today on behalf of the Municipal Environmental Group–Wastewater Division (MEG Wastewater). MEG Wastewater is an organization of approximately 100 municipalities statewide who own and operate wastewater treatment plants. We represent facilities ranging in size from small sanitary districts to larger utilities such as Racine and Green Bay.

The mission of our members is to protect public health and the environment through the treatment and reclamation of wastewater. Publicly owned treatment works are the boots on the ground that make clean water happen. On behalf of our members, we share the concern about PFAS compounds, and we support the regulation of these compounds based on due deliberation and credible science. We appreciate the efforts the authors have made to address some of the concerns expressed about the earlier bills on PFAS. Nevertheless, we have two major concerns with the current draft that will seriously impact the management of wastewater residuals known as biosolids that are land applied.

First, Section 13 of the bill gives the Department of Natural Resources (DNR) the authority to require proof of financial responsibility from a "person who possesses or controls" a PFAS substance for "emergency response actions, remedial actions, environmental repair and long-term care." Because there are no thresholds or standards, this potentially could apply to any person who owns property on which any measureable PFAS compounds are found. And it should be noted that just because you can measure PFAS does not mean there is a risk to human health and environment. It depends on the levels of PFAS and the exposure pathways which are different for groundwater, surface water and soil.

The problem is that we know there are background levels of PFAS in the parts per billion range in household dust, human blood, and elsewhere. If you test for PFAS at the parts per trillion range you are likely to find it. Thus, if you test for PFAS in biosolids you will find it there too.

With a few exceptions, nearly all municipalities in Wisconsin land apply biosolids. As a result, not only do municipalities possess or control a PFAS compound, but when land applied, so would the landowner. Under this bill, municipalities are exempt from financial responsibility requirements but landowners are not. It's important to remember the arrangement to apply biosolids is voluntary. Landowners do not need to accept biosolids and are not required to take them. While one would hope DNR would exercise its discretion and not require financial responsibility of persons receiving biosolids, the potential for that

obligation and associated liability exists under the bill. It will create a powerful disincentive to accept biosolids going forward.

Second, we have a number of concerns with Section 12, the municipal grant program. Although clearly well intended, as drafted it creates several problems. At the outset, it defines any person who possesses or controls a PFAS compound at any level to be a "responsible party." Responsible parties have the full range of liability and obligations under Wis. Stat. § 292.11 for remediation and cleanup. This definition has the potential to make every municipality a responsible party given that PFAS compounds are, as noted above, ubiquitous.

The other problem is that the grant program only applies to municipalities who are *not* responsible parties or if they are a responsible party, they are eligible only when the landspreading of biosolids was done *prior* to the effective date of the bill. In other words, this will not be available for any landspreading activity after the effective date. And because there are only a limited number of fields on which to land apply, most fields will be used after the effective date. The practical result, is that municipalities will be deemed responsible parties but have no real ability to access any of the grant funding this section creates.

MEG Wastewater continues to be willing to work with members of this committee to amend the bill in ways that would avoid these problems.

We appreciate the opportunity to participate in this hearing.

For more information contact Paul Kent at pkent@staffordlaw.com or Vanessa Wishart at vwishart@staffordlaw.com.

State of Wisconsin
Department of Health Services
Tony Evers, Governor
Andrea Palm, Secretary

TO: Members of the Assembly Committee on Environment

FROM: Andrew Hoyer-Booth, Deputy Legislative Director & Roy Irving, Hazard Assessment Section Chief, Bureau of Environmental and Occupational Health, Division of Public Health

DATE: February 6, 2020

RE: 2019 Assembly Bill 842, relating to: providing funding related to PFAS programs and positions, granting rule-making authority, and making an appropriation **&**

2019 Assembly Bill 843, relating to: PFAS standards and grant programs, providing blood testing for certain individuals, requiring a cancer cluster study, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority

Good morning, Chairman Kitchens and committee members. My name is Andrew Hoyer-Booth and I am the Deputy Legislative Director at the Department of Health Services (DHS). I am joined today by our Hazard Assessment Section Chief in the Division of Public Health's Bureau of Environmental and Occupational Health, Roy Irving. We appreciate the opportunity to provide testimony for information only on Assembly Bill (AB) 842 and Assembly Bill 843.

AB 842 would authorize two limited-duration project positions to DHS for the purpose of recommending enforcement standards for PFAS substances. AB 843 would require the Department to administer free blood tests for PFAS to residents in a certain geographic area and conduct a cancer cluster study to investigate suspected PFAS-related cancers.

Over the last year, DHS has been working with the Department of Natural Resources (DNR), the Marinette County Health Department, and others to both assess the extent of PFAS contamination in the county and also communicate the current science regarding the human health effects of PFAS. This collaboration has included numerous local listening sessions and presentations which will continue as we learn more about these chemicals.

Additionally, in June of 2019, after extensive research, the Department recommended groundwater standards for two specific PFAS chemicals – PFOA and PFOS – to the DNR. This prior work has driven our approach to and informs our testimony on these bills.

AB 843 outlines the structure for both the blood testing pilot program and the cancer cluster study. The blood testing pilot requires DHS to provide, at no charge, blood testing for PFAS for individuals living on or near sites or facilities contaminated by PFAS or any other toxic compound in the city of Marinette, the town of Peshtigo, the city of Peshtigo, and the town of Porterfield. The inclusion of other toxic compounds is broad and would likely widen the eligible testing area. This could create ambiguity when administering the pilot program and potentially lead to unnecessary blood tests. If there is a specific compound or metal of concern, it would create clarity to indicate this specifically.

The bill also enables the DNR to recover the costs of blood testing from parties responsible for contamination and credit those funds to the environmental fund for environmental management. It is unclear whether those funds could be allocated to DHS through existing appropriations to recoup the costs for creating and administering the blood testing pilot program. Adequately resourcing the blood testing program will be imperative to its successful implementation.

We know people residing in areas with high PFAS contaminants want more information about the impact of PFAS on their health, and what that means for the physical and economic health of their community.

Testing blood for PFAS is one way to estimate a person's exposure to these chemicals. Because PFAS are used in many products, most people in the United States have detectable levels PFAS in their blood. Even though blood can be tested, there is not enough research to determine the level of PFAS in blood at which we would expect health problems.

Blood testing is most useful when combined with a scientific investigation or health study utilizing control groups. However, conducting a broader biomonitoring investigation or human health study is a significant scientific endeavor, requiring a heavily resourced team-based approach to be successful. Partnerships between public health agencies, scientific researchers, and others are critical.This may be an avenue to pursue in the future as our base of evidence grows.

While AB 843 requires the Department to conduct a cancer cluster study, it is important to note that evidence linking PFAS to cancer is currently limited and determining if and how PFAS exposure may lead to increased cancer risk will require multiple large studies in exposed populations. We do know that studies in workers and people living in areas with high levels of PFOA or PFOS show that these contaminants may increase cholesterol, damage the liver, cause pregnancy-induced hypertension, increase the risk for thyroid disease, decrease antibody response to vaccines, decrease fertility, and cause small decreases in birth weight.

As the state's public health agency, we often receive inquiries from residents, health care providers, and others about concerns of elevated rates of specific cancers. When DHS receives this information, we review the types of cancers that have been reported and assess if there are chemicals in the environment that could pose a risk or contribute to increased occurrence.

AB 843 will result in the documenting and clustering of these inquiries in Marinette, Peshtigo, and Porterfield. However, it will not inform stakeholders with regards to causation of cancer or other illnesses.

We appreciate the bill authors for their continued work to address PFAS in Wisconsin. While there is still a great deal to be done, the legislature has seen a number of bold policies introduced this session to assess the risk of communities across the state for PFAS exposure and allocate funding for remediation.

We are supportive of many of the provisions contained within these two bills and believe that additional clarification on the scope and funding of the blood testing program would help ensure successful implementation.

The Department looks forward to continuing our work on PFAS including developing enforcement recommendations for additional PFAS chemicals and participating on the Governor's PFAS Action Council. We'd be happy to answer any questions from the committee.

Madison Metropolitan Sewerage District

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Committee members, Thank you for allowing me the opportunity to provide testimony today. My name is Martye Griffin, and I am here today on behalf of Madison Metropolitan Sewerage District (the District), where I am the Director of Ecosystem Services. The District has been protecting public health and the environment by safely cleaning water and reclaiming natural resources since 1930. In fact, we are celebrating our 90th anniversary this year.
We are responsible for effectively managing wastewater for the people and businesses in our 26 customer communities throughout Dane County. This charge requires the District to manage a wide range of water chemistry concerns, from minute amounts of toxic substances such as mercury and arsenic, to an overabundance of more common chemicals such as phosphorus and chloride. To do so, the District employs a variety of strategies, including source control, industrial pretreatment and pollution prevention, to protect public health and the environment. In developing our control and prevention strategies, the District pursues solutions that optimize environmental, economic and social sustainability.

The District takes customer and community issues very seriously, including recent public concerns regarding the transport, fate and effects of per- and polyfluoroalkyl substances, or PFAS. Wastewater treatment plants are not original sources of PFAS and do not add or have the capability to remove these chemicals during the treatment processes. However, wastewater arriving at the plant contains traces of PFAS from all of us and the choices we make – from our bodies, our cookware, the dust in our homes, the clothing we purchase and wash, even the cosmetics, conditioners and sunscreens and use.

As wastewater arriving at the plant contains traces of PFAS, it is expected that these chemicals will also find their way into biosolids, a beneficial product of the wastewater treatment process. The District's Metrogro program represents an important local and sustainable source of nutrients needed by the local farming community. The 37 million gallons of biosolids that the District reclaims each year are injected into the soil to fertilize some 5,000 acres, reducing the need for incoming shipments and application of synthetic fertilizers.

The impact of PFAS in biosolids and how it relates to the fate and transport of these compounds in the environment is an emerging science and further research is needed regarding PFAS in soil. While some preliminary studies show that biosolids affected by direct industrial discharges of PFAS to wastewater treatment plants may have an effect on the chemicals in soils, recent research indicates that biosolids with no direct industrial discharges, PFOA levels are in the low parts per billion range, same as background levels of PFAS compounds found to be in household dust, human blood, and even national forests.

The current bill draft of AB853 has two major provisions that will negatively impact how the District is managing our biosolids and runs our Metrogro biosolids land application program.

1. Without access to resources, it will be costly to mitigate for PFAS and those costs could be passed on to our rate payers. Under Wis. Stats 281.01(6), metropolitan sewage districts are considered a municipality. Section 12 of the current bill draft outlines a municipal grant program. As the bill defines any person who possesses or controls a PFAS compound to be a "responsible party," this definition would make the District a responsible party given that PFAS compounds are ubiquitous and that the wastewater arriving at the plant and the biosolids produced contain trace amounts of these compounds. As a responsible party, the grant program would only apply to the District in areas where landspreading of biosolids was done *prior* to the effective date of the bill. The consequence of this is that grants will not be available for any landspreading activity after the effective date. As the District typically land applies on hundreds of fields per year on a rotating basis with short application time periods, there is a high likelihood that many fields will be landspread after the effective date. In this scenario, the District would be considered a responsible party with no ability to access grant resources to act.

2. The availability of recycled biosolids helps the bottom line of our customers as it reduces the need to pay for synthetic fertilizer. Section 13 of the bill gives the Department of Natural Resources (DNR) the authority to require proof of financial responsibility from a "person who possesses or controls" a PFAS substance with no standards. This could apply to any person who owns property on which any PFAS compounds are found. As mentioned earlier, background levels of PFAS in wastewater and biosolids are to be expected due to the ubiquitous nature of these compounds. Requiring proof of financial responsibility with no standards and no link to human health and environmental risk puts a burden on landowners with no scientific basis related to the levels of PFAS and the exposure pathways, which are different for biosolids and soil. In the scenario that the District operates under, we have a long list of landowners that we cooperatively work with to recycle valuable nutrients as fertilizer. Based on the language in Section 13 of this current bill draft, when biosolids containing PFAS are land applied, the landowner would be the entity that now "possesses or controls a PFAS compound." While the District would be exempt from financial responsibility under the current draft, District customers, who are area farmers and landowners, would not be exempt. The current Metrogro program is a voluntary program. The District does not charge for fertilizer, and farmers are not required to take Metrogro. For the farmers and landowners that the District works with, the obligation to show financial responsibility could discourage them from taking Metrogro, effectively shutting down the District's land application program and force the District to find alternate means for managing our biosolids.

