

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

WAUKESHA COUNTY

REDDELIEN ROAD NEIGHBORHOOD
ASSOCIATION, INC. ("RRNA"), et al.,

Petitioners,

v.

Case No. 10-CV-5341

Administrative Agency Review: 30607

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Respondent.

NORTH LAKE MANAGEMENT
DISTRICT, et al.,

Petitioners,

v.

Case No. 12-CV-1751

Administrative Agency Review: 30607

STATE OF WISCONSIN DEPARTMENT
OF NATURAL RESOURCES

Respondent.

BRIEF IN OPPOSITION TO REDDELIEN ROAD NEIGHBORHOOD
ASSOCIATION'S MOTION TO CONSOLIDATE

Respondent State of Wisconsin Department of Natural Resources (DNR), by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Diane L. Milligan, submits this brief in opposition to the Reddelien Road Neighborhood Association's (RRNA's) motion for an order consolidating Waukesha County Case No. 10-CV-5341 and Waukesha County Case No. 12-CV-1751 into Waukesha County Case No. 10-CV-5341.

FACTS

I. FACTS RELATED TO CASE NO. 10-CV-5341, WHICH SEEKS REVIEW OF DNR'S NOVEMBER 4, 2010 STORM WATER PERMIT COVERAGE DECISION.

On December 20, 2010, RRNA filed Waukesha County Case No. 10-CV-5341 to seek judicial review of DNR's November 4, 2010 decision granting Construction Site Storm Water Runoff Coverage under WPDES General Permit No. WI-S067831-3 for the North Lake Public Access construction site (Storm Water Permit Coverage Decision).

The petition alleged that the Storm Water Permit Coverage Decision was flawed because DNR's plans do not show compliance with removal standards for total suspended solids in accordance with Wis. Admin. Code § NR 151.12(5)(a), because the parking lot will not drain in compliance with Wis. Admin. Code § NR 151.12(5)(b), because storm water is not planned to be treated for removal of oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds, because DNR did not grant RRNA and North Lake Management District (a non-party) "reasonable access" to DNR's property, because DNR did not give RRNA a reasonable opportunity to comment, and because the permit coverage decision does not contain a Water Quality Certification (Petition at 15-20).

In January 2012, the Court remanded the first three issues to DNR for a contested case hearing (CCAP Court Record Event 60), and a decision on these issues (the ALJ's Decision) was rendered July 18, 2012 (CCAP Court Record Event 63). At some point after the Court issued its Order, the case was closed on CCAP.

RRNA did not file a petition for judicial review of the July 18, 2012 ALJ's Decision within 30 days. Since no petition was filed, the administrative record has not been compiled or filed in accordance with Wis. Stat. § 227.55.

Instead, on August 3, 2012, RRNA filed a "Petition for Resumption of Judicial Review Following [Wis. Stat. § 227.57(7)] Remand" asking the Court to "resume its judicial review of this matter" as to two issues (Petition for Resumption of Judicial Review, CCAP Record Event 65 at 6). The first issue was the question of whether DNR's permit coverage decision showed compliance with removal standards for total suspended solids in accordance with Wis. Admin. Code § NR 151.12(5)(a), an issue that was addressed and resolved at the contested case hearing. *See id.* The second issue, whether DNR complied with the standards in Wis. Admin. Code ch. NR 103 prior to issuing the Storm Water Permit Coverage Decision, was an issue that RRNA states it first identified during the contested case hearing. *See id.* at 6, 4.

DNR has responded to the Petition for Resumption of Judicial Review by asking that it be denied or rejected because the ALJ's Decision following the contested case hearing is a final and separate agency decision, and any person aggrieved by that decision must file a new and separate petition for judicial review. DNR has also moved that what remains of Case No. 10-CV-5341 be dismissed because RRNA has abandoned the issues that were not remanded for the contested case hearing.

II. FACTS RELATED TO CASE NO. 10-CV-1751, WHICH SEEKS REVIEW OF THE MANUAL CODE APPROVAL DECISION.

On June 1, 2012, RRNA and the North Lake Management District (NLMD) filed Waukesha County Case No. 12-CV-1751 to seek judicial review of DNR's May 4, 2012 decision upholding DNR's issuance of a Manual Code 3565.1 approval to allow the grading of more than 10,000 square feet on the bank of North Lake, construction and placement of a boat ramp on the bed of North Lake, installation of two outfalls below the ordinary high water mark of North Lake, and the discharge of fill in 0.16 acres of wetland to construct an access road and parking facility (Manual Code Approval Decision).

A contested case hearing had been held on the limited issue of "whether an area of the property constitutes navigable waters or is a navigable waterway under Wisconsin law" (Manual Code Approval Decision at 3, Finding of Fact ¶ 8). The certified parties to the proceeding were RRNA, NLMD, DNR and the Wisconsin Wildlife Federation (*see id.* at 1-2).

In the Manual Code Approval Decision, the State of Wisconsin Division of Hearings and Appeals concluded that DNR did not fail to account for a stream within the meaning of Wisconsin law, that the petitioners did not carry their burden of proof that an area outlined by their expert constituted a "slough" within the meaning of Wis. Stat. § 30.10(2), that the project would not detrimentally impact wetlands, and that all practicable alternatives and measure to minimize adverse impacts to wetlands had been taken within the meaning of Wis. Admin. Code § NR 103.08(4)(a). (*See id.* at 13, Conclusions of Law ¶¶ 4-6).

