2021 SENATE BILL 34

1   AN ACT *to renumber* 299.48 (5); and *to create* 299.48 (5) (b) of the statutes;

2   **relating to:** fire fighting foam containing PFAS and the partial suspension of

3   a rule of the Department of Natural Resources.

Analysis by the Legislative Reference Bureau

Current law prohibits the use or discharge of fire fighting foam that contains perfluoroalkyl or polyfluoroalkyl substances (PFAS) unless the use or discharge is part of an emergency fire fighting or fire prevention operation or if the use is for testing purposes as long as the testing facility has implemented appropriate containment, treatment, and disposal or storage measures to prevent discharge of the foam to the environment. Appropriate containment, treatment, and disposal or storage measures may not include discharging the foam into a storm or sanitary sewer. Current law requires the Department of Natural Resources to promulgate rules to administer these requirements and prohibitions, including to determine appropriate containment, treatment, and disposal or storage measures for testing facilities.

This bill prohibits DNR from promulgating a rule that does any of the following:

1. Applies to materials that are contaminated with PFAS-containing foam.

2. Defines "treatment" as requiring the total immobilization, removal, or destruction of a contaminant.

3. Requires any notice of use or discharge of PFAS-containing foam to be given as provided under ch. 292, stats., or any rule promulgated under ch. 292, stats.

4. For a person treating PFAS-containing foam by a method other than incineration or thermal destruction: specifies numerical standards or treatment

indicator parameter action levels; specifies a frequency for collecting wastewater samples; or specifies a retention period for PFAS sample results.

The bill is introduced as required by s. 227.26 (2) (f), stats., in support of the action of the Joint Committee for Review of Administrative Rules in partially suspending DNR emergency rule 2045 on December 18, 2020. Emergency rule 2045 went into effect on December 4, 2020, and contains the provisions listed above.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   **SECTION 1.** 299.48 (5) of the statutes is renumbered 299.48 (5) (a).

2   **SECTION 2.** 299.48 (5) (b) of the statutes is created to read:

3   299.48 **(5)** (b) Notwithstanding par. (a), the department may not issue any

4 order or promulgate any rule under this section that does any of the following:

5   1. Applies to any materials that are contaminated with a class B fire fighting

6 foam that contains intentionally added PFAS or that applies to a person's

7 containment, treatment, and disposal or storage of any materials that are

8 contaminated with such foam.

9   2. Defines "treatment" as requiring the total immobilization, removal, or

10 destruction of a contaminant.

11   3. Requires any notice of use or discharge of class B fire fighting foam that

12 contains intentionally added PFAS to be given as provided under ch. 292 or any rule

13 promulgated under ch. 292.

14   4. For a person treating a class B fire fighting foam that contains intentionally

15 added PFAS by a method other than incineration or thermal destruction, does any

16 of the following:

17   a. Specifies numerical standards or treatment indicator parameter action

18 levels to be used by the person treating the foam to gauge appropriate treatment

1   effectiveness and to trigger actions that are needed to ensure that a treatment

2   system continues to optimize PFAS removal.

3   b. Specifies a frequency for collecting wastewater samples.

4   c. Specifies a period during which analytical sample results for PFAS must be

5   retained and made available to the department.

6   **(END)**