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VIA HAND DELIVERY

August 11, 2006

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 S Webster Street - AD/5
Madison WI 53703

**RE: Petition for a Contested Case, Grande Cheese Company WPDES
Permit No. WI-0063207-01-0.**

Dear Secretary Hassett,

Please find attached a verified petition for review of the above matter. By hand delivery of this letter, I am serving the same on the Wisconsin Department of Natural Resources in accordance with Wis. Admin. Code § NR 2.03.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



Melissa K. Scanlan
Elizabeth Lawton

cc: Janet Boerboom (via first class mail)
Linda Bochert, Esq. (via first class mail)

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**BEFORE THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

**In the matter of Grande Cheese Company
Permit No. WI-0063207-01-0 to Discharge Under
the Wisconsin Pollutant Discharge Elimination
System (“WPDES”) dated June 9, 2006.**

**VERIFIED PETITION FOR REVIEW AND REQUEST FOR HEARING
UNDER WIS STAT. § 283.63 AND WIS STAT. § 227.42.**

To the Department of Natural Resources:

In accordance with Wis. Stat. §§ 283.63 and 227.42, the undersigned Wisconsin Environmental Law Advocates (“WELA”), Janet Boerboom, Michael Klein, Richard Lavigne, and Benjamin Sykes hereby petition for review of the Wisconsin Department of Natural Resources’ (“DNR’s”) final decision to issue Wisconsin Pollutant Discharge Elimination System (“WPDES”) Permit No. WI-006327-01-0 to Grande Cheese Company (“Grande”). The effective date of Grande’s WPDES permit is July 1, 2006. The undersigned hereby request that a hearing be held as a contested case under Wis. Stat. §§ 227.42 and 227.01(3). This is the first WPDES permit the DNR has ever issued to Grande. This new WPDES permit authorizes Grande to discharge effluent wastewater into North Fork Juda Branch Creek through a newly constructed facility for treatment of wastewater.

Formerly, Grande released its wastewater to a neighboring wastewater treatment facility owned by Protient, Inc. (“Protient”). Compared to the amount of wastewater Grande previously sent to Protient for processing, with its new WPDES permit, Grande is authorized to increase its discharge of pollutants to North Fork Juda Branch Creek. Grande is building a wastewater treatment facility separate from Protient’s facility, but will be discharging to the same waterbody

as Protient, a drainage ditch that flows into the North Fork Juda Branch Creek, and will be discharging through a pipe that is adjacent to Protient's existing discharge pipe.

Although the concentration of phosphorus in Grande's effluent will remain at 1 milligram per liter, Grande's total volume of wastewater will increase from its previous discharge under Protient's WPDES permit, and therefore so will the total amount of phosphorus it will discharge into North Fork Juda Branch Creek.

Grande and Protient are located in Green County, in the Village of Juda, approximately five miles east of the City of Monroe, Wisconsin. Grande and Protient both discharge into a drainage ditch which in turn discharges into the North Fork Juda Branch Creek approximately 0.5 miles upstream from its confluence with Juda Branch Creek. Juda Branch Creek, a "Fish and Aquatic Life" water, then joins the Sylvester Creek, an Exceptional Resource Water, approximately 4.3 miles further down stream.

North Fork Juda Branch Creek is officially listed by the DNR as "impaired" by low dissolved oxygen ("DO") levels caused by Biological Oxygen Demand ("BOD") and phosphorus from 2.5 miles upstream of Grande's discharge to 0.5 miles downstream from Grande's discharge at the confluence of the Juda Branch Creek.

Section 283.63(1) of the Wisconsin Statutes allows five or more persons to secure a review by the DNR of any permit denial, modification, suspension or revocation, and the reasonableness of or necessity for any term or condition of any issued, reissued or modified permit by filing a verified petition for review with the DNR Secretary setting forth the issues sought to be reviewed and stating the interest of the petitioners within 60 days after notice of permit issuance by the DNR.

Section NR 203.15 of the Wisconsin Administrative Code provides that if a hearing for review of the terms of a WPDES permit is treated by the DNR as a contested case pursuant to Wis. Stat. § 227.01(3), then rules governing the conduct of contested cases under Chapter 227 of the Wisconsin Statutes will apply to the extent they do not conflict with procedures for WPDES adjudicatory hearings.

Under Wis. Stat. § 227.42, in addition to any other right provided by law, any person filing a written request with an agency for hearing shall have a right to a hearing which shall be treated as a contested case if: a) a substantial interest of the person is injured in fact or threatened with injury by agency action or inaction; (b) there is no evidence of legislative intent that the interest is not to be protected; (c) the injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and (d) that there is a dispute of material fact.

