http://newiprogressive.com/images/stories/S5/wisc-dairy-farm-s5.jpg 

Recent Dane County Circuit Court ruling requires additional groundwater monitoring, animal unit cap for Kewaunee County Dairy.

MADISON - The latest development in Kewaunee County residents' struggle to protect their drinking water from dangerous agricultural pollutants confirms DNR's duty to require environmental monitoring for groundwater pollution.

In October 2015, Clean Wisconsin and Midwest Environmental Advocates filed suit after DNR decided to ignore an Administrative Law Judge order to require monitoring and an animal unit cap in a Kewaunee County Confined Animal Feeding Operation (CAFO) permit.

Late last week, Dane County Circuit Court ruled that DNR's actions were illegal, and that the agency overstepped its authority by ignoring the ALJ order.

In the case of Kinnard Farms, Administrative Law Judge (ALJ) Jeffrey Boldt ordered groundwater quality monitoring, a limit on the number of animals at the facility and other conditions on the facility's wastewater permit to address widespread concern about groundwater contamination in late 2014. Ten months later, DNR ignored that decision and stripped these sensible and necessary groundwater protection conditions from the permit.

Dane County Judge Markson wrote: "The laws that provide structure and predictability to our administrative process do not allow an agency to change its mind on a whim or for political purposes. The people of Wisconsin reasonably expect consistency, uniformity, and predictability from their administrative agencies and from the Department of Justice.…DNR had no authority to reverse [its own final] decision. Its attempt to do so is without any basis in law, and it is void."

"This ruling reinforces that DNR has an absolute duty to protect groundwater. The conditions in

this permit are reasonable and common-sense protections in an area that is riddled with widespread drinking water contamination," said Elizabeth Wheeler, Senior Staff Attorney with Clean Wisconsin. "It is a fundamental duty of DNR to ensure that Wisconsin residents have a safe, reliable, and clean source of drinking water. The people of Kewaunee County don't have that right now, and if DNR can't require monitoring or other limits in permits, it will be impossible to locate the source of the contaminants, much less clean up the mess."

One of the issues in the case was to what degree 2011 Act 21 limits DNR's authority. Industrial representatives have been trying to use Act 21 as a way to prevent DNR from requiring sensible permit conditions to limit pollution. This law is also the basis for a recent opinion for Attorney General Brad Schimel that essentially stripped DNR of its authority to regulate pumping from high capacity wells, which is drying up rivers, lakes, streams and wetlands in some parts of Wisconsin.

"We are pleased that courts are rejecting the claim that DNR's hands are tied by 2011 Act 21, and we hope this is the beginning of many court decisions that restore one of the most critical functions we rely on our DNR for: protection of our water," said Elizabeth Wheeler Senior Staff Attorney with Clean Wisconsin.

The decision comes on the heels of a release of 65 DNR-facilitated workgroup recommendations for addressing groundwater contamination in Kewaunee County, including increased CAFO audits by DNR and revised regulations for landspreading manure in sensitive areas.

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