

# Wisconsin Manufacturers & Commerce: Sues Evers Administration for Unlawful Environmental Policies & Standards

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WAUKESHA – Wisconsin Manufacturers & Commerce (WMC) – the combined state chamber and manufacturers’ association – filed a lawsuit in the Waukesha County Circuit Court on Tuesday against the Wisconsin Department of Natural Resources (DNR) seeking relief from certain unlawful policies and standards.

The complaint alleges that the DNR has unilaterally and unlawfully changed the requirements for the state’s Remediation and Redevelopment program and the Voluntary Party Liability Exemption (VPLE) program without going through the required rulemaking process. Those programs allow private parties to work cooperatively with the Department on environmental cleanup.

“Wisconsinites have a right to know what laws and regulations the state seeks to apply against them,” said WMC Litigation Center Executive Director Lucas Vebber. “For too long, the DNR has refused to provide the certainty that state law requires.” Under Wisconsin law, property owners who are aware of a discharge of a hazardous substance on their property are required to report it to the DNR and go through the Remediation and Redevelopment program. Parties can also voluntarily enter into the VPLE program to do a more intensive cleanup by investigating the site to see if hazardous substances are present, and then remediate those to the DNR’s satisfaction. For parties who go that route, the DNR issues the owner a “Certificate of Completion,” which grants them and future owners of the property liability protection.

This process allows properties to be redeveloped and improved for future use, while protecting the environment from known hazardous substances.

Unfortunately, the DNR has never promulgated a list of substances that qualify as “hazardous substances” under state law. Instead, DNR makes that determination on a case-by-case basis, even going so far as to say that milk could qualify. Recently, the DNR decided that a new category of substances, which they refer to as “emerging contaminants” qualify as hazardous substances. These include PFAS and related substances, which are not currently regulated by the state or federal governments. Due to these “emerging contaminants,” the DNR also fundamentally altered the VPLE program in a way that greatly restricts the benefits the program was intended to have – all without the public’s input or legislative oversight, and contrary to the law.

“The Department never promulgated these policies as rules,” added Vebber. “This lawsuit simply seeks to bring agency practice back in line with longstanding state law.”

WMC filed the lawsuit with co-plaintiff Leather Rich, Inc., a family-owned specialty dry cleaning company based in Oconomowoc that has been struggling to navigate the DNR’s shifting requirements on this issue for nearly three years.

The suit asks the Court to declare these unlawfully adopted policies as invalid, which would force the DNR to follow state law and go through the statutory rulemaking process. This would provide the business community, developers and local governments with certainty that cleanups and property redevelopments will be done according to the letter of the law, instead of the whim of DNR staff.

[Click here for a copy of the complaint.](#)