A STRESS TEST FOR ENVIRONMENTAL DEMOCRACY

PFAS contamination has emerged as a serious environmental and public health threat in a growing number of communities. What does Wisconsin's response reveal about environmental democracy in the Badger State?

At first glance, the town of Stella, Wisconsin, population 633, looks much like any other northern Wisconsin community. Nestled among Oneida County's pine forests and rolling farmland, the small community east of Rhinelander is home to an auto repair shop, a seed potato research facility and dozens of summer cabins tucked along the shores of a half dozen small, picturesque lakes.

It's the kind of quiet place that rarely makes the news, but all that changed last fall when Stella residents learned their small community had a big problem. Water testing conducted by the Wisconsin Department of Natural Resources (DNR) revealed private wells in the area had some of the highest levels of PFAS contamination anywhere in the state. Community members were shocked to learn their wells contain these toxic chemicals at concentrations that are 160 times higher than the state's drinking water standards.

The DNR is currently working with the EPA to identify the source of the contamination. Meanwhile, Stella residents want answers. How did this happen? What can be done to mitigate the health impacts? Who is responsible? Will they be held accountable?

The power of state and local governments to effectively respond to citizens' concerns—in Stella and in the growing number of Wisconsin communities impacted by PFAS contamination—has emerged as a major stress test for the legal processes and government institutions that make up the fabric of our environmental democracy.

Environmental democracy is rooted in the idea that government must be responsive to the needs and values of the community. At its core are three critical components—access to information, meaningful public participation and access to justice.

Access to information

Our state's open government laws entitle us to the greatest possible information regarding the affairs of government. Wisconsin's Public Records Law promotes democracy by ensuring that state, regional, and local governments conduct their business with transparency. All too often however, Wisconsinites encounter barriers when they attempt to access the information they're entitled to.

When former natural resources official Fred Prehn unlawfully withheld public records related to his refusal to step down at the end of his term, MEA sued to access them. The records we obtained show that Prehn's actions were motivated in part by a desire to slow down the DNR's response to PFAS contamination. Prehn's actions, coupled with a troubling Supreme Court decision in another open records case (see page 3), have damaged Wisconsin's tradition of good government. In this context, MEA's work to enforce Wisconsin's open government laws has played an important role in defending environmental democracy. (continued on page 3)
The theme of environmental democracy is woven throughout this issue of the Advocacy Update. While it may seem abstract or academic, it's a value that was at the heart of MEA's founding, and it's a value that continues to motivate our work today.

MEA was founded in 1999 in response to the defunding of Wisconsin's Office of Public Intervenor. For decades, the Office gave the public direct access to experienced environmental attorneys charged with taking legal action when government failed to uphold the public’s rights to a healthy environment. The office was created because Wisconsin environmentalists understood the direct relationship between accountable government and a healthy environment. They understood that when special interests have disproportionate access to high-priced attorneys and lobbyists, government is less responsive to the will of the voters and more likely to prioritize industry profits over the common good.

Although the Office of Public Intervenor no longer exists, you’ll read in this issue how the legacy of defending and strengthening environmental democracy is very much alive at MEA and within the communities we serve.

MEA exists because people like you are committed to standing up to those who seek to make government less accountable and responsive. Your support allows us to carry forward the continual project of ensuring that all of our voices matter. Only when decision makers heed the interests of ordinary people, people who love their homes, their communities and their state, will we secure a clean environment and healthy, just future.

Thank you for making MEA's work to strengthen our environmental democracy possible.
Meaningful participation
The ability to engage in government decisions that affect the environment is another key feature of a healthy environmental democracy. Since PFAS contamination first emerged as an environmental and public health threat in Wisconsin, ordinary people from around the state have been active in finding solutions through the administrative rulemaking process.

Several years ago, state officials launched a rulemaking process to create enforceable PFAS standards for groundwater. During the public comment period, health experts and residents of impacted communities urged state officials to move forward quickly in order to minimize health risks for Wisconsinites—like those living in the Town of Stella—who rely on private wells for their drinking water.

