

No.

IN THE
SUPREME COURT OF THE UNITED STATES

PETER BORMUTH,

Petitioner,

v.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES,
AND ENERGY (EGLE), AND CONSUMERS ENERGY

Respondent & Intervenor.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Appendix A

Michigan 4th Circuit Court Order, Filed March 29, 2024

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PETER BORMUTH,

FILE NO. 23-1508-AA

Petitioner-Appellant,

v

HON. THOMAS D. WILSON

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY,

Respondent-Appellee,

PETER BORMUTH
Petitioner-Appellant in Pro Per
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**ORDER FOLLOWING PETITIONER-APPELLANT'S
REQUEST FOR REVIEW AND FOR ORAL ARGUMENT.**

On May 26, 2022, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) issued a water withdrawal permit to Consumers Energy. Petitioner-Appellant filed a contested petition challenging the issuance of that permit. Appellant's petition was subsequently dismissed by the presiding Administrative Law Judge (ALJ) stating that Appellant was not an aggrieved person and therefore, lacked standing to contest the permit.

Appendix A

Appellant then petitioned the Environmental Permit Review Commission (EPRC) to review the Administrative Law Judge's ruling. After review, the EPRA adopted the ALJ's ruling. Now, pursuant to MCL 24.301, Appellant motions this Court for (1) a direct review of the ALJ's decision and (2) a request for an oral argument. The question of whether Appellant has standing is reviewed *de novo*.¹ Similarly, a review of a trial court's decision granting summary disposition is also reviewed *de novo*.²

Following the issuance of a water withdrawal permit, MCL 324.32723(12) permits aggrieved persons to file a sworn petition and request a contested case hearing. Whether a party is aggrieved determines whether a party has standing. "To have standing on appeal, a litigant must have suffered a concrete and particularized injury."³ This injury must also be "different from the citizenry at large."⁴ Upon review, this Court finds that Appellant fails to satisfy that standard.

Appellant claims he has standing based on his religious status as a Pagan Druid, which distinguishes him from the citizenry at large. This Court affirms the ALJ's finding that Appellant's religious belief regarding water conservation is insufficient to demonstrate a concrete injury that is different from other environmentally conscious members of the general public.⁵

Appellant also argues that because of his low income, an increase in the City of Jackson's water rates will disproportionately affect him compared to the citizenry at large. However, this Court finds Appellant's argument unpersuasive. First, Appellant's argument is unfounded as to what extent this permit could impact water rates. Moreover, Appellant's argument regarding water rates fails to establish how he would suffer a "concrete and particularized

¹ *Manuel v Gill*, 481 Mich. 637, 642 (2008).

² *Maiden v Rozwood*, 461 Mich. 106, 118 (1999).

³ *Federated Ins. Co. v Oakland County Road Com'n*, 475 Mich. 286, 291-92 (2006).

⁴ *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich. 349, 359 (2010).

⁵ Stip. Admin Rec, p 0255.

injury.⁶ Rather, Appellant's argument addresses an issue that could affect all low income individuals in the community.

Appellant also argues that he has standing because as a resident of the City of Jackson, the EGLE's decision to grant this permit nullifies decisions made by the elected members of the City of Jackson's City Council. For the reasons already stated, this claim also fails to show how Appellant's injury is different from the remaining residents of Jackson.

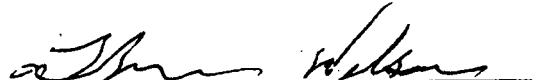
Lastly, Appellant claims that the dismissal of his claim by the ALJ and the subsequent adoption of that decision by the EPRC was a violation of his due process rights. As Appellee correctly points out in their brief, Appellant fails to show such a violation.

Appellant has failed to demonstrate to this Court that his request for oral arguments would significantly add to this Court's deliberation. Rather, Appellant's motion simply recites many of the same arguments he provided through the administrative appeal process. Pursuant to this Court's authority under MCR 7.114(A), this Court believes that the parties' briefs are sufficient for this Court to render a decision.