The District would appreciate the opportunity to discuss these issues further with any committee members and find a way to modify language in the bill to address the challenges I just outlined. Thank you. https://www.madsewer.org/PFAS

Wisconsin Conservation Voters

Testimony on AB 842 & AB 843
Jennifer Giegerich, Government Affairs Director
February 6, 2020

Good morning. Thank you Chairman Kitchens and members of the committee for allowing me to testify today. My name is Jennifer Giegerich. I am the Government Affairs Director for Wisconsin Conservation Voters. We have offices in Madison, Milwaukee, Eau Claire, and Green Bay, where we work with our network of over 40,000 members and supporters to engage voters to protect our environment. We work in close partnership with many local conservation groups around the state.

We would like to thank Representative Nygren and Senator Hansen for introducing AB 842 & AB 843. We encourage you to support them.

There are few things more difficult than facing a medical diagnosis that threatens a loved one's life – your parent, your sibling, your child. Or, maybe it's you.

In Marinette, one of more than 30 communities where we know the toxic class of chemicals called PFAS are lurking in the water, families are fighting an adversary set upon them by outside forces, particularly corporate polluters.

The U.S. Center for Disease Control has advised doctors that PFAS have been linked to increased rates of testicular and kidney cancer. Exposure can also lead to liver lesions, kidney degeneration, and damage to liver function. In addition, a number of large epidemiological studies have related higher maternal exposure to these chemicals to lower birth weight.

There is a solution: the CLEAR Act. The CLEAR Act is the gold standard PFAS solution. Unfortunately, in this political environment, this bill, AB 321, has not even been scheduled for a hearing despite sitting in this very committee since June 2019.

For unexplained reasons, the future of the CLEAR Act is uncertain. Instead, Rep. John Nygren, whose constituents are bearing a disproportionate brunt of this crisis, introduced legislation with a smaller scope.

This proposed legislation, AB 842 & AB 843 though not ideal, are important. They will help families in Marinette and elsewhere. These two bills do take important first steps.

- **AB 842: Funding for PFAS Research and Testing**: AB 842 would provide funding for municipalities to test their drinking water, blood and cancer cluster studies

around areas with known concentrations of PFAS, and research at the UW to destroy PFAS. These are all things for which we need more information and pilot projects that can be scaled up.

- **AB 843: Getting Started on Setting PFAS Standards**: AB 843 would require the Department of Natural Resources to establish and enforce emergency rules that set groundwater standards for PFOA and PFOS, the two most well-known of the PFAS class of chemicals. The bill also would establish emergency rules for any other PFAS for which the Department of Health Services submits a recommended groundwater enforcement standard.

  There are no state or federal guidelines establishing what levels of these chemicals are acceptable in our drinking water. That is why it is necessary for the state to move forward with a rulemaking process that involves all stakeholders and brings science and data to inform the process. We cannot continue to delay setting statewide health standards to protect all communities from PFAS.

Thank you for your time. We encourage you to support AB 842 & AB 843. We also encourage you to come back next session and pass the CLEAR Act, the comprehensive solution to PFAS.

For more information, contact Jennifer Giegerich at Jennifer@conservationvoters.org or 608-208-1130.

WMC

TO: Members, Assembly Committee on Environment

FROM: Scott Manley, Executive Vice President

DATE: February 6, 2020

RE: Opposition to Assembly Bill 843 & Assembly Bill 842

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to explain our opposition to Assembly Bill 843 (AB 843) and its related funding bill, AB 842.

WMC is the state's largest general business association, with roughly 3,800 members in the manufacturing, energy, retail, insurance, financial services, health care, mining, transportation, agriculture, and service sectors of our economy. We represent small, medium, and large employers located throughout the entire state. Since our founding in 1911, WMC's mission has been to make Wisconsin the most competitive state in the nation to do business. This includes opposing legislation that would significantly increase the cost of doing businesses in our state.

At the outset, WMC believes that many years of national and international scientific research justifies establishment of water quality standards for per- and polyfluoroalkyl (PFAS) substances commonly known as PFOA and PFOS. Both of these compounds have undergone rigorous scientific study indicating exposure at high levels is associated with health impacts like high cholesterol. The Wisconsin Department of Natural Resources (DNR) is currently working on rules to establish groundwater, surface water, and drinking water standards for both of these PFAS compounds, and we look forward to working with Department staff to set standards that balance environmental, economic, and public health concerns.

We are greatly concerned that AB 843 and AB 842, while well-intentioned, will significantly increase costs for employers, expose them to unnecessary and unfair litigation, and lead to the imposition of environmental standards that are not based on sound science or a demonstration of need. For the reasons that follow, we respectfully urge you to oppose both of these bills.

Erosion of the Deliberative Process & Public Participation for Groundwater Standards

Wisconsin currently has a well-defined and deliberative process for establishing groundwater standards. The process generally requires our state to follow federal groundwater standards and health advisories to ensure businesses, local governments and homeowners are not unduly burdened with higher costs. However, the law does allow the DNR to set a more stringent or "Wisconsin only" groundwater standard if a very high bar for scientific justification is met by demonstrating why our state requires something more stringent than federal law.

Although this process is not perfect, and many in the regulated community believe the beginning stages of the groundwater setting process is largely opaque and would benefit from additional transparency

and public participation, at least we have a process that provides several opportunities for public participation and legislative oversight.

For example, the DNR began the process for establishing a groundwater standard for PFOA and PFOS in March of 2018. The DNR has stated publicly that it expects to send a final proposed groundwater rule for these two PFAS compounds to the Legislature for review in 2022. The current process, therefore, contemplates spending a total of four years to study and develop PFAS groundwater standards, with several opportunities for public hearings and submittal of input throughout the process.

AB 843 proposes to short-circuit this four-year deliberative process and almost immediately place groundwater standards on the books through mandatory emergency rulemaking after the Department of Health Services (DHS) recommends a groundwater standard. Lost in this approach is the opportunity to spend the time necessary to convene meaningful stakeholder meetings, listen to perspectives outside of government, hear from the regulated community about feasibility and cost concerns, and understand the financial impact on jobs, specific sectors of the economy, and water ratepayers.

Unfortunately, AB 843 would set us down the path of sacrificing public input in favor of a "government knows best" and "quicker is always better" approach to regulating. Once the mandatory emergency rules are in place, the die will be cast, and it is extremely unlikely that DNR would propose a different standard in the permanent rule. Consequently, any stakeholder meetings, public hearings, and opportunities for public input associated with the permanent rule will be rendered meaningless. This is a regrettable approach to setting policy in a state that prides itself in open and transparent government, and legislating based upon the consent of the governed.

Costly and Untenable Air Emission Regulations

In addition to our concerns with the erosion of public input when setting groundwater standards, WMC is greatly concerned by what would be costly and untenable air regulations in AB 843. The bill requires the DNR to regulate *all known PFAS compounds* as hazardous air contaminants, and establish *emission standards for all known PFAS compounds* – a number that currently exceeds 4,000. This approach gives no consideration to the question of whether all 4,000 PFAS chemicals actually present a health hazard. We know that many PFAS compounds have been approved by the FDA as safe for contact with food in packaging, yet this legislation requires the DNR to impose costly new regulations regardless of whether there is an actual health risk associated with a specific PFAS compound.

The regulatory approach in AB 843 is a direct departure from the policy decision the Legislature previously made with respect to hazardous air contaminants. Specifically, Wisconsin's current policy is to align state hazardous air contaminant regulations with those of the federal government to ensure that Wisconsin employers are not placed at a competitive disadvantage with unfair, costly, and unjustified requirements. However, there is an exception in the law that allows Wisconsin to impose a "state only" regulation on a *case-by-case basis* if the DNR performs a public health risk assessment. In addition to the risk assessment, the DNR must demonstrate that a standard unique to Wisconsin is necessary to protect populations in our state from exposure to an air contaminant at levels that are above *recognized environmental health standards*.

In other words, the ability to enact Wisconsin-only air standards is predicated on a case-by-case showing of need, and a demonstration of actual public health risks based on sound science. Unfortunately, AB 843 completely upends this process grounded in the scientific assessment of health risks, and instead requires the DNR to establish air emission standards for more than 4,000 PFAS compounds regardless of

actual data on risks to public health. To place this number into context, Wisconsin currently has emission standards for 496 hazardous air contaminants. AB 843 would require a roughly tenfold increase in the number of emission standards imposed on Wisconsin employers, placing them at a severe competitive disadvantage from the standpoint of both cost and regulatory complexity.

Worse yet, there is not commercially available technology to reduce or remove PFAS from air emissions for the entire universe of known PFAS compounds, placing Wisconsin businesses in a position of potential noncompliance for the statutorily required emission standards. This would place Wisconsin employers in an untenable compliance position, promote regulatory uncertainty, increase legal exposure, and would create a disincentive to grow or invest in our vital manufacturing sector.

Burdensome and Unnecessary Air Emission Reporting

AB 843 imposes an overly-burdensome air emission reporting requirement on many business and local governments, including small businesses. The proposed reporting mandate is more aggressive than any other under current law in that reporting is triggered by emitting a *single molecule of PFAS*. Business would be required to report emissions to the DNR if any amount of PFAS from a list of more than 4,000 compounds happens to leave their facility by air.

Consider this drastic and draconian approach to an example under current law. The DNR has determined that the appropriate threshold for reporting cyanide emissions is 1,635 pounds per year. Yet AB 843 requires *any* amount of *any* PFAS emissions to be reported, regardless of whether that PFAS compound actually poses a public health threat.

Water provides another example to illustrate the regulatory overkill associated with this bill. Recent test data has shown that almost any source of water in our state has a detectable amount of PFAS compounds – in most cases well below levels that would cause a public health concern. However, many businesses boil water to generate steam for manufacturing processes, to process food, to heat buildings, or to generate electricity. Under AB 843, the simple act of boiling water is very likely trigger PFAS air emission reporting.

Additional Costly Litigation

AB 843 also creates a PFAS litigation trust fund, the purpose of which is to collect money from suing businesses. WMC believes that inviting or incentivizing expensive lawsuits or regulatory "sue and settle" schemes is not an appropriate or effective means to achieve policy goals. The history of the of the federal Superfund program teaches that more litigation leads to unnecessary and avoidable cost increases, along with long-term delays in environmental cleanups. WMC urges lawmakers to consider policies that will foster cooperation and collaboration with responsible parties to address legacy contamination concerns, as opposed to the adversarial process associated with litigation.

Inappropriate & Unchecked Government Authority

If you own a cell phone, a car, nonstick cookware, carpet, water-resistant clothing, or have eaten fast food or takeout pizza, you have possessed PFAS compounds. AB 843 gives the DNR expansive and unchecked authority to require businesses to provide upfront assets as proof of financial responsibility simply for *possessing* PFAS compounds. There are many PFAS compounds in the stream of commerce today that do not pose a public health risk. As such, it's totally inappropriate to grant the DNR broad discretion to essentially confiscate financial assets for merely possessing lawful products on the belief

that a PFAS discharge could possibly happen in the future. This guilty-until-proven-innocent approach is inconsistent with core principles of due process. We are left to question why businesses are targeted by this provision, while local governments, who are among the largest purveyors of PFAS compounds, are exempted from this portion of the bill.

Conclusion

WMC reiterates our belief in a scientific justification for establishing water quality standards for PFOS and PFOA. The process for doing so is already underway at the DNR, and we will work within that process toward fair and cost-effective rules based on sound science that adequately protect public health. Unfortunately, the regulatory approach proposed in AB 843 and AB 842 grants the DNR much more authority than is needed to address public health concerns related with PFAS, and correspondingly, will impose significant burdens on Wisconsin employers, workers and consumers. For the reasons mentioned above, we respectfully ask that you oppose passage of these bills. We appreciate your thoughtful consideration, and would be happy to answer any questions.