In support of their petition, Petitioners state:

I. AGENCY ACTION WHICH IS THE BASIS FOR THE HEARING REQUEST

1. The DNR's issuance of Grande's WPDES Permit No. WI-006327-01-0 on June 9, 2006.

II. THE SUBSTANTIAL INTERESTS INJURED OR THREATENED WITH INJURY BY THE AGENCY ACTIONS

2. The Petitioners hold aesthetic and recreational interests in the waters and other natural resource of the State of Wisconsin, specifically, North Fork Juda Branch Creek and its downstream waters.

3. The Petitioners have a substantial interest in the continued protection of North Fork Juda Branch creek, in that they have made significant investments of time and resources to prevent the discharge of excessive pollution into North Fork Juda Branch Creek.

4. The Petitioners hold rights to clean surface water and use of natural resources, namely North Fork Juda Branch Creek and downstream rivers that may be affected by Grande's discharge of phosphorus, BOD, and other pollutants that consume dissolved oxygen in those waters and harm aquatic life.

5. All petitioners are citizens of the state of Wisconsin who are beneficiaries of the public trust duty of the state to protect the navigable waters that will be or are threatened by injury due to the DNR's issuance of WPDES permits that do not meet minimum state and federal water law standards.

III. THERE IS NO EVIDENCE OF LEGISLATIVE INTENT THAT THE INTEREST IS NOT TO BE PROTECTED

6. There is no legislative intent that these interests are not to be protected. On the contrary, there is substantial evidence of legislative intent that the interests stated above are to be protected.

Unabated pollution of the waters of this state continues to arouse widespread public concern. It continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water. It is the policy of this state to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water. In order to achieve this policy, the legislature declares that: (a) It is the goal of the state of Wisconsin to eliminate the discharge of pollutants into the waters of the state by 1985.

Wis. Stat. § 283.001(1)-(1)(a).

7. Furthermore, the Legislature's intent to protect petitioners' interests is further recognized by section 283.63 of the Wisconsin Statutes, which specifically accords petitioners a right to a hearing to review the reasonableness or necessity of any term of a WPDES permit.

8. Regulatory intent that petitioners' interests are to be protected is expressed in chapter NR 203 of Wisconsin's Administrative Code. "The purpose of this subchapter [on WPDES Public Participation Procedures] is to provide adequate procedures to insure as broad a degree of public participation in administrative adjudication of WPDES permits and their conditions as is consistent with procedural due process to the parties involved in the proceedings." § NR 203.14, Wis. Admin. Code.

IV. INTEREST OF AND NATURE OF INJURY TO THE PETITIONERS

9. The injury to the persons requesting the hearing are different in kind or degree from injury to the public caused by the agency actions because:

- a. Members of WELA, including the individual petitioners, recreate in, enjoy, use, hike beside and observe the watershed that includes the North Fork Juda Branch Creek. The environmental, health, aesthetic, pecuniary, and recreational interests of petitioners have been, are being, and will be adversely affected by the DNR's issuance of a WPDES permit to Grande in violation of state and federal water law by allowing new and increased discharges into already impaired waters of the State and the United States. In particular, the petitioners have been, are being, and will be adversely affected by the DNR's issuance of a WPDES permit to Grande that does not meet state and federal legal requirements.
- b. Petitioners use and enjoy the waters to be impacted by Grande's discharges, including waters in the immediate vicinity of, and downstream from, Grande's discharges into North Fork Juda Branch Creek.
- c. The petitioners, as members of WELA, are substantially more aggrieved than members of the public because WELA spent valuable time and resources filing legal

action against Protient, Inc., aimed at preventing excessive pollution discharges into North Fork Juda Branch Creek. Now WELA's board members must ensure that their substantial efforts are not nullified and made worthless by this new and/or increased discharge to the same waterbody by Grande. WELA and its members possess a significant legal, recreational, and aesthetic interest in ensuring that DNR's issuance of a WPDES permit to Grande does not further pollute North Fork Juda Branch Creek or hinder that Creek's progress toward restoration that has resulted from WELA's advocacy. Specifically, WELA and its members, including the petitioners have a significant interest in preventing a further lowering of water quality in the Creek that would cause or contribute to an excursion above water quality standards.

d. A contested case hearing and decision that requires the DNR to issue WPDES permits to Grande in accordance with state and federal law will help restore and preserve water quality, thereby promoting and protecting the use and enjoyment of the impacted area by these petitioners.

