

Reddelien Road Neighborhood Association, Inc.  
("RRNA"), et al.

Petitioners,

vs.

Case No. 10CV5341

The Department of Natural Resources ("DNR"),

Respondent.

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**RRNA PETITION FOR RESUMPTION OF  
JUDICIAL REVIEW FOLLOWING §227.57(7) REMAND**

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**INTRODUCTION**

In an Order dated January 6, 2012 (copy attached as Appendix A) and pursuant to Wis. Stats. §227.57(7), this Court remanded this case for an evidentiary hearing in order to create a record which this Court and counsel could use in the previously instituted §227.53 judicial review proceedings pertaining to the issuance of a November 4, 2010 Storm Water Permit (also referred to as a "grant of coverage") to the DNR. This Court specified in its Order that the hearing on remand would be conducted in accordance with the provisions of Wis. Stats. §§227.42 to 227.50. *See* transcript of the hearing conducted before this Court on December 12, 2012.

Pursuant to ¶5 of its January 6, 2012 Order, this Court specifically stated that it "retained jurisdiction over this matter for purposes of judicial

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CLERK OF CIRCUIT COURT  
CIVIL DIVISION

review of the remanded proceedings once they are completed.” Now that the remanded proceedings have been completed, this Petition seeks return of this case to the Court to complete the judicial review which was underway prior to the remand on January 6, 2012.

### **I. PETITION FOR RESUMPTION OF JUDICIAL REVIEW**

1. The Reddelien Road Neighborhood Association (RRNA) and the other named Petitioners in this proceeding respectfully request that this Court resume jurisdiction over this matter for the purposes of completing the judicial review begun by this Court.

2. Pursuant to this Court’s January 6, 2012 Order, this matter was remanded for the development of a record on three issues, which were set forth on an addendum to that Order. Those issues included:

1. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR § 151.12(5)(a) ?  
In particular:
  - a) Should the access road proposed in the Permit be considered a new “development” rather than a “redevelopment” under Wis. Admin. Code NR §§151.002(39) and 151.12(5)(a)?
  - b) Does the Permit comply with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2?
2. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code §NR 151.12(5)(b)?  
In particular:
  - a) Are the culverts proposed in the project plans adequate to handle the volume of water that will flow out of the wetland complex on and adjacent to the Kraus Site?
  - b) Will the proposed parking lot 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?

- c) Will this surcharge septic systems and cause flooding in the Reddelien Road Neighborhood?
3. Does the Hartsook Decision comply with Wis. Stat. § 281.15 and Wis. Admin. Code NR § 299.04(1)(b)? In particular:
- a) Will the storm water treatment system for the roadway remove oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds such as salt that are found in roadway runoff?
  - b) Will the failure to do so increase pollution in the Reddelien Road. Neighborhood and to North Lake?

3. The remanded proceedings were conducted before Administrative Law Judge (ALJ) Boldt concerning the foregoing issues on April 18 to April 19, 2012 and post-hearing briefs were submitted to him prior to the issuance of the ALJ's decision on July 18, 2012 (copy attached as Appendix B).

4. As a result of facts which were discovered during the course of the remanded proceedings, a related issue regarding Wis. Admin. Code NR Ch. 103 ("the NR 103 issue") came to light. The Petitioners had no notice of and could not have anticipated this NR 103 issue prior to that hearing for the reasons set forth in the following paragraphs.

5. The storm water permit in this case was issued by DNR's Brian Hartsook on November 4, 2010 pursuant to the authority of General Permit WPDES WI-5067831-3 (the "General Permit"). DNR acknowledged during the proceedings conducted before the ALJ in April of 2012 that any storm water permit which is based on the General Permit must comply with the terms of the General Permit. One of the key terms of the General Permit is set forth on the following page:

1.2 **Exclusions.** The following are not eligible for coverage under this [general] permit: ...

1.2.2 Land disturbing construction activity and associated storm water discharges that affect wetlands, **unless the [DNR] determines** that the land disturbing construction activity and associated storm water discharges **comply with the wetland water quality standards provisions in ch. NR 103**, Wis. Adm. Code [Emphasis supplied].