50 YEARS cleanwisconsin
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Testimony of Carly Michiels
Government Relations Director, Clean Wisconsin
Assembly Bill 842 funding for PFAS programs and positions
Assembly Bill 843 PFAS standards, grant programs, blood testing, cancer study, and rule procedures
February 6, 2020

Thank you for the opportunity to testify on Assembly Bill (AB) 842 and AB 843 both relating to PFAS contamination in Wisconsin. We appreciate the authors Representative Nygren and Senator Hansen for their work on this important issue. Thank you to the Committee, and Chairman Kitchens for hearing these bills today.

Clean Wisconsin is a non-profit environmental advocacy organization focused on clean water, clean air, and clean energy issues. We were founded almost fifty years ago and have over 20,000 members and supporters around the state. We have been working on water pollution 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 water resources.

PFAS (Per - and poly fluoroalkyl substances) are an emerging human-made contaminant many communities are still learning about and not yet testing for. They are also known as harmful "forever chemicals" because they do not easily break down and build up in the body and environment over a lifetime. PFAS can have serious health effects and Wisconsin residents are already drinking contaminated water, playing in polluted waterways, and eating contaminated food like fish. The most common places to find high levels of PFAS are near companies that manufacture products that use PFAS materials, places such as military airfields or training bases that are heavy users of PFAS, and wastewater treatment plants that receive all of them.

We need bills like AB 842 and 843 to provide state protections for our communities from these federally unregulated, harmful chemicals. Other states like Michigan have already made concerted efforts and significant investments to identify all contamination sites and coordinate comprehensive solutions to this problem. Wisconsin has a lot of catching up to do. But there has been increased bipartisan attention on addressing PFAS pollution in Wisconsin including from the Governor, state legislators like the authors of this bill, and state agencies.

This is important to me not only professionally but because my hometown is Marinette. And Marinette is the hotspot in the state dealing with a massive PFAS contamination problem that affects both groundwater and soils where manure has been spread on agricultural fields. People in that community, my own family members, are still relying on bottle water deliveries for access to safe drinking water. One source of drinking

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water tested above 1,900 parts per trillion (ppt) which is 95 times higher than the Department of Health Services (DHS) recommended statewide standard of 20 ppt.

This is why solutions are necessary right now. Communities and families should no longer be forced to figure out how to deal with a massive contamination problem like this on their own. However, that is just what they have been doing. This issue in Wisconsin has really been community driven – where outreach, education, and demands have come from people in communities like Marinette. They had to start their own advocacy groups, host their own events, and take time out their day to attend numerous public hearings, and meet with legislators to demand action.

PFAS contamination is not an issue that can go unaddressed any longer. It's not just Marinette, there are currently over 30 contamination sites across Wisconsin being investigated by the DNR. As testing for PFAS increases, there will likely be more communities that find themselves with a new water contamination problem to confront. These bills along with the efforts DNR is undertaking through rulemaking will be an important step forward in setting standards, reducing exposure, providing necessary resources, and ultimately protecting our communities.

We appreciate the journey and hard work put in by the authors to bring forth these bills today. Although not perfect, there are important aspects that we are very supportive of and happy to see addressed. These bills provide much needed resources for staff, research, continuing investigations, remediation, and testing. As well as grant programs and an action fund to continually support communities dealing with PFAS contamination. They additionally allow for state standards to start protecting and preventing continued contamination in groundwater and surface water.

Clean Wisconsin will continue to support research-based protections and all efforts to limit and eliminate sources of PFAS contamination, as there is much work yet to be done. We support AB 842 and 843 and thank the authors and those already in support of the bills.

Thank you.

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MWFPA
Midwest Food Products Association, Inc.

TO: **Assembly Committee on Environment**

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

DATE: **February 6, 2020**

RE: **Opposition to Assembly Bill 842 and Assembly Bill 843**

The Midwest Food Products Association (MWFPA) appreciates the opportunity to testify in opposition to Assembly Bill 842 and Assembly Bill 843, which would create new enforcement standards for perfluoroalkyl and polyfluoroalkyl substances, known as PFAS.

MWFPA is the trade association representing food processors and their allied industries throughout Illinois, Minnesota, and Wisconsin. As Governor Evers noted in his State of the State address, Wisconsin is among the leading states for the growing and processing of vegetables. The state ranks second in the nation in vegetable production, only behind California. Most of our food processors and their contract growers, along with others in the agricultural industry, would be directly and negatively impacted by adoption of this legislation.

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.

Below are several of the concerns our members have expressed with this legislation.

Land Spreading Liability
Land application of biosolids received from municipal wastewater operations is commonly used on vegetable growing fields. Adoption of this legislation complicates the use of biosolids containing PFAS compounds generated by municipal wastewater by creating legal exposure to the growers as well as the processors who use crops harvested on fields where biosolids containing these substances have been spread.

The liability created under this legislation for vegetable growers and processors will invent a new issue of how to dispose of this municipal wastewater byproduct.

Regulating Without Proving Health Impacts
Another concern of MWFPA members is Assembly Bill 843's provisions to regulate PFAS compounds about which little is known of the potential health impacts. Two of the compounds used in firefighting foam, PFOA and PFOS, have been most widely studied and are certainly candidates for regulating, as science-based standards can be discussed regarding these substances.

Adopting standards for substances beyond PFOA and PFOS becomes problematic if health studies on the human health impacts of these substances cannot be found or do not exist. We understand that other First World groups like Health Canada may have conducted some research in this area that could provide guidance for Wisconsin to emulate.

Broad Emergency Rule Authority
Under the current Chapter 160 process, the Department of Health Services (DHS) has begun developing 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.

A number of PFAS substances have been identified by DNR to include in Cycle 11 groundwater process. We have shared the Cycle 11 proposed list of substances with industry scientists and are searching for how those substances may be or had been used in food manufacturing.

Presumably, granting emergency rule authority to DNR under this legislation will result in all or many of these Cycle 11 substances – about which little on the human health effects may be publicly available or known – being regulated under emergency rule and perhaps outside of the established Chapter 160 process.

Proposed Air Emission Standards
It is unclear how the proposal in Assembly Bill 843 to create 4,000-plus air emission standards for the full family of PFAS compounds – long-chain and shorter-chain – will function or impact food manufacturing. This is an enormous undertaking that we do not believe has been undertaken anywhere.

"Responsible Party" and Financial Responsibility Liability
Similar to the land spreading concern outlined above, vegetables canned or frozen at Wisconsin processors could contain PFAS concentrations above those very low standards proposed by DNR (likely similar to the ultra-low 20 ppt proposed for PFOA and PFOS in Cycle 10) – even without the intent of the processor. The plant water supply used in the processing process or vegetables harvested from fields which may have been sprayed with biosolids or other sources that contain PFAS concentrations in excess of the state standard will create a very high threshold that food manufacturers will need to comply with.

Given the low-margin nature of the vegetable processing industry, this new liability for growers and processors may lead to unexpected reductions in the industry's capacity. This would be particularly tragic if there were no actual human health improvements gained by adopting such far-reaching legislation.

MWFPA opposes this legislation in its current form. Nevertheless, we are interested in working with lawmakers supportive of a sustainable solution that properly protects human health and allows vegetable production to continue to thrive.

City of Peshtigo

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331 French Street • Suite A • Peshtigo, Wisconsin 54157

Resolution 2020 – 01

Supporting Bi-Partisan Action on PFAS-Related Bills AB842 & AB843 (And Companion Bills SBTBD & SBTBD)

WHEREAS, PFAS are man-made chemicals used in industrial and consumer products worldwide since the 1950s such as: non-stick cookware, water-repellent clothing, stain resistant fabrics and carpets, some cosmetics, some firefighting foams, and products that resist grease, water, and oil; and

WHEREAS, research suggests PFAS impact human health in various ways including: increasing cholesterol levels, decreasing how well the body responds to vaccines, increase the risk of thyroid disease, decrease fertility in women, is a known carcinogen; and

WHEREAS, PFAS at levels exceeding the Health Advisory Limit, as known to exist in southeastern Marinette County surface and groundwater; and

WHEREAS, PFAS are known to be in materials land spread on fields in parts of Marinette County; and

WHEREAS, people are at risk to consume PFAS by way of drinking contaminated water, eating fish caught from PFAS contaminated water, consuming contaminated meat and dairy from animals drinking/eating contaminated water/crops, or accidentally ingesting contaminated soil or dust.

NOW, THEREFORE, BE IT RESOLVED that the **City of Peshtigo** supports AB 842 relating to: providing funding related to PFAS programs and positions, granting rule-making authority, and making an appropriation, and AB 843 relating to: PFAS standards and grant programs, providing blood testing for certain individuals, requiring a cancer cluster study, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority.

This resolution will be forwarded to local legislative representatives John Nygren and Senator Hansen in support of action that results in making them law.

Dated this 4th Day of February, 2020.

OFFERED BY: _____
Alderperson

Voting: Aye: 6 Nay: 0

SECONDED BY: _____
Alderperson

APPROVED:
Cathi Malka
Mayor

ATTEST:
Tammy Kasa
Clerk-Treasurer

THE CITY REBORN FROM THE ASHES OF AMERICA'S MOST DISASTROUS FOREST FIRE
PESHTIGO FIRE
Oct. 8, 1871

PESHTIGO, WISCONSIN
OCTOBER 1871
AMERICA'S MOST DISASTROUS FOREST FIRE

WISCONSIN PAPER COUNCIL

ASSEMBLY COMMITTEE ON ENVIRONMENT
February 6, 2020

TESTIMONY ON AB 842 & AB 843: PFAS standards and related programs and funding

I. INTRODUCTION

The Wisconsin Paper Council (WPC) appreciates the opportunity to testify on AB 842 and 843 regarding PFAS standards and related programs. Wisconsin is the number one paper-making state in our nation. 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, mostly in rural areas of Wisconsin.

At the outset, it is important to note that WPC does not object to reasonable regulation of perfluorooctanoic acid (PFOA) and perfluorooctaine sulfonic acid (PFOS). There are areas in the state where PFOA and PFOS are found in concentrations high enough to cause concern, and those areas should absolutely be addressed. Our citizens should all have access to clean water, and we hope to work with the legislature and regulators to address those concerns expediently.

However, this bill does not accomplish that. It regulates thousands of compounds with no scientific basis, putting regulation ahead of science and eliminating transparency and opportunities for input from the public. The bill is founded on public fear stirred by misinformation and could severely harm our industry for no measurable environmental improvement.

II. PFAS AND THE PAPER AND PULP INDUSTRY

PFAS is a broad term used to describe an entire family of compounds, all of which share a common type of bond. The most studied PFAS compounds are those containing a chain of eight or more carbon molecules. Specifically, PFOA and PFOS are the focus of many recent studies. These two compounds have been voluntarily phased out of production in the United States but remain present in the environment from past use. In the U.S., testing shows higher levels of PFOA and PFOS around military installations, airports, and training facilities using fire suppression foam.

Our industry has been mislabeled as an early and often contributor to PFAS contamination, including PFOA and PFOS, but that is an absolute misconception. There are thousands of different PFAS compounds, which have been used since the 1940s in many household items such as cookware, waterproof and stain resistant clothing and goods, cosmetics, cleaning products, electronics, packaging, and fire suppression foam. Of the thousands of different PFAS compounds, each has a different scientific formula and a different impact on the environment. PFOA and PFOS are not, and never were, commonly used compounds in the paper-making process. The compounds used today to coat some packaging products are not equivalent to PFOA and PFOS and have been studied and approved by the FDA and its international equivalents. They have been reformulated to avoid bioaccumulation in the body, and to break down more quickly in the environment. However, there is always scientific debate about the safety of any chemical compound, and for every study that supports a safe level, there is another report instilling fear into the public if they regularly use dental floss (which is often coated in a PFAS compound). Regardless, facilities should not be held responsible for contamination they did not cause.

