

FILED
05-31-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CV001298
Honorable Stephen E
Ehlke
Branch 15

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

COUNTY OF DANE
210 Martin Luther King, Jr.
Madison, WI 53703

Petitioner,

Case Code: 30607
[Administrative Agency Review]

v.

**WISCONSIN DEPARTMENT OF
NATURAL RESOURCES**
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921

Respondent.

PETITION FOR JUDICIAL REVIEW

Petitioner, Dane County, by its attorneys, Dane County Corporation Counsel, pursuant to Wis. Stat. §§ 227.52 and 227.53, hereby petitions this Court to review a final decision of the Department of Natural Resources (“Department” or “DNR”) reissuing a Wisconsin Pollution Discharge Elimination System Permit to the Dane County Regional Airport for its storm water system (“Permit”).

As grounds therefore, Petitioner alleges as follows:

1. Petitioner seeks judicial review of an administrative law decision dated April 29, 2022 setting the terms for the Permit (“Decision” a/k/a the Permit). A true and correct copy of such final Decision is attached and incorporated herein by reference as Exhibit A.

PARTIES

2. Petitioner, Dane County is a body corporate of the State of Wisconsin. Petitioner's principal address is located at 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53703. Dane County owns and operates the Dane County Regional Airport ("Airport").

3. Respondent, the Department of Natural Resources ("Department" or "DNR"), is an agency of the State of Wisconsin with its principal office located at 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707. The Department is charged with administering the Wisconsin Pollution Discharge Elimination System ("WPDES") and issuing permits thereunder.

BACKGROUND

4. The Permit contains sampling and other standards regulating per- and polyfluoroalkyl substances ("PFAS").

5. When DNR determines a hazardous substance is present in a storm water system that is subject to an industrial storm water discharge permit, its rules require it to choose between one of two of its remediation programs. It can elect to apply its storm water discharge permit rules in Chapter NR 216, Subchapter II, Wis. Adm. Code or it can apply its Spill Law remediation rules setting forth requirements imposed on responsible parties through Chapter NR 706 et seq. Wis. Adm. Code.

6. DNR elected to apply the Spill Law remediation rules to address PFAS detected in the Airport storm water system. Specifically, in 2019, DNR issued a

responsible party letter to Dane County in response to storm water sampling results detecting PFAS. The letter directed the Airport to report the presence of PFAS as a hazardous substance pursuant to the requirements of Wis. Stat. Chapter 292 and its implementing rules, which include Wis. Adm. Code Chapter NR 706. A true and correct copy of the responsible party letter is attached and incorporated herein by reference as Exhibit B (“Responsible Party Letter”).

7. Since 2019, in accordance with the Responsible Party Letter at Exhibit B, the Airport and others have been undertaking an investigation and remediation process (“remediation process”) to address the presence of PFAS on Airport property, including in the Airport storm water system. That remediation process includes sampling of the storm water system in accordance with Department-approved work plans.

8. Because DNR elected to apply the Spill Law process to the Airport PFAS contamination, an exclusion set forth in § NR 216.21(5)(f) applies and the PFAS response process is not subject to separate storm water regulation standards.

9. The Department erroneously applied the exempted storm water rules through inclusion of the Contested Terms in the Permit. Because those terms conflict with DNR rules, they are not lawful.

STANDING OF PETITIONER

10. The Petitioner, as the permittee, is substantially aggrieved and its substantial interests are adversely affected by certain terms and conditions of the Decision/Permit.

11. As owner of the Airport, Petitioner's injury is different in kind and degree from injury to the general public because Petitioner is the permittee that will be directly responsible for incurring the costs and undertaking the activities required by the Permit.

12. Legislative intent to protect Petitioner's interests is found in Chapters 227 and 283, particularly Wis. Stat. §§ 283.63, 227.52 and 227.53.

13. The specific injuries to the substantial interests of Petitioner that are threatened by the Department's actions include but are not limited to:

- a. substantial increased costs;
- b. substantial administrative burdens, including probable controversy arising from unreliable analytical processes;
- c. probable delays associated with sampling and other requirements that are redundant to and may conflict with ongoing remediation activities.