The rulemaking process was nearing completion last February when it was abruptly ended by four members of the Natural Resources Board. Their decision to unilaterally derail science-based water quality protections was a setback for both public health and environmental democracy. In response, community leaders called on MEA to help them move forward, and we have successfully spurred the state to resume the rulemaking process (see page 5).

Access to justice
Environmental democracy can only be fully realized when government has the power to respond to environmental harms and when members of the public can challenge inadequate enforcement.

Currently, the ability of the DNR to enforce Wisconsin's Spills Law and to hold PFAS polluters accountable is under attack in the courts. Wisconsin Manufacturers & Commerce (WMC), is suing the DNR to make the Spills Law unenforceable. If WMC succeeds, the DNR would be unable to investigate and clean up PFAS pollution in communities like the Town of Stella. That's why MEA got involved in the lawsuit. We're working hard to make sure WMC doesn't succeed, just as we're working hard to protect the rights of all Wisconsinites to government access and transparency.

You, too, can play a role in this important work by speaking up and taking advantage of opportunities to participate in environmental decision making. The challenges we face are not insignificant, but the more informed and engaged we are, the stronger and more resilient our environmental democracy will be.

In a decision issued in February, a Dane County Circuit Court found that Fred Prehn, former chair of the Wisconsin Natural Resources Board, arbitrarily delayed and denied access to public records related to his refusal to step down.

"There is no dispute that Prehn dishonored his commitment to transparent government," wrote Judge Everett Mitchell. "There is no dispute that he delayed access to the records of his official acts as a government official for over one year and there is no dispute that he had no lawful reason to do so."

The lawsuit, which was filed by MEA last year, led to the discovery that Prehn exchanged dozens of text messages with Republican politicians and lobbyists about staying on in order to retain control of environmental policy in Wisconsin. After months of mounting public pressure, Prehn gave up his seat on the Natural Resources Board in December 2022, more than 18 months after his term expired.

Despite Prehn’s clear violation of the law, Judge Mitchell found that the Court couldn’t assess penalties or award MEA legal fees, citing a precedent established last year by the Wisconsin Supreme Court’s conservative majority. Open government advocates have criticized that decision, arguing that members of the public should not have to bear the costs of holding public officials accountable for illegally withholding public information.
MEA INTERVENES IN LAWSUIT OVER LOCAL REGULATION OF CAFOs

In March, MEA filed a motion to intervene in a lawsuit that could impact the ability of local units of government to regulate large livestock operations known as CAFOs. MEA’s participation in the case stems from our involvement with a group of Polk County residents who reached out to MEA several years ago for support and guidance in the development of local efforts to protect air quality and water resources from the impacts of industrial agriculture. Since then, five townships in Polk and Burnett Counties have adopted ordinances that regulate the way CAFOs operate.

Wisconsin Manufacturers & Commerce (WMC) is currently suing Laketown, a small community in Polk County, over its livestock operations ordinance. WMC, a group with a previous history of attempting to threaten and intimidate Polk County officials, wrongly claims that the ordinance is unlawful and that Wisconsin’s Livestock Siting Law preempts all local regulation of CAFOs.

MEA filed a motion to intervene in the case on behalf of the Town of Eureka, a neighboring town with an ordinance similar to Laketown’s. Our involvement will help defend environmental democracy by upholding the authority of local governments to respond to the needs of their constituents and to protect their health and safety.

above: MEA Senior Staff Attorney Dan Gustafson with Polk County forage producer and clean water advocate, Lisa Doerr.

WISCONSIN’S LIVESTOCK SITING LAW

What is the Livestock Facility Siting Law?
The Livestock Facility Siting Law (Wis. Stat. § 93.90) is a state law that restricts the ability of local governments to regulate new and expanding livestock facilities through the use of zoning ordinances. Uniform standards developed under the law address property line and road setbacks, the location of manure storage facilities and more.

What impact does the Law have on local control?
By imposing a one-size-fits-all regulatory framework for the siting of new and expanding CAFOs, the law makes it difficult for local governments to protect natural resources and public health through the use of zoning ordinances that respond to the unique needs and geographical characteristics of their communities.