III. THE SCIENCE BEHIND DHS'S RECOMMENDATIONS

This bill will codify standards recommended by the Department of Health Services (DHS) with no input or transparency into how DHS determined those recommendations. We seem to all agree that any standards should be based on sound science. While it can be complex and tedious to discuss the science, it is absolutely necessary to understand how the DHS reached their recommendations, and why other very bright scientific minds may disagree.

As an example, DHS recommended, and this bill will codify, a combined standard for PFOA and PFOS of 20 ppt, with a Preventive Action Limit (PAL),[1] an enforceable limit, of 2 ppt. DHS and the Department of Natural Resources (DNR) assert that they have reviewed thousands of studies to reach that number, but it's important to understand the science that was actually relied upon to reach this conclusion.

With respect to PFOA, for example, DHS first cites the Agency for Toxic Substances and Disease Registry (ATSDR) *draft* report,[2] a report that has gone through several draft iterations and been incredibly controversial in the scientific community.[3] The report sets "minimum risk levels" which it describes as a "screening levels…not intended to define clean-up or action levels."[4] Still, DHS relied on the draft report as guidance, and recommended an enforceable limit lower than even the overly-conservative screening levels.[5]

Next, DHS explained how it performed a literature search, with terms and timelines defined by the agency. The search parameters chosen by DHS returned eight studies which DHS determined to be "critical," including five toxicity studies and three pharmacokinetic studies.[6]

From the five toxicity studies, DHS estimated safe levels equivalent to 25,000 ppt, 30,000 ppt, 250,000 ppt, and 6200 ppt.[7] DHS also determined additional uncertainty factors ranging from 100 to 1000. But then, DHS apparently ignored those numbers.[8]

Instead, DHS turned to one, single pharmacokinetic study for PFOA.[9] This study was intended to estimate the impact of PFOA on breastfed infants.[10] The starting point was mice who were given PFOA every day during their pregnancy.[11] The lowest dosage with an actual measured impact was the equivalent of 10 million ppt (or 10 ppm).[12] At that dosage, some baby mice had lower bone density in their phalanges or accelerated puberty.[13] There were no signs of cancer reported. This is the same base study that EPA relied on when determining the 70 ppt advisory level.[14]

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

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[1] A PAL is enforceable in the same manner as an enforcement standard. *See* NR 140.24(5).
[2] ATSDR Toxicological Profile for Perfluoroalkyls. Accessed at https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf.
[3] Wisconsin Department of Health Services Recommended Public Health Groundwater Quality Standards Scientific Support Documents for Cycle 10 Substances, June 2019, p. 168. Accessed at https://www.dhs.wisconsin.gov/publications/p02434v.pdf.
[4] ATSDR, Appendix A.
[5] Note that the ATSDR report was published for comment. It is a very in-depth scientific document, but the federal agency still gives the public access to understand and provide input on the process and the science, a practice our state agency does not follow.
[6] DHS Support Document for Cycle 10, p. 165.
[7] *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.
[8] *Id.*
[9] *Id.* at 169
[10] 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/.
[11] *Id.*
[12] *Id.*, Fig. 1. The dosage was converted from mg/kg-day based on Wis. Stat. § 160.13(2)(c).
[13] *Id.*
[14] *Id.*

output from that computer model as input in another computer model – a human simulation – to estimate a human equivalent dosage.[15]

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.[16] 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.[17] 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.[18] That statutory requirement means two things: 1) 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. According to the study, at the dose chosen by DHS, 5400 ppt, even the most vulnerable babies would be safe after 12 months of breastfeeding if the mother drinks nearly two gallons of water contaminated at 5400 ppt every day for her entire life. That is a very conservative standard.

However, even though the study had already accounted for uncertainty and inter-species variability, DHS choose to divide that dose by 300 to account for further uncertainty, which resulted in a recommended standard of 18 ppt.[19] 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.[20] That determination led to an enforceable PAL of 10%, or 2ppt.

To summarize the PFOA science relied upon by DHS, 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. Several decisions were made along the way by DHS, any of which could have drastically changed the recommendations.

IV. CONCERNS WITH AVOIDING RULEMAKING FOR PFAS STANDARDS

This bill also requires DNR to short-circuit the rulemaking process by passing emergency rules within seven months establishing DHS's recommendation as a standard. By doing so, the bill accepts the recommendation from DHS as the final word on the science. There has been no opportunity to comment on or discuss the science relied upon by DHS in setting these recommendations, and by mandating emergency rules, the bill precludes anyone outside of that particular state agency from providing any input going forward.

The scientists at DHS are certainly highly-skilled and capable, but reasonable scientific minds can disagree on the value of studies, which is exactly why research is peer reviewed, why research like the ATSDR report cited by DHS are published for comment, and why EPA and other federal agencies take input when setting regulatory limits. Disagreement on sound science is further illustrated by the range of similar standards in other countries and states. For example, Canada's standards, are 200 ppt for PFOA and 600 ppt for PFOS. Australia's are 560 ppt and 70 ppt, respectively.[21] This legislation would bypass

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[15] *Id.*
[16] *Id.*
[17] DHS Support Document for Cycle 10, p. 169.
[18] Wis. Stats. § 160.13(2)(c).
[19] DHS Support Document for Cycle 10, p. 169.
[20] 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.
[21] *See* https://pfas-1.itrcweb.org/fact-sheets/ for a full list.

that important opportunity for scientific review, and for citizens to see and opine on decision made by our state government.

V. TECHNICAL AND ECONOMIC FEASIBILITY CONCERNS

The water-related components of the bill are already cost-prohibitive, but layered on top are air monitoring and emissions requirements that cannot technically be achieved. The technology to test and control for thousands of PFAS compounds in air emissions and a very small level simply does not exist.

Additionally, the bill could severely reduce use of recycled pulp. Residual PFAS compounds can easily be found in recycled materials. Extracting those compounds, particularly when levels fluctuate, is too difficult to accomplish cost effectively. By making paper manufacturers liable for compounds they have not intentionally added to their process, we foreclose the opportunity to rely on recycled material and take a huge step backwards on our path toward sustainability.

VI. THE ACTION FUND AND "RESPONSIBLE PARTIES"

This bill also creates an "action fund" that will encourage sue-and-settle techniques and harm the reputations as well as the viability of Wisconsin job creators. It is a cost-shifting mechanism once again aimed at making responsible corporate citizens clean up contamination caused by firefighting foam, not by their manufacturing processes.

Moreover, the bill's definition of "Responsible Party" for the contamination is so broad it makes anyone who has ever thrown away Gore-Tex clothing or sprayed Scotch Guard potentially liable for the cost of remediating the environment. Funds like the one proposed, which encourage litigation and use fear of reputational harm to leverage settlements from even responsible corporate citizens, invite corruption and abuse.

An "action fund" does not solve the problems faced by citizens in hot spot areas. It is simply a way for government to force private business to pay for cleanup of unrelated contamination by setting standards they cannot possibly comply with, and then suing them for not complying with those impossible standards.

VII. CONCLUSION

In Wisconsin, there are hotspots of PFOA and PFOS, including Marinette county which we've heard so much about. As a state, we need to prioritize ensuring that those citizens are no longer exposed to harmful levels of those compounds. But this bill does not prescribe effective and efficient treatment and cleanup of those areas. Instead, it mandates state-wide standards, forcing our members to pay for cleaning up compounds left over from firefighting foam.

Our industry is concerned about the very real and very serious impact this bill will have on Wisconsin's economy, one that is proudly based on agriculture and manufacturing. There are better ways to address areas of contamination; a state-wide standard that chokes the economy for no environmental gain is not it. WPC does not support this bill but looks forward to working with the legislature on a fast and effective solution to the concerning hot spot areas in our state.

Assembly Committee on Environment

PACKAGING CORPORATION OF AMERICA

Testimony on Assembly Bill 843: PFAS Standards and Grand Programs

Chair Kitchens, Vice-Chair Oldenburg and committee members, thank you for the opportunity to provide testimony on Assembly Bill 843.

My name is Kristy Neumann, Environmental Manager at Packaging Corporation of America's mill in Tomahawk, WI. Our mill, one century old this year, directly employs 420 people, and is the largest manufacturing employer in Lincoln County, as well as the largest employer in Tomahawk. Our paper mill, due to the employment multiplier effect, provides over 800 indirect jobs in north central Wisconsin.

The Tomahawk Mill manufactures approximately 550,000 tons/yr of unbleached corrugating medium using a mixture of virgin hardwood fiber and recycled cardboard fiber. Approximately 30-35% of our fiber supply is derived from recycled cardboard. We do not use PFOS nor PFOA in our papermaking process.

We have grave concerns with any effort by the State of Wisconsin to issue emergency rules implementing "one-size-fits-all" PFOA/PFOS water quality standards based on Department of Health Services (DHS) recommendations that have not been afforded adequate scientific review or public comment by the regulated community. In addition, we are concerned with the issuance of any other pending PFAS-related standards under contemplation by DHS.

Being that PFAS compounds are ubiquitous, it is not beyond reason that PFOA/PFOS might be detected at parts-per-trillion levels in our mill's wastewater treatment plant as a result of 'pass through' associated with processing nearly 450,000,000 pounds of recyclable cardboard each year. A November 7, 2013 report issued by the consulting firm HDR titled *Treatment Technology Review and Assessment* estimates the cost of the exotic wastewater treatment technologies required to remove trace concentrations of PFOA/PFOS. Based on that report, end-of-pipe control costs at our Tomahawk mill are estimated to range from $104 - $224 million (2019$) and, despite that investment, the controls may not reliably achieve compliance. The compelling societal benefit of cardboard recycling is placed in tension with the perceived health risk associated with trace discharges of PFOA/PFOS.

As I stated earlier, the Tomahawk Mill manufactures corrugating medium - a commodity product. In a commodity business, additional manufacturing costs cannot readily be passed along to customers via increased pricing. Businesses must make strategic, pragmatic capital investment decisions based on the performance and competitiveness of its facilities. If PCA can produce its commodity product at a sister facility in a lower cost state, the facility in the higher cost state will have a harder time securing future capital investment. If the cost of production in one state is too high, the company will shift production to a lower cost state. Economics dictate that capital is allocated in a manner that achieves the best return on investment. Since PCA's capability to produce corrugating medium extends to jurisdictions beyond Wisconsin, capital – and production – will logically flow into the most cost-competitive and profitable locations.

Imposing exorbitantly expensive, impossible-to-meet standards on our mill will lock us out of access to capital and our company will preferentially invest in its other seven PCA mills located in Michigan, Georgia, Tennessee, Louisiana, Alabama, Minnesota and Washington, instead of Wisconsin. Wisconsin's legislative and regulatory efforts should be focused on addressing PFOA/PFOS hot spots, rather than issuing broad-brush standards that will result in unintended consequences that will do more social and economic harm than good.

N9090 County Road E • Tomahawk, Wisconsin 54487 • Tel 715-453-2131 • Fax 715-453-0470

SENT BY ELECTRONIC MAIL

February 5, 2020

TO:
Chairman Kitchens, Assembly Committee on Environment
Chairman Cowles, Senate Natural Resources Committee

FROM:
Laura Olah, Executive Director
Citizens for Safe Water Around Badger
Coordinator, PFAS Community Campaign
E12629 Weigand's Bay South, Merrimac, WI 53561
P: 608 643 3124 | E: info@cswab.org

RE: Registering in SUPPORT of SB772/SB773 and OBJECTING to SB774/SB775

Dear Chairman Kitchens and Chairman Cowles:

Citizens for Safe Water Around Badger (CSWAB) was organized in 1990 when rural residents learned that private drinking water wells near Wisconsin's Badger Army Ammunition Plant had been contaminated with high levels of cancer-causing chemicals for decades. Now 30 years later, CSWAB continues its work to unify and strengthen citizens working for a healthy and sustainable future free of military and industrial toxins.

In 2017, CSWAB submitted a formal open records request to the WDNR for information about all known PFAS sites in Wisconsin, revealing PFAS problems at military and industrial sites around the state. Thereafter, we successfully petitioned the State of Wisconsin for drinking water standards for the two most common forms of PFAS – PFOA and PFOS.

