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# JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

To: Wisconsin Natural Resources Board

From: Representative Joan Ballweg, Co-Chair JCRAR  
Senator Steve Nass, Co-Chair JCRAR

Date: August 11, 2020

RE: DNR Board Action on Emergency Rule WA-06-20(E), relating to creating NR 159 on firefighting foam

The Wisconsin Legislature and Governor enacted 2019 Act 101, providing the DNR with limited authority to regulate firefighting foam with PFAS. We have reviewed information submitted by several organizations raising serious concerns regarding the current version of the emergency rule to be considered by the DNR Board on August 12, 2020.

The following organizations have made good faith efforts to work with the DNR to develop an emergency rule that is compliant with the provisions of 2019 Act 101:

Wisconsin Manufacturers and Commerce  
Wisconsin Paper Council  
Wisconsin Water Alliance  
Midwest Food Products Association, Inc.  
Wisconsin Civil Justice Council, Inc.

After considering the input of these organizations and reviewing the current version of Emergency Rule WA-06-20(E), we now share the following concerns identified by these organizations:

**The current version of the Emergency Rule appears to exceed the authority granted under Act 101 in the following ways:**

- By establishing an effectively non-detect treatment standard for fourteen (14) PFAS compounds under the limited rulemaking authority of Act 101, the DNR is implementing a standard without explicit statutory authority.
- The DNR is seeking to impose a wastewater effluent standard for PFOA and PFOS compounds that is **lower** than Wisconsin's proposed 20 ppt groundwater standard, creating a situation where the wastewater discharge from an on-site treatment facility has to be cleaner than drinking water.

- Further, the DNR has promulgated effluent discharge standards for 12 previously unregulated PFAS compounds in Table 1 of Section 159.08 that essentially mandates a non-detect standard for discharge. This is a significant overreach in two material ways:
  - First, the DNR issued these standards for PFAS compounds without input or guidance from the Wisconsin Department of Health Services as to the potential toxicity of these 12 PFAS compounds.
  - Second, no other state in the U.S. has regulated these other 12 PFAS compounds for wastewater discharge. In fact, with the exception of Minnesota, which has issued non-binding guidance for PFBS and PFHxS, no other state has even attempted to regulate these compounds for drinking water much less wastewater effluent.

As Co-chairs of JCRAR, we want to reaffirm our expectation that the DNR will voluntarily comply with all the provisions of the administrative rules process as required by Chapter 227 of the Wisconsin Statutes. Further, in this particular instance DNR must explicitly comply with the provisions of 2019 Wisconsin Act 101.

Failure by the DNR to meet these mandatory requirements will force us to consider using the full authority of the JCRAR to achieve the department's compliance including the possible suspension of parts or all of the language contained in Emergency Rule WA-06-20(E).