6. DNR acknowledged at the April proceedings that the land disturbing construction activity and associated storm water discharges that will occur when the DNR builds its proposed access road and parking lot will “affect wetlands.” It was thus DNR's burden to establish compliance with all aspects of NR 103's water quality standards.

7. It was not until the April 2012 proceedings, when Mr. Hartsook produced his entire file and testified that he was not aware of any NR 103 analysis as it pertained to impacts to the wetlands from storm water discharges, that the Petitioners were able to conclude, to their considerable surprise, that an NR 103 determination as to storm water discharge impacts to the adjacent wetlands had never been made.

8. It would have been impossible for Petitioners to specifically address the issue of NR 103 prior to the April 2012 proceedings when they had no way of ascertaining that an NR 103 analysis relating to storm water impacts was lacking before the January 2012 Order remanding this matter.

9. As is clear from the proceedings before Judge Davis, the very existence of the storm water permit was not disclosed to the Petitioners

until after the time for filing a Petition for a Contested Case Hearing and Judicial Review had expired. No discovery was available to the Petitioners while this matter was pending before Judge Davis prior to remand. While the Petitioners asked Judge Davis to require discovery in conjunction with a remand, Judge Davis left that to the discretion of the ALJ. Upon remand the Petitioners sought the right to take discovery. The ALJ responded that the Petitioners discovery would be limited to open record requests.

10. The Petitioners made three open record requests (*See* attached Appendix C) for any NR 103 determination conducted in connection with DNR's permitting activities. The DNR did not furnish any type of NR 103 determination in response to the first two requests. Therefore, just prior to the April 2012 hearing, the RRNA tried one more time to nail down the existence, or non-existence, of an NR 103 determination and, on the eve of the April 2012 proceedings, the RRNA was furnished with a document that dealt exclusively with a practicable alternative under NR 299.

11. However, the DNR has never produced any evidence that it made a determination, as required by NR 103.08(4) and as also required by the specific terms of the General Permit. During and before the April 2012 proceedings, there was never any evidence produced that the DNR conducted an analysis of the impacts from the proposed project in terms of the wetlands water quality standards set forth in NR 103.03 [see NR 103.08(3)(c)], including the "wetlands functional values" analysis DNR was required to undertake pursuant to NR 103.08(2). In addition, During

and before the April 2012 proceedings, there was never any evidence produced that the DNR ever made a NR 103.08(4) determination, as required by the General Permit, before Mr. Hartsook issued his permit.

WHEREFORE, the Petitioners respectfully request that this Court resume its judicial review of this matter, as to the following two issues:

1. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR § 151.12(5)(a)? In particular:
  - a. Should the access road proposed in the Permit be considered a new “development” rather than a “redevelopment” under Wis. Admin. Code NR §§151.002(39) and 151.12(5)(a)?
  - b. Does the Permit comply with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2?
2. Did the DNR comply with NR 103 prior to the issuance of its storm water permit in November 2010?
  - a. Did the DNR conducted an analysis of the impacts from the proposed project in terms of the wetlands water quality standards set forth in NR 103.03 [see NR 103.08(3)(c)], including the "wetlands functional values" analysis DNR was required to undertake pursuant to NR 103.08(2).
  - b. Did the DNR ever made a NR 103.08(4) determination, as required by the General Permit?

Dated at Hartland, Wisconsin this 3<sup>rd</sup> day of August, 2012.

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

By:   
William C. Gleisner, III, Esq.  
State Bar No. 1014276  
300 Cottonwood Avenue, Suite No. 3  
Hartland, Wisconsin 53029  
Telephone: (262) 367-1222  
**Of Counsel for the RRNA**  
William H. Harbeck, Esq.  
State Bar No. 1007004  
Quarles & Brady, LLP

# **APPENDIX A**

STATE OF WISCONSIN      CIRCUIT COURT      WAUKESHA COUNTY

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Reddelien Road Neighborhood Association, Inc. ("RRNA"), et al,

Petitioners,

vs.

Case No. 10-CV-5341

The Department of Natural Resources ("DNR"),

Respondent.

