

Jeff Mursau

STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Assembly Committee on Environment AB 312 - Programs and requirements to address perfluoroalkyl and polyfluoroalkyl substances.

June 15, 2023

Committee Members:

Thank you for the opportunity to testify in support of Assembly Bill 312, which creates programs and requirements to address substances related to PFAS. I would like to thank my co-authors Sen. Wimberger, Sen. Cowles, Rep. Swearingen and their staff for all their work to bring this bill forward.

I represent the 36th Assembly District, which has been deeply impacted by the spread of PFAS. Some refer to this Northeast area of Wisconsin as the epicenter of the PFAS contamination, but the truth is that it's only a matter of time before a mass contamination is found in other communities as the small towns of Stella or French Island can attest to. There isn't one corner of the state that hasn't been impacted by PFAS contamination.

We are here today because it will take action by the state to address the spread of these forever chemicals. Our small municipalities can't address the contamination or the costs associated with cleanup on their own. Important pieces of this legislation include: creating a community grant program to assist local governments in complying with required testing and treatment; protects municipal rate payers from excessive increases; and reduces the timeline and cost of testing.

The state as a whole is recognizing that PFAS contamination is harmful and it is coming to a community near you, if it hasn't already. I think it is incredibly important to point out that there isn't one organization registered opposed to this bill. All the leading environmental groups and business stakeholders are currently registered as neutral, which I think is an indication that the bill in front of you is a strong starting point.

At the Senate public hearing, we heard concerns with the bill as written and suggestions for changes. Since that hearing, our offices have met with the agencies and other groups to discuss their recommendations and we are currently working on language for an amendment.

I am encouraged by the conversations I've had and the contacts I've received on this bill. I believe we can find common ground to move this bill forward to protect our citizens and our natural resources from these poisonous chemicals.

Once again, thank you for holding a public hearing on this important piece of legislation. I am happy to answer any questions you may have.



STATE SENATOR

Eric Wimberger

DISTRICT 30

Assembly Committee on Environment

Thursday, June 15, 2023

Testimony on Assembly Bill 312

Thank you Chairman Oldenburg and fellow committee members for allowing me to testify on Assembly Bill 312, which creates a framework to address PFAS contamination in Wisconsin.

PFAS contamination was first identified in Wisconsin in my district – in Marinette and Peshtigo, and over the last several years, it has been found in all corners of our state. These “forever chemicals” can accumulate in the body, wildlife and the environment over time, and they are linked to multiple adverse health impacts.

Since I’ve been in office, I’ve had numerous conversations with local municipalities, landowners, businesses, elected officials and interested parties on how we can stop the further spread of these substances and treat identified contamination. I am proud to be here today to present on a bill that I think offers a multifaceted approach to various concerns and areas of emphasis that have been raised.

With the promulgation of state drinking water standards for PFOA and PFOS and the EPA taking action to establish an even stricter National Primary Drinking Water Regulation for PFAS substances, the pressure for additional testing, monitoring and remediation will only continue to increase.

The **PFAS Municipal Grant Program** in this legislation aims to provide financial support to municipalities and non-municipal entities who have a public water system like daycares or restaurants for testing. It also includes provisions that allow for the purchase of replacement firefighting foam and assistance with capital costs. Funding requests for testing and treatment have consistently exceeded existing funding. The cost of an average PFAS test can be hundreds of dollars and accurate monitoring often requires multiple tests. Those costs are on top of potential multi-million dollar treatment projects.

I also made it a point to allow for a portion of this grant program to help cover the cost to shipping PFAS-contaminated biosolids out of state. Wisconsin currently does not have any landfills that will accept these biosolids and in the case of Marinette, the initial cost estimate to ship their solids to the state of Oregon in 2019 was \$3.6 million. All of these costs combined can take a large chunk of a municipality’s budget they would otherwise spend on necessary services for their residents.

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Biosolid land spreading, as I have uncovered, is a significant contributor to PFAS-contaminated lands in areas that are remote or seem disconnected to nearby industry. The Department of Natural Resources (DNR) previously did not consider the impact of PFAS-contaminated biosolids before approving applications to spread them and once they're on a farmer's land, that farmer or landowner is considered an emitter of this substance. With that designation comes significant financial obligation to test and treat lands and wells. It also depreciates their land value and makes their property harder to sell in the future. To combat this and alleviate the pressure on private landowners, we incorporated an **Innocent Landowner Protection Program** into this bill.

This program will provide grants up to a maximum of \$250,000 to people who own property that is contaminated with PFAS due to no fault of their own. These grants can assist landowners with the cost of temporary drinking water, water filtration, well replacement, legal fees and other expenses that may normally be paid for by a responsible party if one were to be identified.

Another issue this legislation seeks to address relates to the **local annexation process**. The residents of the Town of Peshtigo, due to identified contamination, have two options to remediate and receive clean water. Those options include annexation to the City of Marinette to receive their municipal water or drilling deeper wells. Annexation for town residents can come with higher taxes and new city ordinances; and for the city, they would have to pay for additional costs to extend the service lines, even though they are not directly seeing the benefit of that extension.

To try and offset those concerns, we have language in the bill that will:

- Provide a three year hold period on annexation for municipalities who decide to extend water services due to an immediate health concern.
- Provide a public utility or sewer district the option to petition the Public Service Commission to authorize a separate higher rate class for those receiving services due to a service line extension until those capital costs have been paid off.
- Require the DNR to establish a priority list when ranking applications for two state programs that can help municipalities comply with federal drinking water standards. In this ranking, we direct the DNR to take into account the size and ability of the municipality receiving the service line extension.

I believe this will allow for quicker access to necessary clean water for our communities.

In conversations, my office learned the DNR could essentially stop **public works and construction projects** if their site's groundwater was contaminated by PFAS. These project delays or halts can come at a significant cost to businesses and communities. AB 312 would prohibit the DNR from impeding construction projects if they don't lead to worsening contamination and if the group leading the construction didn't cause the initial contamination. This is a commonsense fix; we shouldn't stop projects for unknown, existing contamination.

Many of the programs and items in this bill address existing PFAS contamination. However, there is still a lot we don't know about these substances and their presence in our state, which is why I think it's important we included **studies** that will look into the cost and feasibility of various treatment, destruction and disposal methods for PFAS. We also have a study to map out PFAS contamination in our state and another to look into the plume in the Green Bay area and its effect on nearby waterbodies.

I appreciate all of the conversations I've had to help refine this proposal. Following the Senate hearing on this legislation, my co-authors and I are working to address some of the suggestions presented. I believe AB 312 is good plan that will provide hope for the landowners and municipalities who have been dealing with contamination and costly, burdensome regulations surrounding PFAS treatment and disposal.

Thank you for taking the time to hear my testimony. I am willing to answer any questions you may have.

ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

STANDING COMMITTEES:

Natural Resources & Energy, Chair
Transportation & Local Government, Vice-Chair
Economic Development & Technical Colleges

Testimony on 2023 Assembly Bill 312

Senator Robert Cowles

Assembly Committee on Environment

June 15th, 2023

Thank you, Chair Oldenburg and Committee Members, for allowing me to testify on 2023 Assembly Bill 312. This bill would establish certain programs and policies which are meant to help address PFAS in Wisconsin.

The lead authors of the bill have covered some of the details of Assembly Bill 312, so I just wanted to take a few minutes to discuss my perspective on this legislation. I've been engaged in the issue of PFAS contamination for a number of years now, dating back to the first action I took on the issue when I signed onto a letter with former Representative Nygren and former Senator Hansen encouraging the Walker Administration to kick-off the process to create standards for PFAS in drinking water, groundwater, and surface water.

While it took a while, we now have standards in place, setting us in a class with less than half of states that have taken such action. We've also taken other steps on PFAS, including two bills which lead to restrictions on the use of PFAS-containing firefighting foam and a statewide foam collection and safe disposal effort.

To check on the progress we have made and, more importantly, see what else has been identified as yet to do, the Senate Committee on Natural Resources and Energy, which I chair, held an informational hearing back in January. I believe it's fair to say that this legislation is largely a reflection of things heard during that hearing.

With more information being brought to light in the State Capitol on PFAS over the past few months, largely thanks to the staunch advocacy of my colleagues which are the lead authors of Assembly Bill 312, we have a tremendous opportunity in front of us to make serious progress against PFAS. But first, we must establish the necessary programs and policies to ensure that we're prepared for what comes next.

While this is a pretty comprehensive bill, and I don't want to take the time to talk about every provision, I do want to highlight a couple. First, we establish two grant programs. One of them, the Municipal Grant Program, will help local governments and entities with responsibilities like local governments (such as community water systems and landfills) with their costs in addressing PFAS contamination. The second, the Innocent Landowner Grant Program, will serve persons impacted by PFAS on their property through no fault of their own. This will help residents get clean drinking water and landowners begin any desired cleanups, among other things.

To highlight a couple more provisions, we also establish an innovative pilot program where the DNR will contract with an entity to test whether diversion, treatment, and return of surface waters impacted by PFAS is a viable strategy to deal with the contamination issues we already have in the state. We also, as funding is available and

within an appropriate timeframe, require the DNR to respond to reasonable requests for testing from homeowners, businesses, schools, farmers, and anyone else who may be interested in verifying their water is safe.

Since this legislation was unveiled a few weeks back, we've had many conversations regarding this comprehensive legislation, and appreciate all of the detailed, respectful feedback that interested parties have provided to our offices. While not perfect, I do feel that the conversations I've had have helped to demonstrate that the legislation presented before you today is already pretty good at balancing all interests involved, from the rural farm owner to the municipal utility director to the homeowner with a contaminated well through no fault of their own. I believe this bill can help a lot of people if we're able to get it done.

So while this bill isn't a first step, and I also do not believe it will be the last step we take, I do believe that Assembly Bill 312 represents a giant step forward for Wisconsin's efforts to address the concerns raised by potential or real PFAS contamination in locations throughout Wisconsin. I hope for your support.

AB/SB 312 Testimony
Thursday, June 15, 2023

My name is Margaret Larson. I am one of two La Crosse County Board Supervisors representing the Town of Campbell. The other one is Rob Abraham who could not be here today. Together we serve the 4,300 residents of the Town of Campbell. The town is comprised of two islands between the Mississippi and Black rivers. Rob lives on the large one, French Island, which is bounded to the west by the Mississippi. I live to the east side of French Island on a much smaller island past which the Black River flows.

Private Wells

Like 30% of Wisconsin residents, people in the Town of Campbell get their drinking water from private wells which provide access to groundwater. For the past two years however, Campbell residents have been cautioned to not use the water from their wells because the groundwater has been contaminated by PFAS. That means they avoid using their own well for drinking, cooking, brushing teeth, preparing infant formula, even bathing their infants. Some adults with serious health issues have been advised by their doctors to not bathe or shower in their well water.

Just two days ago, I was in a conversation with a fellow who is ready to buy the first home for his family. He and his wife found one on French Island. They had already done their due diligence to secure a mortgage. But one nagging question remained: was it safe to live in Campbell due to PFAS contamination? His main concern was for their two-year-old son's health and development – including things that make toddlers laugh and giggle. His son loves blowing bubbles in the bath water. That reminded me that even the small things, the simple pleasures are taken away from us because of PFAS contamination of our groundwater.

Wisconsin residents who depend on private wells will not be helped by this legislation because the state does not have standards for groundwater. There are standards for surface water to protect aquatic life and standards for drinking water which comes from public municipal systems. But no standards for the water that almost one-third of Wisconsinites currently depend on.

Health Advisory

Just over two years ago, when 97% of the wells tested in the town showed concerning levels of PFAS, the Department of Health Services issued a water advisory for the Town of Campbell. Since that time, the DNR has supplied bottled water to over 1400 /90% of households in Campbell. Although older adults find the five-gallon, 42 pound jugs a physical hardship, we greatly appreciate this water which is safe for drinking, cooking, and more. We will need that service/support until a long-term solution for safe water is achieved. Please continue to think of us when appropriating funds.

Working toward Safe Water for all Campbell Residents

Because contaminated wells pose a public health problem, the County of La Crosse has stepped up to support the Town's research for a long-term safe water solution.

Because the water in the upper aquifer – into which the private wells are drilled – is contaminated, the County contributed \$100,000 to drill a 497-foot deep test well to explore

the lower aquifer. The Town used \$92,000 of its ARPA funds to cover the remainder of the cost. The good news is that the lower aquifer looks like a reliable source for safe water. Now the Town will need to leverage additional grants and funding to build this safe municipal water system. Campbell is poised to be awarded \$1.6 million through the EPA and has requested another \$3.4 million through Congressman Van Orden's office.

In addition, the County allocated \$500,000 to study the direction and speed of the spreading PFAS plumes in the groundwater. This research project is a collaboration of U.S. Geological Survey, Wisconsin Geological Survey, UW-Madison Hydrology Department, and Davy Engineering. The data will update a hydrogeologic study from 2002 and will be instrumental in protecting area communities.

While the La Crosse County Board overwhelmingly approved these funds for research to determine the best solution, it cannot provide the tens of millions of dollars to implement that solution. That's another reason for Campbell, and other communities which depend on groundwater, to be included in AB/SB 312.

Disposal of used PFAS filters

Another concern that I have not yet seen addressed in any legislation is the proper disposal of PFAS filters used in households – both under sink filters and whole house systems. In La Crosse County, on the south end of French Island, we have a Refuse Derived Fuel (RDF) facility which receives refuse from several counties. If people toss used/spent PFAS filters in the trash, they are incinerated, and the highly concentrated PFAS contaminants in those filters would be spewed into the atmosphere for all to breathe.

The La Crosse County Waste Department has partnered with the Town of Campbell and assumed the cost of a pilot program to safely dispose of spent filters. This program encourages residents to bring their used/spent filters to the Town Hall where they are kept in sealed 5-gallon buckets and a 55-gallon drum. When the drum is full, it is transferred to the Solid Waste site for safekeeping until either a way to break the bond of these forever chemicals is discovered or until the filters can be transported to a specialized facility which is designed to contain toxic materials.