CLAIMS FOR RELIEF

14. The following Permit terms are based on an erroneous interpretation of law and are not authorized (hereafter "Contested Terms"):

- a. PFAS sampling requirements, including those set forth in §§ 5.2.1, 5.2.7, and 5.2.11
- b. PFAS monitoring and other terms encompassed in § 5.2.12, including §§ 5.2.12.1, and 5.2.12.2.
- c. PFAS-related terms and requirements in §§ 6.1, 6.3, and 8

15. The statute governing monitoring in WPDES permits is Wis. Stat. § 283.55. That statute requires a WPDES permittee to "[s]ample the effluents discharged from each point source under the owner's or operator's ownership or control in accordance with such methods, at such locations and in such manner as the department shall by rule prescribe." Wis. Stat. § 283.55(1)(d).

16. DNR rules governing WPDES storm water permits are set forth in Wis. Adm. Code Ch. NR 216.

17. The monitoring provisions setting forth the methods and manner of sampling, as required by Wis. Stat. § 283.55(1)(d), are limited to industrial storm water discharge permits. Wis. Adm. Ch. NR 216, Subchapter II. *See* § NR 216.28 Wis. Adm. Code.

18. Further, the requirements in Permit § 5.2.12.2, 6.1, 6.3, and 8 are premised on the requirement for development and maintenance of a Storm Water Pollution Prevention Plan (“SWPPP”). The SWPPP requirements are also contained in Subchapter II, specifically § NR 216.27, Wis. Adm. Code.

19. Subchapter II of Ch. NR 216 excludes from coverage discharges that are being addressed as a hazardous substance discharge. The exclusions are set forth in § NR 216.21 and specify that “[t]his subchapter does not apply to. . . (f) [d]ischarges of hazardous substances that are required to be reported under ch. NR 706.” Wis. Adm. Code § NR 216.21(5)(f).

20. The Responsible Party Letter establishes that the presence of PFAS in the Airport storm water system is covered by the exclusion in Wis. Adm. Code § NR 216.21(5)(f).

21. Chapter NR 706 are the rules governing “Hazardous Substance Discharge Notification and Source Confirmation Requirements.” Wis. Adm. Code Ch. NR 706 Title.

22. Chapter NR 706 “applies to hazardous substance discharges that are subject to the requirements of s. 292.11, Stats.” Wis. Adm. Code § NR 706.02(1).

23. Further, § NR 706.05 which sets out the general requirements for responsible parties, including a discharge notification requirement, applies “to all persons who have responsibility under s. 292.11, Stats., for any hazardous substance discharge that may occur. . .” Wis. Adm. Code NR §§ 706.02(2) and 706.05.

24. The Responsible Party Letter (Exhibit B) identifies the County, through its Airport, as a responsible party under Wis. Chapter 292, Wisconsin’s Spill Law, for the presence PFAS at the Airport. As a result, DNR has elected to regulate the presence of PFAS on Airport property as a hazardous substance discharge subject to the reporting and other requirements in Ch. NR 706.

25. The exclusion of “[d]ischarges of hazardous substances that are required to be reported under ch. NR 706” from the storm water monitoring and other industrial discharge requirements in Subchapter II of the NR 216 rules thus applies to the PFAS contamination at the Airport. *See* Exhibit B and Wis. Adm. Code § NR 216.21(5)(f).

26. Even were the Contested Terms authorized, there are not yet approved analytical methods for sampling of PFAS substances.

27. Chapter NR 219 prescribes the analytical test methods and other procedures that “shall. . .be used in the determination of concentrations and quantities of pollutant parameters as required for. . .reports required to be submitted by dischargers in accordance with the conditions of issued permits.” Wis. Adm. Code NR § 219.02(1)(b). This requirement is set forth in Permit § 7.1.2.

28. Permit §§ 5.2.12.1 and 7.1.1 require reporting of PFAS sampling results.

29. Permit § 5.2.12.1 requires sampling of PFAS substances listed in DNR guidance it describes in that section as “PFAS Update-Default Reporting List for Sampling and Analysis Requirements and Expectations.” See Exhibit A. DNR did not include a copy of the referenced guidance document in the Permit. Attached and incorporated herein by reference as Exhibit C is a true and correct copy of a document fitting the general description of the referenced document that was found in a search of the DNR website (“Reporting List”).

30. Chapter NR 219 does not contain analytical methods for any of the substances listed in the Reporting List attached as Exhibit C.

REQUEST FOR RELIEF

WHEREFORE, Petitioner demands that judgment be entered against the Wisconsin Department of Natural Resources pursuant to Wis. Stat. § 227.57 as follows:

1. Reversing the Department’s final decision;
2. Ordering the Department to remove the Contested Terms from the Permit;
3. Remanding this matter to the Department to take actions consistent with the Court’s ordered judgment.