10. Petitioners specifically use, recreate in and enjoy these areas as shown in paragraphs 11 - 19.

11. Wisconsin Environmental Law Advocates ("WELA) is an unincorporated association whose mission is to protect Wisconsin's environmental resources, including air, water, and land, and to ensure compliance with both state and federal environmental laws and regulations. Many of WELA's members, including the individual petitioners, use rivers throughout the State of Wisconsin, and specifically rivers in Green County, including the North Fork Juda Branch Creek, Juda Branch Creek, and Sylvester Creek. WELA and the individual petitioners are reasonably concerned that Grande's WPDES permit authorizes a lowering of

water quality in the North Fork Juda Branch Creek and the downstream Juda Branch Creek, a Fish and Aquatic Life Water, and Sylvester Creek, an Exceptional Resource Water.

12. WELA is further concerned that issuance of Grande's permit without determining the North Fork Juda Branch Creek's ability to assimilate those pollutants will further damage the waterway. WELA is further concerned that discharges of phosphorus and BOD allowed under Grande's WPDES permit will cause or contribute to an exceedence of water quality standards in the already impaired North Fork Juda Branch Creek. WELA is reasonably concerned that Grande's WPDES permit will exacerbate the already murky conditions, objectionable deposits, debris, scum, floating solids and unsightliness present in the North Fork Juda Branch Creek and obstruct its members continued enjoyment of the Creek and its downstream waters. Moreover, WELA is concerned that the DNR's issuance of Grande's WPDES permit will not aid in the restoration of the impaired creek, but rather will prevent the Creek from meeting its potential to support a diverse forage fishery, will hinder the restoration of the Creek to its viable designated use as a Fish and Aquatic Life community, and will further damage the Juda Branch Creek and the pristine downstream waters of the Sylvester Creek.

13. Moreover, WELA is concerned that the unreasonable terms in the Grande permit will cause further harm to the animal, plant, and aquatic life present in the North Fork Juda Branch Creek and downstream Juda Branch Creek and Sylvester Creek. Finally, WELA has a substantial interest in the health of North Fork Juda Branch Creek as revealed by a citizen suit WELA filed against Protient, Inc. in the United States District Court, Western District of Wisconsin, Case No. 04 C 0556 C, the purpose of which was to prevent excessive discharges of phosphorus and other pollutants into North Fork Juda Branch Creek. WELA has been adversely affected and aggrieved by DNR's decision to issue both Grande's WPDES permit without

ensuring that the discharges allowed under the WPDES permit do not have the reasonable potential to violate narrative water quality standards or actually cause or contribute to a violation of water quality standards. WELA is further adversely affected and aggrieved by DNR's failure to establish a Total Maximum Daily Load for this already impaired water and its decision to authorize new and/or increased pollutant discharges to the creek by issuing Grande's WPDES permit.

14. Benjamin Sykes is an adult resident of the State of Wisconsin, residing at 2116 University Ave., Apt 15, Madison, WI 53726. Mr. Sykes is a member of WELA and serves as an Executive Board Member. As a member of WELA's board Mr. Sykes is particularly concerned about the health of Wisconsin's many water ways, particularly problems associated with increased algae, muckiness, and pollutant discharges to the waters of the state. Given that the organization Mr. Sykes leads spent valuable time and resources preventing the further degradation of the North Fork Juda Branch Creek through a citizen suit aimed at preventing polluting discharges into the Creek by Protient, Inc., Mr. Sykes is particularly adversely aggrieved by DNR's issuance of the WPDES permit to Grande, which fails to ensure compliance with water quality standards.

15. Mr. Sykes frequently utilizes southern Wisconsin's waterways as a drinking water source during camping trips and a food source when fishing, but after recreating on the North Fork Juda Branch Creek Mr. Sykes is now wary of using downstream waterways as either a water source or a food source. Mr. Sykes has been deterred from fishing in the watersheds associated with North Fork Juda Branch Creek because he is reasonably concerned that Grande's WPDES permitted discharges will negatively impact fish and aquatic life in the watershed and hence negatively impact his own health and recreational interests. Mr. Sykes feels that his rights

to use North Fork Juda Branch Creek and downstream waters are impaired by the issuance of Grande's WPDES Permit. Ms. Sykes is reasonably concerned about the health and visual appeal of the waterway and will choose not to use downstream waters associated with North Fork Juda Branch Creek, including Juda Branch Creek and Sylvester Creek, in the future due to the large amounts of algae and rotting, foul odor he observed in the North Fork Juda Branch Creek. Mr. Sykes has been adversely aggrieved by DNR's decision to issue Grande's WPDES permit.