Pioneered by La Crosse County and Campbell, this is the first and only program in Wisconsin to prevent PFAS migration contamination. It has just been extended for 6 more months. We hope you will take notice of the need for safe disposal of concentrated PFAS filters.

My feelings about this bill are mixed. I am pleased that you are addressing PFAS remediation. Yet I'm disappointed that this proposed legislation appears to exclude 30% of our state's population which depends on private wells and as-yet-unregulated groundwater. Thank you for the opportunity to speak with you.

Assembly Testimony June 15, 2023 AB 312.

Hello my name is Lee Donahue. I am Town of Campbell Supervisor #2 (for Health, Education and Welfare). Campbell (often called French Island) is hugged by the Mississippi and Black rivers in west central Wisconsin. I am here today on behalf of 43-hundred Campbell residents who have been devastated by PFAS contamination. First and foremost we need to ban PFAS, its toxic effects will continue to economically cripple our communities and we will never get ahead if we continue to play PFAS whack a mole.

Nearly three years ago my Town was told in a small 5 block neighborhood south of the City of La Crosse's Airport may have PFAS in their water. 555 private wells were tested in Campbell. They confirmed 97% of those 555 wells had PFAS, some at levels more than 3,000 parts per trillion. A part per trillion is similar to one grain of rice in a 660-thousand gallon Olympic sized pool. That's how toxic PFAS is and how difficult it is to dilute its poisonous effects. The PFAS wasn't limited to that small 5 block neighborhood – it's extensive.

Within six months Campbell's Town Hall, Community Center and Library showed our PFAS numbers were doubling and continuing to increase. The PFAS plumes were growing, contamination levels continued to rise because PFAS is highly mobile in water and persistent in soil, it moves around but it doesn't go away. That's when the Wisconsin Department of Health issued a health advisory – to stop drinking our tap water. Imagine someone telling you the quality of your water is only good enough to flush a toilet or quickly rinse off in shower. Our entire town is under a DHS health advisory due to PFAS in our private wells. Every Campbell resident is advised to use a safe alternative water source.

Living with toxic water affects the health and safety of every resident. Every time you reach to turn on the tap – to make a bottle of formula, fill your child's bath, brush their teeth, fill your coffee pot – you are reminded your water you must use an alternative safe source.

When you have toxic soil and ground water, you don't plant fruits and veggies in the backyard unless they are in pots with no contact with the soil. You rely on water from the sky instead of the hose. My 10 by 70 ft berry patch now only feeds the birds.

For Campbell residents and Peshtigo and so many others on private wells it is a hardship and a health crisis. I cringe to count my friends who are fighting or succumbed to cancer, and many other untreatable health conditions. I stand here today on their behalf.

My municipality has lived this nightmare for nearly three years. Yet now we have hope, we have found a safe sustainable long-term source of water for our residents. Campbell and our collaborative partners have allocated and invested just shy of \$1 million dollars over the last two years to conduct research and develop our safe sustainable long-term solution. We are doing *our due diligence* to develop and implement a safe water source. We are not asking for a handout; we are asking for equitable consideration. There is no standard for Ground Water in

our State. This bill does not address those living under a DHS health advisory. We need to be equal partners at the table for funding along with our public municipal water users. This bill as it is currently written declares the Public Service Commission MUST upcharge water recipients of new water infrastructure, ***additionally financially penalizing us for contamination we did not cause.***

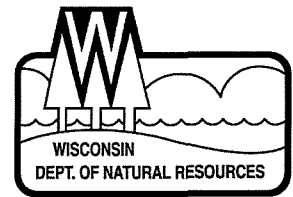
My community is not alone in this health crisis, many others are fighting for safe water too. Campbell is unique in the fact that we rely on groundwater from private wells and we were contaminated by a neighboring municipality. This PFAS health crisis requires immediate attention.

The DNR must retain the authority to hold responsible parties liable for contaminating residents' drinking water. Safe water should be a right for all Wisconsinites. Residents who live in more than 1 - thousand Wisconsin towns deserve parity with those who live in a city or village and receive municipal water.

This bill highlights an investment for water study in Green Bay. I ask that the surface water study be located in Campbell to address the 7 million gallons of PFAS laden water pumped into the Black River (which empties into the Mississippi River) each week for nearly 2 years. Water samples in our region have shown PFAS levels between ***5 thousand to 23 thousand parts per trillion.*** Our municipality has been critically affected by this toxicity. This surface water study would enhance the collaborative ground water models Campbell, USGS, Wisconsin Geological Survey, UW-Madison and Davy Engineering are commencing now. Our goal is to protect neighboring communities by researching all the hydrogeologic features that impact ground water flow. We are investing this money to help ensure others are not impacted by PFAS contamination, because it is a club no one wants to join.

Please recognize that water quality affects our residents *and our businesses.* In Campbell that includes 50 businesses including US Geological Survey – Upper Midwest Environmental Sciences Center, a federal agency which pumps more than \$11 million dollars into our community each year through payroll, fuel, repair and maintenance of their vehicle and boat fleet. Our community would be financially devastated to lose these economic partners who also rely on a safe source of water to conduct their aquatic animal rearing and invasive species research as one of the 5th largest Science centers in the nation.

I appreciate Rep. Oldenburg, and the authors of this bill who recognized the need for this PFAS funding. I appreciate your willingness to consider our input here today. I ask that you amend this bill based on my input, the input of the DNR and other environmental organizations. We need legislation which **equally** benefits all residents, rural and urban. We cannot afford the price to delay action on this critical investment for WI Residents. Thank You! I welcome your questions.



Assembly Committee on Environment

2023 Assembly Bill 312

Programs and Requirements to Address Per- and Polyfluoroalkyl Substances

June 15, 2023

Good morning, Chair Oldenburg and members of the Committee. My name is Jim Zellmer, and I am the Administrator of the Environmental Management Division at the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 312, related to programs and requirements to address per- and polyfluoroalkyl substances (PFAS).

I want to begin by thanking the Joint Committee on Finance for creating a \$125 million PFAS Trust Fund in its proposed budget so the DNR can more effectively help individuals and communities address and prevent PFAS contamination. Assembly Bill 312 would create several new programs and requirements relating to PFAS. My testimony will focus on how this bill directs the DNR to carry out these activities and will offer suggested edits to the bill that would help us better serve the people of Wisconsin as we work together to address PFAS contamination.

The bill would require the DNR to create a municipal PFAS grant program for PFAS testing, disposal of PFAS-containing biosolids, infrastructure and activities at municipally owned lands, among other things. The bill would create a definition of PFAS that includes perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid (PFOA), perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluoroheptanoic acid (PFHpA), perfluorodecanoic acid (PFDA), and any other perfluoroalkyl or polyfluoroalkyl substance for which a standard has been promulgated under state or federal law. This list excludes thirteen PFAS that have health-based standards recommendations from the Department of Health Services. To allow grant funding for all municipalities experiencing PFAS contamination that is known to cause adverse health impacts, the authors could consider revising the definition to include any PFAS for which there is a state or federal standard, a health advisory issued by the U.S. Environmental Protection Agency, or a public health recommendation under the groundwater law, Wis. Stat. § 160.07.

The bill would provide that grants be distributed in equal shares to municipal public water and wastewater systems and non-municipal public water systems to test or to reimburse testing performed for promulgated standards. Public drinking water sampling requirements vary significantly depending on the size of the system, how often the system is required to sample and type of sampling i.e., compliance, confirmation and investigatory. Providing grant funding in equal shares rather than based on need may mean that some systems are underfunded while others receive more grant money than they may request from the grant program. The authors could consider amending the bill to assist those public water supplies and wastewater facilities in most need of help to pay for sampling.

Furthermore, the bill would prohibit the DNR from requiring the recipient of a grant to submit an application for funding to test for PFAS at municipal water systems and municipal wastewater treatment facilities. Prohibiting applications prevents the DNR from collecting basic pertinent information

including cost of sampling, contact information and information about where to send the grant money. This may violate state procurement and financial management laws and procedures. The authors could consider amending the bill to allow the DNR to request a grant recipient to provide contact information for the authorized representative and information sufficient for the department to make a payment to the recipient.

If funding under the proposed grant program were to be allocated for capital projects, there may be efficiencies by allowing the DNR to administer them in conjunction with the existing Safe Drinking Water and Clean Water Revolving Loan Programs since both would be used to fund municipal drinking water and wastewater infrastructure projects. The DNR has already combined several federal funding opportunities for municipalities to ease the application process and make the most efficient use of different funding sources to address infrastructure projects.

This new grant program would require increased DNR staffing to develop guidance, forms, technical review process, payment process and outreach materials. The bill does not provide for the additional staffing needed to develop and administer this grant program. The authors could consider amending the bill to include new positions for the DNR's Community Financial Assistance and other programs to carry out this work.

The bill would prohibit the DNR from disclosing results of any PFAS testing to the public unless the DNR notifies the grant recipient at least 72 hours before publicly disclosing a test result. This would conflict with the current practice of posting results on the DNR's publicly-accessible database within 24 hours of the DNR receiving results. Certified laboratories currently report public drinking water results electronically to the water systems and the DNR. These results are automatically available on the DNR website the next business day (within 24 hours). The DNR believes this transparency is important and supports public health protection. Sample results are considered public records, which require the DNR to disclose this information as soon as practicable and without delay.

In the days after becoming aware of elevated results, the DNR works closely with a water system to assist them with informing the public of drinking water sample results and actions individuals can take to reduce their exposure. The authors could consider amending the bill to prohibit the DNR from publicly disclosing PFAS results for at least 24 hours following the DNR or laboratory performing the analysis notification to the owner of the test results.

The bill also prevents DNR from collecting PFAS samples on any property not owned by the state unless the agency obtains written consent from a landowner to collect the samples, to test the samples, and to publicly disclose the results. This requirement is contrary to the existing remedial action statute, which requires notice, not written consent, and which allows access if there is an imminent risk to public safety or the environment. This limitation is also contrary to other state laws which implement federally delegated programs, namely the Clean Water Act and the Safe Drinking Water Act. Facilities regulated under these authorities are required to provide access for purposes of sampling. The authors could consider adding a provision to address emergency situations and clarifying that the access provision for testing purposes pertains only to testing under the remedial action statute.

The bill would prevent the DNR from requiring action to address PFAS contamination unless testing determines that PFAS levels exceed a promulgated standard or unless other laws allow the DNR to

require action. This would limit the DNR's authority to require action to protect public health or the environment under the spills law, Wis. Stat. §292.11, which currently requires remedial action for any hazardous substance discharge. To allow DNR to take action when PFAS contamination impacts public health, the authors could consider amending the bill to include PFAS for which a standard has been promulgated, for which US EPA has issued a health advisory or for which there is a recommendation under the groundwater law, Wis. Stat.160.

The bill would prohibit the DNR from requiring the owner of a brownfield property to test for PFAS unless the DNR has information that the property previously had a substantial amount of uncontained PFAS. Testing is the first step in assessing the degree and extent of PFAS contamination and whether PFAS is putting the public or the environment at risk. Currently, the DNR does not require sampling for PFAS unless there is reason to believe there is contamination, but the bill uses the term "substantial amount of uncontained PFAS" which is undefined. The authors could consider amending the bill to clarify that testing may be required if the DNR has information that PFAS or products containing PFAS may have been manufactured, used, handled, stored, disposed of, or discharged at the property.

The bill would prohibit the DNR from preventing, delaying, or otherwise impeding any construction project on the basis of a presence of PFAS contamination unless the DNR determines that there is risk to public health, the project would lead to worsening environmental conditions, or the entity is responsible for the original contamination due to negligence. The concept of "negligence" is not part of the current remedial action statute, and the restrictions on the DNR actions conflict with other authority under state and federal laws, such as under the federal Clean Water Act, that require the DNR to act. The authors could consider amending the bill to clarify that the restrictions apply only to the DNR actions under the remedial action statute and add a provision that allows the DNR to act if a project would cause or have the potential to cause a violation of a water quality standard (consistent with chapter 283 and the federal Clean Water Act requirements).

The bill would require the DNR to begin response and remedial actions at any site contaminated by PFAS where a responsible party has not been identified or the responsible party is unable to pay for remediation. The process of finding responsible parties can be difficult and "unable to pay" is not defined. The DNR currently is aware of over 100 sites where PFAS contamination has been found in Wisconsin. There will certainly be more sites identified in the future. Remedial actions can be costly and time consuming. Requiring DNR to begin response and remedial actions at these sites shifts a significant burden on to state taxpayers. Beginning a response action at every site that meets the criteria in the bill would require significant funding and DNR staff to implement. The authors could consider amending the bill to change "shall" to "may" to allow DNR to assess when state action is needed and authorize additional staff to carry out this work. Alternatively, the authors could consider clarifying the action that DNR must begin to take. For example, a first step in cases where there is no responsible party or where a responsible party is unable to pay could be for DNR to evaluate whether there is a potential imminent threat to public health, safety or welfare or to the environment that may require further taxpayer funded response action.

The bill would require the DNR to provide a grant to any person who owns property that is contaminated by PFAS substances if the person has not been identified as a responsible party for the contamination. The cost of this proposal is undetermined and further clarity is needed on who may be eligible for grant assistance. The authors could consider amending the bill to authorize but not require

DNR to issue grants. Alternatively, the authors could clarify whether grant recipients who are landowners may be eligible if they possess but did not cause or contribute to the PFAS contamination.

The bill would require the DNR and University of Wisconsin to enter into a memorandum of understanding to jointly ensure that the state laboratory of hygiene (SLH) reduces costs of conducting PFAS tests by at least 10 percent on or before a certain date. The SLH has a statutorily appointed Board (§ 15.915(2)) who have authority to set fees and approve the SLH budget (§ 36.25(11)(a)). The SLH strives to set test fees to cover costs. This legislation appears to create an entirely new and separate method for setting SLH test fees. There are private-sector laboratories, including one headquartered in Wisconsin, that also perform PFAS testing. The SLH has worked to respond to issues raised by the private-sector labs to maintain professional working relationships, including holding a special Board meeting in February 2022 to address their concerns about PFAS testing activities and pricing. Currently the SLH PFAS test prices may be lower than the private-sector labs and we are concerned that lowering them further could, once again, create tensions that could impact capacity and the ability to serve the people of Wisconsin seeking PFAS tests. It is also unclear who this pricing discount would be for – the general public or all PFAS customers as the SLH performs PFAS testing for the public, municipalities, Wisconsin state agencies, other states, federal agencies, and researchers both inside and outside Wisconsin. The authors could consider deleting this provision.

