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To: Members, Assembly Committee on Environment

From: Paige Scobee, Lobbyist

Date: February 6, 2020

Re: **Opposition to AB 843**

WCJC opposes AB 843, which would impose costly regulations without reliable science and fuel frivolous lawsuits from plaintiff attorneys.

Environmental policy and liability should not be imposed ahead of science.

PFAS are a group of more than 4,000 compounds, each of which has different chemical properties. These chemicals are found in many everyday products, including nonstick pans, cleaning products, paints, medical equipment and firefighting foam.

I. WCJC Opposes Giving DNR Broad Authority to Regulate All PFAS Compounds.

The most extensively studied PFAS compounds are PFOA and PFOS, which have been phased out of domestic manufacturing over the past decade. The federal Environmental Protection Agency (EPA) has set a health advisory limit of 70 ppt for PFOA and PFOS but is still studying the potential health effects of the thousands of other PFAS compounds. Few other jurisdictions have regulated PFAS chemicals other than PFOA and PFOS.

Despite the little science available on PFAS compounds besides PFOA and PFOS, AB 843 provides an extremely broad scope for the Department of Natural Resources (DNR) to immediately regulate thousands of other PFAS compounds. AB 843 requires DNR to promulgate emergency groundwater standards for PFOA and PFOS, as well as any other PFAS that the Department of Health Services (DHS) recommends, requires DNR to promulgate rules for surface water standards and maximum contaminant levels for any PFAS chemicals DHS recommends, and requires DNR to determine that all PFAS are air contaminants.

Giving DNR such broad authority to regulate these thousands of compounds creates regulatory uncertainty and potentially massive liability for Wisconsin businesses. Even with most jurisdictions regulating only PFOA and PFOS, estimates of total PFAS liability are in the billions. The federal Department of Defense alone estimates its liability for PFAS at \$2 billion.

Entities taking on this massive liability include not just Wisconsin businesses, but also municipal water and sewage treatment agencies, hospitals, farmers, airports, and any other entities disposing of everyday products that contain PFAS chemicals.

Before taking action on regulating any PFAS chemicals, the legislature and DNR should wait for a better scientific understanding of *which* of these chemicals actually pose a threat to the environment and human health.

II. WCJC Opposes the Extremely Strict Standards Proposed in AB 843.

AB 843 requires DNR to promulgate emergency groundwater standards for any PFAS chemicals for which DNR receives a recommendation from DHS. DHS has already recommended extremely strict standards for PFOA and PFOS *combined* at 20 parts per trillion with a preventive action limit of 2 parts per trillion. These levels would be some of the strictest regulations in the country, if not the world. WCJC, as part of the Wisconsin Water Quality Coalition, opposed these recommendations for various reasons.¹

AB 843 also requires DNR to set a reporting value for air emissions at “any amount greater than zero pounds per year,” an extremely strict level considering the lack of scientific studies evidencing that PFAS are prevalent or harmful in the air. The legislation also exempts DNR from providing written documentation based on scientific analysis to support that air standards are necessary for public health and welfare. Although AB 843 does delay the effective date of air emissions provisions until EPA’s PFAS air stack testing methods are effective, DNR should still be required to provide the standard scientific analysis required to set state air emissions standards.

Setting any enforcement standards creates legal evidence of a significant public health threat, giving plaintiff attorneys the opportunity to successfully sue industry based on these standards without proving any actual occurrence of illness. If standards are not based on levels supported by science, industry will face massive costs to engage in these frivolous lawsuits, even when there is only a microscopic presence of a PFAS chemical, with little to no actual benefit to public health.

The Legislature should not give DNR the broad authority to regulate PFAS chemicals at these extremely low standards and thereby allow these types of private actions to proceed before thorough research shows the exact levels in each medium when humans experience health effects.

III. WCJC Opposes the Financial Responsibility Language in AB 843.

The proof of financial responsibility requirements in Section 13 of AB 843 give DNR *extremely* broad authority to designate who pays for PFAS remediation. The over 4,000 PFAS compounds are so prevalent in consumer products and the environment that in practice almost any person

¹ View Water Quality Coalition comments on DHS recommendations here: <https://drive.google.com/file/d/12qIL3C8X8lJfBWmmW7KmwKmlmPI2Gc6v/view>

could be found liable by DNR and be required to provide proof of financial responsibility for PFAS response and remediation. Industry and citizens who were never manufacturing or purposefully discharging PFAS could be responsible for millions of dollars in liability for PFAS contamination.

