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To: Adam DeWeese, Wisconsin Department of Natural Resources
From: R.J. Pirlot, Executive Director
Date: November 19, 2019
Re: Scope Statements 089-19, 090-19 & 091-19

WCJC opposes Scope Statements and 089-19, 090-19 & 091-19 and recommends DNR redraft the Scope Statements to only authorize regulation of chemicals for which there is accurate, reliable 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.

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. Similarly, the Wisconsin Department of Health Services has thus far studied and issued health recommendations only on PFOA and PFOS. Few other jurisdictions have regulated PFAS chemicals other than PFOA and PFOS.

Despite the little science available on PFAS compounds besides PFOA and PFOS, Scope Statements 089-19, 090-19 & 091-19 provide an extremely broad scope for DNR to regulate thousands of other PFAS compounds. Scope Statement 089-19 allows DNR to establish maximum contaminant levels for “certain Per- and Polyfluoroalkl substances” including but not limited to PFOA and PFOS. Scope Statement 090-19 vaguely provides that DNR may amend groundwater rules in NR 140, and does not explicitly refer to PFOA, PFOS, or any other specific substances for which the Department of Health Services has issued health recommendations according to the statutory process for setting groundwater standards in Wis. Stat. Ch. 160. Scope Statement 091-19 provides that DNR may establish water quality criteria for PFOA, PFOS, and “any other PFAS which the department determines may be harmful to human health.”

DNR should clarify these three scope statements to specifically focus the rulemaking on PFOA and PFOS. Including thousands of other compounds in the scope of the rulemaking 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.

If DNR regulates under the scope statements as written, these entities in Wisconsin 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. 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. DNR should not have the broad scope to regulate PFAS chemicals other than PFOA and PFOS and thereby allow these types of private actions to proceed before thorough research has established public health concerns for each individual PFAS chemical.

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 these overly broad scope statements could undo Wisconsin's 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 these broad scope statements would have a significant negative impact on Wisconsin's economy.

Overall, Scope Statements 089-19, 090-19 & 091-19 provide 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. WCJC respectfully requests DNR redraft these overly broad and burdensome scope statements and promulgate science-based enforcement standards for only chemicals that have actual, established negative human health effects.

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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