

STATE OF WISCONSIN

CIRCUIT COURT
Branch 3

DANE COUNTY

CLEAN WISCONSIN, INC.

Petitioner,

v.

Case No. 16CV2816

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

FILED

JAN - 6 2017

Respondent.

DANE COUNTY CIRCUIT COURT

**NOTICE OF PETITION AND PETITION TO INTERVENE OF WISCONSIN
MANUFACTURERS & COMMERCE, MIDWEST FOOD PROCESSORS
ASSOCIATION, DAIRY BUSINESS ASSOCIATION, WISCONSIN PAPER COUNCIL,
WISCONSIN POTATO AND VEGETABLE GROWERS ASSOCIATION, WISCONSIN
FARM BUREAU FEDERATION, WISCONSIN CHEESE MAKERS ASSOCIATION,
AND WISCONSIN CORN GROWERS ASSOCIATION**

TO: Attorney Carl Sinderbrand
Axley Brynelson, LLP
2 E. Mifflin Street
Suite 200
Madison, WI 53703

Attorney Jennifer Lynn Vandermeuse
Wisconsin Department of Justice
17 West Main Street
Madison, WI 53703

NOTICE OF PETITION

PLEASE TAKE NOTICE that Proposed Intervenors, by their attorney, Robert I. Fassbender, Great Lakes Legal Foundation, hereby petitions the Court for leave to intervene as party respondents to this action, and request such other relief which the Court may deem just in this matter. This petition will be heard at the Dane County Courthouse, 215 South Hamilton Street, Madison, Wisconsin, at a time and date to be set by the Court. The petition and grounds therefore are set forth below and in the accompanying Brief in Support of the Petition to Intervene.

PETITION

Wisconsin Manufacturers and Commerce, Midwest Food Processors Association, Dairy Business Association, Wisconsin Paper Council, Wisconsin Potato and Vegetable Growers Association, Wisconsin Farm Bureau Federation, Wisconsin Cheese Makers Association, and Wisconsin Corn Growers Association (Proposed Intervenors, hereafter "Intervenors") by their counsel, Great Lakes Legal Foundation, pursuant to Wis. Stat. §227.53(1)(d), hereby petition the Court for leave to intervene as party respondents to this action, based upon the following grounds:

1. The action is now pending in this Court, the object of which is a declaration to reverse, set aside, or vacate the permits issued by the Department of Natural Resources (DNR) to construct and operate high capacity wells issued to nine separate permittees in the consolidated cases. Petitioner further seeks a declaration that the DNR has both the authority and duty to deny or condition approvals of high capacity wells based upon both the individual and cumulative impacts of those wells on the waters of the state. In each of the consolidated cases the scope of the application of

Wis. Stat. §§227.10(2m), 227.11(2)(a), and 281.34(5m) to the DNR's high capacity well permitting process is at issue.

2. Intervenorors are interested in the outcome of the action and its subject matter because they represent numerous individuals and business organizations that have a financial stake in the outcome of this action. Members of each of the Intervenorors hold high capacity well permits, as well as a wide range of other permits issued by the DNR that affect members' ability to conduct business operations. A concise description of each of the Intervenorors is set forth below:

Wisconsin Manufacturers and Commerce ("WMC") is a nonprofit business trade organization with roughly 3,700 members statewide in the manufacturing, dairy, energy, commercial, health care, insurance, banking and service sectors of the economy. Roughly one-quarter of the private sector employees in Wisconsin are employed by WMC members. WMC is dedicated to ensuring that Wisconsin is the most competitive state in the nation to do business. Since 1911, WMC has been representing the interests of Wisconsin's business community before administrative agencies, administrative law judges, and the legislature to ensure that commerce is not impeded by regulatory actions. WMC frequently participates in the rulemaking process by commenting on various issues affecting its members. WMC played a key advocacy role in the enactment of 2011 Act 21.

The Midwest Food Processors Association ("MWFPA") is a trade association that advocates on behalf of food processing companies and affiliated industries in Illinois, Minnesota, and Wisconsin. Established in 1905 as the Wisconsin Canners Association, today MWFPA represents a diverse group of food processors on a variety of food issues. The primary role of MWFPA is to influence public policy and make the Midwest a great place for food processors to

do business. To achieve this goal, MWFPA represents food processors before the legislature and regulatory agencies.