The petition for judicial review commencing Case No. 12-CV-1751 alleges that DNR erred when it authorized the filling of wetlands below the ordinary high water mark through its Clean Water Act § 401 wetland water quality certification process rather than through both the wetland certification process and a Wis. Stat. ch. 30 permitting process or an equivalent review (Petition ¶¶ 15-16, 19-24). It also alleges that DNR did not show it had conducted a Wis. Admin. Code ch. NR 103 analysis in conjunction with its manual code approval analysis (*see id.* ¶¶ 17-18), even though the scope of the hearing did not include Wis. Admin. Code ch. NR 103. In addition, it asserts that a Finding of Fact addressing the elevation of wetlands adjacent to the access road is not supported by substantial evidence in the record (*id.* ¶ 25).

The Record for the Manual Code Approval Decision was filed on July 20, 2012 and consists of two large boxes of hearing exhibits, hearing transcripts and briefs that were admitted and accepted by the Division of Hearings and Appeals (CCAP Court Record 6).

ARGUMENT

I. ACTIONS MAY ONLY BE CONSOLIDATED IF THEY COULD HAVE BEEN BROUGHT AS A SINGLE ACTION.

Wisconsin Stat. § 227.02 provides that Wis. Stat. ch. 227 judicial review proceedings must comply with procedures required by other statutes, provided that those procedures do not conflict with other provisions of Wis. Stat. ch. 227. *State v. Walworth*

County Circuit Court, 167 Wis. 2d 719, 723, 482 N.W.2d 899 (1992). Wisconsin Stat. § 805.05(1), which provides that a court may consolidate pending actions that might have been brought as a single action, does not conflict with any provision in Wis. Stat. ch. 227. Further, Wis. Stat. § 227.53(1)(a)3. provides that when two or more petitions for review of the same decision are filed in different counties, the court in the county where a petition was first filed "shall determine the proper venue for judicial review of the decision, and shall order transfer or consolidation where appropriate." It therefore follows that when two petitions for judicial review of the same decision are filed in the same county, they may likewise be consolidated.

II. RRNA'S MOTION TO CONSOLIDATE MUST BE DENIED BECAUSE THE TWO ACTIONS IT SEEKS TO CONSOLIDATE COULD NOT HAVE BEEN BROUGHT AS A SINGLE ACTION.

The two pending judicial review proceedings seek review of two separate and distinct agency decisions based on the application of different legal standards to different administrative records. They could not possibly have been brought as a single action under Wis. Stat. § 227.53. Therefore, RRNA's motion to consolidate must be denied.

A. Wisconsin Stat. ch. 227 sets forth a linear process for review of individual decisions based on the record of each decision.

The Wisconsin Administrative Procedure Act, Wis. Stat. ch. 227, sets forth a process through which individual agency decisions may be challenged. Specifically, it provides that "any person aggrieved by a decision specified in s: 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the

following procedural requirements." Wis. Stat. § 227.53(1) (emphasis added). The procedural requirements include proper filing in the office of the clerk of circuit court where the proceedings are to be held and proper service upon the agency whose decision is sought to be reviewed, both "within 30 days after personal service or mailing of the decision by the agency," "facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified." Wis. Stat. §§ 227.53(1)(a) 1., 227.53(1)(a)2m., and 227.53(1)(b) (emphasis added).

Strict compliance with the procedural requirements in Wis. Stat. § 227.53(1) is required. *Weisensel v. DHSS*, 179 Wis. 2d 637, 643, 508 N.W.2d 33 (Ct. App. 1993) (internal citations omitted). Petitions filed outside the mandatory time limits in Wis. Stat. § 227.53(1) must be dismissed. *Currier v. Wisconsin Department of Revenue*, 2006 WI App 12, ¶ 23, 288 Wis. 2d 693, 709 N.W.2d 520, citing *Johnsonville Sausage v. Wis. Dep't of Revenue*, 113 Wis. 2d 7, 9, 11, 334 N.W.2d 269 (Ct. App. 1983) (if mandatory time limits are not complied with, the Court lacks competency to proceed).

Each agency decision triggers its own deadlines for service and filing of a petition to commence the judicial review proceeding, and the proper filing of each petition triggers the agency's transmission of the record of the decision under review. Wis. Stat. § 227.55. With a limited exception, the court conducts its review based on this record. Wis. Stat. § 227.57(1).

- B. The two proceedings at issue here could not have been filed as one proceeding because they seek review of different decisions with different timelines and different records.

The petitions for judicial review that RRNA desires to consolidate seek review of different decisions. Case No. 5341 challenges DNR's November 4, 2010 Storm Water Permit Coverage Decision, and pursuant to Wis. Stat. § 227.57(1), the Court's review must be based on the record of that decision. RRNA would now like that case to serve as a vehicle for reviewing the July 18, 2012 ALJ's Decision affirming DNR's permit coverage decision, though there is no basis in law for such a review. Case No. 12-CV-1751 challenges DNR's May 4, 2012 decision affirming DNR's identification of navigable water bodies subject to filling and grading covered by the DNR's Manual Code 3565.1 approval. Since these proceedings involve the review of different decisions, they could not have been filed as one action under Wis. Stat. § 227.53, and thus cannot be consolidated.

