

PFAS Litigation Heating Up as State Hires Private Law Firm

As the growing scrutiny of per- and polyfluoroalkyl (PFAS) chemicals mounts, increased regulations and enforcement seem imminent, as does an onslaught of lawsuits against companies considered responsible for releasing the compounds into the environment.

PFAS chemicals include more than 4,000 different chemical compounds and are widely used in everyday products, including stain- and water-resistant fabrics and carpeting, cleaning products, cookware, paints and fire extinguishing foams. There are growing concerns over potential health effects of a small subset of PFAS compounds. Two of the most concerning – PFOA and PFOS – are no longer manufactured in the United States. However, the compounds are slow to break down in the environment, and may still be detectable in many locations.

On Wednesday, August 25, Gov. Tony Evers and Attorney General Josh Kaul announced that Wisconsin hired a San Francisco-based law firm specializing in high-impact, high-value environmental cases, in an effort to hold accountable those deemed responsible for the release of PFAS into the environment.

As we reported back in [August 2020](#), the Wisconsin Department of Natural Resources (DNR) sent more than 3,000 letters to Responsible Parties (RPs) involved in cleanup at remediation sites across Wisconsin, explaining the DNR's interpretation of statutes and rules related to remediation sites, and insisting that RPs assess for emerging contaminants such as PFAS.

In addition, earlier this year [we also reported](#) that the DNR released a list of businesses targeted for PFAS testing, which included 39 industrial facilities, encompassing many of Wisconsin's largest manufacturers and food producers. Unlike previous DNR PFAS initiatives, the testing was not voluntary. The DNR required companies to permit sampling and testing for more than 30 PFAS compounds despite the fact that no enforcement standards exist.

The DNR's approach raised concerns with Wisconsin businesses as the agency has not explained whether or how it will incorporate background or intake levels of PFAS, nor how it intends to identify the sources of any contamination discovered. Now, those concerns will be amplified by the potential for tort-based claims brought by the private law firm hired by the state.

POSTED:

Aug 26, 2021

RELATED PRACTICES:

[Real Estate](#)

<https://www.reinhartlaw.com/practices/real-estate>

RELATED SERVICES:

[Environmental Litigation](#)

<https://www.reinhartlaw.com/services/environmental-litigation>

[Food and Beverage](#)

<https://www.reinhartlaw.com/services/food-and-beverage>

[PFAS](#)

<https://www.reinhartlaw.com/services/pfas>



In March 2020, the Wisconsin Manufacturers & Commerce (WMC), the state's chamber of commerce, took legal action in an attempt to stop the DNR's proposed PFAS sampling program at specific facilities selected by the agency. The case is still pending, but in recent filings, the DNR asserted that it has the authority to test for PFAS and to bring enforcement action against permit holders who release PFAS into the environment. It is yet to be seen whether the DNR will coordinate with the firm hired by the state to ramp up litigation against companies suspected to be responsible for PFAS contamination.

We will continue to provide updates regarding the DNR's PFAS sampling plan as more information is available. If you have questions about this, contact your Reinhart attorney.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.