16. Mike Klein is an adult resident of the State of Wisconsin, residing at 836 Jennifer St., Madison, WI 53703. Mr. Klein is a member of WELA and sits on its Executive Board. As a member of WELA's board, Mr. Klein is particularly concerned about the health of Wisconsin's many water ways, particularly problems associated with increased algae, muckiness, and pollutant discharges to the waters of the state. Given that the organization Mr. Klein leads spent valuable time and resources preventing the further degradation of the North Fork Juda Branch Creek through a citizen suit aimed at preventing polluting discharges into the Creek by Protient, Mr. Klein is particularly adversely aggrieved by DNR's issuance of the WPDES permit to Grande which fails to ensure compliance with water quality standards. Mr. Klein often uses the waterways of South Central Wisconsin to canoe and sail, and often chooses routes along these waterways for frequent hikes. But after a trip to North Fork Juda Branch Creek to hike and enjoy the natural scenery, Mr. Klein is reasonably concerned about the health and visual appeal of the waterway and will choose not to use downstream waters associated with the North Fork Juda Branch, including Juda Branch Creek and Sylvester Creek, in the future due to the muckiness, sediment, and white film he observed in the North Fork Juda Branch Creek. Mr. Klein is concerned about the further degradation of the already impaired waters of the North Fork Juda Branch Creek, the Fish and Aquatic Life water of Juda Branch Creek and Sylvester

Creek, an Exceptional Resource Water. Mr. Klein has been adversely aggrieved by DNR's decision to issue Grande's WPDES permit.

17. Janet Boerboom is an adult resident of the State of Wisconsin, residing at 902 Lake Court, Madison, WI 53715 . Ms. Boerboom is a member of WELA and serves as an Executive Board Member. As a member of WELA, Ms. Boerboom is especially concerned for the health of Wisconsin's waterways and ensuring that all impaired rivers progress towards recovery rather than become further impaired. Given that the organization Ms. Boerboom leads spent valuable time and resources preventing the further degradation of the North Fork Juda Branch Creek through a citizen suit aimed at preventing polluting discharges into the Creek, Ms. Boerboom is particularly adversely aggrieved by DNR's issuance of the WPDES permit to Grande which fails to ensure compliance with water quality standards.

18. Ms. Boerboom often uses the waterways of South Central Wisconsin to swim and kayak. Ms. Boerboom frequently hikes along South Central Wisconsin's many waterways. But after a trip to North Fork Juda Branch to hike and enjoy the natural scenery, Ms. Boerboom is reasonably concerned about the health and visual appeal of the waterway and will choose not to use downstream waters associated with the North Fork Juda Branch Creek, including Juda Branch Creek and Sylvester Creek, in the future due to the scum, algae, and excessive sediment she observed in the North Fork Juda Branch Creek. Ms. Boerboom is concerned about the further degradation of the already impaired waters of the North Fork Juda Branch Creek, the Fish and Aquatic Life water of Juda Branch Creek, and Sylvester Creek, an Exceptional Resource Water. Ms. Boerbom has been adversely aggrieved by DNR's decision to issue Grande's WPDES permit.

19. Richard Lavigne is an adult resident of the State of Wisconsin, residing at 210 N. Blount St., Apt. 26, Madison, WI 53703. Mr. Lavigne is a member of WELA and serves on its Executive Board. As a member of WELA's board Mr. Lavigne is particularly concerned about the health of Wisconsin's many water ways, particularly problems associated with increased algae, muckiness, and pollution discharges to the waters of the state. The organization Mr. Lavigne leads spent valuable time and resources preventing the further degradation of the North Fork Juda Branch Creek through a citizen suit aimed at preventing polluting discharges into the Creek by Protient, Inc. Mr. Lavigne has visited North Fork Juda Branch Creek, and would have waded through the creek to cool his feet during the hot summer day, but was deterred from doing so by Grande and Protient's foul effluent discharges to the Creek. Further, Mr. Lavigne would use the Creek more but for the rotting algae, scum, and unsightly and discolored effluent flowing into North Fork Juda Branch Creek from Protient's and Grande's effluent ditch. Mr. Lavigne is adversely aggrieved by DNR's issuance of the WPDES permit to Grande which fails to ensure compliance with water quality standards.

V. MATERIAL DISPUTES OF FACT

20. Whether Grande is a "new discharger" under 40 C.F.R. § 122.2 and 40 C.F.R. § 122.4(i).

21. Whether Grande's new discharges of phosphorus and BOD under Section 2.2.1 and 2.2.1.2 of Grande's WPDES Permit will cause or contribute to a violation of water quality standards for dissolved oxygen.

22. Whether Grande's new discharges of phosphorus and BOD under Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit will cause or contribute to a violation of narrative water quality standards under Section 102.04(1) of the Wisconsin Administrative Code.

23. Whether Grande's discharges of phosphorus and BOD under Sections 2.2.1 and 2.2.1.2 of Grande's WPDES permit have a reasonable potential to cause or contribute to an excursion above in-stream narrative water quality standards under Section 102.04(1) of the Wisconsin Administrative Code.