The following year, CSWAB formally petitioned the State for a Health Advisory Level for the summed-total concentration of all PFAS – including precursors – detected in the State's groundwater and/or having a reasonable probability of entering groundwater such as presence in soils. Among them were

the 19 PFAS chemicals detected in soils and groundwater at the Tyco/Johnson Controls Fire Systems in Marinette, Wisconsin.

I am a resident of rural Sauk County and live next to the former Badger munitions plant where environmental sampling by the Army has detected PFAS in soils and groundwater. As Executive Director of CSWAB, I currently coordinate the statewide PFAS Community Campaign – a coalition of nearly 40 social and environmental justice organizations from around Wisconsin.

We appreciate your support for public hearings on the bi-partisan Wisconsin State Senate bills SB772 (providing for PFAS standards, rulemaking and grant programs) and Senate Bill SB773 (providing funding related to these programs) – allowing affected communities with the opportunity to comment on legislation that will directly impact the health and well-being of Wisconsin families and our natural environment.

We strongly support all aspects of SB772/SB773 – providing PFAS standards and grant programs, providing blood testing for certain individuals, requiring a cancer cluster study, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, granting rule-making authority, and funding to support these programs.

We are very disappointed with the last-minute bills (SB774 and SB775) that have been introduced which propose enforcement "zones" rather than comprehensive statewide standards, prevent emergency rulemaking, and focus on only 2 of 36 toxic PFAS chemicals polluting Wisconsin's water resources.

While we understand that the intent of the authors may have been to complement the bi-partisan compromise bills (SB772/SB773) – as written, SB774 and SB775 are highly problematic particularly as they dictate and limit the form and function of site investigations, the characterization of the degree and extent of contamination in the environment, the scope of investigations and remedies, and the appropriate identification of receptors and populations at risk. As a result, this approach will certainly result in a patchwork of inconsistent cleanup around the State, making less-powerful communities more vulnerable than others.

Thank you for the opportunity to comment and we urge you to set aside SB774 and SB775 to allow the long-awaited bi-partisan compromise bills SB772 and SB773 to quickly move forward.

The longer we wait to regulate PFAS – the more we have to lose.

-end-

Transmitted by E-Mail

Doug Oitzinger
2572 S. Circuit Drive
Marinette, WI 54154
715-735-6805

Wisconsin Assembly, Committee on Environment
February 6, 2020

AB 842 and AB 843 Testimony

My name is Doug Oitzinger. I am the former Mayor of the City of Marinette and a past President of the League of Wisconsin Municipalities. Some of you may have heard the testimony I gave before the Speaker's Task Force on Water Quality in August at the Marinette Campus of UW-GB representing the S.O.H2O group.

First, I would like to thank Chairman Kitchens for bringing these Bills forward for a hearing. I know you are in tight legislative time frame and I appreciate that these were worked into your schedule. I would also like to thank our State Representative John Nygren and our State Senator Dave Hansen for the many hours they and their staff worked together to produce this bipartisan legislation. Both of these gentlemen have met with our local group of advocates and did what they promised us they would do. Against all odds, they found a compromise that we can embrace because they listened to our input and worked in good faith with each other.

I live in the most PFAS contaminated area in the State of Wisconsin. I live three blocks from the Tyco/Johnson Controls contaminated Fire Technology Center property. While I have municipal drinking water, my neighbors two blocks south of me have PFAS contaminated wells. I am submitting my testimony in favor of Assembly Bills 842 and 843.

PFAS is a man made chemical compound. It isn't derived from something that already exists in nature. PFAS is 100% unnatural, and 100% manufactured by industry for use by industry. It's not a consumer product that we buy and add to our food and water directly. It is purely and simply industry's fault that PFAS came to be introduced into the environment. So it is time for industry to take responsibility for its actions and not stall and delay, or use their influence to stop meaningful safety regulations for PFAS standards in Wisconsin. It is particularly offensive to see these arguments from some industry groups when we in Marinette and Peshtigo have been the victims of the careless and reckless use of PFAS in the environment by local industry. It has endangered our health, ruined our property values, and degraded our quality of life.

PFAS is a poison. I cannot see the business logic of poisoning our population for decades into the future for a temporary gain in profit. These are after all, the "forever chemicals." I cannot see the legislative logic of allowing the continued poisoning of our children as an acceptable response to this crisis.

Transmitted by E-Mail

The opposition to this bill isn't coming from scientists. It is coming from industry. The Department of Health Services (DHS) reviews and analyzes the most current scientific studies available on PFAS. Trained toxicologists conduct the reviews. The proposed legislation directs the DNR to develop standards based on those recommendations from DHS. Nothing could be more "science based" than the regulatory process detailed in this legislation.

I chose not to go into all the dangers that PFAS contamination presents to our residents today because I think you already know this is a real crisis. The fate of these two bills is strictly an issue of industry short-term self interest versus public health and environmental stewardship. The science has already been established, the dangers of PFAS contamination are already known, and the consequences of inaction will be tragic for every part of Wisconsin. Our particular communities have been waiting since 2017 for standards that can be enforced, how much longer should they wait? We need this now.

I'm asking you to pass bipartisan legislation to establish meaningful PFAS standards in Wisconsin. I'm asking you to provide funding to help communities and citizens deal with a problem they didn't create, and can't solve without help.

Please pass AB 842 and 843. Bipartisan legislation doesn't happen very often in Wisconsin anymore. Please support these bills and demonstrate to our citizens that our elected representatives can reach across the political divide and do what's right for Wisconsin when it really matters.

Thank you for your consideration.

Doug Oitzinger

WISCONSIN LAKES, RIVER ALLIANCE OF WISCONSIN, WISCONSIN TROUT UNLIMITED, AND CLEAN WISCONSIN JOINT STATEMENT IN SUPPORT OF CLEARINGHOUSE RULE 19-093

Wisconsin Lakes, the River Alliance of Wisconsin, Wisconsin Trout Unlimited, and Clean Wisconsin join to offer our support of Clearinghouse Rule 19-093 relating to the development of site-specific numeric phosphorus water quality criteria for surface waters.

All of the undersigned organizations participated in the lengthy process to develop this rule package. We believe the process was fair and well-managed, with all stakeholders provided numerous opportunities to comment and influence the development of each draft. The Department of Natural Resources engaged conservation, industry, and agricultural groups throughout this rulemaking, responding and often enacting changes in response to comments from all sides. We believe that the rules package before you is a fair and effective end result that reasonably balances the needs of all stakeholders and will lead to cleaner, safer waters as a result.

We believe that a process to develop site-specific phosphorus water quality criteria for the state's surface waters is an important tool in water quality management. Such a process provides more effective protection for the designated use of a waterbody, especially for recreation and aquatic life. In addition, use of site-specific criteria allows for an adjustment in the phosphorus standard not only to be more strict than the general standard, but also to be less strict where either is appropriate.

The rule sets up a reasonable, defensible, and scientific process to determine whether a waterbody qualifies for site-specific criteria and how to develop that criteria for the waterbody. Finally, by requiring the development of the site-specific criteria to be conducted as a separate rule-making, the rule ensures that all stakeholders will be provided adequate time and opportunity to comment and influence the development of the criteria specific to that waterbody. Site-specific criteria can be an important tool to ensure clean, safe waterbodies while balancing the interests of all stakeholders.

Wisconsin Lakes, formerly known as the Wisconsin Association of Lakes, is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts.

The River Alliance of Wisconsin is comprised of thousands of members--small business owners, individuals, and local watershed protection groups, from across the state.

Wisconsin Trout Unlimited is a non-profit cold water conservation organization. Our 5,200 members are working to ensure future generations access to cold, clean, fishable water in Wisconsin.

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air and clean energy issues. We were founded fifty years ago and have 20,000 members and supporters around the state.

We thank you for the opportunity to submit testimony on this rule proposal and urge its acceptance.

WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

To: Members, Assembly Committee on Environment

From: Paige Scobee, Lobbyist

Date: February 6, 2020

Re: **Opposition to AB 843**

WCJC opposes AB 843, which would impose costly regulations without reliable science and fuel frivolous lawsuits from plaintiff attorneys. Environmental policy and liability should not be imposed ahead of science.

PFAS are a group of more than 4,000 compounds, each of which has different chemical properties. These chemicals are found in many everyday products, including nonstick pans, cleaning products, paints, medical equipment and firefighting foam.

I. WCJC Opposes Giving DNR Broad Authority to Regulate All PFAS Compounds.

The most extensively studied PFAS compounds are PFOA and PFOS, which have been phased out of domestic manufacturing over the past decade. The federal Environmental Protection Agency (EPA) has set a health advisory limit of 70 ppt for PFOA and PFOS but is still studying the potential health effects of the thousands of other PFAS compounds. Few other jurisdictions have regulated PFAS chemicals other than PFOA and PFOS.

Despite the little science available on PFAS compounds besides PFOA and PFOS, AB 843 provides an extremely broad scope for the Department of Natural Resources (DNR) to immediately regulate thousands of other PFAS compounds. AB 843 requires DNR to promulgate emergency groundwater standards for PFOA and PFOS, as well as any other PFAS that the Department of Health Services (DHS) recommends, requires DNR to promulgate rules for surface water standards and maximum contaminant levels for any PFAS chemicals DHS recommends, and requires DNR to determine that all PFAS are air contaminants.

Giving DNR such broad authority to regulate these thousands of compounds creates regulatory uncertainty and potentially massive liability for Wisconsin businesses. Even with most jurisdictions regulating only PFOA and PFOS, estimates of total PFAS liability are in the billions. The federal Department of Defense alone estimates its liability for PFAS at $2 billion.

Entities taking on this massive liability include not just Wisconsin businesses, but also municipal water and sewage treatment agencies, hospitals, farmers, airports, and any other entities disposing of everyday products that contain PFAS chemicals.

Before taking action on regulating any PFAS chemicals, the legislature and DNR should wait for a better scientific understanding of *which* of these chemicals actually pose a threat to the environment and human health.

II. WCJC Opposes the Extremely Strict Standards Proposed in AB 843.

AB 843 requires DNR to promulgate emergency groundwater standards for any PFAS chemicals for which DNR receives a recommendation from DHS. DHS has already recommended extremely strict standards for PFOA and PFOS *combined* at 20 parts per trillion with a preventive action limit of 2 parts per trillion. These levels would be some of the strictest regulations in the country, if not the world. WCJC, as part of the Wisconsin Water Quality Coalition, opposed these recommendations for various reasons.[1]

AB 843 also requires DNR to set a reporting value for air emissions at "any amount greater than zero pounds per year," an extremely strict level considering the lack of scientific studies evidencing that PFAS are prevalent or harmful in the air. The legislation also exempts DNR from providing written documentation based on scientific analysis to support that air standards are necessary for public health and welfare. Although AB 843 does delay the effective date of air emissions provisions until EPA's PFAS air stack testing methods are effective, DNR should still be required to provide the standard scientific analysis required to set state air emissions standards.

Setting any enforcement standards creates legal evidence of a significant public health threat, giving plaintiff attorneys the opportunity to successfully sue industry based on these standards without proving any actual occurrence of illness. If standards are not based on levels supported by science, industry will face massive costs to engage in these frivolous lawsuits, even when there is only a microscopic presence of a PFAS chemical, with little to no actual benefit to public health.

The Legislature should not give DNR the broad authority to regulate PFAS chemicals at these extremely low standards and thereby allow these types of private actions to proceed before thorough research shows the exact levels in each medium when humans experience health effects.

III. WCJC Opposes the Financial Responsibility Language in AB 843.

The proof of financial responsibility requirements in Section 13 of AB 843 give DNR *extremely* broad authority to designate who pays for PFAS remediation. The over 4,000 PFAS compounds are so prevalent in consumer products and the environment that in practice almost any person

[1] View Water Quality Coalition comments on DHS recommendations here: https://drive.google.com/file/d/12qlL3C8X8ljfBWmmW7KmwKmLmPI2Gc6v/view

could be found liable by DNR and be required to provide proof of financial responsibility for PFAS response and remediation. Industry and citizens who were never manufacturing or purposefully discharging PFAS could be responsible for millions of dollars in liability for PFAS contamination.

