

State ex rel. Reddelien Road Neighborhood Association, Inc. (“RRNA”),
F. Robert Moebius, David Draeger, Frederick A. Hanson, Doris Lattos,
James Wozniak, Donna Anderson, Brad Barke, Carol Barke, James
Baumgartner, Hilda Baumgartner, Douglas Bruch, Linda Bruch, Charlene
Cary, Annabelle M. Dorn, Paulette Draeger, William C. Gleisner, III, Margo
Hanson, Christine Janssen, Frank Janssen, Brian Kennedy, Mary Lou
Kennedy, Mitchell Kohls, Joseph G. Krakora, Marie Krakora, Charles Luebke,
Patricia Luebke, Mary Mitchell, David Mirsberger, Patti Mirsberger, Jill
Moebius, Gerhard Palmer, Betty Palmer, Aletta Ruesch, Thomas Schwartzburg,
Stephanie Smith, William Timmer, Suzanne Timmer, Deborah Wozniak, Daniel
Yuhas, and Jennifer Yuhas,

Petitioners,

vs.

Case Code: 30607
Administrative Agency Review

The Department of Natural Resources (“DNR”),
an agency of the State of Wisconsin,

Respondent.

PETITION FOR JUDICIAL REVIEW
OF NOVEMBER 4, 2010 STORM WATER PERMIT

Petitioners, by counsel, hereby petition for Judicial Review pursuant to Wis. Stats. §227.52 of a Storm Water Permit Decision (under WPDES General Permit No. WI-S067831-3) for a North Lake Boat Launch, which was issued by Bryan Hartsook on November 4, 2010. A copy of that decision (hereafter referred to as the “Hartsook Decision”) is attached as Appendix 1. In this Petition for Judicial Review, the Petitioners (named *infra*) ask first that this Court enter a declaration pursuant to Wis. Stats. §227.57(9) that the thirty (30) day limitation on an appeal of the Hartsook

Decision did not begin to run until December 16, 2010 for the reasons set forth in the first section of this Petition. Thereafter, Petitioners ask that this Court reverse the Hartsook Decision for the reasons set forth in the rest of this Petition.

I. THE PARTIES

A. The Respondent.

1. The Respondent is the Wisconsin Department of Natural Resources (“DNR”).

B. The Petitioners.

2. The Petitioners in this Petition are the same Petitioners who are seeking administrative review of the Hartsook Decision pursuant to their Petition for a Contested Hearing in attached Appendix 2, consisting of the following:
 - i. Reddelien Road Neighborhood Association, Inc., (“RRNA”) W322 N7516 Reddelien Road (the boundaries of the Reddelien Road Neighborhood are marked with a solid red line in Exhibit A of attached Appendix B).
 - ii. F. Robert Moebius, RRNA President, citizen and owner of property at W322 N7492 Reddelien Road.
 - iii. David Draeger, RRNA Board Member, citizen and owner of property at W322 N7448 Reddelien Road.
 - iv. William C. Gleisner, III, RRNA Board Member, citizen and owner of property at W322 N7574 Reddelien Road.

- v. Frederick A. Hanson, RRNA Board Member, citizen and owner of property at W322 N7574 Reddelien Road.
- vi. Doris Lattos, RRNA Board Member, citizen and owner of property at W322 N7516 Reddelien Road.
- vii. James Wozniak, RRNA Board Member, citizen and owner of property at W322 N7548 Reddelien Road.
- viii. Donna Anderson, citizen and owner of property at N73 W32375 River Road.
- ix. Brad Barke, citizen and owner of property at W322 N7458 Reddelien Road.
- x. Carol Barke, citizen and owner of property at W322 N7458 Reddelien Road.
- xi. James Baumgartner, citizen and owner of property at N73 W32275 Reddelien Road.
- xii. Hilda Baumgartner, citizen and owner of property at N73 W32275 Reddelien Road.
- xiii. Douglas Bruch, citizen and owner of property at W322 N7508 Reddelien Road.
- xiv. Charlene Cary, citizen and owner of property at N73 W32365 River Road.
- xv. Annabelle M. Dorn, citizen and owner of property at W322 N7356 Reddelien Road.