24. Whether Grande's discharges of phosphorus and BOD under Sections 2.2.1 and 2.2.1.2 of Grande's WPDES permit have a reasonable potential to cause or contribute to an excursion above in-stream dissolved oxygen water quality criteria.

25. Whether Grande's new and/or increased discharge of phosphorus and BOD under the WPDES permit at Sections 2.2.1 and 2.2.1.2 will result in a lowering of water quality in North Fork Juda Branch Creek, Juda Branch Creek, and Sylvester Creek.

VI. PETITIONERS' RIGHT TO A HEARING

26. The statute other than Wis. Stat. § 227.42 which accords a right to a hearing is Wis. Stat. § 283.63.

VII. ISSUES REQUESTED TO BE REVIEWED AND REASONS WHY A HEARING IS WARRANTED.

The specific issues to be reviewed are:

ISSUE ONE: ISSUANCE OF A WPDES PERMIT FOR A NEW DISCHARGE TO AN ALREADY IMPAIRED STREAM WITHOUT FIRST PREPARING A TMDL.

27. Petitioners request review of the reasonableness of sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit. Sections 2.2.1 and 2.2.1.2 unreasonably authorize a new discharge of phosphorus and BOD that will cause or contribute to the violation of water quality standards to a water listed on Wisconsin's 303(d) list by the Wisconsin DNR as impaired by low dissolved oxygen levels caused by BOD and phosphorus, without first developing a Total Maximum Daily Load ("TMDL") or pollutant load allocation as required by 40 CFR § 122.4(i).

28. A water that is impaired by dissolved oxygen due to BOD and phosphorus is already violating water quality standards and therefore cannot accept any BOD or phosphorus discharges from a new discharger without further violating water quality standards.

29. The DNR cannot determine whether a discharge will violate water quality standards in impaired waters without establishing a TMDL and/or determining the total amount of a pollutant a water can tolerate without violating water quality standards. Without a TMDL in place there is no assurance that Grande's discharges of phosphorus and BOD will not cause or contribute to a violation of water quality standards.

30. Grande is a prohibited "new discharger" as defined at 40 CFR § 122.2 because it is a building, structure, facility, or installation from which there is or may be a discharge of pollutants that did not commence at the particular site prior to August 13, 1979; Grande is not a new source; and Grande has never received a finally effective NPDES permit for discharges at that site.

31. DNR has determined that North Fork Juda Branch Creek is impaired by low dissolved oxygen caused by BOD and phosphorus from 2.5 miles upstream of the Grande discharge to .5 miles below the discharge at the confluence of Juda Branch Creek.

32. The DNR is only authorized to issue WPDES permits for the discharge of pollutants where such discharges meet federal or state water quality standards and those discharges also comply with any applicable federal law or regulation. *See Wis. Stat. § 283.31(3).*

33. Because the North Fork Juda Branch Creek is impaired for dissolved oxygen due to BOD and phosphorus, any discharge of phosphorus and BOD from a new discharger, in this case, Grande, would violate water quality standards unless there is a TMDL in place to bring that discharger into compliance with water quality standards.

34. For the foregoing reasons a hearing is warranted to determine whether Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit are unreasonable because they violate 40 CFR § 122.4(i) and Wis. Stat. § 283.31(3).

ISSUE TWO: ISSUANCE OF A NEW DISCHARGE OF POLLUTANTS THAT WILL CAUSE OR CONTRIBUTE TO A VIOLATION OF WATER QUALITY STANDARDS FOR DISSOLVED OXYGEN.

35. Petitioners request review of the reasonableness of Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit. Sections 2.2.1 and 2.2.1.2 unreasonably authorize a new discharge of phosphorus and BOD that will cause or contribute to a violation of water quality standards, in violation of 40 CFR § 122.4(i), to a water listed on Wisconsin's 303(d) list by the Wisconsin DNR as impaired by low dissolved oxygen caused by BOD and phosphorus.

36. Sections 2.2.1 and 2.2.1.2 of Grande's WPDES permit are inconsistent with Federal Clean Water Act requirements found at 40 CFR §122.4(i) which prohibit the issuance of a permit to a "new discharger" proposing to discharge into a water which does not and is not expected to meet applicable water quality standards.

37. Grande Cheese Company is a "new discharger" as defined at 40 CFR § 122.2 because it is a building, structure, facility, or installation from which there is or may be a discharge of pollutants that did not commence at the particular site prior to August 13, 1979; is not a new source; and has never received a finally effective NPDES permit for discharges at the site at which it proposes to discharge.

38. The DNR is only authorized to issue WPDES permits for the discharge of pollutants where such discharges meet federal or state water quality standards and those discharges also comply with any applicable federal law or regulation. See Wis. Stat. § 283.31(3).