Dated this 31st day of May, 2022.

DANE COUNTY CORPORATION COUNSEL

ELECTRONICALLY FILED BY:

/s/Amy B. F. Tutwiler

Amy B. F. Tutwiler

Assistant Corporation Counsel

State Bar No.: 1046945

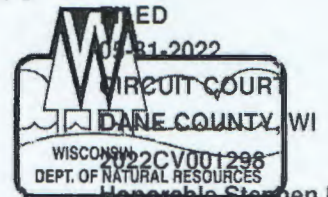
City-County Building

210 Martin Luther King, Jr. Blvd., Rm. 419

Madison, WI 53703

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
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Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
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TTY Access via relay - 711



Honorable Stephen E
Ehlike
Branch 15

October 11, 2019

SENT VIA E-MAIL

Michael Kirchner
Director of Engineering
Dane County Regional Airport
4000 International Lane
Madison, WI 53704

Subject: Reported Contamination in and Responsibilities for Dane County Regional Airport:
BRRTS Activity #02-13-584472

Dear Director Kirchner:

In October 2019, the department received surface water sample results, produced by the Dane County Regional Airport, from various locations within the Dane County Regional Airport property. Several per- and polyfluoroalkyl substances ("PFAS") were detected in these samples.

This sampling data indicates you are responsible for the discharge of a hazardous substance or other environmental pollution (hereafter referred to as "contamination") at the above-described site. You are receiving this letter as a person who caused, possesses or controls the PFAS contamination discovered by the department. "Site" refers to the property where the contamination occurred and any other property it has migrated to, as defined in Wisconsin Administrative Code ("Wis. Admin. Code") § NR 700.03(56). Under Wis. Stat. ch. 292, you may be considered a responsible party whether or not you own the property.

This letter explains how to initiate the investigation and cleanup of contamination of the site, and how to access further information and assistance from the department. The longer contamination is left in the environment, the farther it can spread and the more it may cost to clean up. Quick action may lessen damage to your property and neighboring properties and reduce your costs in investigating and cleaning up the contamination.

Please note that in addition to the standard requirements for responsible parties, this letter also specifies the department's direction that you take any immediate actions necessary to halt and minimize the harmful effects of the contamination. This may include evaluating the need for a proposed interim action to halt and treat PFAS contamination from migrating into surface water and groundwater.

Lastly, this letter also directs you to evaluate the need for public participation and notification in accordance with Wis. Admin. Code § NR 714.07.

Site Investigation, Immediate, Interim and Remedial Actions

Wis. Admin. Code Chapter NR 716 lists the requirements for investigation of contamination in the environment. Specifically, Wis. Admin. Code § NR 716.11(3)(a) requires that the field investigation determine the "nature, degree and extent, both areal and vertical, of the hazardous substances or environmental pollution in all affected media." Your proposed work plan must outline an investigation that will determine the full extent of PFAS contamination associated with current and past airport activities. Further remedial responses, in addition to immediate and interim actions, may be necessary upon completion of a remedial action options report.

The law requires you to take any immediate actions needed to halt and minimize harmful effects, unless you are otherwise directed by department staff, and to submit documentation describing immediate actions and outcomes within 45 days of October 7, 2019, which is the date the department received the data indicating a hazardous substance discharge had

occurred, unless otherwise directed by the department. A final immediate action report should be submitted in accordance with Wis. Admin. Code NR 708.09.

The department also requests that you submit to the department an evaluation within 60 days for the need for an interim action to mitigate and treat PFAS-contaminated groundwater and surface water, consistent with Wis. Admin. Code NR § 708.11. If directed, you shall take any interim actions directed by the department.

Legal Responsibilities:

Persons meeting the definition of “responsible party” under Wis. Admin. Code § NR 700.03(51) must follow applicable law to address the discharge of a hazardous substance to the environment or other environmental pollution. Wisconsin Statutes (“Wis. Stats.”) ch. 292 and Wis. Admin. Code chs. NR 700 through NR 754 provide specific requirements for undertaking appropriate response actions to address contamination, including requirements for emergency and interim actions, public information, site investigations, remedy selection, design and operation of remedial action systems, and case closure.