- xvi. Linda Bruch, citizen and owner of property at W322 N7508
Reddelien Road.
- xvii. Paulette Draeger, citizen and owner of property at W322 N7448
Reddelien Road.
- xviii. Margo Hanson, citizen and owner of property at W322 N7574
Reddelien Road.
- xix. Christine Janssen, citizen and resident of property at W322 N7288
Reddelien Road.
- xx. Frank Janssen, citizen and resident of property at W322 N7288
Reddelien Road.
- xxi. Mitchell Kohls, citizen and owner of property at N73 W32435
River Road.
- xxii. Brian Kennedy, citizen and owner of property at N73 W32295
Reddelien Road.
- xxiii. Mary Lou Kennedy, citizen and owner of property at N73 W32295
Reddelien Road.
- xxiv. Joseph G. Krakora, citizen and owner of property at W322 N7478
Reddelien Road.
- xxv. Marie Krakora, citizen and owner of property at W322 N7478
Reddelien Road.
- xxvi. Charles Luebke, citizen and owner of property at N72 W32225
Reddelien Road.

- xxvii. Patricia Luebke, citizen and owner of property at N72 W32225 Reddelien Road.
- xxviii. Mary Mitchell, citizen and owner of property at N73 W32435 River Road.
- xxix. David Mirsberger, citizen and owner of property at N72 W32455 River Road.
- xxx. Patti Mirsberger, citizen and owner of property at N72 W32455 River Road.
- xxxi. Jill Moebius, citizen and owner of property at W322 N7492 Reddelien Road.
- xxxii. Gerhard Palmer, citizen and owner of property at W322 N7288 Reddelien Road.
- xxxiii. Betty Palmer, citizen and owner of property at W322 N7288 Reddelien Road.
- xxxiv. Aletta Ruesch, citizen and owner of property at W322 N7536 Reddelien Road.
- xxxv. Thomas Schwartzburg, citizen and owner of property at W322 N7574 Reddelien Road.
- xxxvi. Stephanie Smith, citizen and owner of property at N73 W32305 Reddelien Road.
- xxxvii. William Timmer, citizen and owner of property at N72 W32455 Reddelien Road.

xxxviii. Suzanne Timmer, citizen and owner of property at N72 W32455
Reddelien Road.

xxxix. Deborah Wozniak, citizen and owner of property at W322
N7548 Reddelien Road.

xl. Daniel Yuhas, citizen and owner of property at W322 N7392
Reddelien Road.

xli. Jennifer Yuhas, citizen and owner of property at W322 N7392
Reddelien Road.

**II. PETITIONERS OBJECT TO THE DNR'S FAILURE
TO PROPERLY MAIL OR SERVE THE HARTSOOK DECISION
AND REQUEST A DECLARATION OF RIGHTS UNDER §227.57(9).**

This date the Petitioners also will file a Petition for a Contested Hearing with the DNR pursuant to Wis. Stats. §227.42. A copy of that Petition for a Contested Hearing is set forth in attached Appendix 2.

On November 4, 2010 the DNR issued a Permit for a boat launch on North Lake, which Permit is contained in attached Appendix 2 (hereafter, "App. 2"), Exhibit A. On November 22, 2010 Petitioners filed a Petition for a Contested Hearing regarding that Permit. On December 13, 2010 the Wisconsin Department of Natural Resources ("DNR") issued a decision denying that Petition for a Contested Hearing, which Decision is contained in attached App. 2, Exhibit B.

In the fourth paragraph of that December 13th Decision, the DNR cites to a November 4, 2010 Storm Water Permit authored by one Bryan Hartsook. According to the December 13, 2010 Decision in App. 2, Exhibit B:

Any disputes of fact or questions of law in [Petitioners'] issues # 3, 4 and 5 may be relevant, material, or both to the issue of whether DNR should have granted coverage to the boat launch project under WPDES General Permit No. WI-SO67831-3: Construction Site Storm Water Runoff. However, the decision to grant Storm Water Permit coverage was not authorized by [the November 4, 2010 Permit], **but by a decision issued November 4, 2010 by Water Resources Engineer Bryan Hartsook. That decision was not appealed by you or any other person and is now final** [Emphasis supplied].

The mention of the November 4, 2010 Hartsook Decision in the December 13th Decision of the DNR is the very first time the Petitioners or their counsel had ever heard of the Hartsook Decision.