FILED  
IN CIRCUIT COURT  
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ORDER

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The Court heard arguments on Petitioners' Motion to Remand and the Respondent's Motion to Strike the Affidavit of Dr. Neal O'Reilly on October 28, 2011 and the Court in addition held a December 12, 2011 hearing at which the Court issued an oral Ruling. Petitioners Reddelien Road Neighborhood Association (RRNA), et al., appeared on both dates by its counsel, William C. Gleisner, III, and Respondent, Wisconsin Department of Natural Resources, appeared on both dates by its counsel, Assistant Attorney General Diane L. Milligan.

Based on the pleadings and the record in this case, the briefs filed by the parties and the arguments by counsel for the parties during the October 28<sup>th</sup> hearing, and for the reasons stated by the Court on the record at the hearings on October 28, 2011 and December 12, 2011,

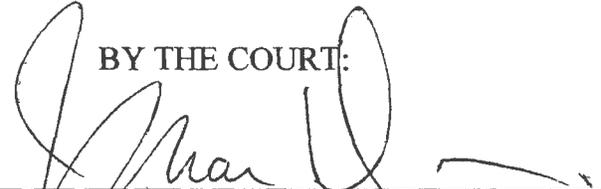
IT IS HEREBY ORDERED that:

1. The Respondent's Motion to Strike the August 23, 2011 Affidavit of Dr. Neal O'Reilly is denied.

2. Petitioners' motion for a remand under Wis. Stat. §227.57(7) for a hearing before the Wisconsin Division of Hearings and Appeals is granted.
3. The hearing on Remand shall be conducted in accordance with the provisions set forth in Wis. Stats. §§ 227.42 to 227.50.
4. In accordance with the Petitioners' Motion to Remand and the briefs in support, and ¶¶ 3 to 6 of the "Wherefore" Clause in the Petition for Judicial Review on file with this Court, the issues to be addressed on Remand shall be those as set forth in the attached Supplement to this Order.
5. This Court shall retain jurisdiction over this matter for purposes of judicial review of the remanded proceedings once they are completed and for any other reason which may arise during the period of remand necessitating the Court' further involvement.

Dated this 6<sup>th</sup> of Jan. December, 20~~11~~<sup>12</sup>.

BY THE COURT:

  
\_\_\_\_\_  
THE HONORABLE J. MAC DAVIS  
Waukesha County Circuit Court, Branch 7

*Jan 6 2012*  
SUPPLEMENT TO JUDGE DAVIS' ~~DECEMBER 2011~~ ORDER

The following issues are to be addressed upon Remand of this matter for a Contested Case Hearing consistent with the foregoing Order:

1. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR § 151.12(5)(a) ? In particular:
  - a) Should the access road proposed in the Permit be considered a new "development" rather than a "redevelopment" under Wis. Admin. Code NR §§151.002(39) and 151.12(5)(a)?
  - b) Does the Permit comply with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2?

[Based on Issue 3 in the Petition for Judicial Review]

2. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR §151.12(5)(b)? In particular:
  - a) Are the culverts proposed in the project plans adequate to handle the volume of water that will flow out of the wetland complex on and adjacent to the Kraus Site?
  - b) Will the proposed parking lot 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?
  - c) Will this surcharge septic systems and cause flooding in the Reddelien Road Neighborhood?

[Based on Issues 4 & 5 in the Petition for Judicial Review]

3. Does the Hartsook Decision comply with Wis. Stat. §281.15 and Wis. Admin. Code NR §299.04(1)(b)? In particular:
  - a) Will the storm water treatment system for the roadway remove oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds such as salt that are found in roadway runoff?
  - b) Will the failure to do so increase pollution in the Reddelien Road. Neighborhood and to North Lake?

[Based on Issue 6 in the Petition for Judicial Review]



FILED  
IN CIRCUIT COURT  
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WAUKESHA COUNTY  
CIVIL DIVISION  
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## **APPENDIX B**



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Reddelien Road Neighborhood  
Association, Inc.'s Challenge to the Department of  
Natural Resources' Conveyance of Coverage  
Under WPDES General Permit No. WI-S067831-3

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Case No. IH-12-02

**FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER**

Pursuant to due notice, hearing was held at Madison, Wisconsin on April 18-19, 2012, Jeffrey D. Boldt, administrative law judge presiding. The parties requested the opportunity to file written briefs, the last of which was received on May 29, 2012.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Jane Landretti  
Department of Natural Resources  
P. O. Box 7921  
Madison, WI 53707-7921