39. The DNR has determined that the North Fork Juda Branch Creek is impaired by low dissolved oxygen caused by BOD and phosphorus from 2.5 miles upstream of the Grande discharge to .5 miles below at its confluence of Juda Branch Creek.

40. Federal regulations prohibit a permit from being issued to a new discharger, if the discharge from its operation will cause or contribute to the violation of water quality standards. 40 C.F.R. § 122.4(i).

41. A water that is impaired by dissolved oxygen caused by BOD and phosphorus is already violating water quality standards and therefore cannot accept any BOD or phosphorus discharges from a new discharger without violating water quality standards.

42. Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit unreasonably authorize discharges that fail to comply with federal regulations at 40 CFR § 122.4(i) because these sections permit a discharge of phosphorus and BOD that will cause or contribute to the violation of water quality standards.

43. For the foregoing reasons a hearing is warranted to determine whether Grande WPDES Permit sections 2.2.1 and 2.2.1.2 are unreasonable because they violate 40 CFR § 122.4(i) and Wis. Stat. § 283.31(3).

ISSUE THREE: ISSUANCE OF A NEW DISCHARGE OF POLLUTANTS THAT WILL CAUSE OR CONTRIBUTE TO A VIOLATION OF NARRATIVE WATER QUALITY STANDARDS.

44. Petitioners request review of the reasonableness of sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit. Sections 2.2.1 and 2.2.1.2 are unreasonable because they violate 40 CFR § 122.4(i) by authorizing a new discharge of phosphorus and BOD that will cause or contribute to a violation of narrative water quality standards established and Wis. Admin. Code § NR 102.4(1).

45. Federal regulations found at 40 CFR § 122.4(i) prohibit the issuance of a WPDES permit to a new discharger where the discharge from its operation will cause or contribute to the violation of a water quality standard. This requirement does not exclude violations of narrative water quality standards.

46. The DNR is only authorized to issue WPDES permits for the discharge of pollutants where such discharges meet federal or state water quality standards and those discharges also comply with any applicable federal law or regulation. See Wis. Stat. § 283.31(3).

47. Grande is a new discharger as defined at 40 CFR § 122.2 because it is a building, structure, facility, or installation from which there is or may be a discharge of pollutants that did not comment at the particular site prior to August 13, 1979; is not a new source; and has never received a finally effective NPDES permit for discharges at that site.

48. Wisconsin Administrative Code establishes water quality standards at Wis. Admin. Code § NR 102.04. Narrative water quality standards applicable to all industrial and commercial discharges are found at Wis. Admin. Code § NR 102.04(1) and require that all waters, including mixing zones, and effluent channels, under all flow conditions, meet the following standards:

- a) Substances that will cause objectionable deposits on the shore or in the bed of a body of water, shall not be present in such amounts as to interfere with public rights in waters of the state.
- b) Floating or submerged debris, oil, scum or other material shall not be present in such amounts as to interfere with public rights in waters of the state.
- c) Materials producing color, odor, taste or unsightliness shall not be present in such amounts as to interfere with public rights in waters of the state.
- d) Substances in concentrations or combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life.

Wis. Admin. Code § NR 102.04(1).

49. Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit are unreasonable in that those sections permit discharges of phosphorus and BOD that will cause or contribute to a violation of the narrative water quality standards found at Wis. Admin. Code § 102.04(1), including but not limited to the presence of objectionable deposits on the shore and bed of the body of water in such amounts as to interfere with public rights in waters of the state; the presence of scum and nuisance algal growth in such amounts as to interfere with public rights in waters of the state; the presence of suspended solids and nuisance algal growth that produce color, odor, taste, and unsightliness in such amounts as to interfere with public rights in waters of the state; and the presence of substances, including algal growth, phosphorus, suspended solids, and BOD which are harmful to animal, plant and aquatic life in excessive amounts.

50. For the foregoing reasons a hearing is warranted to determine whether Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit violate 40 CFR § 122.4(i), Wis. Stat. § 283.31(3), and Wisconsin water quality standards found at Wis. Admin. Code § NR 102.04(1), and to further determine the reasonableness of DNR's failure to include terms in the WPDES permit that ensure compliance with state and federal law. .

ISSUE FOUR: ISSUANCE OF A WPDES PERMIT WITHOUT CONDUCTING A REASONABLE POTENTIAL ANALYSIS AND SETTING WATER QUALITY BASED EFFLUENT LIMITS

51. Petitioners request review of the reasonableness of Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit. Sections 2.2.1 and 2.2.1.2 unreasonably authorize Grande to discharge phosphorus and BOD in violation of Federal Clean Water Act regulations found at 40 CFR § 122.44(d)(1) and without establishing requirements necessary to achieve water quality standards, including state water quality standards and without determining whether these pollutants are or may be discharged at levels

which have the reasonable potential to cause or contribute to an excursion above state water quality standards, including narrative water quality standards found at Wis. Admin. Code § NR 102.04(1).