The Petitioners allege and assert that the Hartsook Decision was never mailed to them or their counsel, and was never served in any manner upon them. THEREFORE PETITIONERS OBJECT to the finality or propriety of the Hartsook Decision on the grounds set forth below. Because the Petitioners do not wish to delay the filing of this Petition for Judicial Review, they have not sought affidavits to verify the following. However, the Petitioners are prepared to present testimony confirming the following factual assertions:

1. After the December 13, 2010 Decision of the DNR was received by the Petitioners' counsel on December 15, 2010, counsel immediately sought to locate the decision by doing the following:
 - A. Attorney Surridge, one of the counsel for Petitioners, emailed the DNR to learn where one might find a copy of the Hartsook Decision. As can be seen from the attached email exchange in App. 2, Exhibit C, Attorney Surridge first emailed Mr. James McNelly on December 15, 2010 at 1:41 p.m. asking where that decision might

be found. Mr. McNelly then emailed Mr. Hartsook on December 15, 2010 at 4:57 p.m. asking if Mr. Hartsook would email a copy of his decision to Mr. Surridge. On December 16, 2010, at 11:24 a.m., Mr. Hartsook emailed a copy of his November 4, 2010 decision (the “Hartsook Decision”) to Mr. Surridge. A copy of the Hartsook Decision is contained in attached App. 2, Exhibit D.

B. Neither Attorney Gleisner nor Attorney Surridge had ever seen the Hartsook Decision before and so they attempted to locate the decision online at the DNR website. After extensive searching, neither Messrs. Gleisner nor Surridge could locate the Hartsook Decision. Attorney Gleisner then checked with Attorneys at Quarles & Brady and they had never seen the decision either.

2. On the morning of December 17, 2010, Attorneys William Gleisner and William Harbeck, a lawyer with Quarles & Brady, had a conference call with Assistant Attorney General Milligan. During that call, Attorney Gleisner stated to Ms. Milligan that neither the Petitioners nor their counsel had received a copy of the Hartsook Decision by mail or by service.
3. As can be seen from attached App. 2, Exhibit E, Ms. Milligan subsequently sent an email to Attorneys Gleisner and Harbeck on December 17, 2010, at 12:11 p.m., wherein she stated as follows: “Regarding the storm water permit, I learned that DNR promptly noted its issuance on its website, as it does with all storm water permits.” The Petitioners wish to point out that in

her foregoing email Ms. Milligan did not assert that the Hartsook Decision had been posted online, but only that it had been “noted” online.

4. Attorney Gleisner then conferred with one his experts, Dr. Neal O’Reilly, to learn his opinion as to whether notice had been given of the Hartsook Decision only. Dr. O’Reilly worked for the DNR for sixteen years and presumably would know about DNR procedures concerning the posting of storm water permits. Dr. O’Reilly wrote the following in a December 18, 2010 email: “I disagree with Ms. Milligan’s claim that the storm water permit issuance was listed on WDNR’s website.”
5. Counsel for the Petitioners then examined the four corners of the November 4, 2010 Hartsook Decision, contained in attached App. 2, Exhibit D, and made the following discoveries.
 - A. The November 4, 2010 Hartsook Decision was addressed to just Lynette Check of the DNR. It was not copied to anyone else. In contrast, the November 4, 2010 Permit in App. 2, Exhibit A was copied to ten different entities. In addition, the December 13, 2010 Decision of the DNR in attached App. 2, Exhibit B was received from the DNR by Petitioners’ counsel via mail on December 15, 2010.
 - B. At the conclusion of the November 4, 2010 Hartsook Decision, it is clear that appeal rights are noted. According to the conclusion of the Hartsook Decision in App. 2, Exhibit D, a person disagreeing with the decision: “[has] 30 days after the decision is mailed, or

otherwise served by the Department, to serve a petition ... on the Secretary.” Thus, the very terms of the Hartsook Decision, posting on a website would not have started the appeal clock running under either Wis. Stats. §227.42 or §227.52. In addition:

i. According to Black’s Law Dictionary (6th Ed. 1990), p. 952:

“A letter, package, or other mailable matter is ‘mailed’ when it is properly addressed, stamped with the proper postage, and deposited in a proper place for the receipt of mail.”

ii. According to Black’s Law Dictionary, p. 1368: “The service of writs, complaints, summonses, etc. signifies the delivering to or leaving them with the party to whom or with whom they ought be delivered or left; and, when they are so delivered, they are then said to have been served.”

iii. The November 4, 2010 Hartsook Decision was never mailed to or served upon the Petitioners or their counsel as required within the four corners of the Decision itself.