The petitions for judicial review that RRNA desires to consolidate also seek review of decisions issued on different days triggering different deadlines that must be met if the Court were to be able to hear them. Case No. 10-CV-5341 was required to have been filed within 30 days of November 4, 2010, in accordance with Wis. Stat. § 227.53(1) in order for the Court to be able to proceed. Case No. 12-CV-1751 was required to be filed within 30 days of May 4, 2012, in accordance with Wis. Stat.

§ 227.53(1), in order for the Court to be able to proceed. A petition challenging the July 18, 2012 Storm Water Permit Coverage Decision was required to have been filed within 30 days of July 18, 2012, in accordance with Wis. Stat. § 227.53(1), in order for the Court to be able to proceed. There is no overlap between these timelines, so it is logistically impossible for the petitions to have been properly filed as one proceeding.

In addition, the petitions for judicial review that RRNA desires to consolidate seek review of decisions based on different administrative records. The record in Case No. 10-CV-5341 consists of 166 pages of documents relied upon by DNR Water Resources Engineer Bryan Hartsook when he determined DNR's construction project could be covered by a statewide general permit for construction site storm water management. The record in Case No. 12-CV-1751 consists of two banker's boxes of hearing exhibits, briefs and transcripts generated during the course of a five-day hearing before a Division of Hearings and Appeals ALJ that was held in September, October and November 2011. The record for the ALJ's Decision on the remanded storm water issues that RRNA chose not to challenge would have consisted of the hearing exhibits, briefs and transcripts associated with the April 18-19, 2012 contested case hearing. Record reviews involving different records cannot have been filed as once proceeding.

C. RRNA's arguments for consolidation are unsupported by law and logic.

RRNA argues that since the petitions "arise from" permits issued for the same project on the same day, they could have been brought as a single action (RRNA Mem. Supp. Mot. to Consolidate at 2). A loose association of relatedness may justify consolidation of claims into one civil action, but there is no legal basis for such loose treatment when contemplating consolidating proceedings for judicial review of individual administrative proceedings under Wis. Stat. §§ 227.52 and 227.53. And, as discussed above, there is no way these proceedings could have been brought as one action.

RRNA next argues that consolidation of claims in a complaint may be permitted when all parties are affected. *See id.* at 3. However, these judicial review actions were not commenced by a summons and complaint, RRNA is not seeking to join claims in a complaint, and all parties are not affected: NLMD is not a party to Case No. 10-CV-5341 or the contested case proceeding that followed it.

RRNA also argues that consolidation would be convenient because both proceedings are before the same judge, and asserts that it "makes perfect sense for the same judge to hear and rule on all three cases which involve overlapping issues" (*id.* at 3). This argument also fails for at least three reasons.

First, a court only issues orders related to convenience under Wis. Stat. § 805.05(1) if it first determines that the actions might have been brought as a single action. As discussed above, these could not have been.

Second, the remaining issues in these matters do not overlap. Case No. 12-CV-1751 deals with whether the placement of fill in wetlands was properly authorized by the Manual Code Approval Decision, whether a stated elevation has record support, and it also asserts that certain wetland analyses should have been done but were not. RRNA has sought to narrow the issues in Case No. 10-CV-5341 to whether the proper standards were employed to determine loading rates for total suspended solids and to whether certain wetland analyses are required in conjunction with construction site storm water permit coverage. And contrary to the assertion in RRNA's brief (p. 3), these issues are not "inextricably intertwined." The fact that they do not even overlap is underscored by RRNA's Appendix A: The highlighted language specifically states that storm water issues were not addressed in the Manual Code Approval process, but were instead addressed in a separate decision and separate approval process.

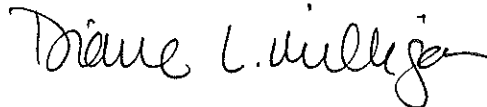
Third, it would be inconvenient and confusing to try to merge such disparate issues with their distinct records in the context of a record review under Wis. Stat. § 227.57. The Court must separately review each decision based on each decision's record, and it must "separately treat disputed issues of agency procedure, interpretations of law, [and] determinations of fact or policy within the agency's exercise of delegated discretion." The need for separate analyses of the different issues based on the different records helps explain why one cannot challenge two different decisions at the same time, and underscores why it does not "make perfect sense" to combine these proceedings.

CONCLUSION

For the reasons set forth here, DNR respectfully requests that RRNA's motion to consolidate cases 10-CV-5341 and 12-CV-1751 be denied.

Dated this 23rd day of August 2012.

J.B. VAN HOLLEN
Attorney General



DIANE L. MILLIGAN
Assistant Attorney General
State Bar #1037973

Attorneys for Respondent State of Wisconsin
Department of Natural Resources

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9595
(608) 267-2250 (Fax)
milligandl@doj.state.wi.us

search calendar pay fees online reports help view cart (0 items)

Reddelien Road Neighborhood Association, Inc. et al vs. The Department of Natural Resources

[Printable Version \(PDF\)](#)

Waukesha County Case Number 2010CV005341

Court Record Events

What is RSS? 

