



Landmark Environmental Case Before Supreme Court

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Today the Wisconsin Supreme Court heard arguments on behalf of citizens seeking the right to challenge a DNR wastewater discharge permit. The State contends that the Wisconsin DNR needs not review permits for compliance with the Clean Water Act.

“The DNR’s claim that it lack the authority to determine whether a DNR issued water pollution permit complies with the Clean Water Act runs afoul of the structured balance between state and federal authority under the Clean Water Act,” said Midwest Environmental Advocates’ attorney, Betsy Lawton, who represents the citizens in this case. “Wisconsin is authorized to implement and enforce the national water pollution permit program.

The permit originally in question was granted in 2005 and allowed a Green Bay paper company to discharge mercury without limits and increase discharges of phosphorous into the already contaminated Fox River. Members of the Clean Water Action Counsel of Northeast Wisconsin (CWAC) and the National Wildlife Federation sought to challenge the DNR’s decision in an administrative hearing but were denied the opportunity to do so by the DNR.

“Initially we were just going for a contested case hearing, which should be a fairly simple process,” said Becky Katers, of CWAC, “It’s been over five years now and we’ve never been allowed to argue the merits of our case. Now the permit we originally challenged is about to expire. The damage to our waters is already done. We’re just hopeful that this case will mean that the DNR can’t make these threadbare excuses to another community.”

This spring, after more than five years of legal proceedings, the Court of Appeal overturned the state’s position, and ordered that the citizens be given the opportunity to have their hearing; however the Wisconsin DNR chose to appeal a portion of that decision to the Wisconsin Supreme Court. The DNR claims that the citizens have no right under state law to challenge an issued permit that fails to comply with minimum federal Clean Water Act requirements.

“We hope the Court will see DNR’s argument for what it is – a craven abdication of its basic responsibility to protect our health and keep our waters clean,” said Kimberlee Wright, executive director of Midwest Environmental Advocates. “What protection does the public have if we can’t count on our state to enforce the minimal standards set the by the federal Clean Water Act? It’s time for the state to drop these procedural roadblocks and hear the public’s concerns about water pollution.”