



February 25, 2021

Re: City concerns with Section 7 of H.F. 1237

Dear Chair Hansen and members of the Environment and Natural Resources Finance and Policy Committee:

The League of Minnesota Cities appreciates the opportunity to submit comments related to H.F. 1237 to the committee. The section of the bill that is of particular interest is Section 7, related to the statutory designation of perfluorochemicals as hazardous.

Given that these comments are consistent with testimony given during the recent hearing on H.F. 78 and to be efficient with the committee's time, those concerns are being submitted in written form rather than verbally repeated. The language in H.F. 1237 is very similar to the language in H.F. 78 and is intended to have the same result, designating perfluoroalkyl compounds or other perfluorochemicals as hazardous substances.

While in agreement that these chemicals need to be prevented from reaching public water supplies, this legislation does not do that. The League has four general concerns:

- City wastewater treatment facilities are not the source of these pollutants, they are simply left with the liability for the release of them.
- There is no current technology that would enable a wastewater treatment facility to remove these compounds from biosolids or effluent. There is also no testing available for many of these compounds.
- Once the compounds are labeled hazardous, biosolids, generated in every wastewater treatment facility in the state and by every septic system, would need to be tested and could not be disposed of through normal land application processes if the concentration of the compound exceeded very low levels. That would require making arrangements on relatively short notice for shipping the biosolids to lined landfills that accept hazardous substances. Minnesota does not have the landfill capacity for that added requirement. The costs to ship to out-of-state facilities is extremely high.
- Statutory classification of the compounds as hazardous opens the door for liability on cities in a manner that does not currently exist. It creates a prime target of public revenue that will not generally escape awards through bankruptcy or dissolution, so is almost always included in litigation. While it is true that such claims could be attempted now, without the hazardous designation it would be difficult to blame the city for the existence of the chemicals or to assign blame to the utility for the compound existing, so cities have not been included in litigation. That changes with this designation. While there are claim caps on liability for public entities, this could still result in thousands of claims against

individual cities. And there is no technology to remove these compounds to prevent those claims.

The League of Minnesota Cities does, however, support urgent action to identify sources of these compounds and recommends state support for water and wastewater facilities to identify local sources where those pollutants could be reduced or eliminated to allow cities and the state to work with local businesses and industries, and through public education about household practices contributing to this problem.

As was also requested in the previous discussion of the issue, we feel it is appropriate for public wastewater and stormwater systems to be provided shelter from liability, as there is no possible way for city utilities to take actions that would remove that liability.

Thank you for your time and attention to this important issue and we look forward to working with the author, the administration, and the legislature to find more suitable ways to address this important issue.

Sincerely,

A handwritten signature in black ink that reads "Craig A. Johnson". The signature is written in a cursive, flowing style.

Craig A. Johnson
Intergovernmental Relations Representative
League of Minnesota Cities



DEDICATED TO A STRONG GREATER MINNESOTA

To: Representative Rick Hansen and members of the House Environment and Natural Resources Committee

Re: House File 1237

Date: February 23, 2021

Dear Representative Hansen and members of the House Environment and Natural Resources Committee,

On behalf of the Coalition of Greater Minnesota Cities, I am writing to express our concern with section 7 of HF 1237. This section would declare perfluorochemicals¹ a hazardous substance under the Minnesota Environmental Response and Liability Act, which could subject cities and wastewater facilities to potential liability for a class of chemicals over which they have virtually no control.

As we have explained to this committee and to the Minnesota Pollution Control Agency, we share your concerns about PFAS chemicals. We want and need our state's waters to be clean and safe. However, we do not believe that imposing liability on cities – whether that is the intention of the legislation or not – for the presence of chemicals in wastewater that they cannot remove will address these concerns.

Throughout its PFAS Blueprint, MPCA recognizes that removing PFAS from wastewater effluent is not technologically feasible. The agency also recognizes that traces of PFAS can be found in almost every waterbody across the state. For the foreseeable future, it is likely that every wastewater facility in the state will be releasing some level of PFAS in their effluent through no fault of their own. Simply put, because PFAS exist in a host of industrial processes as well as in domestic products found in virtually every home, PFAS inevitably end up in the waste stream.

Because MERLA imposes strict liability for the release of hazardous chemicals, this legislation could result in civil or administrative liability for cities for something over which they have no control. Such a result may enrich lawyers, but when applied to cities, will do nothing to make our waters cleaner. Meanwhile, because municipal treatment facilities are publicly owned, any costs would be passed along to community members.

The last time this provision was heard, our organization proposed including language that would exempt municipal wastewater and stormwater from liability for PFAS under MERLA. We continue to believe this would be the simplest way to resolve this defect in the legislation. If the

¹ The preferred term for these chemicals is per- and polyfluoroalkyl substances (PFAS).

committee believes there are other ways that municipalities could be held harmless from liability, we would be happy to discuss.

As stated above, our cities are concerned about the presence of PFAS in Minnesota's waters, particularly our drinking waters; these are the waters our community members depend on daily. We would like to work with the Legislature and MPCA on a solution. But until removal of PFAS is technologically feasible, the best way to address these chemicals is through source control. We renew our request to discuss this solution.

We look forward to working with this committee and the MPCA on solutions to the PFAS problem and the defects in this legislation.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Wefel".

Elizabeth Wefel, Flaherty & Hood, P.A.
CGMC Environmental Lobbyist



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Testimony of Deanna White to the House Environment Committee

February 25, 2021

Good afternoon Mr. Chair and members of the committee,

My name is Deanna White and I am the State Director of Clean Water Action. I also serve as the Director of the Healthy Legacy Coalition – a health based coalition of more than 30 organizations focused on ensuring that consumer products – especially those for children – are made without the use of toxic chemicals. The Healthy Legacy Coalition joins with Clean Water Action and its more than 50,000 members across Minnesota in support of HF 1237.

Per and poly fluoroalkyl substances, known as PFAS, are a class of man-made chemicals. As was previously stated in testimony before your committee on February 4th, scientific research has linked PFAS to diseases including kidney, breast, and testicular cancer; liver, thyroid, and pancreatic diseases; high cholesterol; hormone disruption; ulcerative colitis; and immune system effects. PFAS contamination in our soil and waterways in Minnesota undermines the legacy that we hold near and dear to our hearts as citizens.

PFAS are also highly persistent in our environment where they have gained notoriety as “forever chemicals” that will bind to soil and prove costly to remove from drinking water sources. There are **huge costs** associated with PFAS; if we do not address these chemicals before they enter our waste stream, we will pay a lot more later in health care costs and environmental remediation. Last month, the Wisconsin DNR issued an advisory for smelt consumption in the Great Lakes, including Lake Superior, due to PFAS contamination. This type of advisory threatens many who rely on subsistence gathering including our indigenous populations.

In short, PFAS are hazardous substances, and should be designated as such under the Minnesota Environmental Response and Liability Act. Minnesota Pollution Control Agency must be able to use the regulatory tools necessary to investigate PFAS contamination and take appropriate measures to remediate those sites. Like other hazardous substances, PFAS pose a very real threat to the health of Minnesota’s environment and its people.

Now is the time to take additional steps to commit to a cleaner environment, free of PFAs contamination.

In order to protect the health of Minnesotans and safeguard future generations from contamination and health risks, we urge you to pass HF 1237 today.

Thank you for your time and consideration.

A handwritten signature in black ink that reads "Deanna White".

Deanna White,

State Director, Clean Water Action