

WisPolitics review: DNR since 2020 named at least two responsible for PFAS contamination agency attributed to other parties

Posted on Friday, Nov 29, 2024

The Department of Natural Resources identified at least two parties in the past four years as responsible for addressing PFAS contamination the agency attributed to others, according to agency records.

The records show DNR has issued letters identifying responsible parties for PFAS contamination across 22 sites since 2020. And a WisPolitics review found DNR issued at least two such letters to parties even though the agency pinned the blame on others for causing the contamination. State law does not include a responsibility exemption for so-called “innocent landowners.”

A separate request for enforcement actions related to PFAS contamination found at least six notices of violations were issued over the period — two of which were sent to parties that may not have caused the contamination.

The enforcement process involves issuing a maximum contaminant level violation, notice of violation and enforcement conference to discuss it, as well as a plan and timeline to resolve the pollution.

>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)

DNR issues responsible party letters to those required to investigate the degree and extent of contamination when there is a confirmed discharge of a pollutant to the environment. The letters explain how entities can investigate and clean up contamination to comply with the law.

Meanwhile, the office of Sen. Eric Wimberger, R-Green Bay, pointed to more instances of parties it argued were wrongly held responsible for contamination.

WisPolitics requested the DNR records as GOP lawmakers have regularly raised concerns the agency is putting innocent landowners on the hook for contamination they didn't cause while holding up the release of \$125 million to combat the forever chemicals.

Dem Gov. Tony Evers vetoed a bill co-authored by Wimberger and Sen. Rob Cowles, R-Green Bay. It laid out a framework for the funding. Evers objected to provisions he argued would restrict DNR's ability to regulate PFAS and hold polluters accountable. He has called for Republicans to release the funding under a proposal that mirrors SB 312, without provisions that would restrict DNR authority.

But Republicans have argued the components are crucial to ensure those who haven't caused contamination don't foot the bill for pollution they didn't cause.

One of the responsible party letters was sent on May 25, 2022, to Fraser Properties related to a Chilton property. DNR in the letter said the agency was exercising its discretion to pursue the cause of the contamination — Newell Rubbermaid, Inc. — but noted Fraser Properties would have to take action if the manufacturer was “no longer able or willing” to address the contamination.

The other letter was sent to West River Lofts LLC in Milwaukee for a Two Rivers property. The company was named a “possessor” of contamination on March 3, 2022. Later that month on March 25, a responsible party letter was sent to Newell Operating Company for contamination caused by aluminum cookware manufacturing by Mirro Aluminum Company, a division of Newell.

DNR did not have additional comment, noting the agency has the authority to issue responsible party letters to those who “cause,” “possess,” or “control” discharges of a hazardous substance under the state's Spills Law.

The Spills Law, which establishes DNR's authority to require those responsible for hazardous contamination to immediately report it and take action to restore the environment, is currently being challenged before the state Supreme Court by Wisconsin Manufacturers and Commerce.

Evers spokesperson Britt Cudaback in a statement criticized Republicans for

refusing to release funding to fight PFAS contamination.

“Here is the simple fact: Republican lawmakers have been sitting for over 500 days on \$125 million to fight PFAS statewide—funds they can release at any time, which was the case over 500 days ago and remains the case today,” she said.

State law does not exempt “innocent” parties from responsibility

Any public water systems that exceed PFAS standards under the federal Safe Drinking Water Act are required to resolve the contamination. There are [101 sites](#) in Wisconsin currently addressing contamination.

Under state law, a responsible party is anyone who “causes,” “possesses” or “controls” contamination by a hazardous substance to the environment. That means someone can be labeled “responsible” despite not having caused the contamination.

There is no exemption under state law for innocent property owners, though DNR can use its discretion to prioritize the person or entity who caused contamination. DNR has [vowed](#) not to pursue farmers for unintentional PFAS contamination due to landspreading waste.

DNR has issued 25 responsible party letters related to PFAS contamination since 2020. Many of the recipients included manufacturers such as Oshkosh Defense, Fincantieri Marinette Marine, 3M, Sun Chemical Corporation, Georgia Pacific and Newell Operating Company.

