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**Court Rules with Industry on Unlawful DNR Permit Conditions**

*DNR's Permit Conditions on High Capacity Wells Not Allowed Under 2011 WI Act 21*

Madison, WI – On November 12, Judge McGinnis, Outagamie County Circuit Court, found that Wisconsin Department of Natural Resources (DNR) imposed unlawful permit conditions for high capacity wells.

In a resounding victory for industry, the court found DNR lacked the required explicit authority to impose costly monitoring requirements in high capacity well permits. A related finding was that, under 2011 WI Act 21, agencies cannot use implied authorities to impose regulatory requirements.

On behalf of the Wisconsin Manufacturers and Commerce, Dairy Business Association, Midwest Food Processors Association, and Wisconsin Potato and Vegetable Growers Association, the Great Lakes Legal Foundation (GLLF) filed a motion to intervene in the case (*New Chester Dairy v. Wisconsin Department of Natural Resources and Clean Wisconsin*).

“This isn’t about one permit, or one permit condition,” says Bob Fassbender, GLLF President. “These associations and their members know all too well that a condition in one permit leads to similar conditions in subsequent permits. Permit by permit, an agency will regulate an entire industrial sector, sometimes, as here, without necessary statutory authority.”

The case presented the first opportunity for judicial review of Act 21 in the context of a DNR permit program. New Chester Dairy sought DNR approval to construct two high capacity wells for its dairy operation in the Town of New Chester. DNR conditioned its approval on New Chester Dairy installing groundwater monitoring wells, collecting data, and submitting that data to the agency. However, nothing under the high capacity well statutes provides DNR the authority to impose such conditions. DNR and Clean Wisconsin asserted that the agency has virtually unlimited authority to impose the conditions under its general duties provisions.

New Chester and the Intervenors successfully argued that Gov. Scott Walker’s regulatory reform law (Act 21) clearly precludes DNR from using these broad statements of policy. “Act 21 is not a shift in the law as much as a reassertion that the legislature is the source of agency authority, not the courts or the agencies themselves,” says Fassbender.

Act 21 was one of Gov. Scott Walker’s signature special session bills aimed at creating regulatory certainty and protecting businesses and individuals from unauthorized overreach by state agencies. This, in turn, advances economic growth and increases job opportunities in Wisconsin.

*The Great Lakes Legal Foundation is a non-profit legal foundation providing legal and policy expertise to advance economic growth and increase job opportunities in the upper Midwest.*