In conclusion, we appreciate the opportunity to be here today discussing such an important issue. AB 312 has the potential to enable the DNR to help many communities as they work to address and prevent PFAS contamination. Given the breadth of this issue, the department would need additional staff and other resources to implement the provisions in this bill. The Governor's budget proposal included 11.0 FTE positions to implement a PFAS municipal grant program and manage the state's response to PFAS contamination. In order to implement the provisions in this bill, we would need an even greater investment from the legislature to allow us to serve the people of Wisconsin. We want to thank the authors for meeting with us last week to discuss these staffing needs, the need for an appropriation within DNR's budget to use the money in the PFAS trust fund, and other opportunities for improving this bill. We would be happy to review or provide input on any amendments that may be under consideration.

On behalf of the Department of Natural Resources, we would like to thank you for your time today. I would be happy to answer any questions you may have.

Part I - Bill & Routing Information

Bill / LRB #: 2023 SB 312

Subject: Programs and requirements to address PFAS

Government Costs that are needed for this estimate: State

Bureau/Section Referred: Multiple

Date Referred: 06/01/2023

Due Date to M&B: 06/05/2023

Due Date to DOA: _____

Instructions:

After you have completed the fiscal estimate, please enter your name and approval date below and forward to the next person on the routing list.

| <u>Routing Order</u> | <u>Name</u> | <u>Date approved</u> |
|------------------------|---|----------------------|
| 1. Fiscal note author: | Jim Ritchie, Jenna Soyer, Kate Strom-Hiorns | 06/02/2023 |
| 2. Bureau Director: | Jim Ritchie | 06/02/2023 |
| 3. M&B Analyst review: | | |
| 4. M&B Section Chief: | Paul Neumann | 06/05/2023 |

Part II - Identify State & Local Fiscal Effect

Bill / LRB #: 2023 SB 312

Subject: Programs and requirements to address PFAS

DNR Fiscal Effect

No Fiscal Effect Indeterminate

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local Fiscal Effect

No Local Government Costs Indeterminate

1. **Increase Costs**

- Permissive
- Mandatory

2. **Decrease Costs**

- Permissive
- Mandatory

3. **Increase Revenues**

- Permissive
- Mandatory

4. **Decrease Revenues**

- Permissive
- Mandatory

5. Types of Local Governmental Units Affected:

- Towns
- Villages
- Cities
- Counties
- School Districts
- WTCS District
- Others:

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriation(s)

Long-Range Fiscal Implications *(use this section only for situations when substantial changes in costs and/or revenues will not occur until several years into the future)*

Part III - Assumptions Used in Identifying Fiscal Effect

The bill establishes a new municipal PFAS grant program and an Innocent Landowner grant program. The bill also makes modifications to the Well Compensation grant program, Clean Water Fund program, and the Safe Drinking Water loan program. .

I. Bureau of Community Financial Assistance (CFA)

A. One-Time Costs

CFA's one-time costs to implement the grant provisions of the bill are itemized as follows:

1. Develop grant application forms and processes, including an identification of required documents to be submitted with applications
2. Develop grant payment request forms and process, including documentation of 20% recipient match for those programs that require it
3. Develop and publish grant program guidance, collaborate between DNR programs
4. Establish a process for awarding this specific type of financial assistance, including a rating/scoring system if needed
5. Legal review
6. Develop new Grant web page(s)
7. Prepare outreach materials for the DNR website and other relevant platforms and conduct outreach to potential grant recipients

A total one-time workload increase of approximately 1,000 hours is estimated to perform the above tasks. With an average salary and fringe cost of \$50/hour, one-time costs are estimated to be \$50,000 (1,000 hours x \$50).

B. Ongoing Costs

CFA's ongoing costs to implement the grant provisions of the bill are itemized as follows:

1. Assistance to applicants
2. Application review and grant award processing
3. Coordination between DNR technical and financial programs
4. Reimbursement review and payment
5. Grant closeout procedures
6. Fund administration
7. Database administration
8. Reporting and auditing compliance
9. Policy, procedure, guidance updates

The recurring workload will be dependent on a number of factors, most notably the volume of applications received on an annual basis. Some of the technical tasks and reviews will need to be conducted by expert staff in DNR technical programs, while the financial tasks will need to be conducted by both DNR's Bureau of Finance and CFA.

It is anticipated that Community Financial Assistance will need 2.0 FTE to administer these grant programs after initial development and start-up implementation, at an annualized cost of \$208,000 (\$50/hr. x 2,080 hours x 2.0 FTE).

II. Bureau of Remediation & Redevelopment (RR)

A. Assumptions

1. RR assumes that 50 applications will be received in the first biennium with 35 for the Municipal Grant program related to contaminated lands (RR Program) and 15 for the Innocent Landowner grant program.

Part III - Assumptions Used in Identifying Fiscal Effect

2. An RR technical project manager is required to review and approve all investigation and remediation scopes and is assigned to the site throughout the NR 700 administrative rule process.
3. Larger and more complex PFAS sites (e.g., sites with multiple off-site affected properties) can take up to 25% of project manager's time.
4. An additional 1.0 FTE would be needed to manage the Innocent Landowner grant program, where technical assistance (or "Green Team") meetings would be utilized to walk landowners through the process and what is needed at their site.
5. An additional 1.0 FTE would be needed as a project coordinator for all sites where the department is required to begin response and remedial action under Section 11 (2).
6. Regarding Section 11(2), responsible parties for PFAS can be difficult to identify, especially if the origin of the PFAS is a secondary source like a municipal WWTP, and ability to pay determinations are difficult to determine without knowing the cost of remediation upfront. Therefore, the department assumes there will be 10 state-led remedial action projects under Section 11(2) in the first biennium (including response to PFAS spills that meet the requirements of Section 11(2)). Most PFAS projects are multiyear and the number of projects (and costs) will compound over biennia so the department assumes this funding will be a continuing appropriation.

B. Ongoing Costs

Based on the aforementioned assumption of 25 applications per year, or 50 applications over a biennium, RR's estimated ongoing staffing costs to implement the bill are as follows:

1. Hydrogeologist Advanced = \$50/hour* 12.5 FTE *2080 hours = \$1,300,000
2. Natural Resources Program Coordinator = \$50/hour * 1.0 FTE x 2080 hours = \$104,000
3. Hydrogeologist Program Coordinator = \$50/hour * 1.0 FTE * 2080 hours = \$104,000
4. Total annualized costs: 14.5 FTE and \$1,508,000

III. Bureau of Waste and Materials Management (WA)

A. Assumptions

1. There will be a limited, direct fiscal impact on WA. If CFA manages the grants (as proposed above), WA staff would be available for consultation/technical assistance, as needed – but likely no additional costs.
2. Most of the grants are for municipalities, not private entities. There are currently 14 municipal/publicly-owned active licensed landfills and an estimated 1,000 municipally-owned closed landfills. If, for example, 3 public landfills get grants each year to add leachate treatment systems or other upgrades, existing staff would be needed to review plan of operation modifications.

B. One-Time Costs

WA would incur one-time costs to complete the study required between DNR and UW: likely \$300,000 - \$500,000 in order to be completed within the required 2 years. The study could incorporate existing information from EPA studies (many not final yet) on treatment and disposal of PFAS waste and biosolids disposal. DNR also already has an initial map developed that could be utilized.

Part IV—Detailed Estimate of Annual Fiscal Effect

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

1. The Bureau of Community Financial Assistance would incur estimated one-time costs of \$50,000 to implement the grant provisions of the bill.
2. The Bureau of Waste and Materials Management would incur estimated one-time costs of \$300,000-\$500,000 to complete the joint DNR-UW System PFAS study required in the bill.

| Annualized Costs: | | Annualized Fiscal Impact on State Funds: | |
|---|--|--|-------------------|
| | | Increased Costs | Decreased Costs |
| A. State Costs by Category | | | |
| State Operations — Salaries and Fringes | | \$ 1,716,000 | \$ - |
| (FTE Position Changes) | | (16.50 FTE) | (- FTE) |
| State Operations — Other Costs | | | - |
| Local Assistance | | | - |
| Aids to Individuals or Organizations | | | - |
| Total State Costs by Category | | \$ 1,716,000 | \$ - |
| B. State Costs by Source of Funds | | | |
| GPR | | \$ | \$ - |
| FED | | | - |
| PRO/PRS | | | - |
| SEG/SEG-S | | 1,716,000 | - |
| C. State Revenues | <i>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</i> | Increased Revenue | Decreased Revenue |
| GPR Taxes | | \$ | \$ - |
| GPR Earned | | | - |
| FED | | | - |
| PRO/PRS | | | - |
| SEG/SEG-S | | | - |
| Total State Revenues | | \$ | \$ - |
| Net Annualized Fiscal Impact | | | |
| | | <u>State</u> | <u>Local</u> |
| Net Change in Costs | | \$ 1,716,000 | \$ |
| Net Change in Revenues | | \$ | \$ |

PFAS pollution is a serious problem that requires bold action from state policymakers. Clean Wisconsin truly appreciates the recent legislative efforts to strive for a bold plan, but we are concerned that some of the bill's provisions will result in unintended consequences that make it harder to address the totality of the problem. Again, we urge the bill's authors to continue striving for bold action by drafting amendments allowing the department to use the full extent of its existing statutory authority.

Thank you for your time and attention. I'm happy to answer any questions.



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To: Assembly Committee on Environment
From: Toni Herkert, Government Affairs Director, League of Wisconsin Municipalities
Date: June 15, 2023
RE: AB 312 – Related to PFAS and the Creation of a Municipal Grant Program

Chairman Oldenburg, Vice-Chair Kitchens, and Committee Members,

My name is Toni Herkert and I am the Government Affairs Director with the League of Wisconsin Municipalities. The League represents almost all of the 606 cities and villages and their councils and boards from large and small communities throughout the state. From the largest cities in the state to the Villages of Yuba and Stockholm, with populations of 74 and 76, and everywhere in between, the League represents a diverse array of municipal members.

Thank you for the opportunity to provide testimony on the important topic of PFAS and the impact the emerging chemicals have on municipalities across the state. The League appreciates all the work that went into this proposal and the opportunity to participate in the conversations that led to the creation of this bill. We also want to thank Representative Mursau, Representative Swearingen, Senator Cowles, and Senator Wimberger for their leadership on this important issue. This legislation is a step in the right direction and as a state we must act soon.

The League would also like to thank Senator Wimberger and Senator Felzkowski for their leadership on the funding provided in the budget during Joint Finance deliberations. We appreciate their support of the recent significant \$125 million investment in the segregated PFAS trust fund. To utilize the funding committed, it is necessary to get this policy proposal across the finish line.

As you know, PFAS is impacting municipalities on a many different levels including drinking water, wastewater with surface water/ground water WPDES effluent discharge criteria, biosolids disposal, transportation, utility projects and economic development projects.

All water utilities are in the process of testing for PFOA and PFOS to meet the state standards of 70 ppt although the 20 ppt health advisory standard is also being utilized as well as the understanding that the EPA will deliver a final maximum contaminant level later this year or early next year which could be much lower.

There are approximately 635 entities which receive municipal wastewater discharge permits. Some are Sanitary Districts (which generally service townships) and about 50 are current industries doing some type of pre-treatment, or they are state owned facilities that serve

properties such as prisons or state parks. All these WPDES permittees are in the process of receiving PFAS limitations in their effluent permits.

We are also seeing increased testing being required at approximately 100 remediation and redevelopment sites and some transportation and utility projects through the dewatering process.

Based on the aforementioned reasons, the League supports many of the provisions in SB 312. In particular, we support the creation of a municipal grant program as described in Section 9.

However, prior to finalizing the bill, the League would like to offer the following suggestions for the authors to consider as amendments to Senate Bill 312.

Section 1. Annexation for Water/Wastewater Service - The League suggests deleting this provision. While we understand the reason that the authors are looking at this modification, we believe that an annexation prohibition creates a disincentive for addressing alternatives for drinking water. There is a confusion about annexations in the three-year prohibition. Municipalities don't go seeking annexation, property owners request annexation to receive something of value like municipal water or sewer or the ability to develop on smaller lot sizes with higher densities.

Section 2. Pretreatment – If this provision is retained, the League would agree with MEG-Water that drinking water systems should be excluded from this section of the bill. Drinking water systems are not impacted by the current industrial customer classification in the manner addressed by this section.

The League would also support MEG Wastewater's suggestion of deleting Section 2 of AB 312. There is a current pretreatment process for industrial dischargers that need to reduce high concentration wastewater before sending the water to a treatment facility for final treatment. The costs of pretreatment including the selection and implementation of methods for pretreatment are the responsibility of the discharger including the costs associated with pretreatment. Municipal wastewater facilities must adhere to WPDES effluent limits and when dischargers threaten to impact those limits, the municipality can require pretreatment to stay in compliance. Creating a separate pretreatment process for PFAS would allow the use of ratepayer dollars to fund treatment for one chemical class and not others that are currently funded by industry.

Section 4. Interim PFAS Response - We appreciate the process and funding opportunities created in this section but would like to recommend that the authors consider revisions that would focus on the interim nature of the measures that are contemplated in this section. Often interim measures, like onsite temporary treatment, will be utilized until a permanent PFAS solution is implemented. We support not requiring these interim measures to obtain PSC construction approval and the utilization of grant funding to reduce potential rate increases.

Section 9. Municipal PFAS Grant Program – The League appreciates the provisions in section 9 and supports the creation of these grant programs. We would like to offer a couple recommendations to provide clarification in the bill.



