

Appeal No. 18-AP-0059

SUPREME COURT OF WISCONSIN

Clean Wisconsin, Inc., and
Pleasant Lake Management
District,

Petitioners-Respondents

v.

Wisconsin Department of
Natural Resources,

Respondent-Appellant,

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

Intervenor-Co-Appellants.

**PETITIONERS-RESPONDENTS' RESPONSE TO
WISCONSIN DEPARTMENT OF NATURAL
RESOURCES' MOTION TO MODIFY BRIEFING
SCHEDULE**

BACKGROUND

Petitioners-Respondents Clean Wisconsin, Inc. and Pleasant Lake Management District (“Petitioners-Respondents”) do not object to the motion of the Respondent-Appellant Wisconsin Department of Natural Resources (the “Department”) to modify the briefing schedule for this matter. The Department has requested to file a brief on the Respondents’ schedule, which would allow the Department to file an opening brief on May 29, 2019.

Petitioners-Respondents agree that a modified briefing schedule is necessary as a result of the Department’s motion. For the reasons briefly set forth below, Petitioners-Respondents respectfully notify this Court of an intention to request the opportunity to submit a reply brief to address any novel arguments that the Department may raise in its opening merits brief.

DISCUSSION

Petitioners-Respondents reasonably believe that the Department's motion may affect the content of Petitioners-Respondents' response brief. *See* Wis. Stat. § 809.14(3)(a). The Department states in its motion that the Department's "briefing to the lower courts are not consistent with controlling law." Dept's Mot. to Modify Briefing Schedule 2. Yet it is not clear whether the Department will support the judgment below in its totality, given the Department's statement that the judgment below should be affirmed "in most meaningful respects[.]" Dept's Mot. to Modify Briefing Schedule 3.

Petitioners-Respondents seek only the opportunity to respond to any new or modified arguments that may result from the Department's new position. Petitioners-Respondents will not know whether new or modified arguments warrant a reply until receipt of the Department's merits briefing. We therefore notify this Court of an intention to request the opportunity to submit a limited reply

brief only to address any novel arguments that the Department may raise in its opening merits brief. Petitioners-Respondents would ask to submit any such brief on or before the Respondent's reply brief deadline.

CONCLUSION

For the reasons discussed herein, Petitioners-Respondents support the Department's motion to modify the briefing schedule in this matter.

Dated this 9th day of May, 2019.

Respectfully submitted,



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