

John Nygren

WISCONSIN STATE REPRESENTATIVE ★ 89TH ASSEMBLY DISTRICT
Co-Chair, Joint Committee on Finance

September 26, 2019

Dave Hansen
State Senator
30th Senate District

Dear Sen. Hansen,

The per-and-polyfluoroalkyl substances (PFAS) contamination in our respective legislative districts has created hardship and uncertainty for our constituents. The situation we are facing in Marinette and the Town of Peshtigo has become the locus of contamination we now know is affecting other areas of the state. Unfortunately, this issue is always evolving and becoming more complicated. There are a lot of unknowns surrounding the breadth of this issue, the dangers this class of chemicals poses, and what needs to be done to protect human health and the environment.

While we have both authored legislation on this topic, we both understand it will take a multifaceted approach using new and existing tools to get a firm grasp on this issue and prevent future PFAS contamination. I view AB 323 as a way to significantly limit the use of aqueous film forming foam (AFFF), one of the largest sources of contamination in the state. Sen. Cowles and I sought bipartisan co-sponsors, engaged with stakeholders, and are currently making changes based on input to make AB 323 better. I have been transparent that AB 323 is not the complete answer to the water contamination issue in Marinette and Peshtigo. But we believe it is a step in the right direction.

Your bill, SB 302, also referred to as the CLEAR Act, has a number of provisions which provides funding to study PFAS contamination, reinforces DNR's ability to set standards for PFAS chemicals, and clarifies DNR's ability to investigate and direct remediation of PFAS contamination. Instead of attempting to work with Republicans, the CLEAR Act was unveiled at a press conference. More concerning is the fact that the CLEAR Act was hailed as the answer to all the problems of PFAS water contamination. We both know this is disingenuous and misleading to the residents of Marinette and Peshtigo.

Regardless, I believe that when we sit down and discuss the issues facing our constituents without political motivation, we can find common ground and a solution that will benefit everyone. I believe you also share this belief. To that end, the purpose of this letter is to outline parts of the CLEAR Act I support, parts that I believe are problematic and should be amended, offer to meet with you to further discuss these topics, and ask you to publicly support AB 323.

As I mentioned, one piece of the CLEAR Act provides funding and additional staff to help the DNR respond to PFAS contamination. As you may know, the state budget created two new



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positions at the DNR for PFAS-related research and other emerging chemical contaminants. It also appropriated funds to develop a PFAS model and conduct further studies of PFAS. These two provisions are exactly the same as the Governor requested in his budget recommendations. Although the CLEAR Act appropriates duplicative amounts of funding for PFAS studies as the budget, I am supportive of providing additional financial resources or positions if they are necessary to help DNR and DHS in their work to respond to PFAS contamination beyond what was included in the budget.

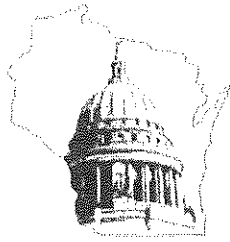
The CLEAR Act also directs the DNR to set standards for PFAS chemicals, and clarifies DNR's ability to investigate and direct remediation of PFAS contamination. It should be noted that the DNR has existing authority to establish standards for PFAS chemicals in water, air, and soil. In fact, on August 27, 2019, the DNR published scope statements beginning the rule-making process for a permanent rule to establish maximum contaminant levels for drinking water and other standards for groundwater and surface water. In its scope statement, the DNR stated that the amendment to administrative rules "is the most efficient and effective" way to add certain PFAS contaminants as regulated contaminants. To date, the DNR has not exercised its authority with regards to PFAS chemicals and hazardous air emissions.

State law also provides DNR with explicit authority to investigate a site or facility, and surrounding area, if the discharge of a hazardous substance has been reported. As evidenced in a letter from DNR to JCI dated July 2, 2019, which requested additional information as part of a site investigation, this is currently happening in Marinette and Peshtigo.

I have long advocated for science-based health standards with which to base DNR enforcement standards on. I do not believe that the Legislature should establish or force standards through legislation. I am happy to discuss amendments to the CLEAR Act that reinforce the establishment of science-based standards, but the facts show that the DNR does not lack the regulatory authority to establish enforcement standards.

Outside of the items listed above, the CLEAR Act would grant new authority to DNR for interim standards. I have been advised that this new process could be on shaky legal ground and could be perilous for local units of government and utilities. Not to mention, under current law, the DNR may use an emergency rule to put new standards into effect immediately while working on a long-term permanent rule. To date, the DNR has not exercised this authority with regards to PFAS chemicals.

We have different letters behind our names, but I do not consider you my adversary on this issue. I want a positive resolution to the PFAS problem. I trust you want the same. To show this bipartisan spirit, I ask you to co-sponsor AB 323.



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Finally, I am willing to work with you to address the concerns I have outlined, or explore different solutions to make a difference for our districts. Shortly, my staff will reach out to you about scheduling a meeting to discuss the areas of concern I have with the CLEAR Act.

Thank you for your consideration.

Regards,

John Nygren
State Representative
89th Assembly District