Reddelien Road Neighborhood Association, Inc., by

Attorney William Gleisner, III  
Law Offices of William Gleisner, III  
300 Cottonwood Avenue, Suite 3  
Hartland, WI 53029-2043

Attorney William H. Harbeck  
Quarles & Brady, LLP  
411 East Wisconsin Avenue, Suite 2040  
Milwaukee, WI 53202-4426

## FINDINGS OF FACT

1. The Wisconsin Department of Natural Resources (Department or DNR) proposed a project to construct a public boat on North Lake. The boat launch site is located on the northwest side of North Lake, off Reddelien Road. The project location is the SE ¼ of Section 17, Township 8 North, Range 18 East, in the Town of Merton, Waukesha County, Wisconsin. On November 1, 2010, the Department received a Construction Project Consolidated Permit Application or Notice of Intent relating to stormwater discharges at the construction site. On November 4, 2010, the Department of Natural Resources issued WPDES General Permit No. WI-S067831-3.

2. There is no automatic right to a hearing for a general storm water discharge permit and the DNR denied the request for a contested case proceeding under § 227.42, Stats. The Reddelien Road Neighborhood Association, Inc. requested a Motion to Remand pursuant to Wis. Stat. § 227.57(1) before the Waukesha County Circuit Court. On January 6, 2012, the Honorable J. Mac Davis issued an Order granting the Motion to Remand under Wis. Stat. § 227.57(7) for a hearing before the Division of Hearings and Appeals.

3. On February 1, 2012, the Department filed a Request for Hearing with the Division of Hearings and Appeals.

4. The Order further set forth the following three issues to be addressed. The issues and a summary of the ruling are as follow:

1. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR § 151.12(5)(a)? In particular:

a) Should the access road proposed in the Permit be considered in new "development" rather than a "redevelopment" under Wis. Admin. Code NR §§ 151.002(39) and 151.12(5)(a)?

Summary Ruling: No, the access project was properly classified as redevelopment because of the existing uses of the gravel driveway road. Under DNR guidance, "driveways" are to be considered redevelopment. Even mowed urban lawns are considered as redevelopment. (Wood; Ex. 35) Further, the Department did classify the parking lot as new development.

However, the classification nomenclature is not an absolute category, but allows for flexibility within project design and administration of the stormwater permitting program. Finally, the classification of the project is not as significant as the fact that the project as a whole will comply with the TSS removal standards. (Harstook)

- b) Does the Permit comply with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2?

Summary Ruling: Yes. (Harstook; See above)

2. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR § 151.12(5)(b)? In particular:

- a) Are the culverts proposed in the project plans adequate to handle the volume of water that will flow out of the wetland complex on and adjacent to the Kraus Site?

Summary Ruling: Yes, the proposed plans submitted by Kapur and Associates meet BMP requirements for all design specifications, including culverts. (Harstook; Ex. 16)

- b) Will the proposed parking lot 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?

Summary Ruling: No. (Harstook)

- c) Will this surcharge septic systems and cause flooding in the Reddelien Road Neighborhood?

Summary Ruling: These issues are outside the scope of this general storm water permit review, but there was no evidence which supported such a conclusion other than speculation. (Harstook)

3. Does the Hartsook Decision comply with Wis. Stat. § 281.15 and Wis. Admin. Code NR § 299.04(1)(b)? In particular:

- a) Will the storm water treatment system for the roadway remove oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds such as salt that are found in roadway runoff?
- b) Will the failure to do so increase pollution in the Reddelien Road Neighborhood and to North Lake?

The third issue subject to the Remand Order asks the Department to impose certification requirements that specifically must be waived by the Department's own rules. The third issue is dismissed as a matter of law.