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Municipal Utility Testing Grants. While the ease of administration and intent of the provision (2)(a) is appreciated, the phrase “provided in equal shares” is unclear. The League supports maintaining a simple process without an application, but one that would provide grants for testing on a per-sample basis and perhaps creating separate programs for water and wastewater utilities. Remediation is not the same nor is the amount of testing required. Providing funding on a per-sample basis would equitably and simply provide funding to those utilities that have or will incur the most costs associated with required PFAS testing.

Capital Cost or Other Costs Grants. The League would like to recommend in section (2)(c) which provides grants to municipalities to test for PFAS at locations that are owned or managed by the municipality, that the language include locations that are “owned, managed, leased, or contracted” by a municipality. This modification would allow grants for testing at all areas that are under municipalities’ charge.

In section (2)(e), grants for capital costs or debt service, including for facility upgrades or new infrastructure, the League would like to recommend that language be added clarifying that the requirements of this grant program for capital costs or debt service do not impact an applicant from receiving funding under the Safe Drinking Water Revolving Loan Program or the Clean Water Revolving Loan Program and vice versa.

Finally, in section (2)(f), focusing on capital costs or other costs related to PFAS not otherwise paid for by EIF, the League would like to request that pollutant minimization plans are included and specifically listed in the eligible activities for this subsection of grant funding. PFAS is much easier to address if we can proactively encourage minimizing the overall usage of the chemicals in processes.

Section 11. Nonstatutory Provisions - Due to the amount of funding that may be required the remedial action at contaminated sites that is required to be started by the DNR if a responsible party is unknown or unable to pay, could be concentrated on environmental engineering studies and site preparation to better focus resources.

As you have heard today, emerging chemicals like PFAS are a significant concern and one that the League has been willing and remains committed to tackle by working with our members and the Legislature on measures that can be successful and sustainable within our communities today and for years to come.

Thank you for your time and patience today and holding this hearing on AB 312. I would be happy to answer questions now or you can contact me at your convenience at therkert@lwm-info.org.



Kaitlyn Bernarde – City Clerk
Mary Goede – Deputy City Clerk

TEL: (715) 261-6620
FAX: (715) 261-6626

OFFICE of the CITY CLERK

June 14, 2023

Honorable Governor Tony Evers
State Capitol, 115 East
P.O. Box 7863
Madison, WI 53707
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Senator Cory Tomczyk
Senate District 29
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League of Wisconsin Municipalities
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Dear Governor Evers and all representatives of the Great City of Wausau,

On Tuesday, June 13, 2023, the Common Council of the City of Wausau passed a Resolution asking our Legislators to support Senate Bill 312. To hear the Common Council discussion on this issue, you can view the meeting on [YouTube](#). The discussion on this item begins on the video at 48:36.

As referenced in the enclosed resolution #23-0630, the City of Wausau is urging the Wisconsin legislature to support Senate Bill 312, to help local Wisconsin governments, including Wausau, in seeking funding for PFAS remediation.

Sincerely,

Kaitlyn A. Bernarde
City Clerk

Encl: Resolution of the Common Council
Council Vote

Cc via email: Wausau City Council, Mayor Katie Rosenberg, and City Attorney Anne Jacobson

RESOLUTION OF THE COMMON COUNCIL

Supporting proposed legislation relating to creating a municipal PFAS grant program and related requirements to address perfluoroalkyl and polyfluoroalkyl substances (“PFAS”)

Committee Action: Approved 10-0

Fiscal Impact:

File Number: 23-0630

Date Introduced: June 13, 2023

RESOLUTION

WHEREAS, 2023 Senate Bill 312 puts guidelines into place for local governments that are seeking funding for PFAS remediation in Wisconsin; and

WHEREAS, Senate Bill 312 is the trailer bill, following the \$125 million earmarked for these programs in the state 2023 – 2025 biennial budget; and

WHEREAS, in January 2022, Wausau tested and found that every one of the City’s six municipal drinking water wells contained PFAS above the health hazard index set forth by the Wisconsin Department of Health Services; and

WHEREAS, in February 2022, the Wisconsin Natural Resources Board voted to enact a PFAS standard in drinking water of 70 parts per trillion; and

WHEREAS, in December 2022, Wausau began filtering all municipal drinking water through a temporary filtration system of PFAS-attracting resin beds; and

WHEREAS, in March 2023, the City of Wausau Water Works Commission approved a permanent granular activated carbon system to filter PFAS from Wausau’s drinking water supply; and

WHEREAS, in March 2023, the United States Environmental Protection Agency advised municipal water utilities that it was proposing a new federal standard, regulating several PFAS in drinking water, capping PFOA and PFOS at four parts per trillion; limiting any mixture containing one or more of PFNA, PFHxS, PFBS, and/or GenX Chemicals using a hazard index calculation to determine if the combined levels of these PFAS pose a potential risk; and

WHEREAS, in May 2023, the Wausau City Council voted to enter into a lawsuit against the manufacturers of PFAS in an effort to recover some of the costs and damages associated with the PFAS contamination found in Wausau’s municipal drinking water wells; and

WHEREAS, in June 2023, the Wisconsin Public Service Commission approved increasing Wausau Water Works' water and sewer rates by about 65% to pay for both new construction along with the temporary and permanent PFAS filtration systems; and

WHEREAS, City of Wausau ratepayers would benefit from some of the language of SB 312, particularly the municipal grant programs for testing, capital costs, and debt service where rates would increase by more than 20% to cover the costs for PFAS remediation; and

WHEREAS, Wausau is one of the only municipalities in Wisconsin where every single drinking water well is contaminated with PFAS. The City of Wausau requests that legislators allow grants distribution to municipalities on a needs-based formula rather than equally, since the scope of PFAS problems in Wisconsin communities are not distributed equally; and

WHEREAS, the City of Wausau respectfully requests that the legislature makes municipalities like Wausau, that have already started paying for the costs associated with PFAS remediation, eligible for reimbursement through this program; and

WHEREAS, the City of Wausau also believes that it is critical that legislators reconsider the DNR authority portions of this legislation, particularly ensuring the DNR has the staffing to effectively run the programs. We recognize that giving the City of Wausau and similarly situated municipalities access to the funds to remediate PFAS as quickly as possible is essential when it comes to best serving our shared constituents; and

WHEREAS, the City of Wausau also requests that the legislature consider funding for treatment, rather than only disposal, of PFAS-contaminated biosolids; and

WHEREAS, the City of Wausau entreats the Wisconsin Legislature to safeguard our shared constituents, our environment, and our municipality's physical and financial well-being by not limiting future financial obligations or exposure of responsible parties through this legislation; and

WHEREAS, the City of Wausau urges the Wisconsin Legislature not to limit the authority of the Wisconsin Department of Natural Resources or the Wisconsin Department of Justice to pursue justice on behalf of affected communities, particularly as it relates to Wisconsin's Spill Law; and

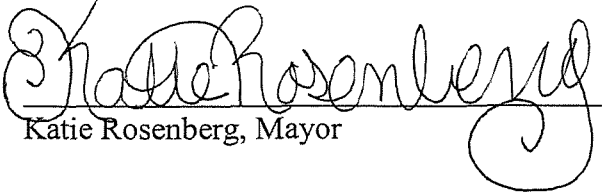
WHEREAS, the City of Wausau requests the Wisconsin Legislature reconsider the municipal matching requirement component of the funding formula to ensure every affected municipal drinking water utility has adequate resources to provide PFAS-free water to our shared constituents, neighbors, and ratepayers;

WHEREAS, the City of Wausau requests the legislature expand their research proposal with the University of Wisconsin to study PFAS migration beyond the bay of Green Bay and includes other bodies of water that flow through Wisconsin municipalities, including the Wisconsin River that dissects Wausau.

NOW, THEREFORE, BE IT RESOLVED, that the City of Wausau supports, with these requests, Senate Bill 312 and directs the Clerk to send a copy of this resolution to the state

legislators representing the City of Wausau and to Governor Tony Evers and to the League of Wisconsin Municipalities.

Approved:

A handwritten signature in cursive script that reads "Katie Rosenberg". The signature is written in black ink and is positioned above a horizontal line. The line extends across the width of the signature and ends with a decorative flourish on the right side.

Katie Rosenberg, Mayor

Office of the Mayor
Katie Rosenberg



TEL: (715) 261-6800
FAX: (715) 261-6808

5 June 2023

Wausau Mayor Katie Rosenberg's Testimony on Senate Bill 312

Good afternoon, Chair Cowles, Vice Chair Wimberger, and members of the Committee on Natural Resources and Energy.

My name is Katie Rosenberg and I'm the mayor of Wausau. Thank you for holding this public hearing today on Senate Bill 312, that puts some guidelines into place when it comes to PFAS remediation in Wisconsin. I think there is a lot to be proud of when it comes to this bill and the related \$125 million dollars earmarked for these programs in the state biennial budget. I think by now you probably know the story of Wausau and PFAS, but I'll give you a brief overview to add a little context to my comments.

In January 2022, the City of Wausau voluntarily tested each of our six municipal drinking water wells for PFAS after talking to folks at the Department of Natural Resources who were looking into a well that tested positive for PFAS in our neighboring municipality, the Town of Rib Mountain. Three weeks later our results were in, and we found that every single well was contaminated.

We worked through a series of temporary and permanent PFAS remediation solutions. Right off the bat we supplied ratepayers with pitcher filters that removed PFAS for individual and family use. At the end of the year, Wausau's new drinking water treatment facility went online with a solution of a PFAS-removing resin in our anion exchange system. I'm happy to report that our permanent solution, one we expect to use long-lasting granular activated carbon to remove PFAS, is out to bid and if everything keeps to our projected schedule, will be in place by the end of next year.

Now, of course these accomplishments aren't without sacrifice. We've asked our community to invest a lot. We've asked them to quickly learn about PFAS and why we need them out of our drinking water. We've asked them to support our efforts to permanently remove PFAS in the drinking water. And now we're asking our community to help pay for it.

Our new drinking water facility was in progress before I was the mayor of Wausau and we were informed during that time that our rates would increase – and in those 2018/2019 projections, we were prepared for a 45% increase to pay for the new drinking water plant and major renovations to the wastewater treatment plant. At the time, the Public Service Commission



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approved half of that increase, 27.5%, and told the city to come back when the asset was online to reassess the costs.

A lot has happened since that initial rate case, so we worked with professional municipal financial advisors to write the rate case to ensure we were on the right track. However, we now have about \$20 million in extra costs for the GAC system. That means that we're asking our ratepayers to pay more – about a 65% increase. For an average Wausau family, that is about \$18 a month or \$50 a quarter increase. It's a lot to ask of people but we know we're doing the right thing by removing PFAS from our drinking water.

The City is also working on some cost recovery strategies, but we understand that's the long haul and it could take years for us to identify a responsible party or parties or recover costs through negotiations with the manufactures of PFAS. Our ratepayers would benefit right away from some of the pieces of this legislation, should you move forward on this.

I recognize that there are a handful of legislative categories that this bill is targeted at but I'm only going to focus on two: the municipal grant program and DNR authority – and I think they are related. I also want to briefly touch on two other topics mentioned in the bill about biosolids and research related to PFAS migration.

The City of Wausau is pleased to see the municipal grant program. We've tested a lot over the last 18 months and those tests are expensive. We are also relieved to see the grants for municipalities for capital costs or debt service where rates would increase by more than 20% to cover the costs for PFAS remediation.

I do have two questions related to the grant program. I'm hoping that any program you pass, you would make eligible for municipalities like Wausau for reimbursement, since we are already well on our way to fixing our problem. I also understand in some ways why this legislation distributes the grants to municipalities equally, so that every municipality small and large has an opportunity to capture funds, however the scope of the PFAS problems in communities are not distributed equally. Wausau is one of the only municipalities in Wisconsin where every single one of our wells is contaminated with PFAS. We couldn't just turn one well off to dilute the water and we won't be able to only filter some of the water. We must filter it all and the cost is more because of it. I would encourage you to consider a needs-based approach so that municipal leaders who find themselves in similar situations to us are enabled to make the right decisions on behalf of their communities.

And that's why I think it's critical you consider the DNR authority portions of this legislation as well. The DNR has been a vital partner for the City during this situation and they will be crucial as we continue work on identifying a responsible party. It will be important for the City of



Office of the Mayor
Katie Rosenberg

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Wausau and similarly situated municipalities to have access to the funds to remediate PFAS and we need them to have the staffing to effectively run the program and get the money out the door as quickly as possible.

I'm glad you are discussing the other side of the PFAS problem in addressing some of the issues related to PFAS-contaminated wastewater and biosolids. As you know, Wausau is the county seat of Marathon County and we had great relationships with surrounding farmers who took our treated biosolids to spread on farm fields. I'm glad you're looking into disposal funding but it's important for communities like ours in central Wisconsin to at least consider treating wastewater and biosolids for PFAS so we can continue to work with our farmers on their needs as well.

Lastly, I was excited to see the research component, analyzing PFAS migration into the bay of Green Bay. I would love to see more research into PFAS migration into our Wisconsin bodies of water, particularly the Wisconsin River. I don't have the science but just based on what we're seeing, it looks like the wells that are the most contaminated in Wausau are closest to the Wisconsin River. With or industrial background, that makes sense, but putting the full power of scientific research into knowing more about what's going on here could help us find more answers to our PFAS questions.

Thank you very much for allowing me to speak today.

TO: Assembly Committee on Environment

FR: Rob Lee, Staff Attorney at Midwest Environmental Advocates

DT: June 15, 2023

RE: Testimony on 2023 Assembly Bill 312 | LRB 3260/1

Good morning/afternoon Chair Oldenburg, and Vice-Chair Kitchens, and members of the Committee.

My name is Rob Lee, and I'm a staff attorney at Midwest Environmental Advocates, a nonprofit, environmental law center located in Madison that combines the power of the law with the resolve of communities facing environmental injustice to secure and protect the rights of all people to healthy water, land, and air.

I'd like to begin by saying how encouraged we are at JFC's recent commitment to put \$125 million into a trust fund to address PFAS contamination in this state. I'd also like to communicate how much we appreciate the effort put into this bill so we can have this important discussion about getting that money out the door and in the hands of impacted communities.