52. Federal Clean Water Act regulations require discharge permits to include requirements necessary to achieve water quality standards, including state narrative criteria for water quality, even where such requirements are more stringent than promulgated effluent limitations. *See* 40 CFR § 122.44(d)(1). In order to determine whether such limitations and requirements must be included in a WPDES permit, the DNR must determine whether the pollutants discharged will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standards, including state narrative water quality standards. *See* 40 CFR § 122.44(d)(1)(i)-(ii). The absence of numeric water quality criteria is clearly irrelevant to this analysis as the federal regulations clearly require the reasonable potential analysis apply to state narrative water quality criteria. *Id.*

53. The DNR is only authorized to issue WPDES permits for the discharge of pollutants where such discharges meet federal or state water quality standards and those discharges also comply with any applicable federal law or regulation. *See* Wis. Stat. § 283.31(3)

54. Wisconsin Administrative Code regulations authorize DNR to establish water quality based effluent limits (“WQBELS”) for phosphorus. Wis. Admin. Code § NR 102.06.

55. Wisconsin regulations contain narrative water quality standards on which such WQBELS may be established. Wisconsin Administrative Code establishes water quality standards. Wis. Admin. Code § NR 102.04. Narrative water quality standards applicable to all industrial and commercial discharges require that all waters, including mixing zones, and effluent channels, under all flow conditions, meet the following standards:

- a) Substances that will cause objectionable deposits on the shore or in the bed of a body of water, shall not be present in such amounts as to interfere with public rights in waters of the state.
- b) Floating or submerged debris, oil, scum or other material shall not be present in such amounts as to interfere with public rights in waters of the state.
- c) Materials producing color, odor, taste or unsightliness shall not be present in such amounts as to interfere with public rights in waters of the state.
- d) Substances in concentrations or combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life.

Wis. Admin. Code § NR 102.04(1).

56. The phosphorus and BOD limitations found in Grande's WPDES Permit sections 2.2.1 and 2.2.1.2 are unreasonable because they do not ensure compliance with Wisconsin's water quality standards established in Wis. Admin. Code § NR 102.04(1), including but not limited to the presence of objectionable deposits on the shore and bed of the body of water in such amounts as to interfere with public rights in waters of the state; the presence of scum and nuisance algal growth in such amounts as to interfere with public rights in waters of the state; the presence of suspended solids and nuisance algal growth that produce color, odor, taste, and unsightliness in such amounts as to interfere with public rights in waters of the state; and the presence of substances, including algal growth, phosphorus, suspended solids, and BOD which are acutely harmful to animal, plant and aquatic life.

57. The permit limitations found in Sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit for phosphorus and BOD are unreasonable because DNR has not determined whether these discharges will occur at levels that have the reasonable potential to cause or contribute to an excursion above Wisconsin state narrative quality standards established in Wis. Admin. Code § NR 102.04(1).

58. For the foregoing reasons, a hearing is warranted to determine whether sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit are unreasonable because they violate 40 CFR § 122.44(d)(1), Wis. Stat. § 283.31(3), and Wisconsin water quality standards found at Wis. Admin. Code § NR 102.04(1).

ISSUE FIVE: ISSUANCE OF A WPDES PERMIT WITHOUT CONDUCTING NECESSARY ANTIDegradation ANALYSIS

59. Petitioners request review of the reasonableness of sections 2.2.1 and 2.2.1.2 of Grande's WPDES Permit. These limits are unreasonable because they do not ensure that permitted phosphorus and BOD discharges will not cause a lowering of water quality in Juda Creek Branch and Sylvester Creek, as required by Wis. Admin. Code § NR 102.05(1) and Wis. Admin. Code § 207.05, and are not based on a DNR analysis determining whether the discharges will cause a significant lowering of water quality in accordance with Wis. Admin. Code § NR 207.05.

60. Juda Branch Creek, a Fish and Aquatic Life Water, and Sylvester Creek, an Exceptional Resource Water, fall within antidegradation review requirements under 40 C.F.R. §131.12(a)(2). Wisconsin provides antidegradation review for all Fish and Aquatic Life waters and all Exceptional Resource Waters. § NR 102.05(1)(a) (protecting all waters of the state from lowering of water quality unless socially and economically justified).