5. DNR Storm Water Program Coordinator James Bertolacini provided undisputed expert testimony regarding the Department's long-standing practice and

policy with respect to the interplay between NR 103(wetland water quality standards) and NR 151 (runoff management) and the general storm water permitting program in particular. Bertolacini testified that rather than imposing specific standards for runoff, the ch. NR 103 language has consistently been addressed (in all DNR issued general storm water permits) by general narrative-type storm water discharge limitations and implementation of storm water practices. Bertolacini described further its context within the NR 151 language qualifying TSS reductions requirements to the maximum extent practicable given the site constraints that exist. By contrast, the wetland permitting process analyzes whether DNR should authorize placement of fill in the wetland, and the practicable alternatives analysis is a step in that permitting process. The storm water runoff permitting process analyzes impacts that are secondary to the wetland fill—the impacts to water of the state (including wetlands) of runoff from the project. The MEP language in NR 151 illustrates how the storm water staff's analysis must be distinct from that of the wetland staff. (Ex. 01-117)

6. Further, the testimony of both James Bertolacini and DNR Water Resources Engineer Bryan Hartsook make clear that it would be impracticable to measure specific effluent limits from a discharge as variable as storm water runoff. Storm water staff do not—and indeed cannot—create specific standards pursuant to a ch. NR 103 Water Quality Certification analysis as part of a storm water runoff permit.

7. Mr. Hartsook testified that he relied on the indication by wetland water quality staff that a ch. NR 103 alternatives analysis had been conducted to the Department's satisfaction on the wetland fill issue. All that was left of ch. NR 103 for Mr. Hartsook to consider in his review of the DNR stormwater plan were the generic and narrative standards that apply to runoff. Mr. Hartsook testified that ch. NR 151 identifies protective area performance standards which are designed to protect and promote the non-numeric wetland water quality standards found in ch. NR 103. The protective area performance standards require an applicant to minimize the area of hard surface placed within a specified setback distance from wetlands and surface waters. The standards further require an applicant to treat runoff from hard surfaces within the protective area to the maximum extent practicable. DNR's review of the storm water management plan prepared by Kapur and Associates considered this protective area performance standard. It found that the project complied with the practicable alternative analysis required by § NR 103.08(4). None of the petitioners' witnesses were able to carry their burden of proof to establish that the proposed storm water plan violates any specific requirement of NR 103.

8. James Bertolacini testified that DNR regulations and policy on ch. NR 103 for runoff management require that applicants achieve the greatest TSS reduction that they can after considering site constraints (i.e., the "maximum extent practicable"). Hartsook was convincing that the project complied with the maximum extent practicable language in ch. NR 151. The plans were more than sufficient given the site constraints.

9. The petitioners argue that the DNR erred in characterizing the roadway expansion as redevelopment rather than as new development. The access project was

properly classified as redevelopment because of the existing uses of the gravel driveway road. Under DNR guidance, "driveways" are to be considered redevelopment. Bertolacini noted that driveways become impervious from the weight of vehicles compacting soils. Further, even the development of urban lawns for construction projects are to be considered redevelopment under DNR guidance. (Ex. 35) Further, the Department did classify the entire parking lot as new development.

However, the classification nomenclature is not an absolute category, but allows for flexibility within project design and administration of the stormwater permitting program. The classification is not as significant as the fact that the project as a whole will comply with the TSS removal standards. (Harstook)

10. The proposed plans submitted by Kapur and Associates meet BMP requirements for all design specifications, including culverts. (Harstook; Ex. 16)

## DISCUSSION

It must first be noted that in the entire history of the program, the DNR has never denied a general storm water permit related to a construction project. (Bertolacini) This small well-designed boat ramp project would be an absurd place to start. DNR Storm Water Engineer Bryan Harstook described the design as considerably "better than average" in terms of meeting storm water management program goals.

The testimony made it clear that storm water runoff is a highly variable effluent which simply cannot be subject to numeric standards relating to the specific pollutants identified in the remand order. The Department's longstanding approach to the interplay between storm water management and NR 103, as well as the exemption from NR 299, reflect this practical reality.