WHEREFORE, the ALJ's findings are hereby **AFFIRMED** and Appellant's Request for Oral Argument is hereby **DENIED**.

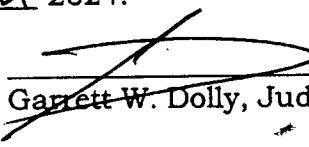
IT IS SO ORDERED.

DATED: 3/29/24


HONORABLE THOMAS D. WILSON
Circuit Court Judge

Certificate of Mailing:

I certify that a copy of this Order was mailed to both counsel/parties by ordinary mail this 29 day of March 2024.


Garrett W. Dolly, Judicial Law Clerk.

⁶ *Federated Ins. Co* at 291-92.

Appendix B

Order Of The EPRC, Filed May 26, 2023

STATE OF MICHIGAN
ENVIRONMENTAL PERMIT REVIEW COMMISSION

In the Matter of

The Petition of Peter Bormuth on the
permit issued to Consumers Energy Company,

MOAHR Docket No. 22-024450

Peter Bormuth, Petitioner,

DECISION OF ENVIRONMENTAL PERMIT REVIEW COMMISSION

May 26 2023

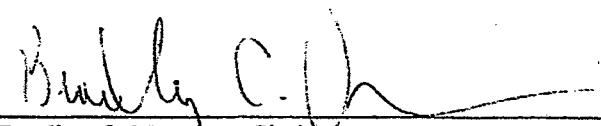
This case is before the Environmental Permit Review Panel (Panel) of the Environmental Permit Review Commission as a result of the Petitioner's timely appeal of an Administrative Law Judge (ALJ) Order Dismissing Contested Case, issued on March 16, 2023 (Order). The Order granted the motion for summary disposition filed by Consumers Energy Company, dismissing the contested case hearing in this matter due to Petitioner's lack of standing. The petition for contested case hearing was filed on or about July 25, 2022, by Peter Bormuth. Mr. Bormuth challenged a permit for water withdrawal issued by the Department of Environment, Great Lakes, and Energy (EGLE) to Consumers Energy Company on May 26, 2022, under Part 327, Great Lakes Preservation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. MCL 324.62501, *et seq.* The Order states that Petitioner failed to establish that he will suffer special damages that are different and apart from the citizenry at large.

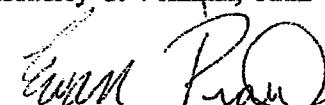
Consistent with MCL 324.1317(2), the Panel convened on May 15, 2023. The meeting of the Panel was conducted consistent with the Open Meetings Act, 1976 PA 267, as amended, and the framework provided in MCL 324.1317, incorporating MCL 324.1315(2) and (3).

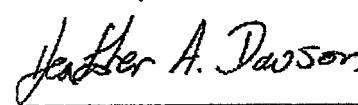
Consistent with MCL 324.1317(3), the Panel listened to oral arguments from the parties prior to deliberation. The Panel determined that due to the limited file in this case, additional time for further briefing of the issues is not needed.

Consistent with MCL 324.1317(4), after review and discussion of the administrative record in this matter and the nine grounds under which Petitioner contests the Order, the Panel unanimously decided to ADOPT the Order in whole on the grounds that the Order is consistent with the regulatory framework and is based on the Administrative Law Judge's thorough legal analysis.

This opinion is the final decision of the Department of Environment, Great Lakes, and Energy, and is subject to judicial review as provided under the Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328, and other applicable law.


