

Wisconsin DNR's PFAS Sampling Plan May Raise Concerns with Wisconsin Businesses

The Wisconsin Department of Natural Resources (DNR) recently released a list of businesses targeted for PFAS testing. The DNR will sample water effluent at several facilities beginning in April. The list includes 39 industrial facilities, encompassing many of Wisconsin's largest manufacturers and food producers. PFAS compounds are ubiquitous and likely to exist at low levels on nearly any property with a history of industrial or commercial use.

Unlike previous DNR PFAS initiatives, the testing is not voluntary. The DNR is requiring companies to permit sampling and testing for more than 30 PFAS compounds despite the fact that no enforcement standards currently exist. The DNR will pay for the testing, but only if a company does not request to perform its own test on a share of the sample collected by the DNR.

Until now, the DNR has only sampled municipal water and wastewater facilities and a small number of utility facilities who have agreed to the testing. In fact, the DNR's authority to require sampling is an open legal question. Historically, the DNR has only asserted authority to sample for PFAS at open remediation sites or where the facility volunteers to provide a sample. However, the agency explains that mandated sampling at industrial facilities is now necessary to gather information on the economic impact of future regulation.

The DNR's new approach may raise concerns with Wisconsin businesses. 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. Moreover, the DNR advised it will publish all testing results, making the facilities a target for the [State government initiative](#) to pursue legal actions against companies perceived as responsible for PFAS contamination.

In addition, the sampling may result in new remediation cases at the tested facilities. The DNR currently requires entities discovering the existence of PFAS to report the discovery as a hazardous substance spill, triggering significant and [costly investigation and remediation requirements](#), often despite the inability to identify the sources of the historic contamination. Although the DNR's approach to PFAS [remediation is currently being litigated](#), it is possible the facilities tested will find themselves responsible for the contamination, even though PFAS could be attributed to any number of other nearby sources.

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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.

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