General Recommendations for Responsible Parties:

The department recommends that you:

1. Hire a Qualified Environmental Consultant

To ensure response actions you plan to undertake comply with Wisconsin law, you should hire an environmental consultant within **30 days of the date of this letter** to meet the regulatory deadlines listed below. A delay in hiring an environmental consultant could result in you missing key submittal deadlines.

Hiring a consulting firm with staff that have the appropriate State of Wisconsin qualifications to supervise and certify the submittals is a critical component and necessary to meet your requirements. Further, an environmental consultant should be knowledgeable of Wisconsin’s technical procedures and laws and be able to answer questions regarding cleanup requirements. Required qualifications for environmental consultants are specified in Wis. Admin. Code ch. NR 712. Program guidance is available, see *Wis. Admin. Code ch. NR 712 Qualifications and Certifications, RR-081*.

2. Properly Submit Reports on Time with Required Information Included

Wisconsin law includes timeframes for submitting technical documents and conducting work, as well as specifications for what should be included in those submittals. This letter provides a general overview of the timeframes and first steps to take for site investigation and cleanup. For an overview of timing requirements, please refer to *NR 700 Process and Timeline Overview, RR-967, enclosed*.

The department developed the publication *Guidance for Electronic Submittals for the Remediation and Redevelopment Program, RR-690*, enclosed, to assist responsible parties and consultants in properly submitting documents. Wis. Admin. Code § NR 700.11(3g), and other specific provisions within Wis. Admin. Code ch. NR 700, outline the requirements for submittals, including electronic submittals. Consultants and representatives of responsible parties are required to submit one paper copy and one electronic copy of submittals, including case closure documents. The electronic version must be an exact duplicate of the paper version. Failure to submit both a paper copy and electronic copy delays acceptance of your submittals.

3. Consider the Benefits of a Fee-based Technical Review of your Submittals

In-depth department review of technical reports and submittals is available for a fee. The Remediation and Redevelopment (RR) Program project managers are available throughout the process to answer general questions and provide general input as the site moves toward closure. However, if you want a formal written response from the department, a meeting or both on a specific submittal, a review fee will be required in accordance with Wis. Admin. Code ch. NR 749. **Obtaining technical assistance from department project managers throughout the process is an effective way to prevent problems and delays at the end of the process when case closure is requested.** Forms, a fee schedule, and further information on technical assistance is available at dnr.wi.gov and searching “brownfield fees.”

Required Steps to Take and Documents to Submit:

The steps listed below serve as a general overview only — all mandatory steps and submittals specified in state law must be met before the department can grant “case closure,” which is a determination by the department that no further cleanup is necessary at a site, as defined in Wis. Admin. Code § NR 700.03(3m).

1. **Immediate Actions – NR 708.05:** The law requires you to take any immediate actions needed to halt and minimize harmful effects, unless you are otherwise directed by department staff, and to submit documentation describing immediate actions and outcomes within 45 days after receipt of this letter. A final immediate action report should be submitted in accordance with Wis. Admin. Code NR 708.09.
2. **Interim Actions – NR 708.11:** The law requires you to evaluate the need for interim action prior to initiating a site investigation and during a site investigation. Interim action shall be taken where it is necessary to contain or stabilize a discharge of a hazardous substance or environmental pollution, in order to minimize any threat to public health, safety, or welfare, or the environment. When warranted, responsible parties shall implement an interim action as soon as possible.
3. **Public Participation and Notification – NR 714.07:** In order to promote effective and meaningful public participation and notification, responsible parties shall conduct all necessary public participation and notification activities, unless otherwise directed by the department. Responsible parties shall evaluate the need for, and the level of public participation based on the criteria in Wis. Admin. Code § NR 714.07(1).
4. **Scoping and Work Plan Submittal – NR 716.07 and 716.09:** The law requires that you appropriately scope out your site investigation and submit a work plan within 60 days of this notification, for completing a site investigation. The work plan must comply with the requirements in Wis. Admin. Code, chs. NR 700 through NR 799. For additional assistance, the department has extensive guidance on its web page at dnr.wi.gov and search “brownfield publications.”

Prior to and during a site investigation, you must evaluate whether any interim actions are needed to contain or stabilize a hazardous substance discharge or environmental pollution, pursuant to Wis. Admin. Code § NR 708.11. If you undertake an interim action (e.g., free product removal), you must submit documentation of the action per Wis. Admin. Code § NR 708.15.