Bradley C. Venman, Chair


Evan Pratt, Commissioner


Heather A. Dawson
Heather Dawson, Commissioner

Appendix C

Order Of MOAHR ALJ Pulter, Filed March 16, 2023

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

Docket No.: 22-024450

Petition of Peter Bormuth on the
permit issued to Consumers
Energy Company

Agency No.: 2022-0001

Part(s): 327, Great Lakes Preservation

Agency: Department of Environment,
Great Lakes, and Energy

Case Type: Water Resources Protection

Issued and entered
this 16th day of March 2023
by Daniel L. Pulter
Administrative Law Judge

ORDER DISMISSING CONTESTED CASE

This contested case concerns an Application filed by Consumers Energy Company (Permittee) for a permit under Part 327, Great Lakes Preservation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. MCL 324.32701, *et seq.* A permit was issued by the Water Resources Division (WRD) of the Department of Environment, Great Lakes, and Energy (EGLE) on May 26, 2022. That agency action was challenged by Peter Bormuth (Petitioner) by filing a Petition for Contested Case Hearing on July 26, 2022.¹ Permittee was granted leave to intervene in this action by an Order entered on December 12, 2022.

On February 22, 2023, Permittee filed a Motion for Summary Disposition. Petitioner filed his Response to the Motion on March 1, 2023. Because it is not represented by counsel, the WRD has not filed a Response to the Motion.² A Pre-Hearing Conference was held on March 7, 2023. Each of the arguments of the parties regarding summary disposition will be addressed *infra*.

¹ The Petition for Contested Case Hearing was filed one day late. Section 32723(12) provides, in part, that “[a] petition filed more than 60 days after action on the water withdrawal permit may be rejected by the department as being untimely.” MCL 324.32723(12). The computation of time is controlled by MCL 8.6. Under that statute, the first day (*i.e.*, the date the permit was issued) is excluded and the last day is included. Using this process, the 60th day after May 26, 2022 was July 25, 2022. The Petition was filed one day late on July 26, 2022. Because this contested case is being dismissed on standing grounds, the Tribunal need not address the permissive use of the word “may” in MCL 324.32723(12).

² Mr. Chris Conn attended the Pre-Hearing Conference and advised that the WRD currently does not intend to retain counsel in this contested case.

I. Summary of the Facts

The Application in this case seeks a water withdrawal of up to 5 million gallons per day (MGD) from groundwater for use in Permittee's electric-power generation processes at its Jackson Generating Station. (Permittee's Motion at p 2). "Although the proposed maximum withdrawal rate is 5 MGD, actual instantaneous withdrawal rates fluctuate significantly due to variable electrical demand." (Exhibit to Petition at p 1). The proposed maximum monthly average withdrawal rate is 4 MGD, and the annual average withdrawal is 2.76 MGD. (Permittee's Motion at p 2). The consumptive water use is for steam generation and cooling processes necessary for electric power generation. (Exhibit to Petition at p 1).

In his Petition, Petitioner identifies himself as a "Druid charged with protecting our public waters." (Petition at p 2). He states that the WRD should have denied the permit, because Permittee "may get the necessary water for their Jackson Generating Station from the City of Jackson...." (Petition at p 3). In his Pre-Hearing Statement, Petitioner contends that the following two legal questions are at issue in this contested case: (1) "Consumers Energy is adhering to internal enemies of the secular government of the United States and providing them with aid and comfort"; and (2) "The proposed use is unreasonable under common law principles of water law in Michigan." (Petitioner's Pre-Hearing Statement at pp 8 and 11).

II. Lack of Jurisdiction or Standing

In its Motion for Summary Disposition, Permittee first contends that this Tribunal lacks jurisdiction because Petitioner is not aggrieved by the issuance of the permit. (Motion at p 3). Before addressing Permittee's Motion, three preliminary issues must be reviewed. First, Permittee brought its Motion based on MCR 2.116(C)(4), (5), and (8). However, the Administrative Hearing Rules expressly provide that the Michigan Court Rules of 1985 (MCR) are to be utilized only "[i]f an applicable rule does not exist...." Mich Admin Code, R 792.10102(3). The Administrative Hearing Rules provide three grounds for summary disposition, to-wit: (a) There is no genuine issue of material fact; (b) There is a failure to state a claim for which relief may be granted; and (c) There is a lack of jurisdiction or standing. Mich Admin Code, R 792.10129(1). Permittee's Motion for Summary Disposition falls squarely within subrule (c).

