



MEMORANDUM

To: Interested Parties
From: Connor Fitzgerald, Scholars Intern
Michael Best Strategies
Date: June 24, 2025
Subject: *Wisconsin Manufacturers and Commerce, Inc. v. DNR* – Supreme Court Decision

In a 5-2 decision, the Wisconsin Supreme Court reversed the court of appeals and ruled in favor of the Department of Natural Resources (DNR), holding that DNR may apply the state's Spills Law (Wis. Stat. § 292.01 et seq.) to PFAS and other emerging contaminants without first promulgating rules identifying them as "hazardous substances." The Court found the statute's definition of "hazardous substance" to be broad but unambiguous, and determined that DNR's communications, such as website statements, letters, and a liability exemption policy, were considered "guidance documents," not enforceable rules. Wisconsin Manufacturers and Commerce (WMC) argued that DNR's actions should be considered unpromulgated rules, warning that citizens cannot be expected to comply with uncertain standards that lack public input. The majority, however, held that no rulemaking was required and highlighted that the Spills Law was enacted in 1978 to enable rapid and proactive responses to environmental contamination, reflecting legislative intent to prevent harm in real time rather than delay enforcement through formal rulemaking processes.

The Court emphasized that DNR's authority to enforce the Spills Law comes from explicit statutory language and longstanding agency practice. In dissent, Justice Rebecca Grassl Bradley warned that the decision enables unelected bureaucrats to impose obligations without legislative oversight, undermining the separation of powers and the public's ability to understand regulatory requirements.

Governor Evers' Statement:

In response to the ruling, Governor Tony Evers praised the Court's decision as a major step in the state's efforts to address PFAS pollution. "This is a historic victory for the people of Wisconsin and my administration's fight against PFAS and other harmful contaminants that are affecting families and communities across our state," he said. "The Supreme Court's decision today means that polluters will not have free rein to discharge harmful contaminants like PFAS into our land, water, and air without reporting it or taking responsibility for helping clean up those contaminants. It's a great day for Wisconsinites and the work to protect and preserve our state's valuable natural resources for future generations."

WMC Statement:

WMC strongly criticized the decision, arguing that it places an unreasonable burden on citizens and business owners. “The DNR refuses to tell the regulated community which substances must be reported under the Spills Law, yet threatens severe penalties for getting it wrong,” said WMC Executive Vice President of Government Relations Scott Manley. “Businesses and homeowners are left to guess what’s hazardous, and if they’re wrong, they face crushing fines and endless, costly litigation. This ruling blesses a regulatory approach that is fundamentally unfair, unworkable, and impossible to comply with.”