IV. WCJC Opposes the Blood Testing Pilot Program and Cancer Cluster Study in AB 843.

The blood testing pilot program is not scientifically feasible and will lead to unnecessary panic and frivolous lawsuits. At a December 2019 listening session in Marinette, DHS told attendees that the level of PFAS in a person's blood is not indicative of clinical health effects. DHS said there is an "association" but no link between PFAS blood levels and health effects. The Agency for Toxic Substances & Disease Registry has also stated that "Laboratory test results can't tell you if PFAS exposure has caused your health condition…PFAS blood tests can tell you the amount of PFAS in your blood. However, test results won't tell you how PFAS will affect your health now or in the future."[2]

Because 98 percent of people in the U.S. have some level of PFAS in their blood, blood testing will cause unnecessary fear with little benefit to the health of citizens in the Marinette and Peshtigo area. Instead, this testing would provide plaintiff attorneys with a large population of clients to file frivolous lawsuits against businesses in the area, with no scientific evidence to support the claims of injury. A national class action lawsuit has already been filed against several PFAS manufacturers on behalf of everyone with detectable levels of PFAS in their blood.

The cancer cluster study is also not scientifically feasible. DHS recently sent a letter to the authors of AB 843 stating that the population sample in the Marinette and Peshtigo area is too small to produce accurate scientific results in a cancer cluster study.[3] Again, inaccurate results from a small sample size could cause unnecessary panic with little benefit to the health of citizens in the Marinette and Peshtigo area. Results of the study would likely lead to frivolous lawsuits against businesses in the area, with no accurate data to support the claims.

V. WCJC Opposes the Creation of a "PFAS Action Fund."

The "PFAS Action Fund" for settlement money created under the bill is a concerning acknowledgement that the state is planning to file lawsuits – or counting on others to file them – against industry for PFAS contamination. Creating a PFAS trust fund incentivizes the state and plaintiff attorneys to file lawsuits against businesses for PFAS contamination. Contamination should be addressed based on sound science and working in collaboration with industry to provide immediate relief for citizens with affected water systems, not through expensive, inefficient, and time-consuming lawsuits.

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[2] ATSDR. "Talking to your doctor about exposure to PFAS." https://www.atsdr.cdc.gov/pfas/docs/Talking_to_Doctor.pdf

[3] Eagle Herald Extra. "DHS lacks science for PFAS health studies." Jan. 28, 2020. https://ehextra.com/Content/Social/Social/Article/DHS-lacks-science-for-PFAS-health-studies/-2/-2/59642

Lawsuits should not come before science. Even without standards in place, we are already seeing plaintiff attorneys aggressively seek states and localities as clients to engage in PFAS litigation against businesses. Creating a "PFAS Action Fund" only further incentivizes plaintiff attorneys to seek contingency fee contracts with state and local governments. Despite the lack of established science on actual harms from PFAS, these plaintiff attorneys file lawsuits and seek massive settlements on behalf of state and local governments. In the end, it is the plaintiff attorneys who receive massive percentages from these settlements – not the state or actual injured parties – that benefit most from lawsuits.

Manufacturers stopped producing PFOA and PFOS in the U.S. decades ago. The civil justice system should not be used as a financial punishment for businesses dealing with historic contamination from products that were deemed safe, legal, and beneficial at the time.

VI. Conclusion

Under the provisions of AB 843, Wisconsin businesses, municipal water and sewage treatment agencies, hospitals, farmers, airports, and any other entities disposing of everyday products that contain PFAS chemicals could face millions of dollars in cleanup costs, legal enforcement action by state agencies, and lawsuits by plaintiff attorneys for the existence of potentially thousands of chemicals that have not yet been shown by federal or state agencies to cause negative human health effects.

Thanks to years of reform-minded legislation, Wisconsin was recently ranked the 13th best lawsuit climate in the nation. Our state's positive legal climate makes it an attractive place to do business and create good-paying, family-sustaining jobs. Regulations proposed and enforced under this legislation could undo Wisconsin's hard-earned reputation as a reliable place to do business and instead turn the state into a haven for plaintiff attorneys filing unwarranted lawsuits against businesses. For potentially little to no public health benefit, imposing burdensome regulations under this legislation would have a significant negative impact on Wisconsin's economy and would stifle innovation.

WCJC supports science-based enforcement standards for chemicals that have actual, established human health effects, but AB 843 provides DNR far too broad a scope to regulate chemicals for which there is little established science confirming negative human health effects. The proposed regulations would impose billions of dollars in compliance and liability costs, crippling Wisconsin industry.

The Wisconsin Civil Justice Council's mission is to promote fairness and equity in Wisconsin's civil justice system, with the ultimate goal to make Wisconsin a better place to work and live.

Contact: Paige Scobee, scobee@hamilton-consulting.com, *608-258-9506*

February 5, 2020

To the Chairs and Members of the Wisconsin Assembly Committee on the Environment:

On behalf of the Associated Recyclers of Wisconsin (AROW), the Wisconsin Badger Chapter of the Solid Waste Association of North America (SWANA), and the Wisconsin Counties Solid Waste Management Association (WCSWMA), the Wisconsin Solid Waste PFAS Coalition is writing to express our concerns with 2019 Assembly Bill AB843. The Bill as written could have significant economic and operational impacts on the Wisconsin solid waste industry which includes publicly and privately owned landfills, composting facilities, recyclers or materials recovery facilities (MRFs), waste haulers, other upstream and downstream industries, and ultimately our customers and taxpayers.

Funding for PFAS Research, Disposal, and Cleanup

As landfill tip fees contribute approximately 80% of the revenue of the Wisconsin Environmental Management Account (EMA), our industry has a vested interest in the spending from the account. There are many competing needs for funding from the EMA and the proposed funding in AB843 is only a fraction of what will be needed to address PFAS if stringent water quality and cleanup standards are introduced. Before diverting millions of dollars from other environmental programs including: recycling, brownfield redevelopment, state-funded cleanup of sites with other types of contamination, and DATCP's household hazardous waste collection program, the environmental risks and benefits of competing needs should be assessed and prioritized.

Specifically troublesome to our industry, is that funding from local recycling continues to be diverted to other uses. Local recycling efforts are intended to be funded by the EMA from the $7 per ton recycling fee assessed at Wisconsin landfills. That fee was increased from $3 per ton to $4 per ton in 2009, yet in 2010 the amount available to Responsible Units (RU) of recycling was reduced by 40%. While the amount of recycling fees collected in the 2017/2018 fiscal year was $37,421,100, only $19 million was made available to RUs to offset the cost of recycling. For 2018, the net eligible costs of local recycling programs are reported as $120,817,217.

The State recently reported that there will be a projected $750 million surplus of revenue collected into general purpose revenue (GPR). The GPR should be used to fund PFAS research, disposal, and cleanup, not the EMA. If the EMA is seen as an unlimited source of funds for PFAS response, the account will quickly find itself in a deficit, rather than a surplus.

WISCONSIN SOLID WASTE PFAS COALITION

AROW
recyclemorewisconsin.org

Wisconsin Badger Chapter SWANA
swana-wi.org

WCSWMA
wcswma.org/

About us

The Wisconsin Solid Waste PFAS Coalition was formed in 2019 to educate and inform our industry members, lawmakers, and the public about the relationship between PFAS and our waste.

Contact us

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The Connections Between Waste Water and Solid Waste

Any actions that limit or restrict land application of biosolids from waste water treatment facilities (WWTFs) will have wide-reaching effects that span across many industries, including the solid waste industry. If WWTFs are forced to landfill biosolids due to financial responsibly requirements, stringent soil standards for PFAS, or otherwise, the tipping fees alone could exceed $10 million dollars annually based on preliminary worst-case estimates by the University of Wisconsin – Stevens Point.

Additionally, the disposal of biosolids isn't as simple as "dumping" the material in the landfill and burying it. The high moisture biosolids require additional effort to effectively and safely combine and compact the material into the waste. This additional effort is necessary to prevent unstable slopes and soft working surfaces that would prohibit vehicle and heavy equipment traffic. There is a limit to the quantity of biosolids that landfills can accept and more importantly, landfilling this material will consume valuable landfill airspace which will ultimately create the need for additional landfills, sooner.

To add complexity, disposal of biosolids in landfills could impact the levels of PFAS in the liquids (or leachate) that is sent to WWTF from landfills. WWTFs and solid waste facilities serve the public and each other by routinely accepting waste materials from one another. Scrutinizing WWTF discharges and biosolids for PFAS has pitted WWTFs and solid waste facilities against one another in surrounding states and created additional environmental risk and economic challenges for leachate and biosolids management. A systems approach that takes into account the impact on all public utilities is needed to find a solution for regulating levels of PFAS in our environment.

It is important to note that landfills, compost facilities, MRFs, and WWTFs, are not producers or original sources of PFAS. Instead, these facilities receive PFAS contaminated materials from unknowing users like households and businesses. Allowing for solid waste facilities to be potentially identified as responsible parties for releases of PFAS will only cost municipalities and taxpayers and not the actual responsible parties, the chemical manufacturers who have knowingly supplied PFAS chemicals for widespread use.

A Complex Problem that Requires a Comprehensive Solution

A patchwork of bills that do not address the continued use and persistence of PFAS in consumer products is not the way to tackle this complex global issue. The proposed concepts will lull many into a false sense of security and not address the larger issue. Wisconsin and the U.S., need a comprehensive approach that considers the science of PFAS, the complex behaviors of the range of compounds in this category, the toxicology, and the economic impacts of various solutions.

The solid waste industry supports regulating these chemicals and has always held protection of human health and the environment as a core value; however, priorities need to be set and the risks of PFAS need to be weighed against other environmental pollutants. Additionally, many other factors including: background concentrations of PFAS in our environment, bodies, and indoor dust and air; continued use of these chemicals in consumer products; and lack of standardized water quality, cleanup, and sampling standards, creates a concern that efforts and money could be more effectively spent on alternative approaches to managing health and environmental risks associated with PFAS.

CITY OF RHINELANDER

Rhinelander WISCONSIN
THE HEART OF HODAG COUNTRY

Office of the City Administrator Daniel Guild

To: Wisconsin Assembly Committee on the Environment

CC: Representative Robert Swearingen

Date: Wednesday, February 5, 2020

RE: Committee on the Environment's consideration of AB 843

I am writing to you on behalf of the 7,400 residents, local business, property owners, taxpayers, thousands of school-age children from the surrounding Rhinelander micropolitan, and the seasonal tourists who consume City of Rhinelander Utilities municipally distributed water on a regular, and most-often daily basis. The purpose of my correspondence is to provide feedback to the members of the Assembly's Committee on the Environment regarding your upcoming discussions regarding AB 843, which has been introduced by Representative Nygren and State Senator Hanson.

As you are aware, AB 843 would create PFAS standards, provide blood testing for certain individuals requiring a cancer cluster study, extend the time limit for emergency rule procedures, provide an exemption from emergency rule procedures, and grant rule-making authority, among other items. Further, this bill would require the WI DNR to create emergency rules establishing groundwater standards for PFOA and PFOS, as well as, any other PFAS chemical for which DHS submits a recommended groundwater enforcement standard. Also intriguing to the City's leaders here in Rhinelander is that this bill would create a PFAS municipal grant program.

Rhinelander is one of Wisconsin communities which has positively tested for the presence of PFAS chemicals in our drinking water. At various times this year, the test results have been above the levels recommended by WI DHS.

Because of this situation, in general, the City's leaders support Representative Nygren and Senator Hansen's thoughtful consideration of how the state of Wisconsin should begin addressing the presence of PFAS in our environment and in our drinking water. These legislative efforts will hopefully be the first, in a series of coordinated initiatives to comprehensively address this issue state-wide. Appropriately and rightfully so, Representative Nygren and Senator Hansen's bill provides extra resources and effort to those Wisconsin citizens impacted by the presence of PFAS contamination in the Marinette area.

