Subject: DNR Emergency Rule NR-159 Firefighting Foam

My name is Doug Oitzinger. I am the former Mayor of the City of Marinette and a current Alderman on its City Council. I am also a member of a local PFAS community group: Save our Water (S.O.H2O). I submit this testimony in favor of NR-159 as written to implement Wisconsin Act 101. I should like to inform you of some history behind Act 101 regulating the use of firefighting foam containing PFAS, specifically as it relates to its use in testing and disposal.

Act 101 began as AB 323/SB 310 when it was introduced in June/July 2019 in the Assembly and Senate. The original bill did not include the following language: “Appropriate containment, treatment, and disposal or storage measures may not include flushing, draining, or otherwise releasing the foam into a storm or sanitary sewer.” In previous testimony during the rule making process, representatives from the Wisconsin Manufacturers and Commerce and others have asserted this language does not mean what it says and the DNR is somehow exceeding the legislative intent of Act 101.

I should like to explain how this language came to be included in the legislation and why it means exactly what it says. The City of Marinette’s Wastewater Treatment Plant was subjected to contamination from PFAS for decades. This occurred because Tyco/Johnson Controls Inc (JCI) regularly “flushed” AFFF firefighting foam containing PFAS down the sanitary sewer after testing “batches” of foam it produced. They told the wastewater treatment plant employees the foam was harmless and biodegradable. They coordinated their discharges with the plant so not to overwhelm it, which could literally cause foam to float up to the top of the clarifiers and disperse into the ambient air.

Starting in 2017 when PFAS contamination was discovered in private wells in the Town of Peshtigo from groundwater emanating from the Tyco/JCI Fire Technology Center, the Marinette Wastewater Treatment Plant tested its influent, effluent, and its biosolids or “sludge” that was normally spread on agricultural fields. PFAS was coming into the plant, leaving the plant and discharging into the Menominee River, and it was also collecting and concentrating in the biosolids. The biosolids stored in the summer of 2018 had concentrations the equivalent of 210,000 Parts per Trillion of PFOA and 10,000 Parts per Trillion of PFOS. We now know these biosolids should never have been used on agricultural
fields, as they had been for over twenty years with high levels of PFAS contamination. Tyco/JCI did not stop disposing of its foam down the sanitary sewer until March of 2019.

Unfortunately, we now know from testing in 2020 that private wells have been contaminated with PFAS as far away as twenty miles from the city where these biosolids had been spread.

With this background, I began a series of conversations in 2019 with John Cronin, a staff person in Rep. John Nygren’s office, asking that AB 323 be amended to prohibit the discharge of firefighting foam containing PFAS into the sanitary and storm sewers. I have attached a copy of one of many e-mail exchanges with Mr. Cronin on this topic. There were also conversations between Rep. Nygren’s office and the DNR, and between me and Darsi Foss at the DNR on this topic. All with the goal of prohibiting PFAS firefighting foam from being discharged into the sewers.

On July 9, 2019 several of us from the S.O.H2O group met in person with Rep. Nygren in Marinette to discuss amending his bill and other legislation dealing with PFAS. In that meeting Rep. Nygren agreed to amend AB 323 to prohibit using sanitary and storm sewers to dispose of firefighting foam. (See Attachment 1) That amendment was subsequently introduced at the committee level, adopted, and became law in February of this year. As a representative of S.O.H2O, I testified before the Speaker’s Task Force on Water Quality in August of 2019 stating that we were seeking this amendment and we would be supporting the passage of AB 323/SB 310. Ultimately I submitted my Task Force PowerPoint presentation as testimony before the Assembly and Senate Committees supporting the bill as amended including the prohibition of disposal of PFAS foam via the sanitary and storm sewers.

There is no ambiguity in the words “may not include flushing, draining, or otherwise releasing the foam into a storm or sanitary sewer.” Those words mean zero PFAS foam. Treating the foam to any level above “zero” and discharging it into the sanitary or storm sewers is a violation of the law. Arguing that some level above non-detect would satisfy Act 101 is simply turning the English language on its head. “May not include” means you can’t do it.