1	Date	Event	Court Official	Court Reporter
	12-20-2010	Petition Additional Text: Petition for Judicial Review of November 4, 2010 Storm Water Permit.		
	12-20-2010	Filing fee paid Amount \$ 164.50 Additional Text: 10R 065221		
	01-11-2011	Notice of Appearance Additional Text: and Statement of Position, received and filed by Attorney Milligan, Assistant Attorney General, with cover letter.		
	01-17-2011	Record as received from Additional Text: certified copy of record from Wisconsin Dept of Natural Resources, received and filed by Attorney Milligan, Assistant Attorney General.		
	01-24-2011	Letters/correspondence Additional Text: dated January 21, 2011, received and filed by Attorney Harbeck, requesting Scheduling Conference.		
	02-07-2011	Letters/correspondence Additional Text: dated "January 7, 2011" from William C Gleisner, regarding Motion to Consolidate and Motion to Dismiss a Supplemental Petition in Case 10CV5096		
	02-07-2011	Letters/correspondence Additional Text: dated "January 7, 2011" from William C Gleisner, III, Esq. regarding Motion to Consolidate		
	02-07-2011	Affidavit Additional Text: Amended Affidavit of Attorney William Gleisner In Support of Motion to Consolidate Case Numbers 10CV5085, 10CV5096 and 10CV5341		
	02-07-2011	Motion Additional Text: Joint Motion to Consolidate Case Number 10CV5085, 10CV5096 and 10CV5341; Memorandum of the NLMD and RRNA in Support of Motion to Consolidate Case Number 10CV5085, 10CV5096 and 10CV5341; Affidavit of Attorney William Gleisner in Support of Motion to Consolidate Case Number 10CV5085, 10CV5096 and 10CV5341;		
	02-08-2011	Notice of motion, motion Additional Text: to Dismiss with Affidavit of Lynette M. Check and cover letter filed by Attorney Milligan.		
	02-11-2011	Letters/correspondence		

Additional Text:

received and filed by Attorney Gleisner, III, advising previous letter filed on February 7, 2011, had wrong current date on it.

- | | | | | |
|----|------------|---|--------------------|----------------|
| 12 | 02-14-2011 | Letters/correspondence | | |
| | | Additional Text: | | |
| | | dated February 14, 2011, received and filed by Attorney Gleisner, requesting Judge Davis schedule a brief telephonic conference, regarding briefing schedules, on Branch 7 cases 10CV5096 and 10CV5341. | | |
| 13 | 02-15-2011 | Notes | | |
| | | Additional Text: | | |
| | | Briefing Schedule, ordered by Judge J. Mac Davis, temporarily suspended, pending consolidation hearing before Judge Ralph M. Ramirez. | | |
| 14 | 02-15-2011 | Notice of hearing | | |
| | | Additional Text: | | |
| | | Telephone status conference on April 18, 2011 at 09:00 am. | | |
| 15 | 03-01-2011 | Letters/correspondence | | |
| | | Additional Text: | | |
| | | dated February 28, 2011, received and filed by Attorney Milligan, requesting Court address Motion to Dismiss before consolidation hearing scheduled before Judge Ramirez on April 11, 2011. | | |
| 16 | 03-01-2011 | Letters/correspondence | | |
| | | Additional Text: | | |
| | | dated March 1, 2011, received and filed by Attorney Gleisner, III, objecting to Branch 7 hearing Motion to Dismiss, as to case 10CV5341. | | |
| 17 | 03-07-2011 | Stipulation and Order | Davis, J. Mac | Villwock, Gail |
| | | Additional Text: | | |
| | | Regarding Stay and Scheduling, signed by Judge J. Mac Davis on February 28, 2011, received and filed by Attorney Gleisner, III, with cover letter dated February 25, 2011. | | |
| 18 | 04-11-2011 | Motion hearing | Ramirez, Ralph M. | Taylor, Sandy |
| | | Additional Text: | | |
| | | Case called at 3:01 pm for a motion to consolidate cases 10cv5085, 10cv5096 and 10cv5341. Appearances: Attorney William Gleisner. Attorney Harbeck. Attorney Diane Milligan and Attorney Carolyn Sullivan. Attorney Gleisner makes statements. No objections by Attorney Sullivan. Attorney Milligan makes statements. Court joins cases 10CV5085 and 10cv5096. Court denies the request to consolidate 10CV5341. Attorney Milligan to draft order. Motion response is due 5/13/11, reply due 5/31/11. Court sets motion date. 10cv5341 remains on Judge Davis' calendar. | | |
| 19 | 04-14-2011 | Letters/correspondence | | |
| | | Additional Text: | | |
| | | dated April 13, 2011, received and filed by Attorney Gleisner, requesting permission to appear via telephone at Scheduling Conference on April 18, 2011. | | |
| 20 | 04-18-2011 | Telephone status conference | Snyder, Patrick L. | |
| | | Additional Text: | | |
| | | CASE NOT DONE ON THE RECORD. Attorney William C Gleisner and Attorney Bill Harbeck appeared by phone means for Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner Hilda Baumgartner, Petitioner James Baumgartner, Petitioner Douglas Bruch, Petitioner Linda Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner David Draeger, Petitioner Paulette Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Margo Hanson, Petitioner Christine Janssen, Petitioner Frank Janssen, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Mitchell Kohls, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Doris Lattos, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Mary Mitchell, Petitioner F. Robert Moebius, Petitioner Jill Moebius, Petitioner Betty Palmer, Petitioner Gerhard Palmer, Petitioner Reddelien Road Neighborhood Association, Inc., Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner Suzanne Timmer, Petitioner William Timmer, Petitioner Deborah Wozniak, Petitioner James Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney Diane L. Milligan appeared by phone means for Respondent The Department of Natural Resources. Attorney William C Gleisner appeared by phone means for Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner Hilda Baumgartner, Petitioner James Baumgartner, Petitioner Douglas Bruch, Petitioner Linda Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner David Draeger, Petitioner Paulette Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Margo Hanson, Petitioner Christine Janssen, Petitioner Frank Janssen, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Mitchell Kohls, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Doris Lattos, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Mary Mitchell, Petitioner F. Robert Moebius, Petitioner Jill Moebius, Petitioner Betty Palmer, Petitioner Gerhard Palmer, Petitioner Reddelien Road Neighborhood Association, Inc., Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner Suzanne Timmer, Petitioner William Timmer, Petitioner Deborah Wozniak, Petitioner James Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney Diane L. Milligan appeared by phone means for Respondent The Department of Natural Resources. Attorney Don Gallo from North Lake Management District appeared by phone means to assist Attorney Gleisner and Attorney Harbeck. The parties | | |