I'm sure you can appreciate that MEA and others have concerns about the first draft of the Bill, and particularly Section 10, which would limit DNR's authority to address PFAS contamination. And so, while we absolutely appreciate the effort on the first draft of the Bill, we do think this first version may risk some unintended consequences that would lead us to oppose the Bill if significant changes are not made.

\$125 million is nothing to balk at, but let's be clear—it isn't a cure-all—it is just a down payment by Wisconsin taxpayers on addressing PFAS in this state. We can't forget that the Spills Law and Chapter 292 at large are priceless when it comes to protecting the environment and people of this state from hazardous substance contamination, and we need to be extremely careful anytime we're amending those laws and work hard to avoid any unintended consequences.

As drafted, the Bill has some language that calls into question whether, in the long run, the Bill will provide a net benefit to the state. We certainly do not want to end up in a place where we get an initial injection of money but handicap the state's ability to address the situation in the long term. At a time when we need greater clarity as to DNR's authority, the first draft of this bill makes DNR's authority less clear in certain instances.

For example, if you read Paragraph 10(4)(c) on the top of page 13 of the Bill, this provision by itself could be read as a sweeping limitation on DNR's authority to bring enforcement actions based on any PFAS test results the Department receives. But if you go back to page 12 and look at the introduction to Subsection 10(4), there is language that suggests these limitations only apply when DNR goes out and conducts PFAS testing itself. The difference between those two reads is significant, and we can rest assured that regulated entities will push for the more aggressive of the two. If successful, there is a significant risk of letting entities like Tyco Fire Products, whose PFAS contamination has wreaked havoc in northeast Wisconsin, shift liability onto taxpayers, and that can quickly add up.

Johnson Controls, which owns Tyco, reportedly set aside \$140 million in 2019 to address that plume. Late last year, the Milwaukee Business Journal reported that Johnson Controls increased those reserves by another \$255 million. That totals nearly \$400 million to address a single contaminated site. Considering the more than 100 sites in Wisconsin currently known to have PFAS contamination, the potential to quickly exceed \$125 million becomes very real.

There are other examples, to be sure, but my message today is this, whatever the final version of the Bill looks like, let's work as hard as we can to avoid as many of these unintended consequences as we can. Without greater clarity as to the scope of some of these limitations, it's difficult for us to answer the question of whether this bill is going to provide net benefits in the long term. For that reason—that uncertainty—we would have to ultimately oppose the bill if this first draft ends up being the final version of the Bill. But I want to be clear. We are not necessarily opposed to this Bill being the vehicle that gets the \$125 million to the impacted communities that need it.

Fortunately, I do think there are some easy fixes, the simplest of which is to jettison Section 10 or at the very least put it in a different bill. Jettisoning these provisions is the most straightforward way of avoiding some of the unintended consequences that may occur based on the current language in the Bill, and I think it would leave no doubt that the answer to that question of whether this bill is going to provide net benefits in the long term is yes.

Thank you for your time and attention. I would be happy to answer any questions you may have.

Sincerely,

Rob Lee, *Staff Attorney*
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Chair Oldenburg and members of the Assembly Environment Committee, thank you for holding a hearing on AB 312 regarding PFAS contamination. My name is Bill Davis. I am the Senior Legal Analyst for the River Alliance of Wisconsin. The River Alliance of Wisconsin is a statewide nonprofit, non-partisan advocacy organization that empowers people to protect and restore Wisconsin's waters. The organization's supporters include more than 5,000 individuals and businesses and more than 80 local watershed organizations.

Perfluoroalkyl and polyfluoroalkyl substances, collectively known as PFAS, are a very large class of chemicals that have been in use for over sixty years. The US Environmental Protection Agency says there are over 12,000 individual PFAS. They are used in a wide array of [products](#) such as cosmetics, microwave packages, rain coats, non-stick cookware, and much, much more. Because there are so many PFAS and they have been used for so long they are found pretty much everywhere in the environment. They are known or suspected of causing: reproductive effects, developmental effects, increased risk of some cancers, impairing the immune system, interfere with natural hormones, and increased cholesterol levels.

The people of Wisconsin want the state to take significant action to address PFAS contamination. A strong majority of voters in 10 counties voted YES to a Clean Water Now Advisory referendum that read: *Should the State of Wisconsin establish a right to clean water to protect human health, the environment, and the diverse cultural and natural heritage of Wisconsin?* Voters in Marquette (73%), Portage (77%) and Wood Counties (76%) approved referendums in the spring of 2021. Voters in Eau Claire (79%) and La Crosse Counties (86%) approved referendums in the spring of 2022. And in the fall of 2022, voters in Adams (79.7%), Bayfield (80%), Green (84%), Juneau (79.6%), and Outagamie (79.5%) Counties approved referendums.

In the past several years we have seen more and more areas find PFAS contamination. They are all across the state from Marinette to Wausau to La Crosse to Madison and many more. We need effective action to address this problem now. Having a vehicle like AB 312 being seriously considered is a step forward. We are happy to see the provisions in the bill aimed at increasing testing, and providing resources to municipalities and individuals that are suffering from PFAS contamination, and various studies and experimental treatment systems. This help cannot come soon enough. However, there are flaws with the bill that must be corrected. Our concerns, detailed below, are related to both specific provisions of the bill and the process that is being used to pass it.

Substance

The specific issues that need to be addressed are:

Remove limitations on the DNR

Section 10 of AB 312 would restrict the DNR's ability to protect Wisconsinites from PFAS contamination by limiting their authority to test for PFAS, and potentially limiting when the



DNR can take enforcement actions against responsible parties. Section 10 should be removed from AB 312.

Broaden the Definition of "PFAS"

The Municipal PFAS Grant Program (Section 9) uses a definition of PFAS that is narrowly defined to only include select PFAS and those for which a standard has been promulgated under state or federal law. Given the limited number of PFAS standards, the length of time it takes to promulgate new standards, and the rapidly emerging research on the dangers associated with more and more PFAS, AB 312 should be amended to include eligibility based on any PFAS for which a health advisory has been issued by the Wisconsin Department of Health Services or the Environmental Protection Agency.

Remove Burdensome Match Requirements

The Municipal PFAS Grant Program (Section 9) and the Innocent Landowner Grant Program (Section 11(4)) are two of the most potentially helpful parts of this bill, but their current structure would require grant recipients to match 20 percent of the funds. This would limit access for many impacted communities and individuals. AB 312 should be amended to remove these requirements, or at the very least, lower them to 5 percent.

Clean up the draft

In addition to these specific changes, there are many terms in the draft that are not defined, such as "emerging contaminant", some terms that are used interchangeably in the bill but are defined differently in other statutes, for example "standard" and "Limit". All of these lead to ambiguity and hence possible unnecessary litigation. The bill needs to be thoroughly reviewed and amended to clean up the language to remove this problem.

Process

Splitting the funding and policy is unnecessary and problematic

The main aspects of AB 312 are funding programs, and yet there is no funding in the bill. The funding is being put in separate legislation, the budget. But what happens if this bill passes and the funding in the budget does not or is significantly reduced. People need clean water now. Injecting this uncertainty into this bill is unnecessary, either the funding should be included in this bill or these programs should be included in the budget so everyone can evaluate them together to make sure they accomplish what is needed.

No funding for staff means uncertainty for those with contaminated water

The bill creates new, and if the funding in the budget comes through, significant funding programs. These programs do not run themselves and yet there is no staffing in either the budget or AB 312 to run the programs. While the DNR could use the 13.10 process to request these staff, there is no guarantee that the request will be granted, and it adds unnecessary delay. Again, people need help now; the staffing necessary to run these programs should be included so these programs can be operational as quickly as possible.

Thank you again for providing an opportunity to comment on AB 312. PFAS are a serious issue that must be addressed; if amended this bill would be a step in the right direction.

Impact of PFAS on Human Health
Testimony by Elizabeth J. Neary, MD, MS, FAAP
Assembly Committee on the Environment
June 15, 2023

Dear Chairman Oldenburg, Vice Chair Kitchens and Members of the Committee,

My name is Dr. Neary. I am a pediatrician and co-president of the Wisconsin Environmental Health Network, a group of doctors who educate and advocate on environmental toxicants that have significant impacts on human health. I am the Wisconsin representative to the Pediatric Environmental Specialty Units, a joint venture of the American Academy of Pediatrics and the EPA.

I appear before you today to provide information on the serious human health effects of exposure to Pfas.

As a pediatrician, I am deeply concerned about the harmful effects of PFAS on the developing organs of the fetus, infant and young child.

Perfluoroalkyl and polyfluoroalkyl substances (PFAS), a group of man-made chemicals, are a serious public health threat. They are toxic at extremely low levels (parts per trillion). No other chemicals are measured at this level, which is testimony to their toxicity.

There has been widespread use of PFAS since the 1950ees. The chemical bond between the fluorine and the carbon is incredibly strong. That quality makes them resistant to grease and water, but the downside is that they are difficult to break down in the environment. Similar to their persistence in the environment, they remain in the human body for long periods of time. PFOA: 2.1 to 10.1 years, PFOS: 3.3 to 27 years and PFHxS (chemical found in fire-fighting foam): 4.7 to 35 years. (Ref 2) There are over 9000 chemicals in this class. Two of the most common ones you will hear about are PFOA (aka C8 because it contains 8 carbons) and PFOS. Both of these chemicals were discontinued in 2015 and 2002, respectively, because of their serious effects on human health. However, we are still dealing with these chemicals in our drinking water today.

As early as the 1980's, Pfas was detected in the blood of workers in a Teflon plant and pregnant workers had children with serious birth defects. In 2005, resident of Parkersburg, Va filed a class action lawsuit against Dupont. As part of the settlement, they funded a study of the citizens of Parkersburg, Va who were exposed to contaminated water in their community.

The C8 Health Study (Ref 4), the best and largest human study (69,030 persons) of health impacts of PFOA, found exposure to PFOA linked to six diseases:

- high cholesterol (hypercholesterolemia),
- ulcerative colitis
- thyroid toxicity
- testicular cancer
- kidney cancer
- elevated blood pressure during pregnancy. (Ref 2)

More recent research has confirmed these effects and found the following additional health impacts:

Decreased birth weight

Immune system effects – decreased response to vaccines in children (Ref 4)

In May 2016, US EPA issued a drinking water advisory for PFOA and PFOS at 70 parts per trillion (ppt), individually or combined. The EPA is in the process of establishing new legally enforceable levels (MCL's) for 6 Pfas chemicals known to occur in drinking water. (PFOA, PFOS, PFNA, PFHxS, PFBS and Gen X. For PFOA and PFOS, the proposed MCL is 4 ppt for each.... a significantly lower level based upon strong evidence of human health impacts.

Children, infants and the developing fetus are a far greater health risk because they drink more water in proportion to their weight, their brains and organs are developing rapidly, and they have a longer life to accumulate toxin.

It is important to regulate these chemicals as a class, not just individually. Otherwise, we are playing a game of cat and mouse... often referred to as "Whack -a- Mole" While the newer Pfas like Gen X have some benefits (don't remain in the environment and human body as long), newer research is showing that health impacts are similar to the longer chain Pfas. We must figure out a way to stop the flow of these chemicals into the environment.

The DNR should not be restricted , but rather continue to retain the flexibility to react to new versions of these Pfas and other emerging contaminants in order to protect human health.

Thank you to all of you, with a special thanks to Senator Wimberger, Senator Cowles, Representative Mursau, and Representative Swearingen for bringing this important legislation to protect the health of the citizens of Wisconsin.

- 1) Agency for Toxic Substances and Disease Registry (ATSDR)
https://www.atsdr.cdc.gov/pfas/docs/pfas_fact_sheet.pdf
- 2) An Overview of the Science and Guidance for Clinicians on Per- and Polyfluoroalkyl Substances (PFAS), ATSDR publication
https://www.atsdr.cdc.gov/pfas/docs/ATSDR_PFAS_ClinicalGuidance_12202019.pdf
- 3) The C8 Health Study was a series of exposure and health studies in the Mid-Ohio Valley communities, which had been potentially affected by the releases of PFOA (or C8) emitted since the 1950s from the Washington Works plant in Parkersburg, West Virginia. C8 signifies that the study looked at selected long chain PFAS. <http://www.c8sciencepanel.org/index.html>
- 4) Grandjean P, Andersen EW, Budtz-Jørgensen E, et al. Serum Vaccine Antibody Concentrations in Children Exposed to Perfluorinated Compounds. *JAMA*. 2012;307(4):391–397.
doi:10.1001/jama.2011.2034



TO: Chairman Oldenburg & Members, Assembly Committee on Environment

FROM: Wisconsin Manufacturers & Commerce
Wisconsin Paper Council

DATE: June 15, 2023

RE: Memo on Assembly Bill 312, relating to programs and requirements to address PFAS

This memo is submitted on behalf of Wisconsin Manufacturers & Commerce (WMC) and Wisconsin Paper Council (WPC) on Assembly Bill 312, which provides new grant funding and new requirements related to impacts from PFAS.

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. With respect to PFAS, WMC supports requirements that are no more stringent than corresponding federal requirements in order to protect consumers from expensive "Wisconsin only" regulatory mandates.

WPC is the premier trade association in Wisconsin that advocates for the papermaking industry before regulatory bodies, and state and federal legislatures to achieve positive policy outcomes. WPC also works to educate the public about the social, environmental, and economic importance of paper, pulp, and forestry production in Wisconsin and throughout the Midwest.

To begin, we appreciate the efforts of Senators Wimberger and Cowles and Representatives Mursau and Swearingen for putting together this comprehensive legislation. In particular, we are encouraged by provisions in the bill that provide Wisconsin manufacturers and other businesses new tools to address impacts from PFAS. We also welcome efforts by the authors to include reasonable checks and balances on DNR authority to help mitigate PFAS "fishing expeditions" that can lead to never-ending project delays.