But I do understand there are technical issues in terms of detection science and determining at what point a reliable detection can be made. The NR-159 addresses that in a responsible way by incorporating the 14 PFAS compounds in Table 1 as measurable detection levels to ensure treatment systems are working properly. Industry needs to know what is permissible under the law and how they can achieve and maintain compliance. The DNR has done an excellent job of identifying reliable detection levels in Table 1 and has not exceeded its authority or the intent of the law. The law does not prescribe that a “safe” level be established for PFAS in fire fighting foam; it prohibits firefighting foam containing intentionally added PFAS from being discharged into the sewers.
The contaminated biosolids in Marinette were ultimately removed and transported to a licensed landfill in the State of Oregon at a cost of $3 million. Keep in mind; we are a community of less than twelve thousand people. Tyco/JCI paid for this disposal because they caused it. The Wastewater Treatment Plant is still contaminated; new biosolids continue to be contaminated. This contamination will be with us long after all of us are gone. Even though some sewer lines coming from Tyco/JCI were lined at a cost of $1 million, PFAS continues to seep in to the system from groundwater. It was absorbed into the concrete structures in the plant, and the sewer lines sit in a sponge of contaminated groundwater that leaks into the sewer pipes. On August 17, 2020, the Marinette Water/Wastewater Board approved the purchase of equipment costing $1.3 million to grind, compress, and dewater the City’s biosolids to reduce their volume and thereby the cost of disposal in a special landfill in Oregon or possibly Canada. In total, it has cost Marinette $5.3 million to dispose of and respond to PFAS contamination in our biosolids. Tyco/JCI has reimbursed us for those expenses but has also strong-armed us into an agreement where future expenses will be Marinette’s liability. The landfill expense will cost the City $20,000 more annually than it cost to land-spread the biosolids on agricultural fields and we won’t be reimbursed for that going forward.

Had Act 101 been the law twenty years ago and “zero” PFAS firefighting foam had been introduced into the sanitary and storm water sewers, then none of this would have happened. That is why we asked for, and Rep. Nygren agreed to amend his bill to prevent this from ever happening again anywhere in Wisconsin.

Act 101 and NR-159 will not help Marinette from what was done in the past but it will prevent any further deliberate discharge of foam products containing PFAS into our sewers. The amendment we sought and that was included in Act 101 is going to help the rest of the State from experiencing our nightmare. We don’t want any other community to go through what we are going through. The only way to ensure this is to prevent the reckless discharge and disposal of firefighting foam containing PFAS into our sewers and into our environment.

I know of only one major manufacturer of Fire Fighting Foam in Wisconsin affected by this emergency rule: Tyco/JCI. They did not object to the final draft of this rule when it went before the Natural Resources Board for approval in October. Tyco/JCI is right now in the process of building a wastewater pre-treatment facility that will meet this rule to treat their firefighting foam before discharging it into the Marinette sanitary sewer. If they are not opposing this rule as written, why are others? Without a statewide rule, you leave local governments to try to protect themselves from PFAS contamination, and local governments don’t have the money or the attorneys to do it.

Finally, let me point out that PFAS is a 100% manmade compound. It doesn’t exist in nature. If it is found in the environment, or in your blood serum, it is there because it was carelessly put there by the use of PFAS in manmade products. I won’t go into the history of when
companies knew this was a dangerous compound that should never be released into our environment. Let me just say, we know it now and Act 101 was a very specific attempt of dealing with only one source, abet a major source, of this contamination crisis in our State. This rule only addresses PFAS in firefighting foam and affects no other sources of contamination in sewer systems or in the environment. The DNR has the responsibility to establish an emergency rule that implements the clear intent of Act 101 and not bend to the wishes of industry that doesn’t care that thousands of people now live in a beautiful area that is contaminated PFAS from firefighting foam. The DNR was given the authority to determine what the appropriate treatment and disposal of firefighting foam shall be. The law requires that if it contains PFAS, it cannot be disposed of through the sanitary or storm water sewers.

Sincerely,

Doug Oitzinger

CC: Sen. Robert Cowles, Darsi Foss, Mayor Steve Genisot
Good afternoon Doug,

Per our discussions, I have an amendment drafted to AB 323/SB310 that states appropriate containment, treatment, and disposal methods may not include flushing, draining, or otherwise discharging AFFF down the sewer.

Sen. Cowles, who is both the bill’s co-author and chair of the Senate committee through which this legislation will proceed, customarily waits until after a public hearing is held to introduce amendments to bills. For the sake of simplicity, if there are additional changes to the bill, we would likely roll those changes and the discharge language into one larger amendment.

In speaking to the Cowles’ office, it sounds like they are aiming for the latter part of August or early September for a public hearing. Rep. Joel Kitchens, chair of the Assembly Committee on the Environment, has indicated a similar timeline.

I hope this information is helpful. Let me know if you have additional questions.

Best,

John Cronin
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