

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 7

WAUKESHA COUNTY

---

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

Petitioners,

Case No. 10-CV-5341

v.

Administrative Agency Review: 30607

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES,

Respondent.

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DNR'S BRIEF IN RESPONSE TO RRNA'S  
"PETITION FOR RESUMPTION OF JUDICIAL REVIEW FOLLOWING § 227.57(7)  
REMAND" AND IN SUPPORT OF DNR'S MOTION TO DISMISS

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The State of Wisconsin Department of Natural Resources (DNR) submits this brief in response to the Reddellen Road Neighborhood Association's (RRNA's) Petition for Resumption of Judicial Review Following [Wis. Stat.] § 227.57(7) Remand (Petition for Resumption of Judicial Review) and in support of its Motion to Dismiss this action.

FACTS

On November 4, 2010, DNR issued a decision granting Construction Site Storm Water Runoff Coverage under WPDES General Permit No. WI-S067831-3 for the DNR's North Lake Public Access construction site (permit coverage decision). RRNA had

I. REQUESTED THAT DNR HOLD A CONTESTED CASE HEARING ON THIS DECISION, BUT RRNA'S REQUEST

was denied and RRNA did not appeal the denial pursuant to Wis. Stat. §§ 227.52 and 227.53.

A. RRNA filed a petition for judicial review of the permit coverage decision, and that petition is the pleading that commenced this proceeding. The petition raised six issues:

1. The permit coverage decision does not comply with Wis. Admin. Code § NR 151.12(5)(a) because it does not address whether DNR's proposed construction work is "development" or "redevelopment," and because the permitted design does not comply with the proper TSS removal standard, so remand is warranted (Pet. ¶¶ 16-19 and Prayer for Relief ¶ 3).
2. The permit coverage decision does not comply with Wis. Admin. Code § NR 151.12(5)(b) because the parking lot drainage system will be inadequate and because the fill for the parking lot will divert water toward neighboring residences, causing flooding and surcharging septic systems, so remand is warranted (Pet. ¶¶ 20-24 and Prayer for Relief ¶¶ 4-5).
3. The permit coverage decision does not comply with Wis. Stat. § 281.15 or Wis. Admin. Code § NR 299.04(1)(b) because the storm water treatment system is not designed to remove oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds, and the effects of these compounds were not accounted for, so remand is warranted (Pet. ¶ 25 and Prayer for Relief ¶ 6).
4. The permit coverage decision was issued without permitting RRNA and the North Lake Management District "reasonable access" to DNR's property (Pet. ¶¶ 26-27).
5. The permit coverage decision was issued without affording the petitioners a reasonable opportunity to comment (Pet. ¶ 28).
6. The permit coverage decision does not contain a proper Water Quality Certification as required by Wis. Stat. § 281.15, Wis. Admin. Code chs. NR 103 and NR 299, and 33 U.S.C. ¶ 1341, so remand is warranted (Pet. ¶¶ 29-32 and Prayer for Relief ¶ 7).

On January 6, 2012, the Court issued an order remanding the DNR's November 4, 2010, permit coverage decision under Wis. Stat. § 227.57(7) to the DNR for a contested case hearing on issues 1, 2 and 3. In its Order, the Court indicated it was retaining "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's further involvement." January 6, 2012 Order at 2, ¶ 5.

A contested case hearing was held on April 18-19, 2012, briefs were filed, and the proceedings were completed on July 18, 2012, when the State of Wisconsin Division of Hearings and Appeals issued its Findings of Fact Conclusions of Law and Order regarding the three remanded issues (the ALJ's Decision). The ALJ's decision contains a Notice providing:

Any person aggrieved by the attached decision which adversely affects the substantial interests of such persons 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. . . . 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: 103 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.

ALJ's Decision at 7-8.

On August 3, 2012, RRNA filed its Petition for Resumption of Judicial Review. In it, RRNA asks this Court to "resume its judicial review of this matter" as to two issues (Pet. for Resumpt. of Jud. Rev. at 6). The first issue is remanded issue 1, above, the question of whether DNR's boat launch project is new development or redevelopment, and whether the proper TSS removal standard has been met (*id.*, ¶1). The second issue RRNA wants addressed is: "Did the DNR comply with [Wis. Admin. Code ch.] NR 103 prior to the issuance of its storm water permit in November 2010?" (*See id.*, ¶ 2). Although the petition for judicial review in this case mentioned Wis. Admin. Code ch. NR 103 in the sixth issue, the Petition for Resumption of Judicial Review states that the issue now being raised was "discovered during the course of the remanded proceedings," and that RRNA "had no notice of and could not have anticipated this NR 103 issue prior to that hearing . . ." *Id.* at 3. Thus, RRNA is asking the Court to resume its judicial review as to one issue that was subsequently addressed in the ALJ's decision and one issue that was raised for the first time before the ALJ. It is not seeking review of any issues in the petition for judicial review that were not addressed in the contested case proceeding.