5. **Field Investigation – NR 716.11:** Following submission of the work plan, the site investigation must be started within the timeframe provided under law. The timeframe varies depending on whether you are requesting the department’s fee-based review of the work plan. If you do not request a fee-based review of the work plan, you must initiate the field investigation within 90 days of submitting the work plan, and you may proceed with the field investigation upon department notification to proceed; however, if the department has not responded within 30 days, from submittal of the work plan, you may then proceed with the field investigation. If a fee and request for department review of the work plan is submitted, the field investigation must begin within 60 days after receiving department approval.
6. **Sample Results Notification Requirements – NR 716.14:** You must report sampling results to the department, owners, occupants, and various other parties within 10 business days after receiving the sampling results, unless a different timeframe is approved by the department, in accordance with Wis. Admin. Code § NR 716.14.
7. **Site Investigation Report – NR 716.15:** Within 60 days after completion of the field investigation and receipt of laboratory data, the law requires you to submit a Site Investigation Report (SIR) to the department. As part of the SIR or in the Remedial Actions Options Report (RAOR), if there is soil contamination, the responsible party shall identify the current land use (i.e., industrial or non-industrial) and zoning for the site or facility in accordance with Wis. Admin. Code § NR 720.05(5). Also, as part of the SIR or in the RAOR, you must include any interim action report that may be required under Wis. Admin. Code § NR 708.15.

8. **Remedial Actions Options Report – NR 722:** Within 60 days after submitting the SIR, the law requires you to submit a RAOR. The selected remedy in the RAOR should include an evaluation of green and sustainable remediation criteria, as appropriate, as required by Wis. Admin. Code § NR 722.09(2m). This may be submitted as part of a broader SIR.
9. **Remedial and Interim Action Design, Implementation, Operation, Maintenance and Monitoring Reports – NR 724:** Unless otherwise directed by the department, the responsible party shall submit all plans and reports required in Wis. Admin. Code ch. NR 724.
10. **Notification of Residual Contamination or Continuing Obligations – NR 725:** In situations where notification is required, the responsible party must provide submittal(s) that confirms that continuing obligations have been identified and affected property owners have been notified by the responsible parties 30 days prior to case closure, as required by Wis. Admin. Code ch. NR 725.
11. **Semi-annual Reporting -- NR 700.11:** Wis. Admin. Code § NR 700.11(1)(a) requires responsible parties to submit semi-annual site progress reports to the department until final case closure is granted. The reports summarize the work completed over six months and additional work planned to adequately complete the response action at the site. Consultants may submit these reports on behalf of responsible parties. These reports are due in January and July of each year. Please refer to department publication *NR 700 Semi-Annual Site Progress Report, RR-082*, for more information.

Submittals required under Wis. Admin. Code chs. NR 700 - 726

These documents, as applicable, must be submitted to the department prior to the responsible party requesting case closure, unless otherwise directed by the department:

- Ch. NR 708 reports and documentation for any immediate or interim actions.
- Ch. NR 712 professional certifications and signatures are included with applicable submittals.
- Ch. NR 716 work plan(s) and site investigation report.
- Ch. NR 722 remedial action options report (exception is for Dry Cleaners Environmental Response Fund sites), with the selected remedial action identified.
- Ch. NR 724 design, construction documentation, operation, maintenance and monitoring plans and reports, including vapor mitigation commissioning.
- Ch. NR 725 submittal(s) that confirms that continuing obligations have been identified and affected property owners have been notified by the responsible parties 30 days prior to case closure.
- If requesting case closure, the Ch. NR 726 case closure form and documentation substantiating compliance with the NR 700 rule series.
- Ch. NR 749 fees have been paid, as applicable, including closure and database fees.
- Ch. NR 700 semi-annual site progress reports starting six months after notification.

Additional Information:

The department tracks information on all cleanup sites in a department database available at dnr.wi.gov and search "BOTW". The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this site is listed at the top of this letter. You may view information related to your site on this database at any time.

All correspondence regarding this site should be directed to:

Mike Schmoller, Project Manager
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg, WI 53711-5367

Email: Michael.Schmoller@wisconsin.gov

Phone: (608) 275-3303

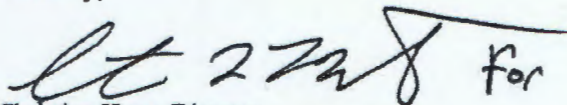
As previously noted, you are required to submit one paper copy and one electronic copy of plans and reports. To speed up processing, your correspondence should reference the BRRTS and Facility Identification (FID) numbers (if assigned) listed at the top of this letter.

