



612 W. MAIN STREET, MADISON, WI 53730
608-256-0827

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TO: Department of Natural Resources
Attn: Kate Strom Hiorns – WA/5
101 S. Webster Street
Madison, WI 53707-7921
Submitted by email to: KathrynM.StromHiorns@wisconsin.gov

RE: EmR2045 to create ch. NR 159 related to the regulation of fire fighting foam containing PFAS and action taken by the Joint Committee for Review of Administrative Rules

The League of Women Voters of Wisconsin (LWVWI) is in support of EmR2045 as approved by the Natural Resources Board (NRB) on October 28, 2020.

The League of Women Voters of Wisconsin has long been a strong supporter of clean drinking water and the regulation of any contaminants. Firefighting foam is a major source of PFAS contamination of our ground water from which about two-thirds of Wisconsin residents derive their drinking water. We are therefore extremely disappointed that the Joint Committee for Review of Administrative Rules (JCRAR) suspended important portions of EmR2045 at its December 18, 2020, meeting.

The suspended portions focus mostly on one aspect of the rule: the treatment of foam used for testing purposes to remove the PFAS before disposal. JCRAR concluded that with the inclusion of those portions EmR2045 “fails to comply with legislative intent and an absence of statutory authority”. The LWVWI disagrees with that conclusion.

2019 Wisconsin Act 101 explicitly directs DNR “to determine appropriate containment, treatment, and disposal or storage measures for testing facilities” “to prevent discharges of the foam to the environment”. As Darsi Foss stated at the JCRAR hearing, measures need to be specific and numeric for the determination of the effectiveness of the treatment of the foam to prevent discharge to the environment.

JCRAR decided to listen to the arguments put forth by organizations that value profit more than public health rather than to be guided by the Public Trust Doctrine embedded in the Wisconsin Constitution. JCRAR’s suspension of those important portions seriously compromise the rule’s intent to protect Wisconsin residents from further PFAS contamination.

PFAS contamination of the state’s drinking water is growing. A health crisis already exists in the Marinette/Peshtigo area. La Crosse, Madison, and Rhinelander have had to shut down one or more of their water wells due to the presence of this toxic chemical. PFAS contamination has been found in places like Sparta and Milwaukee. The Speaker’s Task Force on Water Quality, traveling around the

state, received a significant amount of testimony and comments regarding concerns about PFAS contamination.

EmR2045 addresses only one instance of PFAS contamination: firefighting foam used for training and testing. The rule is one step toward the goal of stopping any further PFAS contamination of our environment, and it has received overwhelming public support. Nearly 100 organizations and individuals impacted by PFAS contaminated drinking water submitted written and oral testimonies in support of Emr2045 to the NRB at its October 28, 2020, hearing. JCRAR at its December 18, 2020, hearing received more than 30 written testimonies in support of the rule as approved by the NRB.

The LWVWI is joining all those individuals and organizations in their support of EmR2045 as approved by the NRB on October 28, 2020.