Is local control entirely preempted by the Law?
No. A local unit of government may enact a livestock siting ordinance that is more stringent than state law if it can be demonstrated that the ordinance is necessary to protect public health and safety. This is a high hurdle to clear, but it is possible. In addition, local units of government may enact ordinances that regulate the operations—as opposed to the siting—of livestock facilities. Operations ordinances have been enacted by Laketown, Eureka and other nearby communities.
MEA TAKES ACTION TO CLOSE PFAS REPORTING LOOPHOLE

MEA is pressing the Environmental Protection Agency to move forward with a proposal that would make it easier to understand how PFAS substances make their way into the environment and to identify those who are responsible. Under federal law, companies that discharge or dispose of toxic chemicals must report that information, which is then compiled in a public database called the Toxics Release Inventory. Currently, there is an exemption in the law that allows companies to avoid reporting when toxic chemicals are discharged in low concentrations. The problem with the exemption is that PFAS are highly toxic even at extremely low concentrations.

In Wisconsin, there is evidence to suggest that industry is taking advantage of the exemption to avoid reporting on PFAS. Wisconsin is home to numerous industries known to use PFAS—including paper mills, chemical manufacturers, and textile plants—yet only one facility in the state has ever reported discharging or disposing of PFAS under the Toxics Release Inventory. Coupled with the fact that there are over a hundred known sites of PFAS contamination in the state, this suggests that current reporting requirements may not be sufficient. Closing the reporting loophole by updating the requirements will give state and local agencies the information they need to protect public health and the environment.

NATURAL RESOURCES BOARD VOTES TO MOVE FORWARD WITH PROCESS OF CREATING WATER QUALITY STANDARDS FOR PFAS IN GROUNDWATER

In a win for MEA and our clients, S.O.H2O and the League of Women Voters of Wisconsin, the Natural Resources Board has allowed a regulatory effort to move forward that will protect rural Wisconsin communities from PFAS pollution. According to a scope statement approved by the NRB in December, the DNR proposes adopting enforceable standards for some of the most widely studied PFAS chemicals—including PFOS, PFOA, PFBS and GenX chemicals—under Wisconsin’s Groundwater Law. Now that the scope statement has been approved, the DNR is moving forward in the administrative rulemaking process.

DID YOU KNOW?

Two-thirds of Wisconsinites get their drinking water from groundwater, and a quarter of Wisconsinites get their drinking water from private wells that are not subject to the same regulations as public water systems.

THE PFAS RULEMAKING PROCESS AND OPPORTUNITIES FOR PUBLIC INPUT

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MEC and our Coalition on Lead Emergency (COLE) partners are urging Milwaukee officials to use a portion of the city’s remaining pandemic relief funds to address lead contamination. Milwaukee resident Deanna Branch (left), whose son was hospitalized twice due to lead poisoning, attended an ARPA meeting in February to share her family’s experience with city officials. Deanna now works as a COLE parent advocate to raise awareness and find solutions to this public health crisis. Three days after the hearing, Deanna and her sons attended the State of the Union Address as guests of Vice President Kamala Harris.

Wisconsinites who testified at a series of public hearings this winter expressed overwhelming opposition to a controversial proposal to expand I-94 in Milwaukee from six to eight lanes. Many speakers, like Pastor Richard Shaw (right), president of Milwaukee Inner-City Congregations Allied for Hope (MICAH), called for more investment in public transit, which would reduce carbon emissions and improve access to healthcare, jobs and basic goods for local residents. In response to a previous freeway expansion project, MEC represented MICAH in a lawsuit against the Department of Transportation for inadequate environmental analysis and racial discrimination. That suit resulted in increased investments in public transit for inner city residents.

