

Case Caption (Case Name)

Wisconsin Dairy Alliance Inc. and Venture Dairy Cooperative v. Wisconsin Department of Natural Resources, Natural Resources Board, Clean Wisconsin, and Wisconsin Farmers Union

DOCKETING STATEMENT

Circuit Court Case No. 2023-CV-66

Case Number Issued by Court of Appeals

Appellant(s) (Cross-Applicant)

Wisconsin Dairy Alliance Inc.,
Venture Dairy Cooperative

Attorney's Name and Address

Scott E. Rosenow, 501 East Washington Avenue,
Madison, WI 53703

Attorney's Telephone Number

(608) 661-6918

Respondent(s) (Cross-Respondent)

Wisconsin Department of Natural Resources,
Natural Resources Board,
Clean Wisconsin (Intervenor),
Wisconsin Farmers Union (Intervenor)

Attorney's Name and Address

Gabe Johnson-Karp, PO Box 7857, Madison, WI 53707-7857
Adam Voskuil, 634 W. Main St., #210, Madison, WI 53703
Evan Feinauer, 634 W. Main St., #300, Madison, WI 53703

Attorney's Telephone Number

608-267-8904 (GJK)

CRITERIA FOR EXPEDITED APPEALS

- This Docketing Statement is used solely to determine whether an appeal should be placed on the expedited appeal calendar. The respondent is not required to respond to the Docketing Statement. Generally, an appeal is appropriate for the expedited appeal calendar if:
 1. no more than 3 issues are raised;
 2. the parties' briefs will not exceed 15 pages in length; and
 3. the briefs can be filed in a shorter time than normally allowed.
 These requirements can be modified somewhat in appropriate cases.
- Parties should assume that the appeal will proceed under regular appellate procedure unless the court notifies them that the appeal is being considered for placement on the expedited appeals calendar.

JURISDICTION

Has judgment or order appealed from been "entered" (filed with the clerk of circuit court)?

Yes No If yes, date of entry 01/31/2024

Is appeal timely? (See §808.04, Wisconsin Statutes)

Yes No

Is judgment or order final (does it dispose of the entire matter in litigation as to one or more of the parties)?

Yes No (If "no", explain jurisdiction basis for appeal on separate sheet.)

NATURE OF ACTION – Briefly describe the nature of action and the result in circuit court:

This declaratory judgment action challenges the validity of two administrative rules that the Wisconsin Department of Natural Resources (DNR) promulgated. The two rules effectively require all concentrated animal feeding operations (CAFOs) with 1,000 or more animal units to have a Wisconsin Pollutant Discharge Elimination System (WPDES) permit.

The Plaintiffs brought this action seeking a declaration that both rules are unlawful. The Plaintiffs brought two separate grounds for invalidating each rule: each rule exceeds the DNR's statutory authority, and each rule violates the uniformity mandate in Wis. Stat. § 283.11(2).

The circuit court concluded that each rule had statutory authority and that neither rule violated the uniformity mandate. The circuit court thus denied the Plaintiffs' motion for summary judgment and granted the Defendants' motion for summary judgment.

ISSUES – Specify the issues to be raised on appeal: *(Attach separate sheet if necessary.)*

(Failure to include any matter in the docketing statement does not constitute waiver of that issue on appeal. The court may impose sanctions if it appears available information was withheld. Court of Appeals Internal Operating Procedures, sec. VII(2)(b).)

Does Wis. Admin. Code § NR 243.11(3), which requires a large CAFO to have a WPDES permit, exceed the DNR's statutory authority?

Does Wis. Admin. Code § NR 243.11(3) conflict with the uniformity mandate in Wis. Stat. § 283.11(2)(a), which requires the DNR's rules concerning point source discharges to be consistent with federal law?

Does Wis. Admin. Code § NR 243.03(2), which requires a large CAFO to have a WPDES permit in order for any of its storm water discharges to be exempt from liability and permitting requirements, exceed the DNR's statutory authority?

Does Wis. Admin. Code § NR 243.03(2) conflict with the uniformity mandate in Wis. Stat. § 283.11(2)(b), which requires rules concerning storm water discharges to be no more stringent than federal law?

STANDARD OF REVIEW – Specify the proper standard of review for each issue to be raised, citing relevant authority:

The court of appeals reviews de novo whether a rule exceeds an agency's statutory authority or conflicts with a statute. *Debeck v. Wisconsin Dep't of Nat. Res.*, 172 Wis. 2d 382, 386, 493 N.W.2d 234 (Ct. App. 1992).

The court of appeals "review[s] a grant of summary judgment de novo." *Munger v. Seehafer*, 2016 WI App 89, ¶ 46, 372 Wis. 2d 749, 890 N.W.2d 22.

Do you wish to have this appeal placed on the expedited appeals calendar? *(See Criteria For Expedited Appeals.)*

Yes No If "no", explain : This appeal will not meet the criteria for expedited appeals, including the requirement that the briefs not exceed 15 pages.

Will a decision in this appeal meet the criteria for publication in Rule 809.23(1)?

Yes No

Will you request oral argument?

Yes No

List all parties in trial court action who will not participate in this appeal:

<u>Party</u>	<u>Attorney's Name and Telephone Number</u>	<u>Reason for not Participating</u>
N/A	N/A	N/A

Are you aware of any pending or completed appeal arising out of the same or a companion trial court case that involves the same facts and the same or related issue?

Yes No Name of Case _____

Appeal Number _____

Electronically signed by Scott E. Rosenow

Signature of Person Preparing Docketing Statement

Scott E. Rosenow

Name Printed or Typed

srosenow@wmc.org

Email Address (if any)

03/08/2024

Date

Appellant Note:

You MUST file this form and attachments with the Clerk of the Circuit Court.

You MUST attach a copy of the following trial court documents to this form:

1. Trial court's judgment or order and findings of fact.
2. Conclusions of law.
3. Memorandum decision or opinion upon which the judgment or order is based.

You MUST also serve all parties with a copy of this completed Docketing Statement and attached trial court documents.

The clerk of circuit court shall forward this form to the Court of Appeals.

FILED
01-31-2024
Clerk of Circuit Court
Calumet County
2023CV000066

DATE SIGNED: January 30, 2024

Electronically signed by Carey J. Reed
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT CALUMET COUNTY
BRANCH 2

WISCONSIN DAIRY ALLIANCE,
INC. and VENTURE DAIRY
COOPERATIVE,

Plaintiffs,

v.

Case No. 23-CV-0066

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES and
WISCONSIN NATURAL RESOURCES
BOARD,

Defendants,

CLEAN WISCONSIN and
WISCONSIN FARMERS UNION,

Intervenor-Defendants.

ORDER

This matter came before the Court on January 30, 2024, for a hearing on cross motions for summary judgment. Plaintiffs appeared by attorney Scott E. Rosenow, Defendants appeared by assistant attorney general Gabe Johnson-

Karp, Intervenor-Defendant Wisconsin Farmers Union appeared by attorney Adam Voskuil, and Intervenor-Defendant Clean Wisconsin appeared by attorney Evan Feinauer.

Based on the pleadings, briefing, and arguments before the Court, and for the reasons stated on the record:

It is hereby ordered that Plaintiffs' motion for summary judgment is DENIED and Defendants' motion for summary judgment is GRANTED.

This is a final order for purposes of appeal.