While you consider the merits of AB 843, our community would ask that you also consider the following:

135 South Stevens Street
Rhinelander, WI 54501
http://www.rhinelandercityhall.org

City Hall: (715) 365-8600
Mobile: (715) 906-7692
cityadministrator@rhinelandercityhall.org

CITY OF RHINELANDER

Rhinelander WISCONSIN
THE HEART OF HODAG COUNTRY

Office of the City Administrator Daniel Guild

- The bill requires DHS to create and administer a pilot program to provide free blood testing, beginning no later than September 1, 2020, for individuals living on or near sites or facilities contaminated with PFAS or other toxic compounds in the city of Marinette, the town of Peshtigo, the city of Peshtigo, or the town of Porterfield. Could the City of Rhinelander be added to this bill language?

- The bill also requires DHS to conduct a cancer cluster study to investigate the incidence of PFAS-related cancers and other illnesses in the city of Marinette, the town of Peshtigo, the city of Peshtigo, and the town of Porterfield. Could the City of Rhinelander be added to this bill language?

Here are some brief explanations why we believe the City of Rhinelander should be considered with this legislation.

- The City of Rhinelander was among the first communities in Wisconsin to have known contamination in the municipal water system. We have five municipal wells in the City, of which two are currently shut down due to concerns over PFAS. If we must shut down another well, we will not be able to meet the demands of our utility customers to provide them with drinking water.

- For years, Oneida County has switched between ranking either first or second for having the highest rates of cancer in Wisconsin. Source: https://www.cancer-rates.info/wi/

- Rhinelander is a poor community with limited financial resources to start addressing this issue, itself. 14% of the City's resident population lives below the poverty line. 46% of the City's resident population meets the definition of the United Way's ALICE (Asset Limited, Income Constrained, Employed) methodology. Source: https://www.unitedforalice.org/wisconsin

We are, respectfully, asking that more funding be allocated to solving this problem, specifically here in the City of Rhinelander.

On behalf of Mayor Chris Frederickson, and the members of the Rhinelander Common Council.

My regards,

Daniel Guild
Rhinelander City Administrator

135 South Stevens Street
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http://www.rhinelandercityhall.org

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Mobile: (715) 906-7692
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February 5, 2020

To the Chairs and Members of the Wisconsin Assembly Committee on the Environment:

On behalf of the Associated Recyclers of Wisconsin (AROW), the Wisconsin Badger Chapter of the Solid Waste Association of North America (SWANA), and the Wisconsin Counties Solid Waste Management Association (WCSWMA), the Wisconsin Solid Waste PFAS Coalition is writing to express our concerns with 2019 Assembly Bill AB843. The Bill as written could have significant economic and operational impacts on the Wisconsin solid waste industry which includes publicly and privately owned landfills, composting facilities, recyclers or materials recovery facilities (MRFs), waste haulers, other upstream and downstream industries, and ultimately our customers and taxpayers.

Funding for PFAS Research, Disposal, and Cleanup

As landfill tip fees contribute approximately 80% of the revenue of the Wisconsin Environmental Management Account (EMA), our industry has a vested interest in the spending from the account. There are many competing needs for funding from the EMA and the proposed funding in AB843 is only a fraction of what will be needed to address PFAS if stringent water quality and cleanup standards are introduced. Before diverting millions of dollars from other environmental programs including: recycling, brownfield redevelopment, state-funded cleanup of sites with other types of contamination, and DATCP's household hazardous waste collection program, the environmental risks and benefits of competing needs should be assessed and prioritized.

Specifically troublesome to our industry, is that funding from local recycling continues to be diverted to other uses. Local recycling efforts are intended to be funded by the EMA from the $7 per ton recycling fee assessed at Wisconsin landfills. That fee was increased from $3 per ton to $4 per ton in 2009, yet in 2010 the amount available to Responsible Units (RU) of recycling was reduced by 40%. While the amount of recycling fees collected in the 2017/2018 fiscal year was $37,421,100, only $19 million was made available to RUs to offset the cost of recycling. For 2018, the net eligible costs of local recycling programs are reported as $120,817,217.

The State recently reported that there will be a projected $750 million surplus of revenue collected into general purpose revenue (GPR). The GPR should be used to fund PFAS research, disposal, and cleanup, not the EMA. If the EMA is seen as an unlimited source of funds for PFAS response, the account will quickly find itself in a deficit, rather than a surplus.

WISCONSIN SOLID WASTE PFAS COALITION

AROW
recyclemorewisconsin.org

Wisconsin Badger Chapter SWANA
swana-wi.org

WCSWMA
wcswma.org/

About us

The Wisconsin Solid Waste PFAS Coalition was formed in 2019 to educate and inform our industry members, lawmakers, and the public about the relationship between PFAS and our waste.

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The Connections Between Waste Water and Solid Waste

Any actions that limit or restrict land application of biosolids from waste water treatment facilities (WWTFs) will have wide-reaching effects that span across many industries, including the solid waste industry. If WWTFs are forced to landfill biosolids due to financial responsibly requirements, stringent soil standards for PFAS, or otherwise, the tipping fees alone could exceed $10 million dollars annually based on preliminary worst-case estimates by the University of Wisconsin – Stevens Point.

Additionally, the disposal of biosolids isn't as simple as "dumping" the material in the landfill and burying it. The high moisture biosolids require additional effort to effectively and safely combine and compact the material into the waste. This additional effort is necessary to prevent unstable slopes and soft working surfaces that would prohibit vehicle and heavy equipment traffic. There is a limit to the quantity of biosolids that landfills can accept and more importantly, landfilling this material will consume valuable landfill airspace which will ultimately create the need for additional landfills, sooner.

To add complexity, disposal of biosolids in landfills could impact the levels of PFAS in the liquids (or leachate) that is sent to WWTF from landfills. WWTFs and solid waste facilities serve the public and each other by routinely accepting waste materials from one another. Scrutinizing WWTF discharges and biosolids for PFAS has pitted WWTFs and solid waste facilities against one another in surrounding states and created additional environmental risk and economic challenges for leachate and biosolids management. A systems approach that takes into account the impact on all public utilities is needed to find a solution for regulating levels of PFAS in our environment.

It is important to note that landfills, compost facilities, MRFs, and WWTFs, are not producers or original sources of PFAS. Instead, these facilities receive PFAS contaminated materials from unknowing users like households and businesses. Allowing for solid waste facilities to be potentially identified as responsible parties for releases of PFAS will only cost municipalities and taxpayers and not the actual responsible parties, the chemical manufacturers who have knowingly supplied PFAS chemicals for widespread use.

A Complex Problem that Requires a Comprehensive Solution

A patchwork of bills that do not address the continued use and persistence of PFAS in consumer products is not the way to tackle this complex global issue. The proposed concepts will lull many into a false sense of security and not address the larger issue. Wisconsin and the U.S., need a comprehensive approach that considers the science of PFAS, the complex behaviors of the range of compounds in this category, the toxicology, and the economic impacts of various solutions.

The solid waste industry supports regulating these chemicals and has always held protection of human health and the environment as a core value; however, priorities need to be set and the risks of PFAS need to be weighed against other environmental pollutants. Additionally, many other factors including: background concentrations of PFAS in our environment, bodies, and indoor dust and air; continued use of these chemicals in consumer products; and lack of standardized water quality, cleanup, and sampling standards, creates a concern that efforts and money could be more effectively spent on alternative approaches to managing health and environmental risks associated with PFAS.

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Wisconsin State Assembly
Committee on Environment
February 6, 2020 Public Hearing
Room 328 Northwest, State Capitol
2019 Assembly Bills 842 and 843

Re: Comments of the PFAS Regulatory Coalition
February 6, 2020 Public Hearing on 2019 Assembly Bills 842 and 843

Dear Sir or Madam:

The PFAS Regulatory Coalition (Coalition) appreciates the opportunity to submit public comments regarding Assembly Bills 842 and 843.

I. The Coalition's Interest

The Coalition is a group of industrial companies, municipal entities, and trade associations that are directly affected by the State's development of policies and regulations related to per- and polyfluoroalkyl substances (PFAS). Coalition membership includes entities in the automobile, coke and coal, iron and steel, municipal, paper, petroleum, and other sectors. Coalition members, for purposes of these comments, include: American Coke and Coal Chemicals Institute; American Forest and Paper Association; American Iron and Steel Institute; Barr Engineering; Brown & Caldwell; Gary Sanitary District (IN); North Shore Water Reclamation District (IL); Pueblo, CO; Tempe, AZ; Toyota; Trihydro, and, Yucaipa Valley Water District (CA).

Coalition members support the State's efforts address PFAS.. In doing so, the Coalition emphasizes that states must ensure that its actions are scientifically supported, cost-effective, and achievable.

II. Coalition Recommendations

In the comments below, the Coalition recognizes some of the challenges that the States face is addressing PFAS issues. The Coalition appreciates the State's desire to act to protect its citizens from potential risks associated with exposure to certain PFAS compounds, but urges the various states and federal government to work closely together to develop a cohesive national strategy to help ensure national uniformity. The prospect of a patchwork set of state-specific standards that vary widely is likely to cause significantly more confusion and overwhelming challenges for Coalition members that operate in multiple states or nationwide.

To promote a national, cohesive, and coordinated approach, the Coalition offers the following general principles that should guide states in their approach to PFAS.

A. The Scientific Community Does Not Agree on Human Health Toxicity Values for PFAS

The term "PFAS" refers to a group of man-made chemicals that include perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), GenX,[1] and other fluorinated compounds. The most prevalent and available science regarding the incidence and potential health effects of PFAS is based on PFOA and PFOS, two compounds that are no longer manufactured in the United States due to voluntary phase outs. For replacement chemicals, industry has begun using shorter-chain PFAS that have different physical, chemical, and toxicological properties from the long-chain PFOA and PFOS. The scientific understanding of how PFAS impacts people and the environment is still developing and, for thousands of PFAS compounds, much remains unknown. From a toxicological perspective, states must have adequate science for determining health-based values before promulgating individual compound standards, limits, and related regulations.

Toxicologists, whether they work for various state agencies, USEPA, international standards-setting organizations, academia, or in private practice, have not yet established specific methodologies, resources, or even agreed on which of the hundreds of studies of PFAS compounds are the appropriate or critical components that must or should support appropriate regulatory "standards." Different methodologies, levels of experience, procedural prerequisites to standards-setting, and even local political pressures can and have led to considerations of highly variable standards in different states or at USEPA. Accordingly, the Coalition recommends that states work with one another and with USEPA

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[1] Note that GenX is a trade name for a specific PFAS compound, ammonium, 2,3,3,3-tetrafluoro-2-(heptafluoropropoxy) propanoate. ITRC "Naming Conventions and Physical and Chemical Properties of Per- and Polyfluoroalkyl Substances (PFAS)," at 12, *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2018/03/pfas_fact_sheet_naming_conventions__3_16_18.pdf (last visited January 23, 2020). More generically, GenX can be denoted by the abbreviation, "HFPO-DA."

to continue developing science and methodologies to inform and encourage a more uniform approach to federal and state PFAS regulatory mandates.

B. Federal Action on PFAS

USEPA has issued "Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS."[2] Those recommendations provide clear and consistent guidance for federal cleanup sites being evaluated and addressed under federal programs, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). The screening levels followed under such cleanups are risk-based values that are used to determine if levels of contamination may warrant further investigation at a site. The recommendations are intended to be used as guidance for states to evaluate state cleanup and corrective action sites. The interim guidance recommends in relevant part:

- Using a screening level of 40 parts per trillion (ppt) to determine if either PFOA, or PFOS, or both, is present at a site and may warrant further attention.
- Using USEPA's PFOA and PFOS Lifetime Drinking Water Health Advisory level of 70 ppt as the preliminary remediation goal (PRG) for contaminated groundwater that is a current or potential source of drinking water, where no state or tribal MCL or other applicable or relevant and appropriate requirements (ARARs) are available or sufficiently protective.

