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The information in this article is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

Comprehensive PFAS legislation introduced in Wisconsin

On Thursday, May 24, 2019, Wisconsin State Senators Dave Hansen (D-Green Bay) and Mark Miller (D-Monona) introduced legislation (LRB-2297/2) which, if enacted, could have significant impacts on the State of Wisconsin's regulation of per- and polyfluoroalkyl substances, otherwise known as PFAS. By extension, the proposed legislation could significantly affect the regulated community, including municipalities/ Local Government Units, publicly owned treatment works, parties holding air and wastewater discharge permits, and many others.

The proposed legislation includes the following features:

By statutory amendments:

- Requires the Wisconsin Department of Natural Resources (WDNR) to determine, initially, if an emission standard is needed for protection of public health and welfare related to PFAS and, if such a determination is made, requires the WDNR to consider all PFAS to be air contaminants and to require reporting of any emissions of PFAS (i.e. a reporting level of zero pounds per year).
- Requires WDNR, following a recommendation by the Department of Health for a Wisconsin Administrative Code NR 140 Enforcement Standard (ES) for PFAS, to use such number as the interim ES and as the interim Maximum Contaminant Level (or MCL) for public water systems and water suppliers, and to use a standard that is 20% of the ES as the Preventative Action Limit (or PAL).
- Allows the WDNR to require persons who possess or control PFAS to provide proof of financial responsibility for remediation and long-term care to address potential remediation caused by PFAS contamination.
- Allows for budgeting for (a) sampling and testing leachate and groundwater at landfills for PFAS, (b) creating a model to assist in identifying and prioritizing sites with "likely" PFAS contamination, (c) conducting a survey local and state emergency responders regarding the use of firefighting foam containing PFAS, (d) the administration and enforcement related to PFAS, and (e) investigating for PFAS and for providing alternate drinking water supply for persons if no responsible party is available.

As "Emergency Rules":¹

- Requires the WDNR to establish and enforce acceptable levels and standards, performance standards, monitoring requirements and required response actions

¹Significantly, the legislation provides that the WDNR is not required to provide evidence that promulgating a rule "as an emergency rule" (i) is necessary "for the preservation of public peace, health, safety, or welfare" and (ii) is not required to provide a finding of emergency for a rule promulgated under this subsection.

for any PFAS in drinking water, groundwater, surface water, air, solid waste, beds of navigable waters, and soil and sediment, if the department determines that the substances may be harmful to human health or the environment.

- Requires WDNR to add PFAS to the list of groundwater contaminants under Wis. Stats. §160.05.
- Requires WDNR to include PFAS in wastewater discharge toxic and pretreatment effluent standards under Wis. Stats. §283.21.
- Requires WDNR to characterize PFAS as a hazardous waste under Wis. Stats. §291.05.
- Requires WDNR to establish criteria for certifying laboratories to test for PFAS and to certify laboratories that meet these criteria.
- These rules must cover, at a minimum, PFOA and PFOS, as well as PFHxS, PFNA, PFBS and PFHpA compounds.

These are just a few of the substantive requirements contained in this bill relating to PFAS. The Bill provides that the rules would remain in effect until the earlier of July 1, 2022, or until permanent rules take effect.

The LRB document can be [accessed here](#).

Godfrey & Kahn's Environmental Practice Group has been closely following the national and state attention to and development of regulations related to PFAS. For further information, you can find other articles under the "Updates, News & Presentations" tab [here](#).

For further information concerning this alert, please contact Arthur J. Harrington or Edward B. Witte at Godfrey & Kahn. Please note that Mr. Harrington will be a member of a panel concerning "PFAS – Municipal Legal Planning for Emerging Contaminants" at the [League of Wisconsin Municipalities, Municipal Attorneys Institute](#) on June 14, 2019, and that Mr. Witte will be a presenter on "Emerging Contaminants/PFAS: Regulation and Response" at [The State Bar of Wisconsin Annual Meeting & Conference 2019](#) on June 13, 2019.