The DNR's categorization of the existing gravel drive, which will be paved, as redevelopment and the proposed parking lot area as development comported with DNR Guidance. (Ex. 35) Further, the petitioners' emphasis on the classification of the particular segment of the roadway is misplaced. As Harstook testified, the plan had been designed to overcompensate in some areas (by achieving performance beyond the designated TSS removal standards) so as to yield a "better than average" TSS removal for the entire project. In the general permit he issued, Mr. Harstook complied with the standards of ch. NR 151 to look at the project as a whole for TSS standards that can be achieved to the maximum extent practicable given the site constraints that are present. His testimony was clear that the plans presented in the application for general permit coverage treated storm water to the maximum extent practicable on the site, given soil types, the flat surface area and the boundaries of the easement. (Harstook)<sup>1</sup>

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<sup>1</sup> Harstook suggested the possibility of adding a low cost baffle steel plated device to catch even more TSS particles; this idea should be considered but is not necessary to meet NR 151 requirements. (Harstook)

Several of the issues raised by the petitioners come precariously close to being frivolous as a matter of law. In particular, there is a very specific exemption from Wis. Admin. Code ch. NR 299 for Chapter 283 storm water permits, such as the instant general permit, set forth in NR 299.01(2)(c). As a matter of law, the DNR is instructed to: "Waive certification for any activity which the department finds will result in no discharge, any wastewater discharge associated with an activity which will be regulated by the permit authority under ch. 283, Stats., or any activity that does not fall within the purview of the department's authority." The third issue subject to the Remand Order thus asks the Department to impose certification requirements that specifically must be waived by the Department's own rules. That issue is dismissed as a matter of law.

### CONCLUSIONS OF LAW

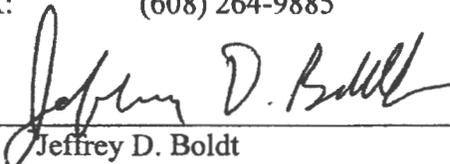
1. The Division of Hearings and Appeals has authority under Wis. Stat. §§ 227.43(1)(b) to review cases referred to it for hearing by the Department of Natural Resources.
2. For purposes of NR 151, "development" means residential, commercial, industrial or institutional land uses and associated roads. Wis. Admin. Code NR 151.002(11) The DNR properly characterized the proposed parking lot as (new) development.
3. For purposes of NR 151, "redevelopment" means areas where development is replacing older development. NR 151.002(39) The DNR properly characterized the existing gravel driveway as "redevelopment." This complied with DNR guidance on this topic. (Ex. 35)
4. The Permit and project as a whole complies with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2, and with peak runoff discharge standard under Wis. Admin. Code NR § 151.12(5)(b).
5. Boat landings are exempt from the vegetative buffer protective area requirements of NR § 151 pursuant to NR § 151.12(5)(d)4.c.
6. As a matter of law, the DNR is instructed in NR 299.01(2)(c) to.: "Waive certification for any activity which the department finds will result in no discharge, any wastewater discharge associated with an activity which will be regulated by the permit authority under ch. 283, Stats., or any activity that does not fall within the purview of the department's authority." The third issue subject to the Remand Order thus asks the Department to impose certification requirements that specifically must be waived by the Department's own rules. The third issue is dismissed as a matter of law.

ORDER

WHEREFORE IT IS HEREBY ORDERED, that the permit remain in full force and effect as issued, and the petition for review be DISMISSED.

Dated at Madison, Wisconsin on July 18, 2012.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By:   
Jeffrey D. Boldt  
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve

and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.

## **APPENDIX C**

# Hey and Associates, Inc

Water Resources, Planning and Ecology

100 ROCKY HILL DRIVE, SUITE 300

SHOENICHOFF, WISCONSIN 53045-0100

PHONE 262-796-0340

FAX 262-796-0447

100 ROCKY HILL DRIVE

100 ROCKY HILL DRIVE

September 20, 2010

Mr. Matthew J. Frank, Secretary  
Wisconsin Department of Natural Resources  
101 S Webster Street  
PO BOX 7921  
Madison, WI 53707-7921

Project No.: 10072

Re: Open Records Request for Docket Number IP-SE-2009-68-05745-05750 (North Lake Boat Launch)

Dear Mr. Frank:

I am writing on the behalf of the Reddellen Road Neighborhood Association, Inc., a group of affected property owners near the proposed public boat launch on North Lake in Waukesha County. We are requesting under Wis. Stat. § 19.31-19.39 copies of documents associated with Docket Number IP-SE-2009-68-05745-05750. Specific documents we are requesting include:

1. WDNR's Wis. Stat. Chapter 30 permit application.
2. Plans submitted with permit application.
3. Any revised plans submitted since original application.
4. Practical alternative analysis to comply with Wis. Adm. Code NR103.
5. Application for Water Quality Certification under Wis. Adm. Code NR299.
6. Application for stormwater permit under Wis. Adm. Codes NR216 and NR151.
7. Files associated with the preparation of an environmental assessment under Wis. Adm. Code NR150.
8. Field surveys related to wetland delineations, tree surveys, wildlife inventories, identification of endangered and threatened species, navigability or other natural resource features of the proposed and alternative boat launch sites.
9. Any other documents related to this permit application.