## ARGUMENT

### II. RRNA'S PETITION FOR RESUMPTION OF JUDICIAL REVIEW MUST BE REJECTED BECAUSE IT RAISES ISSUES THAT MUST BE RAISED IN A SEPARATE JUDICIAL REVIEW PROCEEDING CHALLENGING THE ALJ'S DECISION, NOT IN THIS PROCEEDING.

#### A. A remand order is a final order.

It is well settled that a circuit court order remanding a case to an administrative agency is appealable as of right when the remand order disposes of the entire matter in litigation. *Bearns v. Dept. of Industry Labor and Human Relations*, 102 Wis. 2d 70, 77-78, 306 N.W.2d 22 (1981). This is because a remand order is not an intermediate order, but is instead an order that concludes the litigation in court and commences a proceeding before an administrative tribunal. *Bearns*, 102 Wis. 2d at 76. The *Bearns* court explained, by quoting *Van Domelon v. Industrial Commission*, 212 Wis. 22, 249 N.W. 60 (1933), that:

If, after setting aside an order or award, a new order or award is subsequently made by the commission, in further proceedings upon a remanded record, in relation to the original application for compensation, then such new order or award is not reviewable in the action which was theretofore commenced and prosecuted to judgment in relation to a former order or award. Each proceeding to review an order or award of the commission is an action against the commission and such parties as may have an interest in sustaining such order or award. When the court in such an action either confirms or sets aside the commission's order or award, the court's adjudication constitutes the final determination in that action. If thereafter any person feels aggrieved by a subsequent order or award of the commission in relation to the same application for compensation, a new and separate action to review that order or award must be instituted by the person aggrieved.

*Van Domelon*, 212 Wis. at 25-26. This same logic applies to issues that are remanded to an administrative agency. When the Court remands an issue to an administrative agency,

it is disposing of that issue in litigation and a new proceeding on that issue is being commenced. When the administrative agency issues a subsequent order addressing that issue, a new and separate judicial review action must be instituted by any party aggrieved by the administrative order.

The requirement that administrative decisions be appealed through new and separate judicial review proceedings makes practical sense. It is equally possible that either party may be aggrieved by an administrative order, and the review requirement permits either party to seek review. RRNA can petition for judicial review under Wis. Stat. § 227.52, and the DNR can petition for judicial review under Wis. Stat. § 227.46(8). Alternatively, both parties can decide not to petition for judicial review and let the decision stand. It is also possible that some but not all of the RRNA members may choose to file a petition, and this separate review opportunity allows them to choose for themselves. If a third party had intervened in the administrative proceeding pursuant to Wis. Stat. § 227.44(2m), the separate review requirement provides for third party notice and intervention in the new judicial review proceeding. *See* Wis. Stat. § 227.53(2). The issuance of a new agency decision triggers the mandatory time limits under Wis. Stat. § 227.53(1) (*See Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, ¶ 23, 288 Wis. 2d 693, 709 N.W.2d 520), and the filing of a petition for judicial review triggers the production of the record on review for the decision being challenged. *See* Wis. Stat. § 227.55. If a new petition is not filed, the record is not automatically compiled and filed.

- B. RRNA should have filed a new petition to challenge the ALJ's Decision, not a "petition for resumption of judicial review."

Here, the Court issued an order remanding three issues to DNR for hearing. The ALJ's Decision became the final order of the DNR on those three issues, and is subject to review under Wis. Stat. §§ 227.52 and 227.53, as noted in the Notice appended to that decision. If RRNA is aggrieved by the ALJ's Decision, it must properly file and serve a petition for judicial review of that decision pursuant to Wis. Stat. § 227.53. That petition would trigger DNR's statement of position and the Division of Hearings and Appeals' production of the administrative record.