advise the court that they have agreed to a briefing schedule and that there is a pending motion to dismiss. Court sets briefing schedule as follows: Attorney Gleisner to file brief by May 23, 2011 and Attorney Milligan to file reply by June 8, 2011. Court sets motion date. Motion hearing scheduled for June 17, 2011 at 02:30 pm.

21	04-18-2011	Notice of hearing	Davis, J. Mac
		Additional Text: Motion hearing on June 17, 2011 at 02:30 pm.	
22	05-24-2011	Brief	
		Additional Text: RRNA Brief in Opposition to DNR Motion to Dismiss filed with cover letter by Attorney Gleisner, III.	
23	06-08-2011	Brief	
		Additional Text: State of Wisconsin Dept of Natural Resources' Reply Brief in Support of its Motion to Dismiss, Affidavits of Bryan Hartsook and Diane Milligan, received and filed by Attorney Milligan, with cover letter.	
24	06-13-2011	Affidavit	
		Additional Text: of Bryan Hartsook, received and filed by Attorney Milligan, with cover letter.	
25	06-13-2011	Letters/correspondence	
		Additional Text: received and filed by Attorney Gleisner, III, requesting court convert Ms. Milligan's Motion to Dismiss to a Motion for Summary Judgment and requesting an adjournment for the date of June 17, 2011.	
26	06-16-2011	Response/reply	
		Additional Text: by fax, with fax cover sheet, received and filed by Attorney Milligan, responding to letter brief of Attorney Gleisner, dated June 13, 2011,	
27	06-17-2011	Motion hearing	Davis, J. Mac Villwock, Gail
		Additional Text: Case called at 2:32 pm for Attorney Milligan's motion to dismiss. Petitioner William C. Gleisner in court with attorney William C. Gleisner. Attorney William H Harbeck in court for Petitioner Reddelien Road Neighborhood Association, Inc.. Attorney William C. Gleisner in court for Petitioner Reddelien Road Neighborhood Association, Inc., Petitioner F. Robert Moebius, Petitioner David Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Doris Lattos, Petitioner James Wozniak, Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner James Baumgartner, Petitioner Hilda Baumgartner, Petitioner Douglas Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner Linda Bruch, Petitioner Paulette Draeger, Petitioner Margo Hanson, Petitioner Frank Janssen, Petitioner Christine Janssen, Petitioner Mitchell Kohls, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner Mary Mitchell, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Jill Moebius, Petitioner Gerhard Palmer, Petitioner Betty Palmer, Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner William Timmer, Petitioner Suzanne Timmer, Petitioner Deborah Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney Diane L. Milligan in court for Respondent The Department of Natural Resources. Attorney Gleisner makes statements. Court questions Attorney Gleisner. Attorney Milligan makes statements. Parties continue with arguments. Court adjourns hearing to make decision.	
28	06-17-2011	Notice of hearing	
		Additional Text: Motion hearing on July 29, 2011 at 03:00 pm.	
29	06-17-2011	Memorandum	
		Additional Text: in Support of RRNA's request for 801.08 Jurisdictional Trial and Limited Discovery filed in court by Attorney Gleisner.	
30	06-22-2011	Transcript	
		Additional Text: Transcript received and filed for the following date and event: Motion Hearing held on June 17, 2011	
31	07-15-2011	Brief	
		Additional Text: with supporting affidavits and exhibits, received and filed by Attorney Gleisner, III, with cover letter.	
32	07-18-2011	Brief	
		Additional Text:	

RRNA's Supplemental Brief, correcting page 6 of previously filed Brief on July 15, 2011, received and filed by Attorney Gleisner III, with cover letter.

