



To: Natural Resources Board Members

From: Citizens for Safe Water Around Badger, Clean Wisconsin, League of Women Voters of Wisconsin, Midwest Environmental Advocates, Milwaukee Riverkeeper, PFAS Community Campaign, River Alliance of Wisconsin, S.O.H2O – Save Our Water, Sierra Club – Wisconsin, Wisconsin Conservation Voters

Date: August 26, 2020

RE: Emergency Rule WA-06-20(E) Relating to PFAS in Firefighting Foam

We write in support of Emergency Rule WA-06-20(E) and ask the Board to approve the rule without changes at the September 22nd meeting. We were extremely disappointed to see the approval of this rule and the modest protections against PFAS pollution it offers delayed at the behest of a coalition of business, industry, and manufacturing organizations with a financial interest in weak regulations. Profits should not come before public health and clean water.

Wisconsin is well behind our neighboring states in providing PFAS protections for its residents. This emergency rule, which is required under 2019 Wisconsin Act 101, is an incredibly modest step towards addressing the burgeoning PFAS pollution problem our state faces, and it does not provide any immediate relief to those in our state already confronted with PFAS pollution in their water. This emergency rule will only address a specific instance of PFAS contamination associated with firefighting foam training and testing exercises.

This modest rule is only a start towards protecting Wisconsin residents from PFAS pollution, but it is an important step that should not be controversial or difficult. Given its minimal scope, we were surprised and disappointed by the decision to delay its approval and equally disappointed to see the letter from the co-chairs of JCRAR threatening legislative action at the behest of the same industry concerns. Following a familiar playbook, a few industry PFAS-users stepped in at the very last-minute to wield an unreasonable amount of influence and put profit over public health.

We believe protections and policies from harmful pollutants should be crafted for the victims of environmental pollution, not those responsible for the polluting.

Regardless of industry's strategy to cloud the process in doubt, the emergency rule is consistent with the rulemaking requirements in Chapter 227 and well within the statutory authority conferred by the legislature on the DNR. The rule is consistent with the approved statement of scope, addressing the precise issues identified in that statement, e.g. appropriate containment, treatment, and disposal or storage measures. There is no violation of rulemaking procedures here.

Further, 2019 Act 101 explicitly directed DNR to identify appropriate containment, treatment, and disposal or storage measures to prevent discharges of PFAS-containing foam at testing facilities. This rule does exactly that. Industry's argument that—while DNR is required to identify appropriate treatment measures to avoid discharges of PFAS—it is somehow prohibited from identifying effluent limits for treated foam is both facially absurd and inconsistent with decades of administrative law. It's akin to telling someone they must stop horses from escaping the barn but objecting when they repair the broken barn door, because you didn't say the word "door" when you asked them to solve the problem.

Moreover, and as explained below, DNR exercised its expertise to engage in a diligent, rigorous scientific process to identify appropriate measures. To assert that the Department's determinations are arbitrary and capricious ignores the hard work of DNR staff to follow a clear legislative directive and address this public health crisis. At the end of the day, Act 101 aimed to prevent a particular source of PFAS contamination and preserve water quality, and that is what this rule would accomplish.

Further, we believe there is a clear rational basis for the effluent limits in the proposed rule. Comparisons of these effluent limits to surface water quality standards established by Michigan (or any state) are misleading and inappropriate. Such water quality standards were developed with the purpose of calculating the level to which water could be contaminated by PFAS but not yet harm human health or aquatic life. In contrast, here DNR is calculating an effluent level that ensured a certain technology is functioning properly regardless of whether the technology cleans the water to a level below a maximum level of contamination that is still healthy. The DNR through this rule was able to develop limits that both serve their intended purpose and protect public health. To further underscore the rational basis and scientific grounding of the effluent limits, they are based on two years' worth of effluent data from a system here in Wisconsin treating water contaminated with Class B firefighting foam, the very products being addressed by this bill.

PFAS containing firefighting foam is the source of the massive water contamination problem in Marinette, WI from a local firefighting training facility. In Marinette, one source of drinking water tested above 1,900 parts per trillion (ppt), which is 95 times higher than the Department of Health Services' recommended statewide standard of 20 ppt. While this rule might not be able to address that specific contamination problem, it would put in place protections to help prevent another one like it.

All Wisconsinites have a right to clean, safe drinking water, and this is an unfortunate delay at the behest of industry special interests to modest actions meant to protect public health and keep our water clean. We ultimately need meaningful policies in Wisconsin that provide broader protections for our water from the federally unregulated, PFAS chemicals in use. Through the Speaker's Task Force on Water Quality and other venues, citizens across the state have demanded that decision-makers step up to address the drinking water crisis too many families face today. One facet of that drinking water crisis is caused by PFAS pollution – approving this emergency rule is the least we can do to start to address the growing problem.

This decision should be guided by science to keep our water clean and protect public health, not industry profits. Therefore, we respectfully request the NRB approve Emergency Rule WA-06-20(E) as written at the Sept. 22, 2020 board meeting.