However, we also have concerns about unintended consequences of certain provisions of the bill for Wisconsin businesses. In addition, WMC and WPC have suggestions to improve the bill's language related to DNR authority, and better ensure DNR bureaucrats do not attempt to undermine the reasonable guardrails proposed in the bill. Our specific comments are as follows:

Funding for pretreatment for PFAS (Section 2 of the bill):

Section 2 of the bill allows a water or sewer utility to use funds to pay for up to half of the cost of PFAS pretreatment or PFAS source reduction for an interconnected customer, including a business. Such an investment can only occur if both of the following criteria are met:

1. The costs incurred are less than the costs of upgrades otherwise required at the treatment facility.
2. The costs are approved by the relevant local governing body (municipality or metropolitan sewerage district)¹

Under current law, Wisconsin has promulgated drinking water and surface water standards for two of the most common PFAS – PFOA and PFOS. Much of the media attention in Wisconsin has focused on the state’s drinking water quality standards for PFAS, which is a combined standard of 70 ppt (parts per trillion) for PFOA and PFOS.

However, far less media attention has been paid to the state’s PFAS surface water standards, which are very impactful to Wisconsin’s business community. The state’s surface water standard for PFOS is 8 ppt for most waters. For PFOA, the standards are 20 ppt for public water supplies, and 95 ppt for all other waters. These are the most stringent surface water standards of any of Wisconsin’s neighboring states. Additionally, in a February 2023 letter to the DNR, even the EPA acknowledged that Wisconsin’s surface criteria are “more stringent than the values calculated using EPA’s Appendix C Methodology.”² In fact, Wisconsin’s adopted criteria are more than twice as stringent as previously prescribed under the EPA’s own methodology, as demonstrated in the EPA table referenced below:³

Table 3: Appendix C Methodology calculated values compared to Wisconsin’s adopted criteria.

| Chemical | 40 CFR Part 132 Appendix C Calculated Values (ng/L) | Wisconsin Adopted Criterion (ng/L) | Applicable Waters |
|----------|---|------------------------------------|---|
| PFOA | 230 | 95 | All other surface waters that are not public water supply. |
| PFOA | 45 | 20 | All public water supplies. |
| PFOS | 20 | 8 | All waters except those that cannot naturally support fish and do not have downstream waters that support fish. |

Moreover, much of the burden for complying with the state’s PFAS surface water standards falls to Wisconsin manufacturers. Although no Wisconsin businesses manufacture PFOA or PFOS, manufacturers may still need to make incredibly costly upgrades related to pretreatment to comply with Wisconsin’s new PFAS surface water standards. These types of PFAS mitigation activities are generally ineligible for the \$900 million in additional federal funding expected for Wisconsin (under the Bipartisan Infrastructure Law) via the Clean Water Fund and Safe Drinking Water loan programs.

¹ See page 6, lines 11-19 of the proposal.

² See EPA Review Under Section 303(c) of the Clean Water Act: Wisconsin Department of Natural Resources Request for Approval of Human Health Criteria for Perfluorooctanoic Acid and Perfluorooctane Sulfonate (Natural Resource Chapters 102 and 105); February 6, 2023.

³ Ibid.

In addition, a new study published by the Minnesota Pollution Control Agency (MPCA) found it would cost between \$14 billion and \$28 billion over 20 years to remove and destroy PFAS from certain wastewater streams in Minnesota.⁴ While the study utilized more stringent metrics than provided under Wisconsin's PFAS surface water standards, it is illustrative of just how expensive it can be to remove PFAS from wastewater. The report also notes that source reduction strategies – including treatment at point sources – is a more cost-effective option than downstream treatment.

Wisconsin's PFOA/PFOS surface water rule focuses on a pollutant minimization approach rather than a treatment approach. If pollutant minimization is not successful in achieving Wisconsin's standard, however, treatment may be required.

This is why the bill's provision related to pretreatment and source reduction of PFAS for interconnected customers is helpful. While this change will only address some of the PFAS challenges facing manufacturers, this provision could provide important relief to qualifying Wisconsin businesses.

Water rate changes (Section 3):

Section 3 of the bill allows the Public Service Commission to raise rates for water and sewer utility service extended outside of the public utility's service area "in response to a public health concern caused by a contamination" and at the request of the public utility.⁵ The bill does not define the term "contamination," which may or may not be related to PFAS.

In other words, the bill provides this process exception for any perceived contamination, regardless of what the substance is and whether any state standard has been exceeded. We oppose granting broad authority to the PSC to unilaterally raise rates on water or sewer utility customers – including businesses – outside of the standard rate-setting process.

PFAS defined under the bill (Section 9):

Section 9 of the bill defines PFAS to include six types of PFAS: PFOA, PFOS, PFHxS, PNFA, PFHpA, PFDA, and "any other perfluoroalkyl or polyfluoroalkyl substance for which a standard has been promulgated under state or federal law."⁶

It should be noted that only two PFAS substances in Wisconsin have lawfully promulgated standards (water quality and drinking water): PFOA and PFOS. The EPA has proposed drinking water standards for the four other substances listed in the aforementioned definition, but has not yet promulgated those standards.

⁴See *Evaluation of Current Alternatives and Estimated Cost Curves for PFAS Removal and Destruction from Municipal Wastewater, Biosolids, Landfill Leachate, and Compost Contact Water*; Prepared for Minnesota Pollution Control Agency; May 23: <https://www.pca.state.mn.us/sites/default/files/c-pfc1-26.pdf>.

⁵ See page 6, lines 21-25.

⁶ See page 9, lines 9-14.

We respectfully request that the definition simply list “PFOA” and “PFOS,” and any other perfluoroalkyl or polyfluoroalkyl substance for which a standard has been promulgated “by rule.” This change would clarify that substances with criteria prescribed via guidance do not meet the required definition under the bill.

Section 9 of the bill also prohibits the DNR from taking action to address PFAS “unless testing determines that PFAS levels exceed any applicable limit under state or federal law or unless another applicable state or federal law allows the department to require the grant recipient to take action.”⁷ Under current law [Wis. Stat. § 292.11(3)], “a person who possesses or controls a hazardous substance which is discharged or who causes a discharge of a hazardous substance” is responsible to restore the environment to the extent practicable and minimize harmful effects from the discharge. Moreover, the statute contains a narrative definition of “hazardous substance,” although DNR has not identified what substances are hazardous, and at what levels or concentrations. Consequently, it is unclear under what circumstances, if any, DNR would determine it was not allowed under state law to take action. The authors may want to clarify this restriction.

Limitations on DNR actions related to PFAS (Section 10):

Section 10 of the bill attempts to limit fishing expeditions and excessive project delays by the DNR related to PFAS. This is an important section of the bill, and we thank the bill authors for including language to impose reasonable restrictions on delaying projects and testing requirements for PFAS.

That said, we have several suggestions for this section to strengthen the proposed guardrails. These suggestions are consistent with the authors’ goal of prohibiting the DNR from imposing costly and unnecessary project delays on businesses, local governments, and other entities:

- **Definition of PFAS:** Section 10 of the bill uses the definition of PFAS provided under section 9.⁸ This means limitations on DNR actions would only apply to PFOA, PFOS, PFHxS, PNFA, PFHpA, PFDA and any other PFAS with a standard. The proposed guardrails on DNR authority under section 10 of the bill should be extended to include other perfluoroalkyl or polyfluoroalkyl substances.
- **“Measurable risk:”** The bill limits the ability of the DNR to delay a construction or public works project, unless the project poses a “measurable risk to public health or welfare.”⁹ This seems to be a very low threshold, as *any* project may pose a “measurable risk.” We suggest a more reasonable limitation, such as “measurable and substantial.”
- **PFAS Testing:** The bill generally requires permission from the applicable landowner in order to collect PFAS samples.¹⁰ We suggest modifying the provision to stipulate that written permission from the landowner is required to test for PFAS, and subsequent written permission is required to release those test results.

⁷ See page 11, lines 9-13.

⁸ See page 11, line 23.

⁹ See page 12, lines 8-12.

¹⁰ See page 12, lines 17-25.

Innocent Landowner Grant Program/PFAS Testing (Section 11)

Another welcome provision of the bill is the creation of an Innocent Landowner Grant Program under Section 11. This provision allows an impacted entity – including a business – to apply for grant funding from the DNR for costs associated with PFAS impacts if the entity was not responsible for the presence of PFAS. Our coalition has heard countless stories from businesses impacted by PFAS through no fault of their own. The program could provide helpful assistance for businesses of all sizes, but especially small businesses.

We do have a series of suggestions to improve Section 11 of the bill:

- **Program eligibility:** The proposed program requires DNR to provide grants to landowners if the property is contaminated by PFAS and the landowner “has not been identified as the responsible party for the contamination.” However, as mentioned earlier, under Wisconsin law, a “responsible party” includes a person “who possesses or controls a hazardous substance.”¹¹ In other words, a landowner that has a PFAS contamination on his property through no fault of his own could be identified as a responsible party. Our coalition encourages the authors to evaluate this criterion to ensure that innocent landowners will be eligible for the proposed relief.
- **Required match:** The bill states the DNR may require matching funds “in an amount greater than 20 percent of the amount of the grant.”¹² The provision appears to allow DNR to specify whatever grant match it deems appropriate, provided it is at least 20%. Instead, we recommend eliminating the required match, which would help ensure the proposed grant is useful to a wide range of businesses and other affected landowners.
- **Legal fees:** The proposed innocent landowner grant program provides that “legal fees” are a reimbursable expense. In theory, it appears the funding could be used by affected landowners to sue one another. We support targeting the relief provided under this program toward efforts to mitigate PFAS, and not to trigger additional litigation. Thus, we recommend modifying this provision.
- **PFAS map:** Section 11 also prescribes requirements for the creation of a comprehensive, interactive map of all available PFAS testing data. The disclosure of personally identifiable information is prohibited “unless the entity to which the data applies is required to test and disclose its results under state and federal law.”¹³ While well-intended, this broad exception could lead to disputes over which testing data is and is not required to be disclosed on the proposed map. Thus, we recommend the provision simply specify that the map not include any personally identifiable information.
- **PFAS testing:** This section of the bill requires the DNR to “conduct additional PFAS testing activities.” However, it does not specify how the DNR should go about increasing testing, and it

¹¹ See definition of “Responsible party” under s. 292.35(1)(e).

¹² See page 14, line 25 through page 15, line 2.

¹³ See page 15, line 24 through page 16, line 3.

is unclear how the DNR would attempt to comply with this directive. We respectfully request this provision be removed.

Thank you for your consideration.



Public Service Commission of Wisconsin

Rebecca Cameron Valcq, Chairperson
Tyler Huebner, Commissioner
Summer Strand, Commissioner

4822 Madison Yards Way
P.O. Box 7854
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Testimony on Assembly Bill 312 before the Assembly Committee on Environment

June 15th, 2023

Matthew Sweeney

Public and External Affairs Director

Public Service Commission of Wisconsin

Chairman Oldenburg and committee members, thank you for the opportunity to testify for information on AB312. My name is Matt Sweeney and I'm the Public and External Affairs Director at the Public Service Commission (PSC or Commission). As you are probably aware, the PSC is our state's independent utility regulator. Our mission is to ensure safe, reliable, affordable, and environmentally responsible utility services and equitable access to telecommunications and broadband services. Included in the utilities that we regulate are 575 privately- and municipally-owned water utilities.

Our state's water utilities face many challenges. Aging infrastructure, pipes containing lead, and water contaminants, like Per- and Polyfluoroalkyl Substances (PFAS), all provide an upward pressure on utility rates when the time comes to construct or replace facilities to address the challenge. Our role as regulator is to make sure that the utilities' efforts to meet these challenges are necessary, cost-effective, in the public interest, and not unjust or unreasonable.

AB312 makes several changes to PSC processes and authority under Chapter 196. I will limit my testimony to those sections of the bill that impact the PSC -- primarily sections three and four. The bill requires the Commission to authorize a separate rate class and higher rates for customers who have water service extended to them in response to a public health concern caused by contamination like PFAS. This concept represents a divergence from utility rate-making principles and best practices, and we want to make sure that this Committee is fully informed as it considers the bill.

Conventional utility ratemaking relies on the principle that all customers share in all costs to operate and maintain the utility. Although PSC staff use a cost-of-service study and rate design process to allocate costs based on customer classification, PSC staff do not allocate costs to customers based on their geographic location within the water system. Instead, rate making principles rely on a cost-averaging concept, where it is standard rate-setting practice for the entire customer base to pay for all assets included in net investment rate base.

A hypothetical example of this principle is when utilities replace old or worn-out infrastructure. All customers might see a small rate increase when a utility replaces old water mains in a neighborhood on the north side of the city, or when it replaces the water tower in the industrial park located on the west side of the city. Customers in a new area served with infrastructure included in a proposed project would share in all costs to operate and maintain the entire water

system, just like all the other customers do. Existing customers may pay a few cents more per month if a utility adds service in this new area, but the new customers will pay water rates that fund improvements in other parts of the water system too.

Wisconsin Stat. § 196.60 prohibits discrimination. In absence of this bill allowing for it, a higher rate for a class of customers that are identical to an existing class of customers, could be considered discriminatory. This may be particularly true given that no customer bears more or less responsibility for the contamination than other customers but are now being required to pay a higher cost to treat water to the same health/water quality standard. Additionally, customers outside of a municipality may be subject to rates and policies determined by an entity in which they have no direct representation. This lack of representation highlights the potential for discrimination under Wis. Stat. § 196.60.

The disparities in water utility pricing discourage potential investors from directing their resources towards communities outside a municipality. Higher water rates can deter these investments, leading to reduced capital inflows, limited infrastructure development, and slower economic growth in the affected areas. Likewise, inequitable cost allocation may impede economic development in regions outside the municipality. Higher water rates can discourage businesses from operating or expanding in these areas. This, in turn, may perpetuate regional disparities and hinder the overall prosperity of the affected communities.

Higher rates for customers outside the municipality may lead to unintended health and affordability consequences. Customers with higher rates may not connect to the system or may resort to using water from less reliable or contaminated sources. The increased financial burden posed by higher water rates may particularly affect low-income households, who may be forced to allocate a more substantial portion of their income toward water bills. This could compromise their ability to meet other essential needs such as food, healthcare, and education.