RRNA cannot file a "Petition for Resumption of Judicial Review" to fold issues raised through and during the contested case hearing into the judicial review proceeding challenging the permit coverage decision. There is no basis in law for such a petition. In addition, not only is this approach contrary to the well-settled law regarding remand decisions, but it also presents practical problems and problems with the scope of review. When RRNA filed the petition that commenced this proceeding, DNR filed its statement of position (CCAP Court Record Event 3), and it produced the administrative record (CCAP Court Record Event 4). Since no contested case hearing had been held, the Court's treatment of disputed issues of fact is governed by Wis. Stat. § 227.57(7).

Now RRNA wants this Court to review an issue that was determined after a contested case hearing based on a separate administrative record. Wisconsin Stat.

§ 227.55 has not been engaged to produce that record, and there is no authority in Wis. Stat. ch. 227 providing for the production of a post-remand record or the combination of two separate records associated with two separate decisions in one judicial review proceeding. To the contrary, the chapter speaks only of the review of singular decisions, and sets deadlines based on service of "the decision." *See, e.g.*, Wis. Stat. §§ 227.52(1), 227.52(1)(a)2., 227.52(1)(a)2m., 227.52(1)(a)3., 227.52(1)(b). Further, the standard of review employed by the Court is different once a contested case hearing has been held. When reviewing an ALJ's decision, the court must give substantial deference to the ALJ's factual findings under the substantial evidence test. Wis. Stat. § 227.57(6); *City of Oak Creek v. DNR*, 185 Wis. 2d 424, 443-49, 518 N.W.2d 276 (Ct. App. 1994).

Since the ALJ's Decision is a new, final, reviewable decision, it must be subject to a separate petition for judicial review filed under Wis. Stat. § 227.53. RRNA cannot file a petition for resumption of judicial review to challenge this new decision as part of its challenge to DNR's initial permit coverage decision. The petition must be denied.

III. RRNA HAS ABANDONED THE REMAINING ISSUES IN THIS CASE, SO THIS CASE SHOULD BE DISMISSED.

The Court remanded three of the six issues raised in RRNA's petition for judicial review for a contested case hearing under Wis. Stat. § 227.57(7). When it did so, it specifically stated that it was retaining jurisdiction over the matter during and after the contested case hearing. The parties had briefed the question of whether the Court has



authority to remand for a hearing under Wis. Stat. § 227.57(7) prior to commencing its judicial review. Neither party had briefed the question of whether the Court has authority to retain jurisdiction after remanding the case. DNR asserts that the Court lacked the authority to retain jurisdiction over the remanded issues. The Court may only retain jurisdiction when it orders that additional evidence be taken by the agency pursuant to Wis. Stat. § 227.56(1), not when it remands under Wis. Stat. § 227.57(7). Compare *Soo Line R. Co. v. Revenue Dep't*, 143 Wis. 2d 874, 878, 422 N.W.2d 900 (Ct. App. 1988) with *Gimenez v. State Medical Exam. Bd.*, 229 Wis. 2d 312, 600 N.W.2d 29 (Ct. App. 1999).

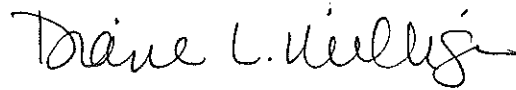
The Court need not reach the issue of its authority to retain jurisdiction post-remand if it dismisses this case because RRNA has chosen not to pursue the three issues that were not remanded. As noted in the preceding section, the three issues that were sent to the ALJ were resolved in the ALJ's Decision, which is a separate reviewable final decision. They are off the Court's plate. RRNA now seeks to go forward with one of the three issues that was remanded for the contested case hearing, and one issue that RRNA first became aware of during the course of the contested case hearing. Since RRNA is not contesting any of the three issues that the Court did not remand, this case should be dismissed.

CONCLUSION

For all of the reasons set forth here, DNR respectfully requests that this Court reject RRNA's Petition for Resumption of Judicial Review and that it grant DNR's motion to dismiss this petition for judicial review.

Dated this 23rd day of August, 2012.