In April 2021, the Bayfield County Planning and Zoning Commission denied Kristle KLR’s application for a conditional use permit to operate a water pumping facility in Clover Township. Since then, the company has unsuccessfully appealed the decision to the Bayfield County Board of Adjustment and the Bayfield County Circuit Court. The case is now before the Wisconsin Court of Appeals. MEC submitted an amicus brief on behalf of Lake Superior Not for Sale, a grassroots group that was formed to protect Lake Superior—one of our nation’s greatest environmental, cultural and economic treasures—by opposing water commercialization schemes like the one proposed by Kristle KLR.
DOOR COUNTY COMMUNITY SPEAKS OUT IN OPPOSITION TO CAFO EXPANSION PROPOSAL

MEA is urging the DNR to fully evaluate the risks to public health and water resources as it considers a permit application that would allow Door County’s largest livestock operation to double in size.

S & S Jerseyland Dairy has applied for a permit to expand its herd size from 5,000 to almost 10,000 cows. The expanded facility would generate more than 95 million gallons of manure annually, which is far more than the facility can safely dispose of. That’s because the fields where the manure would be spread are located in an area that is highly susceptible to groundwater pollution. It is difficult to imagine a worse place for a dairy operation of that size.

MEA is asking the DNR to reject the proposed expansion and to require S & S to implement protective measures such as groundwater monitoring.

We have also asked for an Environmental Impact Statement, which would allow the public to offer truly informed comments and would assist public officials in making informed decisions. The DNR is expected to consider and respond to all public comments before moving forward.

MEAN ATTORNEY HELPS YOUTH LEADERS ADVOCATE FOR CLIMATE JUSTICE

Young people increasingly view climate change as their generation’s greatest challenge. MEA attorney and Equal Justice Works Fellow, Jorge Roman-Romero, has been working with Dane County Youth Environmental Committee (DCYEC) to advocate for solutions to the climate crisis. In preparation for the Dane County Climate Conference this winter, Jorge and DCYEC members created a resource to help student leaders understand the concept of intergenerational equity—a principle embedded in state and federal law that requires decisionmakers to consider how climate change will affect young people and future generations.

The concept of intergenerational equity is particularly important in evaluating the risks of oil pipeline construction and operation. Here in Wisconsin, young people are playing an increasingly important role in opposing Enbridge Energy’s Line 5 construction proposal. Last year, Jorge helped DCYEC members prepare to testify at a public hearing after the DNR released a draft Environmental Impact Statement for the proposal. This work is part of MEA’s ongoing commitment to ensuring that Enbridge’s Line 5 construction plan is subjected to the highest possible legal and environmental scrutiny.
We are excited to announce the upcoming launch of *Public Trust*, a new MEA podcast!

In this series, host Richelle Wilson will explore Wisconsin’s response to PFAS contamination. She’ll trace these toxic “forever chemicals” across the state to understand how Wisconsinites have been affected and what state and local officials are doing about it. The series will also examine how recent attempts to roll back environmental protections in Wisconsin could imperil public health and environmental justice in our state. Each episode will feature the voices of community members who have been directly impacted by environmental contamination.

Richelle is a Ph.D. candidate at the University of Wisconsin—Madison. She has joined MEA as a Public Humanities Fellow for the 2022-23 academic year. Richelle brings a wealth of media expertise to this project. Her previous experience includes working as managing editor of *Edge Effects*, a digital magazine and podcast about the environment, producing the *Collegeland* podcast, and producing *A Public Affair* at community radio station WORT 89.9 FM.

Throughout March and April, Richelle will continue recording interviews with scientists, journalists, community members, and others whose perspectives will be featured in the series. Wisconsin Sea Grant’s Bonnie Willison is providing critical support with scripting, editing and audio mixing.

Visit midwestadvocates.org/podcast to learn more about the podcast and to sign up for our newsletter. We’ll notify you when the first episode is released in late May.

Listen and subscribe on Google, Apple, Spotify, or wherever you get your podcasts.

Happy listening!

The Center for the Humanities partners with schools, museums, libraries, cultural organizations and nonprofits like MEA to demonstrate the value of the humanities outside of the university and prepare students to transform society—from within the classroom and beyond.

Wisconsin Sea Grant is a statewide program of basic and applied research, education, outreach and technology transfer dedicated to the stewardship and sustainable use of the nation’s Great Lakes and ocean resources.
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