AB312 allows water utilities to embark on permanent projects to mitigate the contaminant prior to receiving Commission approval. It is the role of the PSC to make sure that utility projects are thoroughly vetted so that customers are not left paying unreasonable costs.

The PSC's construction review ensures that customers are protected from unnecessary, oversized, overbuilt, or in some way discriminatory water infrastructure projects. Given the uncertainty over the effectiveness and types of treatment, limiting the PSC's authority to investigate or require approval for such projects may result in overbuilt or project cost overruns.

Utility recovery of construction dollars is not addressed or authorized by the PSC in its authorization of construction projects. Recovery of those costs is addressed in a subsequent rate case but is based on staff analysis provided during the construction authorization. Eliminating review and authorization of construction projects may, at the very least, increase processing times for rate cases, or at worst, possibly endanger the utility's ability to recover the costs of the project.

Page 3

I appreciate this opportunity to testify. As always, the PSC stands ready to assist the committee and bill authors in any way that we can.

Thank you.

To: Assembly Committee on Environment
From: Municipal Environmental Group – Water Division
Date: June 15, 2023
Re: Comments on AB 312

MEG – Water is an association of 73 municipal water systems which provides input on Wisconsin legislation and regulations that impact municipal water systems. MEG - Water appreciates all the work done on AB 312 and its introduction and sponsorship.

MEG-Water supports many of the provisions in AB 312. In particular, MEG-Water supports the creation of a municipal grant program as described in Section 9 of the bill. MEG-Water offers the following comments for consideration to further refine the bill.

Section 1. MEG-Water suggests deleting this provision. MEG-Water believes that an annexation prohibition creates a disincentive for a municipality to be willing to offer a water supply alternative to an outlying area impacted by PFAS contamination.

Section 2. MEG-Water suggests that water systems be excluded from this section of the bill. Water systems are not impacted by current industrial customers in the manner addressed by this section.

Section 3. MEG-Water acknowledges the rate incentive offered by this section if a municipal water system extends water to an outlying area impacted by PFAS.

Section 4. MEG-Water suggests that this section be revised to focus on interim measures undertaken to address PFAS until a permanent PFAS solution is implemented. MEG-Water suggests that interim measures (perhaps limited by time and cost) should not be required to obtain PSC construction approval.

Sections 5, 6, 7, and 8. MEG-Water supports these sections.

Section 9. MEG-Water supports these grant programs and offers the following comments to help clarify the bill.

Municipal Utility Testing Grants. Page 9, lines 16-21. MEG-Water suggests the clause “provided in equal shares” be deleted. MEG-Water believes this language is confusing. For water utilities, a grant provided on a per sample basis would be workable and easy to administer without the need for any application. A different allocation method may be better for municipal wastewater utilities. It may be advisable to have separate grant programs for water and wastewater testing.

Non-Municipal Public Water Testing Grants. Page 9, line 22 to Page 10, line 4. MEG-Water suggests that non-municipal public water systems could be covered under the same type of per

June 15, 2023
Page 2

sample grant program as suggested above. If that was the case, grants could be provided without requiring the submission of an application.


Capital Cost Grants. Page 10, lines 19-25 and page 11, lines 1-8. MEG-Water suggests that language be added clarifying that the requirements of this grant program for capital costs or debt service do not apply to funding received under the Safe Drinking Water Revolving Loan Program or the Clean Water Revolving Loan Program.

PFAS Reporting. Page 11, lines 14-16. It is MEG-Water's understanding that all public water supply testing results reported by a laboratory to the DNR automatically appear on DNR's website.

Section 10. MEG-Water supports having a more streamlined process for handling public works projects which may be impacted by PFAS.

Section 11. MEG-Water supports providing additional staffing to the DNR and the State Laboratory of Hygiene to conduct the work required to respond to PFAS and to implement the programs contemplated by this legislation.

Thank you for this opportunity to provide you MEG-Water's comments. If you have any questions, please do not hesitate to contact MEG-Water's Legal Counsel, Lawrie Kobza at 608-283-1788 or lkobza@boardmanclark.com.



Municipal Environmental Group Wastewater Division

TO: Assembly Committee on Environment
FROM: Municipal Environmental Group – Wastewater Division
DATE: June 15, 2023
RE: Comments on AB 312

MEG Wastewater is an organization of over 100 municipalities statewide who own and operate wastewater treatment plants. MEG Wastewater represents 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.

Wastewater treatment plants across the state are proactively working to address PFAS concerns. Wastewater treatment plants do not generate PFAS and cannot cost-effectively treat for them. That is why MEG Wastewater supported the DNR surface water rule now in effect that will result in testing and implementation of pollution minimization plans where necessary. MEG Wastewater supports the provisions of AB 312 that help cover the cost of testing and subsequent pollutant minimization efforts. In particular, MEG Wastewater supports the creation of a municipal grant program as described in Section 9 of the bill.

MEG Wastewater offers the following additional comments for consideration to refine AB 312.

Section 1. MEG Wastewater suggests deleting Section 1 of AB 312. MEG Wastewater believes that an annexation prohibition would create a disincentive for a municipality to offer a wastewater treatment alternative to an outlying area impacted by PFAS contamination.

Section 2. MEG Wastewater suggests deleting Section 2 of AB 312. Industrial dischargers that discharge wastewater containing constituents that are either incompatible with or too high strength for treatment at a wastewater treatment facility are often required to pretreat that wastewater before discharging into the municipal wastewater treatment facility. The costs of selecting, implementing, and operating appropriate pretreatment mechanisms to ensure wastewater discharged into a wastewater treatment facility can be sufficiently treated are the responsibility of the discharger. It is not the role of a wastewater utility to determine the appropriate manner of pretreatment or to subsidize those costs at the expense of other ratepayers. As drafted, Section 2 of AB 312 would result in wastewater utilities facing pressure to subsidize the costs of pretreatment for particular industrial dischargers, at the expense of that utility's other ratepayers. MEG Wastewater is opposed to creating an incentive structure that would put responsibility for pretreatment costs on a wastewater utility in favor of particular industrial dischargers and at the expense of other ratepayers.

Section 9. MEG Wastewater supports the creation of the municipal PFAS grant program. As to particular elements of this program, MEG Wastewater provides the following comments:

Municipal Utility Testing Grants. MEG Wastewater suggests that the phrase “provided in equal shares” be deleted from subsection (2)(a). As currently drafted, it is not clear how this language is intended

to be applied. MEG Wastewater supports instead grants provided for testing on a per-sample basis for water and wastewater utilities. Apportioning funding on a per-sample basis would fairly and reasonably provide funding to those utilities that are required to conduct the most PFAS testing and that have therefore incurred or will incur the most costs.

Capital Cost or Other Costs Grants. MEG Wastewater supports the provision of grants for capital costs or other costs incurred by municipalities relating to PFAS. For wastewater utilities, significant costs are likely to be incurred in the development and implementation of PFAS pollutant minimization plans. Subsection (2)(f) enumerates certain types of costs for which this “other costs” grants section is intended to apply. MEG suggests that development and implementation of PFAS pollutant minimization plans be enumerated in this section. MEG Wastewater also suggests that language be added clarifying that the requirements of this grant program for capital costs or debt service do not apply to funding received under the Safe Drinking Water Revolving Loan Program or the Clean Water Revolving Loan Program.

Section 10. MEG Wastewater supports the inclusion of a more streamlined process for handling public works projects that may be impacted by PFAS.

Section 11. MEG Wastewater generally supports providing additional staffing to the Department of Natural Resources and State Laboratory of Hygiene to conduct the work required to respond to PFAS and to implement programs contemplated in this legislation. However, MEG Wastewater suggests that subsection (5)(b)2. be deleted from Section 11. The U.S. EPA is currently in the process of conducting a Biosolids risk assessment that is planned to be completed by 2024. This study will provide significant information regarding the potential impacts of PFAS to Biosolids. MEG Wastewater does not believe that prioritizing resources to conduct the cost-benefit analysis of different options for disposing of Biosolids that may contain PFAS is the best use of the state’s resources at this time, given the work that EPA already has underway.

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



Thursday, June 15th 2023

Assembly Committee on Environment

Re: Assembly Bill 312: Relating to: programs and requirements to address perfluoroalkyl and polyfluoroalkyl substances.

Michelle Ramirez-White – Policy Coordinator, Wisconsin Farmers Union

Chair Representative Oldenburg and members of the committees, thank you for the opportunity to submit testimony of Assembly Bill 312.

Wisconsin Farmers Union (WFU) is a 2,000+ family farm member-driven organization committed to enhancing the quality of life for family farmers, rural communities and all people through educational opportunities, cooperative endeavors and civic engagement.

Wisconsin Farmers Union's grassroots, member-driven policy reads:

“Wisconsin Farmers Union supports research into health and environmental impacts from PFAS and determining appropriate safe levels; and Wisconsin Farmers Union supports banning the use of PFAS and their disposal as land applied waste until research has determined safe levels; and Wisconsin Farmers Union supports legislation that requires PFAS producing companies to contribute to a fund that compensates farmers and homeowners who have been impacted by PFAS contamination in their wells, soils, livestock, crops, or their own health.”

As we learn more about PFAS, historic land applications of contaminated processing waste and biosolids spanning decades has led to concerns about plant uptake, use for crop production, accessibility for grazing, and impacts to wildlife and the environment. Farmers who discover these issues, through no fault of their own, need assistance in the form of more research on plant uptake and remediation, as well as access to resources including income support and funding to transition to alternate forms of production if necessary.

The story of New Mexico dairy farmer Art Schaap is one that we never want to see impact the agriculture community again. The 54-year-old second-generation dairy farmer learned that his water, his land, his crops – even the blood in his body – were contaminated with the PFAs chemicals that migrated to his property from nearby Cannon Air Force Base. Instead of selling milk, he dumped 15,000 gallons a day. Instead of working to keep his animals healthy, he had to exterminate all 4,000 of his cows, and lay off his 40+ employees. This heartbreaking reality is a wakeup call for what could happen to the booming dairy industry our state is proudly known for.

Since the incident at Art's farm, we have seen PFAs contamination impact agricultural land in Michigan, Maine, and at home here in Wisconsin. The reality in Wisconsin is that there is still so much we don't know surrounding the impacts of PFAs on our agricultural production.

Wisconsin Farmers Union appreciates the bill authors of AB 312 for bringing forward legislation to address the impact PFAs contamination has had on communities across Wisconsin. We would advocate for amendments to AB 312 around the Innocent Landowner provision, and feel the 20% match will make the cost of obtaining safe drinking water overly burdensome. WFU would ask the committee to lower this match to no higher than 5%.

The DNR needs flexibility to test for PFAS chemicals as well as to hold responsible parties liable for contaminating our residents' drinking water. Everyone deserves to feel confident knowing that the water coming out of their tap is safe to drink. The legislation before you needs to make sure drinking water can be tested for contamination, and enforcement against responsible parties can occur. We also cannot unnecessarily limit the number of PFAS chemicals defined in the bill. Using the DHS roster of PFAS compounds in the Hazard Index is an appropriate compromise on the number of PFAS chemicals defined in the bill.

Thank you for this opportunity to share Wisconsin Farmers Union's thoughts on this issue.

Sincerely,

Michelle Ramirez-White

Policy Coordinator, Wisconsin Farmers Union



Wisconsin Rural Water Association
350 Water Way • Plover, Wisconsin 54467
715-344-7778 • Fax: 715-344-5555 • E-mail: wrwa@wrwa.org

To: Members, Senate Committee on Natural Resources
From: Chris Groh, WRWA Executive Director
Date: June 15, 2023
RE: Assembly Bill 312 – PFAS Legislation

WRWA is a nonprofit association that represents 586 municipal water and wastewater systems in small and rural communities that serve less than 10,000 people. Collectively, WRWA members provide services to over four million Wisconsin residents.

WRWA supported the creation of a state municipal grant program for the testing and if necessary, removal of PFAS in the state budget and appreciate the intent of the provisions of AB 312 to provide additional support to communities for PFAS testing & removal. However, we are concerned that the cost of several other items in AB 312, such as the Innocent Landowner program, that could potentially chip away at dedicated funding that would be available to support locals in these efforts.

On behalf of rural systems, we ask the committee to consider the following changes to AB 312:

- Section 2: WRWA recommends this provision be removed from the legislation, as we do not want to set the precedent for rate payer funds to be utilized to support industrial pre-treatment measures.
- Section 9, subsection (2) (a): WRWA appreciates the creation of the municipal PFAS grant program, however the bill specifies the grants be provided “in equal shares.” The testing and remediation costs are not equal across drinking water and wastewater systems. Instead, we support dividing up the program between water and wastewater and for water utilities, providing grants based on the number of samples needed for that water system. This funding could be provided without requiring water utilities to go through an application process.
- Section 9, subsection (2) (e): WRWA requests language be added to clarify that the requirements of this grant program for capital costs or debt service do not apply to funding received under the Safe Drinking Water Revolving Loan Program or the Clean Water Revolving Loan Program.

Thank you for your consideration of these items. We look forward to continuing to work with legislators on this bill to ensure funding can be deployed efficiently to communities to deal with PFAS contamination.