Hey and Associates, Inc. agrees to pay the applicable fees for reproduction outlined in Wis. Stat. § 19.35 (3).

Sincerely,

Neal O'Reilly, PhD, PH  
Vice President Water Resources Planning



Mr. Matthew J. Frank, Secretary  
September 20, 2010  
Page 2

- c: Andrew Hudak, Water Management Specialist, Wisconsin Department of Natural Resources
- J.B. Van Hollen, Attorney General, State of Wisconsin
- William C. Gleisner, III, Council Reddellen Road Neighborhood Association, Inc.
- Elizabeth G. Rich, ELIZABETH GAMSKY RICH & ASSOCIATES, S.C., Co-Counsel for the Plaintiffs
- Vince Moseca, Vice President, Geological Sciences and Permitting, Hey and Associates, Inc.



**William C. Gleisner, III**

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**From:** UPS Quantum View <auto-notify@ups.com>  
**Sent:** Wednesday, September 22, 2010 11:46 AM  
**To:** wgleisner@sbcglobal.net  
**Subject:** UPS Delivery Notification, Tracking Number 1Z37Y1R90191193389



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**At the request of Hey and Associates, Inc., this notice is to confirm that the following shipment has been delivered.**

**Important Delivery Information**

**Tracking Number:** [1Z37Y1R90191193389](#)  
**Delivery Date / Time:** 22-September-2010 / 10:21 AM

**Delivery Location:** RECEPTION  
**Signed by:** GRORY

**Shipment Detail**

**Ship To:**  
Susan Hedman  
US EPA Region 5  
77 W JACKSON BLVD  
ROOM 1300  
CHICAGO  
IL  
60604  
US

**Number of Packages** 1  
**UPS Service:** NEXT DAY AIR  
**Weight:** 1.0 LBS  
**Reference Number 1:** 10072

# Hey and Associates, Inc.

Water Resources, Wetlands and Ecology

9401 W. BELOIT ROAD, SUITE 210

MILWAUKEE, WISCONSIN 53227

OFFICE 414-327-0440

FAX 414-327-0441

VOLO, ILLINOIS

CHICAGO, ILLINOIS

March 19, 2012

**By Overnight Mail**

Ms. Cathy Stepp, Secretary

Wisconsin Department of Natural Resources

P.O. Box 7921

Madison, WI 53707-7921

Project No.: 10072

Re: Open Records Request for Docket Number IP-SE-2009-68-05745-05750 (North Lake Boat Launch)

Dear Ms. Stepp:

On September 20, 2010, I made an open record request to your predecessor, Matthew Frank, on behalf of the Reddelien Road Neighborhood Association, Inc. I did so pursuant to Wis. Stats. § 19.31-19.39. A copy of that September 20, 2010 request is enclosed for your information. I received a prompt response to that request, but I never received copies of the following two items:

1. Practical alternative analysis to comply with Wis. Adm. Code NR103.
2. Application for Water Quality Certification under Wis. Adm. Code NR299.

If I do not hear back from you *within a reasonable time*, I will assume that those two items do not exist. If they do exist, then I would respectfully ask two things. First, I would like an explanation as to why they were not produced in response to my September 20, 2010 letter. Second, pursuant to Wis. Stats. § 19.34(2)(b)1 and Wis. Stats. § 19.35(1)(b) & (4)(a), I request that *within a reasonable time* you send me full and complete copies of those two items, including any grant of the application for Water Quality Certification under Wis. Adm. Code NR299. According to the Wisconsin Department of Justice (See [http://www.doj.state.wi.us/dls/OMPR/2010OMCG-PRO/2010\\_Pub\\_Rec\\_Outline.pdf](http://www.doj.state.wi.us/dls/OMPR/2010OMCG-PRO/2010_Pub_Rec_Outline.pdf), at Section VIIB), a *reasonable time* for responding to an open records request is ten days.