- | | | | | |
|----|------------|---|--------------------|-----------------|
| 33 | 07-27-2011 | Response/reply | | |
| | | Additional Text: | | |
| | | DNR's Response to RRNA's Supplemental Brief in Opposition to DNR's Motion to Dismiss, Second Affidavit of Lynette M Check, Affidavit of James K Bertolacini, Motion to Strike Portions of and Exhibits to the July 14, 2011, Affidavit of Frederick Hanson, Motion to Strike Portions of and Exhibits to the July 14, 2011, Affidavit of Margo Hanson, Motion to Strike the July 14, 2011, Affidavit of Edward A Longhini, Motion to Strike Portions of and Exhibits to the July 14, 2011, Affidavit of Neal O'Reilly, PHD, received and filed by Attorney Milligan, with cover letter. | | |
| 34 | 07-27-2011 | Letters/correspondence | | |
| | | Additional Text: | | |
| | | dated July 27, 2011, objecting to four Motions to Strike filed by Attorney Milligan, received and filed by Attorney Gleisner, III. | | |
| 35 | 07-29-2011 | Motion hearing | Snyder, Patrick L. | Villwock, Gail |
| | | Additional Text: | | |
| | | Attorney William C Gleisner in court for Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner Hilda Baumgartner, Petitioner James Baumgartner, Petitioner Douglas Bruch, Petitioner Linda Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner David Draeger, Petitioner Paulette Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Margo Hanson, Petitioner Christine Janssen, Petitioner Frank Janssen, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Mitchell Kohls, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Doris Lattos, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Mary Mitchell, Petitioner F. Robert Moebius, Petitioner Jill Moebius, Petitioner Betty Palmer, Petitioner Gerhard Palmer, Petitioner Reddelien Road Neighborhood Association, Inc., Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner Suzanne Timmer, Petitioner William Timmer, Petitioner Deborah Wozniak, Petitioner James Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney Diane L Milligan in court for Respondent The Department of Natural Resources. Court hears Attorney Milligan's continued motion to dismiss from June 17, 2011 for failure to timely file notice to review. Attorney Milligan presented statements as to the motions to strike Motion to Strike that she just recently filed. Attorney Milligan presented further argument to the court. Court denies DNR's motion to dismiss for reasons stated on the record. Court also found that the DNR website is not service or notice on anyone. Attorney Gleisner to submit order under 5 day rule. Parties request to set briefing schedule. Court sets phone scheduling conference unless the parties submit a briefing schedule prior to the scheduling conference to the court. Telephone scheduling conference scheduled for August 26, 2011 at 03:00 pm. | | |
| 36 | 07-29-2011 | Notice of hearing | Davis, J. Mac | |
| | | Additional Text: | | |
| | | Telephone scheduling conference on August 26, 2011 at 03:00 pm. | | |
| 37 | 08-02-2011 | Received documents | | |
| | | Additional Text: | | |
| | | proposed order resulting from hearing held on July 29, 2011, submitted by Attorney Gleisner, III, with cover letter. (5 day hold) | | |
| 38 | 08-09-2011 | Transcript | | |
| | | Additional Text: | | |
| | | Transcript received and filed for the following date and event: Motion Hearing held on July 29, 2011 | | |
| 39 | 08-11-2011 | Order | Davis, J. Mac | |
| | | Additional Text: | | |
| | | resulting from hearings held on: June 17, 2011 and July 29, 2011, signed by Judge J. Mac Davis, received and filed by Attorney Gleisner, III, with cover letter. | | |
| 40 | 08-25-2011 | Motion | | |
| | | Additional Text: | | |
| | | Reddelien Road Neighborhood Association Motions Pursuant to Wis. Stats. 227.57(1) and 227.57(7), Brief in Support of, with attachments, received and filed by Attorney Gleisner, III, with cover letter. (date to be scheduled at Hearing scheduled on August 26, 2011) | | |
| 41 | 08-26-2011 | Telephone scheduling conference | Davis, J. Mac | Balkowski, Lisa |
| | | Additional Text: | | |
| | | Attorney William C Gleisner appeared by phone means for Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner Hilda Baumgartner, Petitioner James Baumgartner, Petitioner Douglas Bruch, Petitioner Linda Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner David Draeger, Petitioner Paulette Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Margo Hanson, Petitioner Christine Janssen, Petitioner Frank Janssen, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Mitchell Kohls, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Doris Lattos, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Mary Mitchell, Petitioner F. Robert Moebius, Petitioner Jill Moebius, Petitioner Betty Palmer, Petitioner Gerhard Palmer, Petitioner Reddelien Road Neighborhood Association, Inc., Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner Suzanne Timmer, Petitioner William Timmer, Petitioner Deborah Wozniak, Petitioner James Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney William H Harbeck appeared by phone means for Petitioner Reddelien Road Neighborhood Association, Inc.. Attorney Diane L Milligan appeared by phone means for Respondent The Department of Natural | | |

Resources. Case called for Scheduling Conference. Atty. Milligan stated she would be filing a Motion to Strike and response brief. Statements presented Court orders Atty. Milligan to file Motion by September 16, 2011 and Atty. Gleisner to file response by October 3, 2011. Motion hearing scheduled for October 28, 2011 at 03:00 pm.