C. When Attorney Gleisner confronted Ms. Milligan with the assertion that neither the Petitioners nor their counsel had received a copy of the Hartsook Decision by mail or service, her response was the email in attached App. 2, Exhibit E which did not contradict the assertion that the Hartsook Decision had not been mailed or served but instead merely claimed that the DNR had “noted [the Decision’s] issuance on its website.”

6. At a minimum, the DNR had to know that the Petitioners and their counsel would be keenly interested in receiving notice of a decision such as the Hartsook Decision from the lawsuit which Petitioners previously commenced in Waukesha County Circuit Court on September 3, 2010 as Case No. 10CV3792.
7. In addition, the DNR knew or should have known that the Petitioners and their counsel were unaware of a water quality permit or a storm water permit from the discussion at pages 14 to 15 of their November 22, 2010 Petition for a Contested Case Hearing in the case of *North Lake Boat Launch Manual Code 3565.1 Approval Re: IP-SE-2009-68-05745-05750, Issued November 4, 2010*. It is clear from the foregoing referenced discussion that the Petitioners and their counsel did not know about the existence of the Hartsook Decision at the time of the filing of their November 22, 2010 Petition for a Contested Hearing of the November 4, 2010 Permit in App. 2, Exhibit A. The Petitioners even include an example of what a water quality permit should have looked like in Exhibit I to the aforesaid November 22, 2010 Petition. At that point, the DNR should have referred the Petitioners to the Hartsook Decision, and there can be no doubt from Petitioners' November 22, 2010 Petition for a Contested Hearing that they would have sought review of the Hartsook Decision if they had known of it.
8. Further, the DNR knew or should have known that the Petitioners and their counsel were unaware of a water quality permit or a storm water permit

from the discussion at pages 16 to 18 of their December 3, 2010 Petition for Judicial Review in the case of *State ex rel. Reddelien Road Neighborhood Association v. DNR*, Waukesha Circuit Court Case No. 10CV5096. It is clear from the foregoing referenced discussion that the Petitioners and their counsel did not know about the existence of the Hartsook Decision at the time of the filing of the December 3, 2010 Petition for Judicial Review. At that point, the DNR should have referred the Petitioners to the Hartsook Decision, and again there can be no doubt from Petitioners' December 3, 2010 Petition for Judicial Review that the Petitioners would have sought review of the Hartsook Decision if they had known about it..

9. In addition to all of the foregoing, there is absolutely no reference of any kind in the November 4, 2010 Permit contained in attached App. 2, Exhibit A to the Hartsook Decision in attached App. 2, Exhibit D, although since the Hartsook Decision in App. 2, Exhibit D was issued on the exact same day as the DNR's Permit in App. 2, Exhibit A it would have been logical for there to have been cross-references between those documents.
10. The Hartsook Decision in attached App. 2, Exhibit D notes in its first paragraph that Mr. Hartsook had received the application from the DNR for a "Construction Project Permit" on November 1, 2010, and the Hartsook Decision is dated just four days later, on November 4, 2010. The Hartsook Decision makes it clear that it is being issued under Wis. Stats. Ch. 283. Permit applications subject to Chapter 283 must be issued so that

the public has at least 30 days to provide comments on the permit application. Wis. Stats. §283.39(2). Clearly, the four days from the application to the issuance of the Hartsook Decision is less than 30 days.

WHEREFORE, pursuant to §227.57(9) and under the superintending powers of this Court, Petitioners respectfully request that this Court declare that the thirty (30) day limitation on an appeal of the Hartsook Decision did not begin to run until December 16, 2010.

**III. WITHIN THE MEANING OF WIS. STATS. §227.53(1)(b),
PETITIONERS ARE AGGRIEVED PARTIES WHOSE SUBSTANTIAL
INTERESTS WILL BE AFFECTED BY THE HARTSOOK DECISION.**

1. The Petitioners are aggrieved by the DNR's issuance of the Hartsook Decision, and the development of the boat launch that decision makes possible affects Petitioners' substantial interests. The Petitioners are also residents of the Reddelien Road Neighborhood, which is immediately adjacent to the proposed boat launch on the Kraus Site which is the subject of the Hartsook Decision.
2. The Petitioners have a substantial interest in using and enjoying their property in the Reddelien Road Neighborhood adjacent to the Site. Based on reports from Petitioners' experts, the construction of the access road, parking lot, and boat launch authorized in part by the November 4, 2010 Hartsook Decision will result in increased flooding and pollution as well as the surcharging of septic systems on Petitioners' property. This will impair Petitioners' use and enjoyment of their property, reduce the value of that property and damage their interest as riparian owners in North Lake.