Please visit the department's Remediation and Redevelopment Program website at dnr.wi.gov and search "Brownfields," for information on selecting a consultant, seeking financial assistance, and understanding the investigation and cleanup process. Information regarding review fees, liability clarification letters, post-cleanup liability and more is also available.

If you have questions, please contact the DNR project manager identified above, or Wendy Weihemuller, Environmental Program Associate, at 608-275-3212, or Wendy.Weihemuller@wisconsin.gov for assistance.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine Haag" followed by a stylized flourish and the word "for".

Christine Haag, Director
Remediation & Redevelopment Program

cc: Darsi Foss – AD/8
Mark Aquino – SCR-Fitchburg
Mike Schmoller – SCR-Fitchburg
Steve Martin – SCR-Fitchburg
Adrian Stocks – WY/3

FILED

05-31-2022

CIRCUIT COURT

DANE COUNTY, WI

2022CV001298

Honorable Stephen E

Enke

Branch 15

Wisconsin DNR PFAS Updates - effective March 1, 2021**Update to the Wisconsin DNR PFAS list**

After careful consideration, the Wisconsin Department of Natural Resources (DNR) will no longer expect laboratories to report 10:2 FTS, PFHxDA or PFOA, as part of the WI DNR default PFAS list, at this time. This applies to new and existing projects, unless otherwise directed by the DNR. The DNR will continue to evaluate which PFAS are critical for reporting in Wisconsin as PFAS analysis and science continues to evolve. This decision was based on the exclusion of these compounds in the forthcoming EPA method. Therefore, the updated DNR PFAS list now consists of 33 PFAS and is provided on the third page of this document.

The remainder of this document clarifies the administrative rule requirements and general recommendations that the DNR has for the regulated community regarding PFAS sampling. Where guidance is provided, it is done so to assist the regulated community in submitting information to the DNR that it can use to make regulatory decisions with confidence.

Reporting PFAS results based on Wisconsin DHS recommended PFAS groundwater standards

The DNR expects laboratories to have PFAS method detection limits (MDLs) equal to or below the recommended groundwater enforcement standards (ES).

The DNR does not expect laboratories to have PFAS MDLs that are below the recommended groundwater preventative action limits (PAL) for all of the PFAS on the DNR PFAS list if the laboratory's routine method procedure does not generate MDLs below the PALs. Neutral PFAS are examples of PFAS for which laboratories may not have MDLs below the recommended PALs. The recommended groundwater ESs and PALs are provided for the updated DNR PFAS list on the third page of this document.

The DNR expects all sample results to be reported to the statistical MDL.

Certification requirements and expectations

The DNR's administrative rules require the analysis of drinking water samples submitted under s. NR 716.13 or s. NR 809.73 to be performed by a Wisconsin certified laboratory if one exists.

The DNR's administrative rules require the analysis of non-drinking water samples submitted under ss. NR 200.027 (except for those tests excluded in NR 219.037), NR 507.17, NR 664.0013 or NR 716.13 to be performed by a Wisconsin certified laboratory if one exists.

For samples that do not fall under ss. NR 200.027, NR 507.17, NR 664.0013, NR 716.13 or NR 809.73, the DNR recommends the analysis to be performed by a Wisconsin certified laboratory if one exists.

If a Wisconsin certified laboratory does not exist, the DNR recommends that the samples be performed by a laboratory that has applied for Wisconsin PFAS certification. The list of laboratories that have applied for Wisconsin PFAS certification can be found at <https://dnr.wisconsin.gov/topic/Contaminants/Labs.html>.

Analysis requirements and expectations

Laboratories perform PFAS analysis according to the instructions provided to them by their client. If the client does not provide instructions, the DNR expects drinking water and non-drinking water samples to be performed using the laboratory's isotope dilution method that utilizes the Wisconsin PFAS Aqueous (Non-Potable Water) and Non-Aqueous Matrices Method Expectations guidance document.

In addition, unless otherwise instructed by the client, the DNR expects drinking water and non-drinking water samples to be tested for the 33 compounds on the DNR PFAS list.

Non-drinking water matrices field quality control samples requirements

For non-drinking water matrices, laboratories are not responsible for sending out instructions or supplies for collecting field quality control samples unless requested by their client.

