

Report to
Legislative Council Rules Clearinghouse
NR 159, Wis. Adm. Code
Natural Resources Board Order No. WA-07-20

Wisconsin Statutory Authority

Sections 299.48, and 227.11(2)(a), Wis. Stats.; 2019 Wisconsin Act 101 (s. 2, nonstatutory provisions directing rulemaking.

Federal Authority

N/A

Comparison of Adjacent States

Illinois had legislation proposed in 2020, [SB3154](#), that would prohibit the knowing manufacture, sale, offering for sale, distribution for sale, or distribution for use of foam containing intentionally added PFAS. This legislation would also require manufacturers of foam containing intentionally added PFAS to register with the Illinois EPA and pay to the EPA an annual registration fee of \$5,000. This legislation wasn't voted upon but was re-introduced in 2021 as [SB0561](#). Additional proposed firefighting foam-related legislation, HB5003, proposed prohibition of the use of foam containing intentionally-added PFAS for training purposes and also testing purposes, unless the facility has implemented appropriate containment, treatment and disposal measures. This legislation wasn't voted upon but was re-introduced in 2021 as [HB3635](#) and [SB2512](#). Bill [HB3190](#) was also introduced in 2021 and proposes prohibition of incineration of any PFAS substance, including AFFF firefighting foam.

Indiana's House Bill 1189 was signed into law on March 30, 2020 as [IC 36-8-10.7](#) and prohibits the use of Class B firefighting foam containing an intentionally added PFAS: (1) for training purposes; and (2) for testing purposes, unless the testing facility has implemented appropriate measures to prevent releases of the firefighting foam to the environment.

As of May 2021, Iowa has a non-binding guidance "action plan" to identify and minimize PFAS exposures, prevent future releases, and provide education and outreach. HF 2241 failed to pass last session. HF 2241 would have prohibited the manufacture and sale of firefighting foam containing PFAS, prohibit the use of PFAS foam for training purposes, and require manufacturers of firefighter protective equipment to disclose the inclusion of PFAS in their products. Iowa DNR is developing a plan to assess risk to public water supplies from PFAS and may sample the higher risk facilities in the future.

Michigan has created by executive order a PFAS action team to identify, recommend, and implement responses to PFAS contamination. Several bills focused on fire departments and fire fighter activities have been passed by the MI legislature: [Section 324.14705](#) establishes a PFAS firefighting foam collection program at the Department of Environment, Great Lakes, and Energy (EGLE). [Section 324.14703](#) requires immediate reporting of the use of firefighting foams with intentionally added PFAS. [Section 29.369c](#) bars the use of PFAS firefighting foam in firefighting training, and requires proper training for the emergency use, handling, storage, disposal and cleanup of PFAS foam. [Section 408.1014r](#) calls for rulemaking to be promulgated by the Department of Labor to establish best practices for handling and storing PFAS foam by emergency responders, ban the use of PFAS foam for training purposes, and to end the use of PFAS foam for equipment calibration unless certain stringent conditions have been met. Michigan recently announced it had collected and disposed of approximately 51,400 gallons of PFAS-containing firefighting foam through a clean sweep type program. Michigan recommends that fire departments use only Class A foam unless Class B foam is needed to protect human life or critical infrastructure, and that they train only with Class A foams.

Minnesota passed legislation that took effect July 1, 2020 ([Section 325F.072](#) of MN Statutes) requiring that any Class B firefighting foam containing PFAS that is used on a fire must be reported to the State Fire Reporting System within 24 hours. It also prohibits use of PFAS-containing firefighting foam for testing and training unless appropriate containment, treatment and disposal measures are implemented to prevent releases of foam to the environment. Minnesota is currently working on guidance related to proper containment, treatment and disposal measures.

As of January 2021, Arizona, Georgia, Indiana (as mentioned above), Kentucky, Maryland, Minnesota (as mentioned above), Virginia and Wisconsin have enacted legislation prohibiting the use of foam with intentionally added PFAS, with a testing exemption. Of those states, Arizona, Indiana, Maryland, Minnesota, Virginia and Wisconsin include the word “appropriate” regarding the measures needed for containment, treatment and disposal. Wisconsin is the only state that has directed an agency to conduct rulemaking regarding their PFAS-containing foam legislation. Wisconsin is the only state tasked with determining the “appropriate” measures to prevent discharges of PFAS-containing foam to the environment. New Hampshire’s ban on PFAS-containing foams included a provision that allowed for testing of class B foams only if evaluated by their department of environmental services. The New Hampshire legislature did not direct the department to promulgate criteria for determining such evaluation.

Washington, New York, and Colorado have prohibited the use of PFAS-containing foams with no exception for testing or emergency use and therefore have considerably more strict regulations than proposed in this permanent rule.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

The department is proposing the creation of ch. NR 159, Wis. Adm. Code. The purpose of this rulemaking is to implement the non-statutory provisions under 2019 Wisconsin Act 101 (“Act 101”), which created s. 299.48, Wis. Stats.

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are a group of synthetic chemicals used in industry and consumer products worldwide since the 1950s. They do not break down in the environment for extremely long periods of time and they accumulate in the human body. Exposure to certain PFAS may cause adverse health effects. Some firefighting foams currently used to extinguish flammable liquid fires, including Class B and Class A/B foams, include intentionally added PFAS, meaning PFAS is a constituent of the foam.

Section 299.48(1), Wis. Stats., prohibits the use of Class B firefighting foams with intentionally added PFAS, including for training exercises. Section 299.48(2), Wis. Stats., provides the use of foam is allowed for emergency firefighting, fire prevention operations, and testing purposes so long as certain requirements are met. These prohibitions and requirements are included in the proposed permanent rule and apply to foam that is in concentrate or that is mixed with water or other liquids. Discharge of foam is prohibited to a storm or sanitary sewer or to the environment unless the discharge meets the requirements of the proposed permanent rule.

Agency Procedures for Promulgation

The department will hold a hearing online on November 4, 2021 at 1:00 p.m. The hearing will be followed by a request for board adoption, expected in January 2022, followed by a request for the governor’s approval and legislative review.

Description of any Forms (attach copies if available)
None

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