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**SUPREME COURT OF WISCONSIN**

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Clean Wisconsin, Inc., Lynda Cochart,  
Amy Cochart, Roger DeJardin, Sandra  
Winnemueller, and Chad Cochart,

*Petitioners-Respondents,*

v.

Wisconsin Department of Natural  
Resources,

*Respondent-Appellant,*

and

Kinnard Farms, Inc.,

*Intervenor-Co-Appellant.*

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

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**BACKGROUND**

Petitioners-Respondents Clean Wisconsin, Inc. and Cochart et al. (“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, we 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 our response brief. *See* Wis. Stat. § 809.14(3)(a). The Department states in its motion a new position that the Department's "briefing to the lower courts . . . are not consistent with controlling law." Resp't-Appellant's Mot. to Modify Briefing Schedule 2. Yet it is not clear whether the Department will support the

judgment below in its totality. In particular, it is not clear whether the Department supports the judgment below both with respect to the Department's authority to impose off-site groundwater monitoring and with respect to authority to impose animal unit caps in Wisconsin Pollutant Discharge Elimination System permits for concentrated animal feeding operations. Resp't-Appellant's Mot. to Modify Briefing Schedule 2, n.2.

Petitioners-Respondents seek only the opportunity to respond to any new or modified arguments that may result from the Department's new position. We 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 modifying  
the briefing schedule in this matter.

Dated this 9th day of May, 2019.

Respectfully submitted,



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