3. The Hartsook Decision was issued in violation of the public notice and comment requirements of Wisconsin Law, as detailed *supra*. The DNR held a public informational hearing on September 30, 2010, pursuant to Wis. Admin. Code Chapter NR 310. The DNR's comment period ended on October 12, 2010, at 4:30 p.m. As set forth more fully *infra*, the Petitioners' statutory and due process rights were violated when Petitioners were prevented from responding to the Hartsook Decision.
4. In point of fact, as is clear from the items in attached App. 2, Exhibit D, the NLMD and the RRNA were denied reasonable access to the Kraus Site during the growing season and during the period of time when threatened and endangered species would be present so that they could conduct tests and make appropriate observations in order to address properly storm water issues now raised by the Hartsook Decision. Without the ability to meaningfully access the Kraus Site, the NLMD and the Petitioners were obstructed from formulating comprehensive or meaningful responses to the Hartsook Decision.

**IV: THE HARTSOOK DECISION IS
DEFICIENT IN A NUMBER OF DIFFERENT RESPECTS.**

5. The Hartsook Decision in attached App. 2, Exhibit D makes reference to DNR General Permit No. WI-S067831-3, which provides at Section 3.1.6.1 that an erosion control plan for a development should contain a description of the "expected level of sediment control on the construction

site that achieves compliance with Wis. Admin. Code NR §151.11 or §151.23.”

A. The Hartsook Decision does not address the Factual Issue of whether the DNR’s Proposed Work is “Development” or “Redevelopment.”

6. The Hartsook decision does not contain such a description and is otherwise deficient when compared with the requirements of Wis. Admin. NR Ch. 151. Most troubling of all, the Hartsook Decision completely overlooks the fact that the DNR has decided to characterize the work to be performed on the Kraus Site as “redevelopment.” As a consequence, the DNR insists that it only has to reduce pollutants by 40%. As Petitioners’ expert, Dr. O’Reilly makes clear in the Affidavit contained in App. 2, Exhibit F, ¶4, it is entirely incorrect to characterize the work to be performed as “redevelopment.” In fact, the work to be performed is “new development” and pollutants must be reduced by 80%. *Id.* The failure of the Hartsook Decision to address this issue in any way ignores the facts of the Kraus Site and must be addressed in a contested hearing before an ALJ.
7. As part of the proposed development, the DNR plans to construct a 1,500 foot long, 24 foot wide paved access road with a surface area of approximately 36,000 square feet. This is to be built over the existing 6 to 9 foot wide gravel access road with a surface area of approximately 9,000 square feet. See App. 2, Exhibit F, ¶4.
8. For purposes of Wis. Admin. Code NR §151.12(5)(a) the DNR considers this construction of the paved road to be "redevelopment," thus requiring a

design that meets only a 40% total suspended solids (“TSS”) removal standard under NR 151.12(5)(a)2. *Id.* Since the proposed construction of the road actually represents a 300% increase in the development footprint, its construction should be considered a new "development" [as defined in Wis. Admin. Code NR §151.002(39)] requiring a design that meets an 80% TSS removal standard under NR §151.12(5)(a)1. *Id.*

9. According to the DNR, the design achieves only a 39.9% TSS removal. *Id.* Thus the DNR’s proposed work at the Kraus Site does not comply with Wis. Admin. Code NR 151.12(5)(a) *Id.* and the Hartsook Decision is invalid for failing to address this issue in any way.

B. The Hartsook Decision does not Comply with the Requirements of Wis. Admin. Code NR §151.12(5)(b).

10. Wis. Admin. Code NR §151.12(5)(b) requires the institution of Best Management Practices ("BMPs") to maintain or reduce peak runoff discharge rates to the maximum extent practicable, as compared to pre-development conditions for the 2-year, 24 hour design storm applicable to the post-construction site.
11. In the September 22, 2009 memo prepared by Kapur & Associates, Inc. for the DNR titled “Storm Water Evaluation for North Lake Boat Launch, Waukesha County” the issue of peak flood discharges is not addressed (O’Reilly Affidavit, App. 2, Ex. F, ¶5). The Hartsook Decision does not address this factual issue or the requirements of Wis. Admin. Code NR §151.12(5)(b), and this also requires a contested hearing.

