

Midwest Environmental ADVOCATES

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EPA Demands that Wisconsin DNR Correct Pattern of Deficiencies in Its Water Pollution Permitting Program

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Madison, WI – Four months after the Wisconsin Supreme Court decided *against* them, citizens from the Fox River Valley are celebrating. Why? Because their demand that the Wisconsin Department of Natural Resources (“DNR”) protect Wisconsin water quality by following the Clean Water Act has been reinforced by the U.S. Environmental Protection Agency (“EPA”).

“We told the DNR that it had to follow Federal law – the Clean Water Act. DNR went to incredible efforts to convince the Supreme Court that it didn’t have to. Now the EPA is telling the DNR that Wisconsin can’t ignore the Clean Water Act,” says Dean Hoegger, president of the Clean Water Action Council of Northeastern Wisconsin. Clean Water Action Council was a party in *Andersen, et al. v. Wisconsin Department of Natural Resources*, a 2011 Supreme Court case that pitted everyday citizens against the DNR. The citizens’ concern: A water pollution permit for the Georgia Pacific paper mill in Green Bay that allowed unlimited discharges of mercury and increased discharges of phosphorus into the already polluted Fox River.

Neil Kagan, Senior Counsel for the National Wildlife Federation, another party in the case, said, “The Supreme Court was wrong when it determined that DNR’s issuance of a permit, by itself, means that the permit complied with the Clean Water Act, unless EPA objects. That ruling absolved DNR of its promise to apply the Clean Water Act when making its permit decisions.”

Now, several months after the Supreme Court’s 5-2 decision that found DNR had no obligation to comply with minimum Clean Water Act standards unless EPA specifically required them to, the EPA has issued a letter to the DNR that points out the agency’s “numerous apparent omissions and deviations between Wisconsin’s current statute and [Clean Water Act] requirements.” The EPA is requiring that the “omissions and deviations...be corrected quickly”, and that the state prove it has “adequate authority” to rectify the program’s problems or provide a plan to establish the required authority.

Midwest Environmental Advocates’ attorney Betsy Lawton, counsel for the citizens, Clean Water Action Council, and the National Wildlife Federation in the *Andersen* case, believes this letter sends a strong message to the Wisconsin DNR. “It clearly, and I believe correctly, sends a message that the Clean Water Act, passed in 1972 to protect public health and access to clean water for future generations, may not be weakened to help irresponsible polluters save money at the expense of public health. If Wisconsin can’t protect its citizens through adequate pollution permits, then the EPA will. A state that lacks adequate authority to run its programs can’t efficiently serve the needs of business or investors.”

Curt Andersen, one of the named parties in the *Andersen* case, says that the letter “takes the sting out of the punch in the gut we got when we heard the decision. We KNEW we had a good case. This letter shows that citizens do have power and sometimes know more about enforcing environmental law than the DNR.”

- The Clean Water Action Council is a non-profit citizen organization, founded in 1985, working to protect public health and the environment in Northeast Wisconsin. Clean Water Action Council works to increase public awareness of the many threats to water quality, and to build support for improved management.
- The National Wildlife Federation is America's largest conservation organization inspiring Americans to protect wildlife for our children's future.
- Midwest Environmental Advocates is a non-profit environmental law center with offices in Madison and Milwaukee. Its mission is to provide legal and technical advice and representation to citizens and grassroots groups who are working for environmental justice in the Upper Mississippi River and Great Lakes regions.