42	08-30-2011	Received documents		
		Additional Text: proposed order, received under five (5) day hold, resulting from hearing held on August 26, 2011, submitted by Attorney Gleisner, III, with cover letter.		
43	09-07-2011	Order	Davis, J. Mac	
		Additional Text: resulting from hearing held on August 26, 2011, signed by Judge J. Mac Davis, received and filed by Attorney Gleisner, III, with cover letter.		
44	09-16-2011	Motion		
		Additional Text: to Strike Portions of and Exhibits to the August 23, 2011, Affidavit of Neal O'Reilly, PHD and DNR's Response to RRNA's "Motions Pursuant to Wis. Stats. 227.57(1) and 227.57(7)", received and filed with cover letter by Attorney Milligan.		
45	10-03-2011	Stipulation and Order	Davis, J. Mac	
		Additional Text: Revised Scheduling Order, signed by Judge J. Mac Davis on September 30, 2011, received and filed by Attorney Gleisner, III, with cover letter.		
46	10-10-2011	Brief		
		Additional Text: Reply Brief in Support of its Motion pursuant to Sec. 227.57(1) & (7) and a Brief in Response to the DNR's Motion to Strike portions of the Affidavit of Dr. O'Reilly, received and filed by Attorney Gleisner, III, with cover letter.		
47	10-17-2011	Brief		
		Additional Text: Reply Brief, on behalf of State of Wisconsin Dept. of Natural Resources', in Support of its Motion to Strike, received and filed by Attorney Milligan with cover letter.		
48	10-28-2011	Motion hearing	Davis, J. Mac	Villwock, Gail
		Additional Text: Attorney William C Gleisner in court for Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner Hilda Baumgartner, Petitioner James Baumgartner, Petitioner Douglas Bruch, Petitioner Linda Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner David Draeger, Petitioner Paulette Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Margo Hanson, Petitioner Christine Janssen, Petitioner Frank Janssen, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Mitchell Kohls, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Doris Lattos, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Mary Mitchell, Petitioner F. Robert Moebius, Petitioner Jill Moebius, Petitioner Betty Palmer, Petitioner Gerhard Palmer, Petitioner Reddellen Road Neighborhood Association, Inc., Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner Suzanne Timmer, Petitioner William Timmer, Petitioner Deborah Wozniak, Petitioner James Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney William H Harbeck in court for Petitioner Reddellen Road Neighborhood Association, Inc.. Attorney Diane L. Milligan in court for Respondent The Department of Natural Resources. Case called for motions by Petitioners and Respondent. Court addressed the Respondent's (DNR) motion to strike Affidavit by Dr. Neal O'Reilly. Court denies motion for reasons stated on the record. Court addressed Petitioner's "Motions Pursuant to Wis. Stats. 227.57(1) and 227.57(7)" (whether the court has have legal authority to grant Plaintiff's request). Attorney Gleisner presents argument to the court. Attorney Milligan presents Respondent's argument to the court. Attorney Gleisner presents rebuttal argument. Court takes motion under advisement. Parties may appear by phone. Court sets decision hearing. Oral ruling scheduled for December 12, 2011 at 03:00 pm.		
49	10-28-2011	Notice of hearing	Davis, J. Mac	
		Additional Text: Oral ruling on December 12, 2011 at 03:00 pm.		
50	10-31-2011	Brief		
		Additional Text: Letter brief, responding to new arguments raised in court on October 28, 2011, received and filed by Attorney Gleisner, III, with cover letter.		
51	11-02-2011	Response/reply		
		Additional Text: to the October 29, 2011 letter brief filed by Attorney Gleisner, received and filed by Attorney Milligan, with attachment.		
52	11-04-2011	Transcript		

Additional Text:

Transcript received and filed for the following date and event: Motion Hearing held on October 28, 2011

53	12-12-2011	Oral ruling	Davis, J. Mac	Villwock, Gail
		Additional Text:		
		Attorney William C Gleisner in court for Petitioner Reddelien Road Neighborhood Association, Inc., Petitioner F. Robert Moebius, Petitioner David Draeger, Petitioner William C. Gleisner, Petitioner Frederick A. Hanson, Petitioner Doris Lattos, Petitioner James Wozniak, Petitioner Donna Anderson, Petitioner Brad Barke, Petitioner Carol Barke, Petitioner James Baumgartner, Petitioner Hilda Baumgartner, Petitioner Douglas Bruch, Petitioner Charlene Cary, Petitioner Annabelle M. Dorn, Petitioner Linda Bruch, Petitioner Paulette Draeger, Petitioner Margo Hanson, Petitioner Frank Janssen, Petitioner Christine Janssen, Petitioner Mitchell Kohls, Petitioner Brian Kennedy, Petitioner Mary Lou Kennedy, Petitioner Joseph G. Krakora, Petitioner Marie Krakora, Petitioner Charles Luebke, Petitioner Patricia Luebke, Petitioner Mary Mitchell, Petitioner David Mirsberger, Petitioner Patti Mirsberger, Petitioner Jill Moebius, Petitioner Gerhard Palmer, Petitioner Betty Palmer, Petitioner Aletta Ruesch, Petitioner Thomas Schwartzburg, Petitioner Stephanie Smith, Petitioner William Timmer, Petitioner Suzanne Timmer, Petitioner Deborah Wozniak, Petitioner Daniel Yuhas, and Petitioner Jennifer Yuhas. Attorney William H Harbeck in court for Petitioner Reddelien Road Neighborhood Association, Inc. Attorney Diane L. Milligan in court for Respondent The Department of Natural Resources. Case called for oral ruling on petitioner's request for relief under 227.57(7). Court grants Petitioner's request for reasons stated on the record. Court remands matter. Attorney Gleisner to draft court's ruling.		
54	12-16-2011	Transcript		
		Additional Text:		
		Transcript received and filed for the following date and event: Oral Ruling held on December 12, 2011		
55	12-22-2011	Received documents		
		Additional Text:		
		Proposed Order filed under the 5-day rule. filed by Atty. William Gleisner.		
56	12-27-2011	Letters/correspondence		
		Additional Text:		
		Letter dated December 23, 2011 objecting to the form of Attorney Gleisner's order dated December 22, 2011 with proposed Remand Order with attached Chapter NR2, filed by Attorney Milligan.		
57	12-28-2011	Letters/correspondence		
		Additional Text:		
		filed with attached exhibits and proposed order by Attorney Gleisner stating that the RRNA disagrees with the DNR's letter of December 22, 2011 to the Court and objects to the DNR's proposed order.		
58	01-03-2012	Letters/correspondence		
		Additional Text:		
		dated December 29, 2011, received and filed by Attorney Milligan, objecting to Attorney Gleisner's proposed order. Attached proposed Remand Order for consideration.		
59	01-03-2012	Letters/correspondence		
		Additional Text:		
		dated December 30, 2011, received and filed by Attorney Gleisner, III, responding to Attorney Kloppenburg's letter dated December 29, 2011.		
60	01-06-2012	Order	Davis, J. Mac	
		Additional Text:		
		resulting from hearing held on: October 28, 2011, with Oral Ruling held on December 12, 2011, signed by Judge J. Mac Davis on January 6, 2012 on behalf of Reserve Judge Patrick Snyder, received and filed by Attorney Gleisner, III, with cover letter.		
61	01-11-2012	Other	Davis, J. Mac	
		Additional Text:		
		Court remanded case back to Department of Natural Resources per January 6, 2012 signed order.		
62	07-23-2012	Letters/correspondence		
		Additional Text:		
		dated July 23, 2012, received and filed by Attorney Gleisner, III, with attachments, addressing concerns pending the continuation and completion of judicial review and requesting confirmation of transcript, of hearing by Administrative Law Judge, being furnished to Circuit Court.		
63	07-27-2012	Letters/correspondence		
		Additional Text:		
		received and filed by Assistant Attorney General Diane Milligan, dated July 25, 2012, with copy of Findings of Fact, Conclusions of Law and Order of the State of Wisconsin Division of Hearings and Appeals.		