61. Antidegradation review is required for "new" and "increased" discharges to Fish and Aquatic Life waters under Sections NR 207.02(6) and (8). Grande's discharge of phosphorus, BOD and other pollutants is "new," or in the alternative, "increased." However, Grande's WPDES permit limits are not based on antidegradation review nor has the DNR conducted any such review in issuing Grande's WPDES Permit. This violates Wisconsin's antidegradation implementation procedures in Chapter NR 207, Wis. Admin. Code.

62. For the foregoing reasons, a hearing is warranted to show that Grande's WPDES Permit sections 2.2.1 and 2.2.1.2 are unreasonable because they fail to ensure that permitted phosphorus and BOD discharges will not cause a lowering of water quality in Juda Creek Branch and Sylvester Creek as required by Wis. Admin. Code § NR 102.05(1) and Wis. Admin. Code §§ 207.04 and 207.05 and are not based on a DNR antidegradation analysis determining whether the discharges will cause a lowering of water quality, significant or otherwise, in accordance with Wis. Admin. Code § NR 207.05.

Dated this 11th day of August, 2006.

Respectfully submitted,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



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VERIFICATION

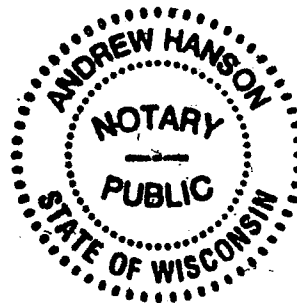
STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Janet L. Boerboom verifies that Wisconsin Environmental Law Advocates is a petitioner in this request for a Contested Case Hearing. Wisconsin Environmental Law Advocate's Authorized Representative has read the foregoing Petition for Review and the information contained therein is true and correct to the best of her knowledge and belief.

Janet Boerboom
Authorized Representative
of Wisconsin Environmental Law Advocates

Subscribed, sworn to, and signed before me this 6th day of August, 2006.

Andrew C. Hanson
Notary Public, State of Wisconsin
My Commission Expires is permanent



VERIFICATION

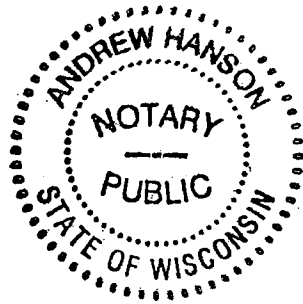
STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Janet L. Boerboom verifies that she is a petitioner in this request for a Contested Case Hearing. She has read the foregoing Petition for Review and the information contained therein is true and correct to the best of her knowledge and belief.

Janet Boerboom
Janet Boerboom

Subscribed, sworn to, and signed before
me this 10th day of August, 2006.

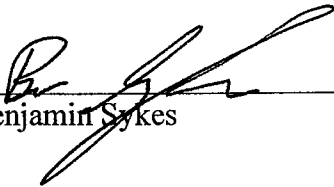
Andrew Hanson
Notary Public, State of Wisconsin
My Commission Expires 13 permanent



VERIFICATION

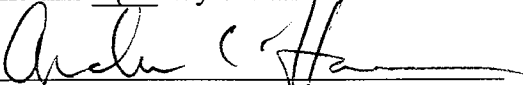
STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

BENJAMIN P. SYKES verifies that he is a petitioner in this request for a Contested Case Hearing. He has read the foregoing Petition for Review and the information contained therein is true and correct to the best of his knowledge and belief.

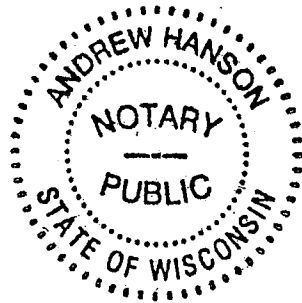


Benjamin Sykes

Subscribed, sworn to, and signed before me this 10th day of March, 2006.



Notary Public, State of Wisconsin
My Commission Expires is permanent



VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Richard A. Lavigne verifies that he is a petitioner in this request for a Contested Case Hearing. He has read the foregoing Petition for Review and the information contained therein is true and correct to the best of his knowledge and belief.

Richard A. Lavigne
Richard Lavigne

Subscribed, sworn to, and signed before me this 10th day of August, 2006.

Andrew Hanson
Notary Public, State of Wisconsin
My Commission Expires Permanent



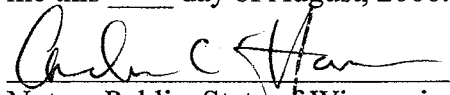
VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Michael Klein verifies that he is a petitioner in this request for a Contested Case Hearing. He has read the foregoing Petition for Review and the information contained therein is true and correct to the best of his knowledge and belief.


Michael Klein

Subscribed, sworn to, and signed before me this 10th day of August, 2006.


Notary Public, State of Wisconsin
My Commission Expires is permanent

