

WMC Sues DNR Again and Secures TRO in Effort to Block PFAS Sampling Program

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On Monday, March 29, 2021, [Wisconsin Manufacturers and Commerce \(WMC\)](#) sued the [Wisconsin Department of Natural Resources](#) and related entities (DNR) to block the DNR's currently applied program of collecting and analyzing wastewater effluent samples from industrial facilities and municipal publicly owned treatment works (POTWs) for Per- and Polyfluoroalkyl Substances (PFAS).

In communications with these regulated entities, DNR has stated that the purpose of its PFAS sampling program is “to gather facility effluent data from diverse facilities in order to project economic impacts of the PFAS surface water standard rule creation expected for 2021. This data will also allow the [DNR] to work with stakeholders to create practicable plans for implementation of these upcoming standards.”

[WMC asserts](#) in its complaint that the DNR is engaging in “rulemaking” beyond its legal authority under standards including Act 21, passed during the administration of former Governor Scott Walker, and that the DNR's actions in carrying out the sampling program do not fall within any statutorily-granted authority. WMC also asserts that DNR has incorrectly interpreted the legal bases upon which it is relying to authorize the collection and analyses of wastewater samples, because the wastewater discharge permits do not include PFAS as a regulated or covered constituent, so the DNR sampling program cannot be linked to assuring permit compliance.

The Jefferson County Circuit Court, in which the action is filed, will hold a hearing on Thursday, April 1, 2021, to consider WMC's argument that the Court should issue a temporary restraining order (TRO) to immediately block the DNR's PFAS sampling program, and to prohibit the DNR from releasing results from samples already taken. Such extraordinary relief as a TRO would precede the Court's subsequent consideration of more lasting actions to more permanently enjoin or suspend the DNR's PFAS sampling initiative.

WMC's action today comes on the heels of a recent complaint it filed earlier this month [challenging DNR's authority to regulate PFAS](#) as a “hazardous substance” under the Wisconsin environmental repair laws as well as its application of a certain remediation liability exemption program, again as unlawful rulemaking.

National Law Review, Volumess XI, Number 89

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