-
- 64 08-03-2012 Motion
Additional Text:
to Consolidate Cases 10CV5341 and 12CV1751, received and filed by Attorney Gleisner, III.
-
- 65 08-03-2012 Petition
Additional Text:
for Resumption of Judicial Review Following Sec. 227.57(7) Remand, received and filed by Attorney Gleisner, III, with cover letter requesting Status Conference to address filings and briefing schedule.
-
- 66 08-09-2012 Letters/correspondence
Additional Text:
dated August 8, 2012, confirming status conference date of August 24, 2012, parties by phone.
-
- 67 08-10-2012 Letters/correspondence
Additional Text:
dated August 9, 2012, received and filed by Attorney Gleisner III, confirming status conference on August 24, 2012 has been canceled, Motion to Consolidate scheduled for September 14, 2012, copy of motion attached.
-

[Printable Version \(PDF\)](#)

[Return to Case 2010CV005341](#)

Technical problems? [Contact us.](#)

[notice to employers](#) | [accuracy](#) | [public records on the internet](#) | [data extraction option](#) | [rss](#) | [court terms](#)

search calendar pay fees online reports help view cart (0 items)

North Lake Management District ("NIMD") et al vs. Wisconsin Dept of Natural Resources (The) [Printable Version \(PDF\)](#)

Waukesha County Case Number 2012CV001751

Court Record Events

What is RSS? 

	Date	Event	Court Official	Court Reporter
1	06-01-2012	Petition Additional Text: Joint petition of the NLMD and The RRNA for Judicial review with appendix A,B,C,D.		
2	06-01-2012	Filing fee paid Amount \$ 129.50		
3	06-20-2012	Notice of Appearance Additional Text: on behalf of Wisconsin Dept of Natural Resources, received and filed by Attorney Milligan, with cover letter.		
4	06-22-2012	Stipulation and Order Additional Text: Respondent's Statement of Position shall be filed on or before June 29, 2012, and Record on Review shall be filed on or before July 20, 2012, signed by Judge J. Mac Davis on June 21, 2012.	Davis, J. Mac	
5	06-27-2012	Other papers Additional Text: Statement of Position, on behalf of The Wisconsin Dept of Natural Resources, received and filed by Assistant Attorney General Milligan, with cover letter.		
6	07-20-2012	Record as received from Additional Text: two (2) boxes, received and filed by State of Wisconsin, Division of Hearings and Appeals. (boxes kept on empty desk in Rm. 153)		
7	07-20-2012	Notice of briefing schedule Additional Text: signed by Judge J. Mac Davis.		
8	07-23-2012	Letters/correspondence Additional Text: dated July 19, 2012, received and filed by Attorney Milligan, confirming previous filing of record.		
9	08-03-2012	Motion Additional Text: to Consolidate Cases 10CV5341 and 12CV1751, received and filed by Attorney Gleisner, III.		
10	08-03-2012	Petition Additional Text: for Resumption of Judicial Review Following Sec. 227.57(7) Remand, received and filed by Attorney Gleisner, III., with cover letter requesting Status Conference to address filings and briefing schedule.		
11	08-03-2012	Letters/correspondence Additional Text: requesting Status Conference to address filings and briefing schedule, received and filed by Attorney Gleisner III.		

12 08-09-2012 Letters/correspondence

Additional Text:

dated August 8, 2012, confirming status conference date of August 24, 2012, parties by phone.

13 08-10-2012 Letters/correspondence

Additional Text:

dated August 9, 2012, received and filed by Attorney Gleisner III, confirming status conference on August 24, 2012 has been canceled, Motion to Consolidate scheduled for September 14, 2012, copy of motion attached.

[Printable Version \(PDF\)](#)

[Return to Case 2012CV001751](#)

Technical problems? [Contact us.](#)

[notice to employers](#) | [accuracy](#) | [public records on the internet](#) | [data extraction option](#) | [rss](#) | [court terms](#)