Dairy Business Association, Inc. (“DBA”) is a nonprofit, statewide organization of dairy producers, vendors, allied industry partners, and professionals actively working to ensure that dairy producers, large and small, remain an active, thriving part of Wisconsin’s economy, communities, and food chain. A large part of DBA’s work is fostering a positive business and political environment for dairy farming in Wisconsin. This includes being dedicated to the creation and preservation of consistent water, environmental, and waste management regulation.

Wisconsin Paper Council is a nonprofit statewide organization representing 20 pulp and paper mills located in Wisconsin, along with 70 paper converting and related business associate members employing over 31,000 or over 7 percent of all manufacturing workers in Wisconsin. The value of paper and pulp shipments represents gross state product in Wisconsin in excess of \$14 billion annually. The Wisconsin Paper Council advocates for and represents its members in public affairs and public relations matters, serves as a center for exchange of ideas, and disseminates news and information concerning the industry.

Wisconsin Potato and Vegetable Growers Association (“WPVGA”) is a nonprofit statewide organization representing 300 farm operations and related business associate members. WPVGA was created to help its grower-members conduct and utilize the latest research and technologies, garner government support, produce environmentally sound research and stay in touch with consumers. Wisconsin ranks third in the United States in potato production and generally ranks number one in canning vegetable production. The Wisconsin potato and vegetable industry provides 35,000 jobs in Wisconsin and generates \$7.5 billion in gross state product.

The Wisconsin Farm Bureau Federation is Wisconsin's largest general farm organization with more than 46,000 members originating from 61 county farm bureaus across Wisconsin. The Wisconsin Farm Bureau is a nonprofit statewide agricultural organization providing a voice for farmers and a vision for agriculture for its farmer members who are leaders in the production of Wisconsin's dairy, beef, pork, poultry, corn, soybeans, grain, alfalfa, forage, cranberry, vegetables, fruits, forestry, and aquatic products.

Wisconsin Cheese Makers Association is a nonprofit statewide organization representing over 80 dairy product manufacturing facilities in Wisconsin, and more than 100 companies in Wisconsin supplying goods and services to the dairy industry. The association provides information, advocacy, member education and networking events for its member companies.

The Wisconsin Corn Growers Association (WCGA) is a nonprofit statewide organization representing 842 corn farming operators, operations and related business associate members. The WCGA was created to assist its grower-members to conduct and utilize science-based agricultural research and technologies, garner public and private sector support for agricultural research, and educate the consumer on corn crop production and utilization in consumer products.

3. Intervenors, on behalf of their members, are interested in advocating for the impact of Wis. Stat. §§227.10(2m) and 227.11(2)(a), as created in 2011 Act 21, and §281.34(5m) on the high capacity well permitting process as it currently functions. The outcome of the above action may impair or diminish the interests of Intervenors' members' existing high capacity well permits, as well as in their ability to obtain timely action on high capacity well applications in the future, or whether they ultimately are issued high capacity well permits by the DNR.

4. Intervenors will expand the information available to the Court by providing the perspective of many individuals and business organizations across Wisconsin for whose benefit the legislature enacted these statutes. Intervenors also can help provide the Court with an understanding of the broad-based legal, social and economic consequences which will stem from a decision in this proceeding. Intervenors will provide the Court with information concerning the effect and implications arising from the implementation of these statutes on the high capacity well permitting process which will be useful for the Court to reach an informed and just decision.

WHEREFORE, Intervenors respectfully request this Court for the following relief:

1. An order granting the petition to intervene in the above-captioned case pursuant to Wis. Stat. §227.53(1)(d);
2. Any other relief this Court deems reasonable and just.

Dated this 6th day of January, 2017.

Respectfully submitted,

GREAT LAKES LEGAL FOUNDATION

Attorneys for Proposed Intervenors-Respondents

Wisconsin Manufacturers and Commerce, Midwest Food Processors Association, Dairy Business Association, Wisconsin Paper Council, Wisconsin Potato and Vegetable Growers Association, Wisconsin Farm Bureau Federation, Wisconsin Cheese Makers Association, and Wisconsin Corn Growers Association



Robert I. Fassbender, SBN 1013985

10 East Doty Street, Suite 504

Madison, WI 53703

Telephone: (608) 310-5315

fassbender@greatlakeslegalfoundation.org