In addition, if there are any documents which were produced after September 20, 2010 that relate in any way to the open request items outlined in my enclosed request, please also provide copies of same within a *reasonable time*. Hey & Associates, Inc. agrees to pay the applicable fees for reproduction outlined in Wis. Stat. § 19.35(3).



Ms. Cathy Stepp, Secretary  
March 19, 2012  
Page 2

Sincerely,

Neal O'Reilly, PhD, PH  
Vice President Water Resources Planning  
[noreilly@heyassoc.com](mailto:noreilly@heyassoc.com)

cc: Andrew Hudak, Water Management Specialist, WDNR  
J.B. Van Hollen, Attorney General, State of Wisconsin



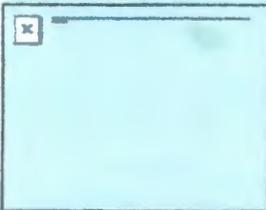
**William C. Gleisner, III**

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**From:** UPS Quantum View <auto-notify@ups.com>  
**Sent:** Tuesday, March 20, 2012 9:43 AM  
**To:** wgleisner@sbcglobal.net  
**Subject:** UPS Delivery Notification, Tracking Number 1Z044R0V1396727599



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**Important Delivery Information**

**Tracking Number:** [1Z044R0V1396727599](#)  
**Delivery Date / Time:** 20-March-2012 / 9:25 AM

**Delivery Location:** OFFICE  
**Signed by:** WESTBY

**Shipment Detail**

**Ship To:**  
Ms. Cathy Stepp, Secretary  
WDNR  
101 S WEBSTER ST  
MADISON  
WI  
53703  
US

**Number of Packages:** 1  
**UPS Service:** NEXT DAY AIR SAVER  
**Weight:** 1.0 LBS  
**Reference Number 1:** 10072

# *Hey and Associates, Inc.*

Water Resources, Wetlands and Ecology  
9401 W. BELOIT ROAD, SUITE 210  
MILWAUKEE, WISCONSIN 53227  
OFFICE 414-327-0440  
FAX 414-327-0441

VOLO, ILLINOIS

CHICAGO, ILLINOIS

April 12, 2012

**By Overnight Mail**

Ms. Cathy Stepp, Secretary  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707-7921

Project No.: 10072

Re: Open Records Request for Docket Number IP-SE-2009-68-05745-05750 (North Lake Boat Launch)

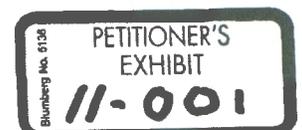
Dear Ms. Stepp:

This is to follow up my March 19, 2012 open records request (copies of that request and the September 20, 2010 request referred to therein are attached for your convenience). Since the DNR has not responded to that request, I am assuming, as set forth in that request, that the DNR has no responsive documents. If this is incorrect, please let me know immediately. I can be contacted by phone at 414-870-5732.

Sincerely,

Neal O'Reilly, PhD. PH  
Vice President Water Resources Planning  
[noreilly@heyassoc.com](mailto:noreilly@heyassoc.com)

cc: Andrew Hudak, Water Management Specialist, WDNR  
J.B. Van Hollen, Attorney General, State of Wisconsin



**William C. Gleisner, III**

---

**From:** UPS Quantum View <auto-notify@ups.com>  
**Sent:** Friday, April 13, 2012 10:03 AM  
**To:** noreilly@heyassoc.com  
**Subject:** UPS Delivery Notification, Tracking Number 1Z044R0V1396001630



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**Important Delivery Information**

**Tracking Number:** [1Z044R0V1396001630](#)  
**Delivery Date / Time:** 13-April-2012 / 9:31 AM

**Delivery Location:** OFFICE  
**Signed by:** RAMOS

**Shipment Detail**

**Ship To:**  
Ms. Cathy Stepp  
WDNR  
101 S WEBSTER ST  
MADISON  
WI  
53703  
US

**Number of Packages:** 1  
**UPS Service:** NEXT DAY AIR SAVER  
**Weight:** 0.5 LBS  
**Reference Number 1:** 10072