Responsible parties as defined in ch. NR 716 and owners and operators of solid waste disposal facilities regulated under chs. NR 500 to 538 are obligated to ensure that field quality control samples (e.g. field blanks, field duplicates, equipment blanks) are collected as required by the administrative code sections presented below. These parties and agents acting on their behalf shall inform laboratories of the field quality control samples that must be collected in order for the laboratory to provide the proper sampling supplies for collection.

Groundwater: s. NR 140.16 Monitoring and laboratory data requirements.

(1)

(a) All groundwater quality samples collected to determine compliance with ch. 160, Stats., shall comply with this section except as noted.

(b) *Groundwater sampling requirements.* All groundwater quality samples shall be collected and handled in accordance with procedures specified by the applicable regulatory agency or, where no sampling procedures are specified by that agency, in accordance with the sampling procedures referenced in par. (c). The sampling procedures specified by a regulatory agency may include requirements for field filtration.

(c) *Department groundwater sampling procedures.*

1. If sampling procedures are not specified by the applicable regulatory agency pursuant to par. (b), all groundwater quality samples shall be collected and handled in accordance with the sampling procedures contained in the following publications:

- a. Groundwater Sampling Desk Reference. Wisconsin Department of Natural Resources, PUBL-DG-037-96, September, 1996.
- b. Groundwater Sampling Field Manual. Wisconsin Department of Natural Resources, PUBL-DG-038-96, September, 1996.

Landfills: s. NR 507.16 Sampling plan. The owner or operator shall submit a sampling plan for all monitoring devices at the facility for approval as part of the feasibility report. The sampling plan shall be implemented as approved in writing by the department. The sampling plan shall follow procedures and methodologies specified by the department and shall comply with the requirements in s. NR 140.16.

Site Investigations: s. NR 716.13 Sampling and analysis requirements.

(6)

Responsible parties shall provide for the following quality control and quality assurance procedures, at a minimum, when collecting samples for laboratory analysis for a field investigation conducted under this chapter:

(a) Chain of custody shall be documented from the time of sample collection to the receipt of the sample by the analytical laboratory. Chain of custody documentation shall be in compliance with ch. NR 149, and shall be submitted to the department with the sample results.

(b) For soil samples, one temperature blank for every shipping container of samples that require cooling for preservation, unless samples are received by the laboratory on ice, unless another temperature is required by the analytical method used.

(c) For water samples:

1. One replicate sample for every 10 or less samples.
2. One equipment blank for every 10 or less samples, unless dedicated sampling equipment is used to prevent cross-contamination.
3. One trip blank for each shipping container that contained volatile samples.
4. One temperature blank for every shipping container of samples that require cooling for preservation, unless samples are shipped on ice.

(d) Decontamination of all sampling instruments between each sampling event, unless dedicated or disposable sampling devices are used in a manner that prevents cross contamination or other unintended contamination of samples.

(10)

Responsible parties shall ensure that groundwater samples are collected and handled according to the procedures specified in s. NR 140.16 (1), unless the department approves the use of an alternative procedure.

Any questions contact Tom Trainor at tom.trainor@wisconsin.gov or 920.412.5970.

