

Appeal Background

Pursuant to Wisconsin Administrative Code N.R. 2.20, Meteor Timber can request the Secretary of the DNR to review the ALJ's decision. The agency has the sole discretion to concur with the ALJ or reverse the decision if the agency believes there are significant factual or legal errors. Meteor Timber believes there are errors which merit a second review by the state agency with decades of experience in environmental permitting.

For example, of the 32 Finding of Facts in the ALJ decision, 9 are directly contradicted by conditions in the permit cited for those Findings. Most troubling, the decision made these contra-factual findings without actually acknowledging the testimony of the Department's 5 witnesses (or any of the Meteor witnesses), but based solely on the testimony of a former Department staffer who helped to draft the conditions of the permit she later testified against.

In addition, there are multiple public policy issues for the state. By way of examples, the ALJ determined the Department cannot issue an amended wetland permit. We believe this is contrary to state statute and long-standing Department practice. In this case, the amended permit was issued by the DNR pursuant to each of the requirements found in state law which require public notice and opportunity for public comment.

In this instance, the ALJ proclaimed the DNR did have the authority to issue an amended permit. If that authority does not exist, the ALJ is proclaiming that well over a dozen permits which have been issued by the agency and are currently in use across the state are hereby invalid overnight. Such a finding would greatly impair future mitigation projects and mitigation banks.

We believe the aforementioned samples are illustrative of a number of errors which cannot be allowed to stand for both this project and for Wisconsin as a whole. The law provides the Secretary the discretion to correct such errors and this petition asks the Secretary to review the decision of the ALJ.