J.B. VAN HOLLEN  
Attorney General



DIANE L. MILLIGAN  
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## 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 <b>Additional Text:</b> Petition for Judicial Review of November 4, 2010 Storm Water Permit.		
	12-20-2010	Filing fee paid <b>Amount</b> \$ 164.50 <b>Additional Text:</b> 10R 065221		
	01-11-2011	Notice of Appearance <b>Additional Text:</b> and Statement of Position, received and filed by Attorney Milligan, Assistant Attorney General, with cover letter.		
	01-17-2011	Record as received from <b>Additional Text:</b> certified copy of record from Wisconsin Dept of Natural Resources, received and filed by Attorney Milligan, Assistant Attorney General.		
	01-24-2011	Letters/correspondence <b>Additional Text:</b> dated January 21, 2011, received and filed by Attorney Harbeck, requesting Scheduling Conference.		
	02-07-2011	Letters/correspondence <b>Additional Text:</b> 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 <b>Additional Text:</b> dated "January 7, 2011" from William C Gleisner, III, Esq. regarding Motion to Consolidate		
	02-07-2011	Affidavit <b>Additional Text:</b> Amended Affidavit of Attorney William Gleisner In Support of Motion to Consolidate Case Numbers 10CV5085, 10CV5096 and 10CV5341		
	02-07-2011	Motion <b>Additional Text:</b> 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 <b>Additional Text:</b> 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	
		<b>Additional Text:</b> Motion hearing on June 17, 2011 at 02:30 pm.		
22	05-24-2011	Brief		
		<b>Additional Text:</b> RRNA Brief in Opposition to DNR Motion to Dismiss filed with cover letter by Attorney Gleisner, III.		
23	06-08-2011	Brief		
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> of Bryan Hartsook, received and filed by Attorney Milligan, with cover letter.		
25	06-13-2011	Letters/correspondence		
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> 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
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> Motion hearing on July 29, 2011 at 03:00 pm.		
29	06-17-2011	Memorandum		
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> Transcript received and filed for the following date and event: Motion Hearing held on June 17, 2011		
31	07-15-2011	Brief		
		<b>Additional Text:</b> with supporting affidavits and exhibits, received and filed by Attorney Gleisner, III, with cover letter.		
32	07-18-2011	Brief		
		<b>Additional Text:</b>		

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		
		<b>Additional Text:</b>		
		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 Hans on, 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		
		<b>Additional Text:</b>		
		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
		<b>Additional Text:</b>		
		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 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	
		<b>Additional Text:</b>		
		Telephone scheduling conference on August 26, 2011 at 03:00 pm.		
37	08-02-2011	Received documents		
		<b>Additional Text:</b>		
		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		
		<b>Additional Text:</b>		
		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	
		<b>Additional Text:</b>		
		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		
		<b>Additional Text:</b>		
		Reddellen 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
		<b>Additional Text:</b>		
		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 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 appeared by phone means for Petitioner Reddellen 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		
		<b>Additional Text:</b> 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	
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> 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	
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> 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
		<b>Additional Text:</b> 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 Yuhus, and Petitioner Jennifer Yuhus. 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 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 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	
		<b>Additional Text:</b> Oral ruling on December 12, 2011 at 03:00 pm.		
50	10-31-2011	Brief		
		<b>Additional Text:</b> 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		
		<b>Additional Text:</b> 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
		<b>Additional Text:</b>		
		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 Y uhas, and Petitioner Jennifer Y uhas. 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		
		<b>Additional Text:</b>		
		Transcript received and filed for the following date and event: Oral Ruling held on December 12, 2011		
55	12-22-2011	Received documents		
		<b>Additional Text:</b>		
		Proposed Order filed under the 5-day rule. filed by Atty. William Gleisner.		
56	12-27-2011	Letters/correspondence		
		<b>Additional Text:</b>		
		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		
		<b>Additional Text:</b>		
		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		
		<b>Additional Text:</b>		
		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		
		<b>Additional Text:</b>		
		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	
		<b>Additional Text:</b>		
		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	
		<b>Additional Text:</b>		
		Court remanded case back to Department of Natural Resources per January 6, 2012 signed order.		
62	07-23-2012	Letters/correspondence		
		<b>Additional Text:</b>		
		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		
		<b>Additional Text:</b>		
		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	<b>Additional Text:</b> to Consolidate Cases 10CV5341 and 12CV1751, received and filed by Attorney Gleisner, III.
65	08-03-2012	Petition	<b>Additional Text:</b> 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	<b>Additional Text:</b> dated August 8, 2012, confirming status conference date of August 24, 2012, parties by phone.
67	08-10-2012	Letters/correspondence	<b>Additional Text:</b> 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.

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