12. According to Petitioners' expert, the construction of the proposed parking lot for the boat launch will interfere with drainage for the residents along Reddelien Road (O'Reilly Affidavit, App. 2, Ex. F, ¶6). The 4-inch PVC pipe to be used for drainage according to the DNR plans will be totally inadequate to handle the amount of water that will flow out of the wetland complex. *Id.* Again, the Hartsook Decision does not even address this factual issue.
13. The fill for the proposed parking lot has the potential to raise flood water stages on neighboring properties by several feet and shift the current overland flow route onto the neighbors to the south of the Kraus Site. *Id.*
14. The foregoing will increase flooding and surcharge septic tanks in the Reddelien Road Neighborhood. Once again the Hartsook Decision does not address this factual issue.

C. The Hartsook Decision does not Comply with Wis. Stat. § 281.15 or Wis. Admin. Code NR §299.04(1)(b).

15. The storm water treatment system for the roadway is not designed to remove oils and grease, toxic organic compounds, nitrogen compounds, or de-icing compounds such as salt that are found in roadway runoff. See O'Reilly Affidavit, App. 2, Ex. F, ¶4. These effects are not accounted for by the DNR or the Hartsook Decision and violate Wis. Stats. §281.15 and Wis. Admin. Code NR § 299.04(1)(b). The Hartsook Decision is thus invalid.

D. The Hartsook Decision was issued without permitting Petitioners and the NLMD Reasonable Access to Kraus.

16. The DNR prevented Petitioners from providing meaningful comments on the DNR's issuance of permits to itself because it failed to accord Due Process to the public – specifically to Petitioners themselves and the North Lake Management District (“NLMD”), members of which include the Petitioners – when it refused to allow Petitioners and the NLMD access to the Kraus Site during the growing season and/or during the period of time when threatened/endangered species would be present at the Kraus Site.
17. By denying meaningful access the Kraus Site during seasons which would allow Petitioners and the NLMD (via experts) to conduct the necessary studies, the DNR obstructed Petitioners' and the NLMD's ability to formulate a comprehensive or meaningful comment to the proposed development, or to otherwise protect their property interests from the DNR's actions at the Kraus Site. Quite simply, it is impossible to know whether or not the DNR has complied with the mandate of Wis. Admin. Code NR §103.03 or Wis. Stats. §281.36, and in addition Wis. Admin. Ch. 151. The DNR's denial of meaningful access to publically owned property is fundamentally unfair given the DNR's self-dealing on its own project. Therefore, Petitioners' statutory and Due Process rights were violated by the DNR's actions. DNR's denial of reasonable access to the Kraus Site is also contrary to Wis. Admin. Code NR §150.01(5) which provides that

DNR is to “provide an opportunity for public input to the decision-making process.”

E. The Hartsook Decision was issued without affording Petitioners a Reasonable Opportunity to Comment.

18. The Hartsook Decision in attached App. 2, Exhibit D notes in the first paragraph that Mr. Hartsook had received the application from the DNR for a “Construction Project Permit” on November 1, 2010, and the Hartsook Decision is dated just four days later, on November 4, 2010. The Hartsook Decision makes it clear that it is being issued under Wis. Stats. Ch. 283. Permit applications subject to Chapter 283 must be issued so that the public has at least 30 days to provide comments on the permit application. Wis. Stats. §283.39(2). Clearly, the four days from the application to the issuance of the Hartsook Decision is considerably less than 30 days.

F. The Hartsook Decision does not contain a Proper Water Quality Certification as Required by Law.

19. The November 4, 2010 DNR Permit contains the following statement: “The [DNR] public boat launch will not adversely affect water quality or increase water pollution in the wetlands or in North Lake and will not cause environmental pollution ...” (App. 2, Exhibit A, FOF #13). This statement falls well short of the standards normally employed and the methodology normally adopted by the DNR when assessing water quality.
20. One has only to compare the extremely terse statement in App. 2, Exhibit A, FOF #13 with the lengthy and very specific water quality certification

attached as App. 2, Exhibit G that is customarily issued by the DNR in other cases. The Hartsook Decision does not in any way clarify the lack of clarity in the November 4, 2010 Permit in App. 2, Exhibit A and makes it impossible for the Petitioners to ascertain whether water quality standards have been met.