IV. WCJC Opposes the Blood Testing Pilot Program and Cancer Cluster Study in AB 843.

The blood testing pilot program is not scientifically feasible and will lead to unnecessary panic and frivolous lawsuits. At a December 2019 listening session in Marinette, DHS told attendees that the level of PFAS in a person's blood is not indicative of clinical health effects. DHS said there is an "association" but no link between PFAS blood levels and health effects. The Agency for Toxic Substances & Disease Registry has also stated that "Laboratory test results can't tell you if PFAS exposure has caused your health condition...PFAS blood tests can tell you the amount of PFAS in your blood. However, test results won't tell you how PFAS will affect your health now or in the future."²

Because 98 percent of people in the U.S. have some level of PFAS in their blood, blood testing will cause unnecessary fear with little benefit to the health of citizens in the Marinette and Peshtigo area. Instead, this testing would provide plaintiff attorneys with a large population of clients to file frivolous lawsuits against businesses in the area, with no scientific evidence to support the claims of injury. A national class action lawsuit has already been filed against several PFAS manufacturers on behalf of everyone with detectable levels of PFAS in their blood.

The cancer cluster study is also not scientifically feasible. DHS recently sent a letter to the authors of AB 843 stating that the population sample in the Marinette and Peshtigo area is too small to produce accurate scientific results in a cancer cluster study.³ Again, inaccurate results from a small sample size could cause unnecessary panic with little benefit to the health of citizens in the Marinette and Peshtigo area. Results of the study would likely lead to frivolous lawsuits against businesses in the area, with no accurate data to support the claims.

V. WCJC Opposes the Creation of a "PFAS Action Fund."

The "PFAS Action Fund" for settlement money created under the bill is a concerning acknowledgement that the state is planning to file lawsuits – or counting on others to file them – against industry for PFAS contamination. Creating a PFAS trust fund incentivizes the state and plaintiff attorneys to file lawsuits against businesses for PFAS contamination. Contamination should be addressed based on sound science and working in collaboration with industry to provide immediate relief for citizens with affected water systems, not through expensive, inefficient, and time-consuming lawsuits.

² ATSDR. "Talking to your doctor about exposure to PFAS."

https://www.atsdr.cdc.gov/pfas/docs/Talking_to_Doctor.pdf

³ Eagle Herald Extra. "DHS lacks science for PFAS health studies." Jan. 28, 2020.

<https://ehextra.com/Content/Social/Social/Article/DHS-lacks-science-for-PFAS-health-studies/-2/-2/59642>

Lawsuits should not come before science. Even without standards in place, we are already seeing plaintiff attorneys aggressively seek states and localities as clients to engage in PFAS litigation against businesses. Creating a “PFAS Action Fund” only further incentivizes plaintiff attorneys to seek contingency fee contracts with state and local governments. Despite the lack of established science on actual harms from PFAS, these plaintiff attorneys file lawsuits and seek massive settlements on behalf of state and local governments. In the end, it is the plaintiff attorneys who receive massive percentages from these settlements – not the state or actual injured parties – that benefit most from lawsuits.

Manufacturers stopped producing PFOA and PFOS in the U.S. decades ago. The civil justice system should not be used as a financial punishment for businesses dealing with historic contamination from products that were deemed safe, legal, and beneficial at the time.

VI. Conclusion

Under the provisions of AB 843, Wisconsin businesses, municipal water and sewage treatment agencies, hospitals, farmers, airports, and any other entities disposing of everyday products that contain PFAS chemicals could face millions of dollars in cleanup costs, legal enforcement action by state agencies, and lawsuits by plaintiff attorneys for the existence of potentially thousands of chemicals that have not yet been shown by federal or state agencies to cause negative human health effects.

Thanks to years of reform-minded legislation, Wisconsin was recently ranked the 13th best lawsuit climate in the nation. Our state’s positive legal climate makes it an attractive place to do business and create good-paying, family-sustaining jobs. Regulations proposed and enforced under this legislation could undo Wisconsin’s hard-earned reputation as a reliable place to do business and instead turn the state into a haven for plaintiff attorneys filing unwarranted lawsuits against businesses. For potentially little to no public health benefit, imposing burdensome regulations under this legislation would have a significant negative impact on Wisconsin’s economy and would stifle innovation.

WCJC supports science-based enforcement standards for chemicals that have actual, established human health effects, but AB 843 provides DNR far too broad a scope to regulate chemicals for which there is little established science confirming negative human health effects. The proposed regulations would impose billions of dollars in compliance and liability costs, crippling Wisconsin industry.

The Wisconsin Civil Justice Council’s mission is to promote fairness and equity in Wisconsin’s civil justice system, with the ultimate goal to make Wisconsin a better place to work and live.

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