

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 41

CLEAN WATER ACTION COUNCIL
OF NORTHEAST WISCONSIN,
FRIENDS OF THE CENTRAL
SANDS, MILWAUKEE
RIVERKEEPER, and WISCONSIN
WILDLIFE FEDERATION,

Petitioners,

v.

Case No. 17-CV-12861

WISCONSIN DEPARTMENT
OF NATURAL RESOURCES,
DANIEL MEYER, and
MARK D. AQUINO,

Respondents.

**MOTION TO DISMISS PETITION FOR
JUDICIAL REVIEW AND DECLARATORY JUDGMENT**

PLEASE TAKE NOTICE that Respondents Wisconsin Department of Natural Resources, Daniel Meyer, and Mark Aquino (collectively, DNR), by their attorneys Brad D. Schimel, Wisconsin Attorney General, and Gabe Johnson-Karp, Assistant Attorney General, move this Court for an order dismissing the petition for judicial review and declaratory judgment in its entirety. First, under Wis. Stat. § 227.52, a circuit court only has jurisdiction to review “final agency decisions.” The challenged action here, DNR’s entry into a settlement agreement in another case, does not constitute a final agency decision subject to review under Wis. Stat. § 227.52. This Court therefore lacks subject matter to review the settlement agreement, and the petition for judicial review must be dismissed.

Second, the settlement agreement at issue also is not an agency “rule,” and is thus not subject to review in a declaratory judgment action under Wis. Stat. § 227.40. A “rule” is defined as “(1) a regulation, standard, statement of policy or general order; (2) of general application; (3) having the effect of law; (4) issued by an agency; (5) to implement, interpret or make specific legislation enforced or administered by such agency.” *Cholvin v. DHFS*, 2008 WI App 127, ¶ 22, 313 Wis. 2d 749, 758 N.W.2d 118 (citation omitted). The settlement agreement easily fails elements (1), (2), (3), and (5). Petitioners’ declaratory judgment action must therefore be dismissed, as well.

Further grounds for this motion are set forth in the accompanying brief, which is incorporated by reference herein.

PLEASE TAKE FURTHER NOTICE that this motion will be heard on March 19, 2018, at 10:00 a.m.

Dated this 16th day of January, 2018.

BRAD D. SCHIMEL
Wisconsin Attorney General

Electronically signed by:

/s/ Gabe Johnson-Karp
GABE JOHNSON-KARP
Assistant Attorney General
State Bar #1084731

Attorneys for Respondents

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8904
(608) 267-2223 (Fax)
johnsonkarpg@doj.state.wi.us

CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the foregoing Motion to Dismiss Petition for Judicial Review and Declaratory Judgment with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 16th day of January, 2018.

/s/ Gabe Johnson-Karp
GABE JOHNSON-KARP