21. Indeed, the absence of a meaningful water quality certification such as that contained in App. 2, Exhibit G in and of itself deprives the Petitioners of their Due Process rights because they have no way of knowing, let alone assessing, the accuracy of the claims in App. 2, Exhibit A, FOF #13.

22. In addition, the single statement in the Permit's (App. 2, Ex. A, FOF # 13), does not satisfy in any way the requirements of the DNR to act as an agent for the Environmental Protection Agency in conducting a full water quality certification under Section 401 of the Federal Clean Water Act (33 USC §1341). Nowhere is there any evidence in the Permit that the DNR conducted the type of investigation and certification process customary for such a project.

WHEREFORE, Petitioners pray for the following relief:

1. FOR AN ORDER that the thirty (30) day limitation on an appeal of the Hartsook Decision did not begin to run until December 16, 2010.

2. FOR AN ORDER that the November 4, 2010 Hartsook Decision, which was issued based on a November 1, 2010 was not timely prepared and issued within the meaning of Wis. Stats. §283.39(2), and thus should be set aside.

3. FOR AN ORDER that the Hartsook Decision be remanded so that a factual determination can be made that there is full compliance with Wis. Admin. Code NR § 151.12(5)(a) in that a factual determination is made that the access road on the Kraus Site should be considered a new “development” rather than a “redevelopment” under Wis. Admin. Code NR §§151.002(39) and 151.12(5)(a) and a factual determination is made that there will be full compliance with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2.

4. FOR AN ORDER that the Hartsook Decision be remanded so that a factual determination can be made that there will be full compliance with Wis. Admin. Code NR §151.12(5)(b) in that:

- a) the culverts proposed in the project plans are adequate to handle the volume of water that will flow out of the wetland complex on and adjacent to the Kraus Site and
- b) that the proposed parking lot will not act as a stopper, preventing water from the wetland complex on and adjacent to the Kraus Site from draining into North Lake via the Kraus Site and instead divert it onto neighbors to the south of the Kraus Site.

5. FOR AN ORDER that the Hartsook Decision be remanded so that a factual determination be made that the surcharge of septic systems on Reddelien Road will not cause flooding in the Reddelien Road Neighborhood or pollution of North Lake.

6. FOR AN ORDER that the Hartsook Decision be remanded so that a factual determination can be made that there is full compliance with Wis. Stat. §281.15 and Wis. Admin. Code NR §299.04(1)(b) in that:

- a) A factual determination will be made that the storm water treatment system for the roadway will remove oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds such as salt that are found in roadway runoff.
- b) A factual determination will be made that the storm water treatment system will not in fact increase pollution in the Reddelien Road. Neighborhood and North Lake.

7. FOR AN ORDER that the Hartsook Decision be remanded so that it is clear from the face of the Hartsook Decision that the required water quality certification under Wis. Stat. §281.15, Wis. Admin. Code NR Ch. 103 and Ch. 299, as well as the Federal Clean Water Act, 33 USC §1341?

8. FOR AN ORDER pursuant to Wis. Stats. §227.57(1) and to the extent evidence is adduced at the Contested Hearing pursuant to the Petition in Appendix 2 of DNR irregularities in procedure before the Agency, allowing for further testimony before this Court and also for discovery in the form of depositions or interrogatories.

9. FOR AN ORDER pursuant to Wis. Stats. §227.57(4) and based evidence adduced at the Contested Hearing pursuant to the Petition in Appendix 2, remanding this case to the DNR for further action because the fairness of the proceedings and the correctness of the DNR's actions have been impaired by a material error in procedure or a failure to follow prescribe Agency Procedures.

10. FOR AN ORDER pursuant to Wis. Stats. §227.57(8) and based on evidence adduced at the Contested Hearing pursuant to the Petition in Appendix B, remanding the case to the DNR because the DNR has

- a) Acted outside its area of discretion; or
- b) Acted inconsistently with a DNR rule, stated DNR policy or a prior DNR practice.

Dated at Hartland, Wisconsin this 20th day of December, 2010.

LAW OFFICES OF WILLIAM C. GLEISNER, III
Counsel for the Petitioners

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