

Wisconsin Supreme Court Ruling on PFAS Leaves Businesses Vulnerable and Overextends Agency Power

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In a contentious 5–2 decision, the Wisconsin Supreme Court has dealt an unprecedented blow to the state's business and manufacturing sector by ruling that the Department of Natural Resources (DNR) can force cleanup of PFAS contamination despite the fact that these emerging contaminants have not been formally designated as hazardous substances. This outcome is the latest in a years-long battle over how to address PFAS, chemicals known for their use in a myriad of products due to their resistance to heat, water and stains. The properties that make them useful in a wide range of applications also contribute to their persistence in the environment.

The dispute centered around a dry-cleaning business that had become aware of PFAS contamination of its property and had already begun addressing PFAS contamination. The DNR then abruptly posted a message online indicating that they considered PFAS chemicals to be hazardous substances and ordered the dry cleaner to test its groundwater for PFAS. It failed, however, to provide the business with any information concerning for which PFAS compounds it was required to test, or even the levels of contamination that would be considered dangerous.

The Wisconsin Manufacturers & Commerce sued the DNR on behalf of the dry cleaner. It argued that DNR could not force a business to investigate and remediate emerging contaminants unless and until it designated them as hazardous substances, a process that requires approval of the Wisconsin Legislature. The trial judge and state appeals court agreed, but the Wisconsin Supreme Court overturned the decision.

The majority's reasoning leaned heavily on the decades-old "Spills Law," which requires clean up of hazardous substance releases. PFAS, however, have yet to be formally classified as hazardous through the legislative process, a safeguard that exists to ensure transparency, scientific rigor and public accountability. By sidestepping that process, the court granted the DNR broad regulatory authority with minimal explanation or precedent. This raises alarms across the business community. As dissenting justices Ziegler and Bradley warned, the ruling permits unelected bureaucrats to enforce penalties without prior rulemaking or legislative oversight. This decision undermines core principles of due process and the rule of law.

The consequences for businesses are immediate and far-reaching. Without clear guidelines or a formal designation of what constitutes a hazardous substance, companies are left potentially subject to retroactive enforcement, steep fines and prolonged litigation. Scott Manley of Wisconsin Manufacturers and Commerce aptly stated that "this ruling blesses a regulatory approach that is fundamentally unfair, unworkable, and impossible to comply with." The court's decision does more than expand environmental protections. It imposes a framework that leaves both businesses and homeowners vulnerable to unpredictable and costly enforcement, all while bypassing the democratic process meant to safeguard fairness and clarity.

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