Disclaimer: This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

WISCONSIN DNR PFAS LIST - 1.1.21

#	Acronym (EPA)	Name [# carbons] (trade name)	CAS #	ES (ng/L) *	PAL (ng/L) *	Acronyms (other)
Carboxylic Acids						
1	PFBA	Perfluorobutanoic acid [C4] (FC 23, Fluorad FC 23)	375-22-4	10,000	2,000	HFBA
2	PFPeA	Perfluoropentanoic acid [C5]	2706-90-3			
3	PFHxA	Perfluorohexanoic acid [C6]	307-24-4	150,000	30,000	
4	PFHpA	Perfluoroheptanoic acid [C7]	375-85-9			
5	PFOA	Perfluorooctanoic acid [C8]	335-67-1	20 °	2 °	8PF
6	PFNA	Perfluorononanoic acid [C9]	375-95-1	30	3	
7	PFDA	Perfluorodecanoic acid [C10]	335-76-2	300	60	Ndfda, PFDeA
8	PFUnA	Perfluoroundecanoic acid [C11]	2058-94-8	3,000	600	PFUdA, PFUnDA
9	PFDoA	Perfluorododecanoic acid [C12]	307-55-1	500	100	PFDoDA, PFDOA, PFDDA
10	PFTriA	Perfluorotridecanoic acid [C13]	72629-94-8			PFTriA, PFTTA
11	PFTA	Perfluorotetradecanoic acid [C14]	376-06-7	10,000	2,000	PFTeDA, PFTDA, PFTeA, PFTetA, PFTreA
Sulfonic Acids						
12	PFBS	Perfluorobutanesulfonic acid [C4] (FC-98)	375-73-5	450,000	90,000	PFBS
13	PFPeS	Perfluoropentanesulfonic acid [C5]	2706-91-4			
14	PFHxS	Perfluorohexanesulfonic acid [C6]	355-46-4	40	4	PFHS
15	PFHpS	Perfluoroheptanesulfonic acid [C7]	375-92-8			
16	PFOS	Perfluorooctanesulfonic acid [C8] (FC 95, Fluorad FC 95)	1763-23-1	20 °	2 °	nPFOS, P8S
17	PFNS	Perfluorononanesulfonic acid [C9]	68259-12-1			
18	PFDS	Perfluorodecanesulfonic acid [C10]	335-77-3			
19	PFDoS	Perfluorododecanesulfonic acid [C12]	79780-39-5			PFDoDS, PFDOS
20	4:2 FTS	4:2 fluorotelomersulfonic acid [C6]	757124-72-4			4:2 FTSA, 4:2 FtS, FtS 4:2
21	6:2 FTS	6:2 fluorotelomersulfonic acid [C8]	27619-97-2			6:2 FTSA, 6:2 FtS, FtS 6:2, 6:2 PFOS, THPFOS
22	8:2 FTS	8:2 fluorotelomersulfonic acid [C10]	39108-34-4			8:2 FTSA, 8:2 FtS, FtS 8:2, 8:2 PFOS
Sulfonamides, Sulfonamidoacetic acids, Sulfonamidoethanols						
23	PFOSA	Perfluorooctanesulfonamide [C8]	754-91-6	20 °	2 °	FOSA, pfosa
24	NMeFOSA	N-Methylperfluorooctanesulfonamide [C9] (Fluorad FX 12)	31506-32-8			MeFOSA, N-MeFOSA, N-Me-FOSA
25	NEtFOSA	N-Ethylperfluorooctanesulfonamide [C10] (Aistar, Finltron, Fluramin, FX 12, Mirex S, Sulfluramid, Volcano)	4151-50-2	20 °	2 °	EtFOSA, N-EtFOSA
26	NMeFOSAA	N-Methylperfluorooctanesulfonamidoacetic acid [C11]	2355-31-9			MeFOSAA, N-MeFOSAA, NMe-PFOSA-AcOH
27	NEtFOSAA	N-Ethylperfluorooctanesulfonamidoacetic acid [C12]	2991-50-6	20 °	2 °	EtFOSAA, N-EtFOSAA, NEt-PFOSA-AcOH
28	NMeFOSE	N-Methylperfluorooctanesulfonamidoethanol [C11]	24448-09-7			MeFOSE, N-MeFOSE, MeFOSE Alcohol
29	NEtFOSE	N-Ethylperfluorooctanesulfonamidoethanol [C12] (FC-10, Fluorad FC 10)	1691-99-2	20 °	2 °	EtFOSE, N-EtFOSE, N-Et-FOSE
Replacement Chemicals						
30	HFPO-DA	Hexafluoropropylene oxide dimer acid [C6] (FRD-903, GenX)	13252-13-6	300	30	PFPrPrA
31	DONA	4,8-dioxa-3H-perfluorononanoic acid [C7]	919005-14-4	3,000	600	ADONA (sodium salt of DONA)
32	9CI-PF3ONS	9-chlorohexadecafluoro-3-oxanonane-1-sulfonic acid [C8]	756426-58-1			F-53B Major, C8 CI-PFESA
33	11CI-PF3OUdS	11-chloroeicosafluoro-3-oxaundecane-1-sulfonic acid [C10]	763051-92-9			F-53B Minor, C10 CI-PFESA
		No recommended standard yet from cycle 11				

c = DHS recommends a combined ES of 20 ng/L and a combined PAL of 2 ng/L for PFOS, PFOA, PFOSA, NEtFOSA, NEtFOSAA, and NEtFOSE.

* The Enforcement Standard (ES) and Preventive Action Limit (PAL) listed in this table have been recommended by the Department of Health Services to the Department of Natural Resources. The Department of Natural Resources is in the rule making process to include these values into ch. NR 140. The standards presented in this table are not required on January 1, 2021 as the rule making process has not been completed yet.

EXHIBIT C