



STATE SENATOR

Eric Wimberger

DISTRICT 30

December 20, 2024

The Honorable Tony Evers
Governor of the State of Wisconsin
115 East, State Capitol
Madison, WI 53702

Governor Evers,

Last budget cycle our mutual concern for PFAS remediation efforts led to \$125 million being set aside and placed in trust for future appropriation once specific plans passed. I proposed SB312 as that starting point. My staff and I met with dozens of organizations and interested parties over a year, including repeatedly with the DNR, your staff and you. Unfortunately, you vetoed the bill. As I rework the legislation for this session, I genuinely hope to get your input and come to agreeable terms.

After working with the DNR to make dozens of changes to the bill, it's my understanding that the remaining area of disagreement comes in the language associated with protecting innocent landowners. Those designated innocent landowners in SB312 are nearly identical to the parties the Biden EPA has decided not to hold federally liable for contamination under the Superfund process, and would definitely avoid giving relief to guilty parties. However, in our joint meeting with DNR representatives, the DNR expressed a desire to maintain authority to prosecute at their discretion in all cases "just in case." In your veto message, you also expressed concern about limiting DNR authority to prosecute innocent landowners. Directly I ask you, what are you envisioning in the "just in case" scenario so I can account for it while protecting innocent landowners? Please provide me draft language, or even ideas you find acceptable, to protect victims of pollution from unnecessary and oppressive State domination. When I asked you and your staff last session for that information, I was met with either silence on the issue or public attacks on my motivations.

In restating my concerns, I again highlight the current meanings of what it means to be a pollutant emitter. Current law does not care how a pollutant got into the land, it only cares whether the pollutant is migrating from an owner's property into adjacent property. With PFAS migrating through the water table, many qualify under the legal designation as an emitter who should not be. Someone at a distance from the point of pollution may become a contaminated property through a neighbor's emission. Then, as the water table continues to move, the victim becomes the emitter into their neighbor, and so on until the last property becomes an emitter into a water source like a river or lake.

Current law does not distinguish participation or intent in the polluting act. The innocent landowner is subject to the exact same emitter rules and penalties as the point source polluter upstream simply because they possess contaminated land regardless of how it became contaminated. This wrongly punishes victims and we can change it.

As you know, my goal continues to be absolving an innocent landowner of liability if they let the DNR have access for testing and remediation at their discretion. Funding alone without liability reform will not solve any problems. For example, when you allocated \$10 million in Federal COVID funds to the Well Compensation fund, after two years merely 26 of about 450 applicants were for PFAS remediation and there was \$2 million left in the fund. As a juxtaposition, there are approximately 1600 suspected contaminated wells on French Island alone due to firefighting foam testing at the airport a long distance away. I also know that you understand money is not the solution because you could have used hundreds of millions of dollars to remediate PFAS available to you unallocated from remaining Federal Covid funds.

Funds are vastly underutilized because a landowner's application for a grant is a self-incriminating statement they have a polluted property and are an emitter. The DNR will approve a grant application, but also send a notice of responsibility to the innocent landowner. The innocent landowner will have to notify their bank that the loan collateral is now a brownfield, and they will have to disclose the status to any potential buyer. An attempt by an innocent landowner to get clean water or help remediate pollution will financially ruin them. Our laws should not make doing the right thing a life-changing dilemma for innocent parties.

You expressed publicly in Marinette that you wanted to protect innocent landowners. Let's do that. But, without your specific desires expressed, I and the legislature are left guessing through trial and error over many years what might be something acceptable. Lack of clarity from you on how to protect innocent landowners from government overreach is causing an unnecessary delay in solving PFAS problems. I hope to reintroduce PFAS legislation by the end of January 2025. I look forward to your specific response to how we can protect innocent landowners and suggestions on priorities for grants.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Wimberger", with a stylized flourish at the end.

Senator Eric Wimberger
Wisconsin State Senator
Senate District 30