In addition, USEPA is focusing significant resources on developing appropriate regulatory mechanisms related to various PFAS compounds. For example, USEPA has developed a PFAS Action Plan, which provides a multi-media, multi-program, national research, and risk communication plan to address emerging PFAS challenges.[3] Part of USEPA's PFAS Action Plan involves expanding the scientific foundation for understanding and managing risk from PFAS, including researching improved detection and measurement methods, generating additional information about PFAS presence in the environment and drinking water, improving the understanding of effective treatment and remediation methods, and developing more information regarding the potential toxicity of a broader set of PFAS. In turn, USEPA expects that this information will help states and others better manage PFAS risks.

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[2] USEPA Office of Land and Emergency Management, OLEM Directive No. 9283.1-47 (December 19, 2019), *available at* https://www.epa.gov/sites/production/files/2019-12/text_version_epas_interim_recommendations_for_addressing_groundwater_contaminated_with_pfoa_and_pfos_dec_2019.txt.

[3] *See* USEPA "EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan" (February 2019) *available at* https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf.

USEPA is also moving towards possible Maximum Contaminant Level (MCL) standards for PFOA and PFOS—two of the most well-known and prevalent PFAS chemicals. The Agency has sent "regulatory determinations" for PFOA and PFOS to the White House Office of Management and Budget, Office of Information and Regulatory Affairs (OMB-OIRA) for approval.[4] As stated in its proposed regulatory determination, "[p]roposing a regulatory determination is the next step in the maximum contaminant level [] rulemaking process under the Safe Drinking Water Act; it enables the USEPA to propose and solicit comment on information critical to regulatory decision-making towards protecting public health and communities across the nation."[5] Additionally, USEPA is gathering and evaluating information to determine if similar regulations are appropriate for a broader number of PFAS compounds.

While USEPA is working through its long-established processes and rulemaking procedures, Congress is considering ways to expedite and fund various national standards-setting approaches. Recently, the House of Representatives passed the PFAS Action Act (H.R. 535), which would require, among other things, that USEPA promulgate a national primary drinking water regulation for certain PFAS and a health advisory for other PFAS not subject to a national primary drinking water regulation. Also, Congress passed and then the President signed into law the National Defense Authorization Act (NDAA) (P.L. 116-92) that mandates additional federal actions to regulate and manage various risks associated with many PFAS. While we recognize that not all states and stakeholders can agree on specific priorities or approaches to PFAS regulations, these congressional actions combined with USEPA's efforts, are important national developments that should be supported by the states through their contribution of expertise, resources, and efforts as the Nation works to respond to the PFAS exposure risks.

Indeed, a patchwork of 50 different state solutions is unworkable and contrary to how the U.S. has previously addressed similar emerging contaminant issues. While some limited variations related to groundwater, surface water, or soil cleanup levels may be expected and appropriate, the highly variable regulatory health advisories, action levels, and drinking water standards currently being developed or under consideration across the country create unnecessary confusion and complexity for the public and the regulated community.

The Coalition recognizes that states have elected to utilize different methods and processes for communicating risks to their populations. However, standards-setting must reflect more national and uniform collaboration and cohesion. We must work to avoid the undesirable solution of 50 separate state statutes and rules, particularly with regard to drinking water standards. With this in mind, we urge the states to work closely with

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[4] RIN: 2040-AF93 *available at* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2040-AF93 (last visited January 26, 2020).
[5] *Id.*

USEPA to establish science-based and peer-reviewed federal standards that serve as the basis for comparable state standards. Such an approach is consistent with how USEPA and the states have addressed environmental and human health risks since the inception of USEPA.

In addition, the Coalition can foresee challenges to states that choose to develop their own unique and varying drinking water standards. Many jurisdictions have existing laws or rules that prohibit the state from promulgating regulations that are more stringent than the federal rules. When USEPA does promulgate national primary drinking water regulations, such states may be in conflict with their legislature's clearly stated policy. States that promulgate their own drinking water standards ahead of USEPA may be required to amend such state-specific PFAS regulations when USEPA completes its work in this regard. Antibacksliding provisions may further limit states' abilities to change their standards to conform with federal rules.

Considering the above, implementation of any future federal standards likely will be more complex and resource-consuming for states that set their own limits in advance of federal action. Indeed, the purpose of federal law is to protect against a patchwork of state law. Accordingly, the State should clearly articulate how forthcoming federal drinking water standards may impact these state-specific proposed laws, how the State will help to foster consistency and uniformity with neighboring states, and how the State will defer to federal standards or revise standards based on future federal action and improved scientific understanding about exposure, dose, and toxicology.

The Coalition encourages the State to use its resources to support the development of science upon which USEPA can base its federal standards, heed the non-binding recommendations of USEPA's Federal Health Advisory of 70 ppt (for PFOA and PFOS combined), and, ultimately, work to implement any forthcoming national primary drinking water standards. This will protect the State from expending resources on establishing and enforcing individual PFAS drinking water standards that are inconsistent both with other states and with federal science-based and peer-reviewed standards.

C. Reliance on the ATSDR Values

The United States Agency for Toxic Substances and Disease Registry (ATSDR), part of the federal Center for Disease Control, and many states have reviewed the toxicity information available for PFOA and PFOS and opined on appropriate dosages that reflect highly conservative assumptions designed to protect human health, including the most susceptible subpopulations. ASTDR values are derived through different methods than USEPA's MCL (and Health Advisory) values and the two are not directly comparable.[6]

[6] *See* ATSDR Public Health Assessment Guidance Manual (2005) at Appendix F: Derivation of Comparison Values (https://www.atsdr.cdc.gov/hac/phamanual/appf.html) ("MCLs represent

These variabilities in how various health recommendations are derived must be considered and addressed to ensure that any final standards are scientifically justified and corroborated.

Moreover, the ATSDR has only finalized the Toxicological Profile for two PFAS compounds, PFOA and PFOS. The profiles for two additional PFAS—Hexafluoropropylene Oxide (HFPO) Dimer Acid, more commonly referred to as the "GenX Chemicals," and Perfluorobutane Sulfonic Acid/Potassium Perfluorobutane Sulfonate, referred to as PFBS—are still only in draft form. ATSDR made the Toxicological Profiles for these additional PFAS available for public comment in 2018, and the Profiles have not been finalized yet.

Considering the above, the Coalition recommends that the State base any statute or rulemaking on any forthcoming national primary drinking water standards, rather than the draft ATSDR report. And, even if the State still seeks to base its statutes and rulemaking on the ASTDR reference doses, the Coalition recommends that it wait until ATSDR finalizes its Toxicological Profiles, as the science supporting ATSDR's reference doses is not fully developed and not generally agreed-upon in the scientific community. Moreover, ATSDR has not even drafted profiles for some of the compounds that the State is proposing to regulate.

The State, at best, must avoid underpinning regulations on information that the scientific community is still debating, or using science not yet fully developed enough for ATSDR to draft recommendations. USEPA is actively working on developing its own assessments for these and other PFAS compounds and, consequently, final standards-setting is still premature.

D. Specificity in the Type of Regulated PFAS

Generally, future PFAS regulations should clearly specify the individual compounds of PFAS that it seeks to regulate. Given the wide variations in toxicities and other characteristics exhibited by different PFAS chemicals, it is not scientifically appropriate to group all PFAS together for purposes of risk assessment or to assume that exposures to mixtures of PFAS necessarily bioaccumulate in one's body in interchangeable 1:1 ratios.

Accordingly, the Coalition supports approaches that have specificity in identifying which PFAS compounds are regulated and recommends that the regulation of individual PFAS substances reflect peer-reviewed science regarding the physical, chemical, and toxicological properties of each compound. Similarly, the Coalition recommends against including any combined PFAS standards or limits unless science clearly demonstrates that

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more realistic assumptions about toxicity and contain fewer uncertainty factors than the very conservative ATSDR environmental guidelines.")

the mixture of the PFAS compounds subject to the combined limit results in bioaccumulation in hazardous concentrations.

E. Validated Test Methods for PFAS

The State should regulate only those PFAS comopounds for which there are validated analytical test methods. USEPA's main validated test methods for PFAS, Methods 537 and 537.1, apply only to 18 PFAS compounds in samples derived from drinking water. USEPA recently issued Method 533 that can be used to measure an additional 11 "short-chain" PFAS compounds (and only 14 of the 18 PFAS covered by Method 537.1), again only for use in testing drinking water. Therefore, the entirety of USEPA's approved test methods can measure no more than 29 different PFAS compounds, and multiple methods would have to be used to obtain results from all 29 compounds.

No validated USEPA test methods exist for testing PFAS compounds in any other environmental media. USEPA has received comments on a draft non-potable water test method (SW-846 Method 8327), but that method is only considered "guidance" at this time. USEPA also is working with the Department of Defense's Naval Seas Systems Command Laboratory Quality and Accreditation Office to validate a solid-phase extraction/isotope dilution method to include solid matrices (*i.e.,* for soil, sediment, fish tissue, biosolids), as well as non-potable water sources, but that effort may not be completed until 2021.[7]

Accordingly, the Coalition recommends that any PFAS regulatory approaches recognize the limits of the available USEPA validated test methods and choose a specific test method to be referenced by any standards being adopted. Limitations on test methods and the lack of any validated method by USEPA for anything except drinking water creates major challenges for the State's efforts to regulate non-potable water or other matrices.

F. Testing Capabilities and Reliability

The Coalition urges the State to consider the capabilities and reliability of laboratories that test for PFAS. In other words, there is limited capacity nationally to perform all of the analytical laboratory work and limited reliability on any given sample result due to potential lab error, cross contamination, or other factor that could impact results in the very low parts per trillion levels being considered. There is little doubt that the closer the State sets a limit or standard to the detection limit, analytical sampling and related lab results become increasingly unreliable.

For example, Coalition members who have sent split samples to multiple labs report receiving highly variable results. Such anecdotal evidence demonstrates the potential

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[7] *See* PFAS Methods Technical Brief at https://www.epa.gov/sites/production/files/2020-01/documents/pfas_methods-sampling_tech_brief_7jan2020-update.pdf .

difficulty and unreliability of performing testing at limits that approach the detection limit. Considering that the State can potentially impose fines, costly corrective action, or other penalties for failing to meet regulatory limits, the regulated community must have the ability to accurately measure PFAS to demonstrate compliance. Subjecting the regulated community to fines, corrective action, and other penalties based on potentially unreliable testing raises due process concerns. Accordingly, the Coalition urges the State to consider testing capabilities and set limits and impose a regulatory scheme that accounts for the variability in and limits of current laboratory testing.

G. Availability of Testing and Disposal

A limited number of established laboratories in the country have robust experiecnce testing and reporting PFAS results. The State's laws and rules should account for the limited number of testing laboratories in the region. The Coalition recommends, for example, that in regions where testing capacity is limited that the statutes provide for a delayed effective date or phased implementation that allows for laboritories to develop the expertise necessary to reliably accommodate the increased testing that the statutes will require.

Similarly, treatment technologies for PFAS are still being developed, and there is limited capacity for the disposal of byproducts from newly-developed technologies. For example, absorption technologies such as granular activated carbon (GAC) are being developed as potential response measures to achieve compliance with new drinking water standards for PFAS. The regulated community will need to safely dispose of the byproducts of such treatment technologies used to treat PFAS in drinking water. Again, this is another area where USEPA is taking action.

Congress, in the NDAA, mandated that USEPA, not later than one year after enactment, "publish interim guidance on the destruction and disposal of perfluoroalkyl and polyfluoroalkyl substances and materials containing perfluoroalkyl and polyfluoroalkyl substances," which includes guidance on "spent filters, membranes, resins, granular carbon, and other waste from water treatment."[8] The Coalition urges the State to use its resources to support the development of USEPA's interim guidance documents prior to independently establishing MCLs.

[8] NDAA Sec. 7631(4).

IV. Conclusion

The Coalition appreciates the opportunity to submit these comments concerning the proposed statutes. We look forward to working closely with the State regarding developing appropriate, reasonable, and scientifically-defensible PFAS statutory and regulatory programs. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in these comments.

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