Letters were also issued to the Chippewa Valley Regional Airport, and jointly to the Wisconsin Air National Guard, the city of Madison and the Dane County Airport for contamination caused by the use of PFAS-containing firefighting foam.

Wimberger in a statement to WisPolitics said under current law, any property owner’s application for state funds to remediate PFAS contamination will result in a finding that the property emits a hazardous substance and the owner is a responsible party.

“The application itself is a self-incriminating statement and puts the property owner on the hook for an unknown remediation cost at the DNR’s discretion,” Wimberger said. “The DNR may pinky swear they will pursue industrial producers first. But, the landowner still has to notify their bank that the mortgage collateral is now a

brownfield, and any potential buyer that they will become the new responsible party if they purchase. By seeking help the DNR will financially ruin landowners by a function of law we can change.”

Wimberger’s office provided WisPolitics with an [analysis](#) of DNR data on contaminated properties compiled by Cowles’ office. The analysis includes examples of parties it argues shouldn’t have been found liable for contamination, including eight that received responsible party letters provided through WisPolitics’ request: Fraser Properties, West River Lofts LLC, the city of Wausau, the state Department of Administration, the Chippewa Valley Regional Airport, the city of Madison, Dane County Regional Airport and the National Guard.

The analysis notes the use of firefighting foam containing PFAS was required by the FAA until 2022, when airports were permitted to find alternatives. It argues both the Chippewa Valley Regional Airport and the parties held responsible for PFAS contamination at the Dane County Airport should not be held responsible.

Most notices of violations issued since 2020 issued to those who caused contamination

WisPolitics also requested notices of violation related to PFAS contamination issued since 2020. DNR has the authority to issue the notices to entities it believes have violated a permit condition, administrative rule or statutory requirement.

The request turned up six notices of violations over the past four years, and all but two were for violations by entities known to have caused the contamination.

The two exceptions — Pine River School for Young Learners in Merrill, and a 3M plant in Wausau — were issued notices for pollution found as a result of mandatory sampling in 2023. When asked if causes for the contamination had been identified, DNR told WisPolitics it hasn’t named a responsible party under the state’s Spills Law in either case.

Pine River School for Young Learners was sent a [notice of violation](#) in May after DNR-mandated testing found a well serving the school had levels of PFAS exceeding state limits. DNR told WisPolitics the school has been working with the agency to come back into compliance, and plans to use Bipartisan Infrastructure Law funding to drill a new well.

3M was issued a [notice of violation](#) on Jan. 9 after compliance testing found PFAS levels beyond state limits at a water system service serving the company's Greystone plant in Wausau.

Meanwhile, three of the violations since 2020 were related to contamination caused by Marinette-based chemical manufacturer ChemDesign, which processes PFAS-containing material for Johnson Controls and Tyco Fire Products on a 7-acre plot of land.

Johnson Controls and Tyco Fire Products, which merged with Johnson Controls in 2016, were found responsible for extensive PFAS [contamination in the area](#) tied to the use of PFAS-containing firefighting foam after starting to investigate contamination in Marinette and Peshtigo in 2017. The companies stopped outdoor training using firefighting foam that same year. Tyco reached a \$750 million national settlement over PFAS pollution in April, but the state didn't receive any of the money, because it was a settlement with public water systems not owned by the state.

DNR sent [three notices of violations](#) to ChemDesign in 2020 for failing to comply with the state's wastewater and spill pollution laws at its 2 Stanton Street facility in Marinette owned by Johnson Controls and Tyco.

The final [notice of violation](#) turned up in the records search was issued jointly to the Rhinelander-Oneida County airport, city of Rhinelander, and Oneida County on Sept. 22, 2022.

The notice was issued to the entities for failing to take action to restore the environment after they were found responsible for PFAS contamination in a city of Rhinelander well in 2019. DNR stated the parties had failed to install monitoring wells to measure contamination, evaluate options to minimize PFAS pollution and provide well sampling results to well owners, among other violations.