Overview of Assembly Bill 312

Assisting Local Governments

- Require the DNR to establish a Municipal PFAS Grant Program, specify that the DNR may not direct action under the program unless levels detected exceed applicable limits under state or federal law, prohibit the DNR from releasing testing results without notifying the community at least 72 hours prior to disclosing the results, and establish the following subprograms:
 - Assistance for testing PFAS levels in municipal water and wastewater systems
 - Assistance for non-municipal public water systems to test for PFAS when required
 - Assistance for testing for PFAS at any municipally-owned or managed location
 - Assistance for disposing of PFAS-containing biosolids at appropriate facilities
 - Assistance for certain PFAS capital upgrade costs at water or wastewater facilities
 - Assistance for capital costs at facilities or properties not covered by the EIF
- Prohibit the DNR from preventing, delaying, or otherwise impeding any public works project on the basis of the presence of PFAS contamination unless the project has a measurable risk to public welfare, there is a substantial risk of worsening environmental conditions, or the local government proposing to complete the project caused the contamination through negligence

Removing PFAS from the State

- Require the DNR to contract with an entity for a pilot project to partially or fully divert surface water contaminated by PFAS to a portable treatment system and return the treated surface water to the water body in an area with high concentrations of PFAS and no responsible parties
- Direct the DNR to begin response and remedial actions at any site contaminated by PFAS across the state where a responsible party hasn't been identified or the responsible party is unable to pay
- Specify that the DNR shall survey or resurvey fire departments on their use of PFAS-containing firefighting foam, send communications regarding foam, and contract for the collection of foam
- Change the Well Compensation Grant Program to allow awards for eligible applicants to cover a filtration device and up to two replacement filters if awards are still within the maximum limit

Municipal Utility Ratepayer Protection

- Authorize municipal wastewater utilities or districts to utilize ratepayer funds for up to half of the cost of pretreatment or other PFAS source reduction measures from an interconnected customer or other regular customer if the costs incurred are less than the upgrades otherwise required at the endpoint treatment facility and if the costs are approved by the governing body
- Prohibit the PSC from investigating, imposing a penalty against, or bringing action to enjoin any water utility which expended some costs which would otherwise require a certificate of authority if the expense was to address a public health concern caused by an emerging contaminant or by PFAS, the contaminant was not known until shortly before the project was commenced, and the application and supporting documentation are submitted to the PSC within six months
- Direct the PSC, at a municipality's discretion, to authorize a separate rate class for customers which have had utility service extended out of the utility's service territory line in response to a public health concern caused by contamination, and allow this rate class to have higher rates and remain in effect for ten years or the duration of any financing authorized, whichever is longer

Municipal Utility Ratepayer Protection, cont.

- Require the DNR to consider a project for the extension of service to a new territory as a result of water contamination as a 'small and disadvantaged' project under the Environmental Improvement Fund, if that extended service territory would qualify for this criteria on its own

Improving Testing Costs and Timelines

- Have the DNR and UW-System Board of Regents enter into a memorandum of understanding to jointly ensure the State Laboratory of Hygiene reduces the costs of PFAS testing by at least 10% within two years of the effective date, and have the lab report to the legislature on its efforts

Protecting Wisconsinites from Overreach

- Require the DNR to establish an Innocent Landowner Grant Program where any person who owns property that is contaminated by PFAS, but that person is not a responsible party, may apply for up to \$250,000 in funding with a 20% match to pay for eligible costs, including testing, studies, engineering reports, clean drinking water supplies, remediation costs, legal fees, and other costs
- Prohibit the DNR from preventing, delaying, or otherwise impeding any construction project on the basis of the presence of PFAS contamination unless the project has a measurable risk to public welfare, there is a substantial risk of worsening environmental conditions, or the entity proposing to complete the construction project caused the contamination through negligence
- Clarify that a municipal government may not annex an area where water or sewer service is extended beyond their municipal boundary due to an immediate public health concern from contamination for a period of three years without a two-thirds vote of residents impacted
- Specify that the DNR may not require the owner of a brownfield property, current or past, to conduct testing for the presence of PFAS, unless the Department has information that reasonably supports the belief that the property previously had a substantial amount of uncontained PFAS
- Require the DNR to have written permission from landowners of lands not owned by the state before collecting PFAS testing samples, require the DNR to provide a 72 hour notice with results to the landowner before releasing those results, and prohibit the DNR from taking enforcement action based on the results of any PFAS testing unless tests exceed promulgated standards
- Require the DNR to report every once every six months after the passage of this legislation on the detailed expenditure of funds and progress on implementing statutory directives set by the act

Addressing the Unknown

- Require the DNR to conduct additional testing in this biennium, and require the DNR to respond to requests for testing if there is a reasonable belief that PFAS contamination may be present
- Require the DNR and UW-System to enter into a memorandum of understanding to, with the help of UW campuses, the DNR, other state agencies, county conservationists, and others, complete the following studies and, within two-years of the effective date, report back to the Legislature:
 - Cost, feasibility and effectiveness analysis of treatment methods for PFAS in discharges
 - Cost-benefit analysis on biosolids disposal options when they are or may be contaminated
 - Cost, feasibility and effectiveness analysis of PFAS destruction and disposal methods
 - Analysis on migration of PFAS into the bay of Green Bay, including effects and sources
 - A comprehensive, interactive map with data points on PFAS and indication of levels



**Wisconsin Assembly, Committee on Environment
June 15, 2023**

Assembly Bill 312

Chairman Oldenburg and Committee members:

Save Our Water (S.O.H2O) was formed in response to the massive PFAS contamination of our area's groundwater and the bay of Green Bay by Tyco/Johnson Controls. This contamination poisoned private drinking water wells, and ultimately spread throughout Marinette County via contaminated biosolids. It is with this perspective that we offer these comments on the draft legislation SB 312.

We are concerned that SB 312, as currently written, would restrict the DNR's ability to protect Wisconsinites from PFAS contamination by limiting their authority to test for PFAS, and potentially limiting when the DNR can take enforcement actions against responsible parties. These limitations should be removed from the bill. For example, Tyco/Johnson Controls' Fire Technology Center is in the middle of over 300 acres. The definition of Brownfield property "means abandoned, idle, or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination" gives us pause for concern. Would Tyco/Johnson Controls property have been considered "underused" since so much of it is vacant land?

The Municipal PFAS Grant Program uses a definition of PFAS that is narrowly defined to include only select types of PFAS and those for which a standard has been created under

state or federal law. Given the limited number of PFAS standards, the length of time it takes to create new standards, and the rapidly emerging research on the dangers associated with more and more types of PFAS, SB 312 should be amended to include eligibility based on any PFAS for which a health advisory has been issued by the Wisconsin Department of Health Services or the Environmental Protection Agency.

The most helpful parts of this bill would provide grants to municipalities or people on private wells, but the bill currently could require grant recipients to match 20 percent of the funds. This would limit access for many impacted communities and individuals and put a financial burden on people and communities who didn't create the contamination problem. SB 312 should be amended to remove these requirements, or at the very least cap them at 5 percent.

Adding language ensuring State funding would also be of value, the current language mandating programs which the DNR 'shall' implement would be unimplementable without ongoing additional funding. Doing so would create the unintended consequence of a DNR mandate requiring the allocation of funding from its current budget toward PFAS initiatives leaving them with a funding shortfall for existing department initiatives.

Thank you for your consideration.

Save Our Water (S.O.H2O):

Doug Oitzinger, City of Marinette

Cindy Boyle, Town of Peshtigo

Chuck Boyle, Town of Peshtigo

Kayla Furton, Town of Peshtigo

Jeff Lamont, Town of Peshtigo



**Wisconsin
Conservation
Voters**

**Testimony of Peter Burress on AB 312
Wisconsin Conservation Voters
June 15, 2023**

Dear Chairman Oldenburg and Members of the Committee,

My name is Peter Burress and I work as the Government Affairs Manager with Wisconsin Conservation Voters. We have offices in Madison, Milwaukee, and Green Bay, where we work with our network of over 40,000 members and supporters to engage voters to protect Wisconsin's environment.

Thank you for holding this public hearing. I appreciate the opportunity to share testimony on Assembly Bill 312, which has the potential to begin protecting Wisconsin families from the negative health-related impacts associated with PFAS contamination. Those impacts include increased risk of complications with pregnancy, childhood obesity, learning and behavioral issues, thyroid disease, heart disease, diabetes, and testicular cancer.

PFAS have been detected in more than 120 Wisconsin communities, impacting the drinking water of nearly 2.5 million Wisconsinites. In small, highly-contaminated communities like Campbell, Stella, and Peshtigo, Wisconsinites are working to avoid health risks by mixing their baby formula, cooking their meals, and washing their dishes with five-gallon water jugs. In cities like Wausau and Eau Claire, residents are facing more than \$20 million in expenses to filter these toxic forever chemicals out of their municipal drinking water systems.

Thanks to the Joint Finance Committee's decision to allocate \$125 million into a new PFAS Trust Fund, we have a real opportunity to begin delivering support to impacted communities. But that funding won't matter for local communities until we pass legislation that structures how it can be distributed. We appreciate many of the provisions in Assembly Bill 312. That said, we have concerns about the potential unintended impacts of the bill as drafted.

Any legislation we pass must work for impacted communities and individuals. It must provide flexible support that allows for the equitable and efficient distribution of funding, and supports long-term remediation efforts. As drafted, Assembly Bill 312 would not work for many communities. To improve the bill, we urge you to make the following amendments:

- First, we urge you to strengthen Assembly Bill 312 by removing Section 10, which would restrict the DNR's ability to protect Wisconsinites from PFAS by limiting their authority to test for PFAS. This would potentially limit when the DNR can take enforcement actions against responsible parties. We are concerned these limitations would undermine long-term remediation efforts, prolong impacted communities' exposure to these chemicals, and increase the risk of serious health-related impacts.
- Second, we urge you to strengthen Assembly Bill 312 by expanding the definition of PFAS under Section 9, the Municipal PFAS Grant Program. Currently, PFAS is narrowly defined to only include select PFAS – those for which a standard has been promulgated under state or federal law. Given the limited number of PFAS standards, the length of time it takes to promulgate new standards, and the rapidly emerging research on the increasing dangers associated with PFAS, we urge you to amend the bill to include eligibility based on any PFAS for which a health advisory has been issued by the Wisconsin Department of Health Services or the Environmental Protection Agency.
- Third, we urge you to strengthen Assembly Bill 312 by addressing its burdensome match requirements. We appreciate that Assembly Bill 312 includes both Section 9, the Municipal PFAS Grant Program for public drinking water systems, and Section 11(4), the Innocent Landowner Grant Program for private well owners. That said, the draft structure of these grant programs could require grant recipients to match 20 percent of the funds. This would limit access for many impacted communities and individuals and put a financial burden on people and communities who didn't create the problem. We urge you to remove these requirements, or at the very least, cap them at a five percent match.

We are grateful for the ongoing conversations with Senator Cowles, Senator Wimberger, Representative Mursau, and Representative Swearingen, and are hopeful that the committee will amend Assembly Bill 312 so that it works for impacted local communities. Included with this testimony is a letter signed by 25 of our community partners on Assembly Bill 312's counterpart, Senate Bill 312.

As members of the Assembly Committee on Environment, each of you have the opportunity and responsibility to get this right for Wisconsin. We are eager to help in any way we can.

Thank you for your time.

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Wisconsin Conservation Voters is a nonprofit, nonpartisan organization dedicated to engaging voters to protect Wisconsin's environment. For more information, contact Government Affairs Manager Peter Burress at peter@conservationvoters.org or 920-421-3601.

Dear Wisconsin Legislators,

Every person in Wisconsin deserves to turn on their tap and know that water is safe to drink. There is mounting evidence linking PFAS to a long list of negative health effects including cancer, liver damage, decreased fertility, increased risk of thyroid disease, and growth, learning, and behavior impairment. Over 120 communities have found PFAS in their drinking water and it's clear more will be found.

We appreciate Governor Evers and the Joint Finance Committee responding to the public demand for action by allocating \$125 million for communities to address PFAS. However, not a single penny can be spent until we have passed legislation creating the program. We are asking you to support a bill that will deliver on that promise of safe drinking water for Wisconsin.

Communities must have the flexibility to spend money to address PFAS in their water. A bill worth supporting will be equitable and work for the communities that are facing this problem. In order to support SB 312, it is essential communities have the tools they need to effectively deal with PFAS contamination. Specifically, SB 312 should be amended to:

- Remove limitations on the DNR. SB 312, as currently written, would restrict the DNR's ability to protect Wisconsinites from PFAS contamination by limiting their authority to test for PFAS, and potentially limiting when the DNR can take enforcement actions against responsible parties. These limitations should be removed from the bill.
- Broaden the definition of "PFAS." The Municipal PFAS Grant Program uses a definition of PFAS that is narrowly defined to include only select types of PFAS and those for which a standard has been promulgated under state or federal law. Given the limited number of PFAS standards, the length of time it takes to promulgate new standards, and the rapidly emerging research on the dangers associated with more and more types of PFAS, SB 312 should be amended to include eligibility based on any PFAS for which a health advisory has been issued by the Wisconsin Department of Health Services or the Environmental Protection Agency.
- Remove burdensome match requirements. The most helpful parts of this bill would provide grants to municipalities or people on private wells, but the bill currently could require grant recipients to match 20 percent of the funds. This would limit access for many impacted communities and individuals and put a financial burden on people and communities who didn't create the contamination problem. SB 312 should be amended to remove these requirements, or at the very least cap them at five percent.

We ask you, as our legislators, to strengthen SB 312 to be more effective for communities and impacted landowners to use as intended. Without changes to SB 312 as introduced, we will be unable to support the bill. We would like to work with you to get to a bill that benefits the impacted communities we all care about.

Thank you,

Andrew Meindl
Wauwatosa

Angela Whirry-Achten
Madison

Cavalier Johnson
Milwaukee

Citizens for a Clean Wausau
Wausau

Clean Green Action
Wisconsin Rapids

Clean Water Action Council of NE WI
Green Bay

Dan Barth
Mosinee

Ethan Achten
Madison

Indian Council of the Elderly, Inc
Milwaukee

Jonathan Brostoff
Milwaukee

Milwaukee Riverkeeper
Milwaukee

Nancy Stencil
Wausau

Nathan Babcock
Stevens Point

NextGen America
Madison

PerSISTERS
Milwaukee

Peter Burgelis
Milwaukee

Project Outreach: Frac Sand Sentinel
Chippewa Falls

Rene Rivera
Wausau

Root-Pike Watershed Initiative Network, Inc
Kenosha

River Revitalization Foundation
Milwaukee

Shawn Rolland
Milwaukee County Board of Supervisors
Wauwatosa

Sierra Club
Wausau

SOH20
Marinette

Tom Kilian
Wausau

9to5 Wisconsin
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