Second, Permittee has couched its argument as a lack of jurisdiction rather than a lack of standing. However, Permittee's argument more accurately is one challenging Petitioner's "standing" to bring this contested case. In footnote 1 of its Motion, Permittee acknowledges that this Tribunal may determine that "this issue is one of standing...." (Permittee's Motion at p 3 n 1). Since this Tribunal is treating Permittee's Motion as

challenging Petitioner's standing to bring a contested case, it will be important to reiterate standing principles involved in contested cases under the NREPA.

Third, before addressing the concept of standing, this Tribunal is compelled to address the recent Supreme Court decision in *Lakeshore Group v Department of Envtl Quality*, 507 Mich 52; 968 NW2d 251 (2021). Therein, the Court questioned, without resolving, whether justiciability doctrines, such as standing and mootness, are properly applied in administrative decisions. 507 Mich at 65, n 10. The Court explained that these justiciability doctrines act as "guardrails for the judiciary" to prevent courts from encroaching on other branches of government. Because administrative agencies do not possess judicial power, and contested case hearings are a legislatively created process, the Court reasoned that the statutes alone should govern the scope of the right to request a hearing.

The *Lakeshore* decision does not mean, however, that cases applying the doctrine of standing have no application in the administrative context. An administrative agency must apply the statutory language used by the Legislature to define the scope of the administrative hearing process. Nothing in the *Lakeshore* decision stands for the proposition that cases applying the doctrine of standing cannot be helpful in this determination. Because the Legislature has chosen to limit access to administrative proceedings in the same way that the standing doctrine limits access to court proceedings, the standing cases are instructive.

Indeed, in contested cases brought under Part 327 of the NREPA, it is clear from the statutory language that the Legislature intended to limit who may request a hearing. Part 327 extends the right only to "[a] person who is aggrieved by a determination of the department under this section related to a water withdrawal permit...." MCL 324.32723(12). It is instructive to compare the wording to these provisions with the Michigan Environmental Protection Act (MEPA), MCL 324.1701 *et seq.*, which provides that "any person may maintain an action in circuit court." See MCL 324.1701(1) (emphasis added). The Legislature could have used similar language in §32723(12), which would have extended the right to request a formal hearing to "any" member of the general public, but instead it chose to limit the right to request a formal hearing only to "aggrieved" persons. Thus, under the broadest reasonable reading of the statute, a person requesting a formal hearing must be detrimentally affected by the Department's determination in some way distinct from a member of the public at large. Because this is the same principle underlying the standing doctrine, it is appropriate for this Tribunal to look to standing cases when applying the "aggrieved" person standard set forth in §32723(12).

Generally, the concept of standing flows from the constitutional principle that courts can only grant "relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm...." *Lewis v Casey*, 518 US 343, 349; 116 S Ct 2174; 135 L Ed 2d 606 (1996). Standing does not go to the merits of a case, but instead asks whether it is appropriate for a particular person to bring a challenge in a judicial

proceeding, which includes contested cases.³ The purpose of requiring a person to have standing to maintain a legal action is to “assure sincere and vigorous advocacy.” *Michigan License Beverage Ass’n v Behnan Hall, Inc*, 82 Mich App 319, 324; 266 NW2d 808 (1978). However, such commitment does not confer standing. Rather, “[s]tanding requires a demonstration that the plaintiff’s substantial interest will be detrimentally affected in a manner different from the citizenry at large.” *Dodak v State Administrative Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993).

The Supreme Court has confirmed that “[t]he purpose of the standing doctrine is to assess whether a litigant’s interest in the issue is sufficient to ‘ensure sincere and vigorous advocacy.’” *Lansing Schools Educ Ass’n v Lansing Bd of Educ*, 487 Mich 349, 355; 792 NW2d 686 (2010). The Court further held:

A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

487 Mich at 372. In this contested case, the Permittee contends that Petitioner does not have standing, because he is not aggrieved. Accordingly, it is important to review the legal authorities with respect to the definition of the word “aggrieved.”

a.

The “Aggrieved” Standard

This contested case concerns a challenge to a permit issued under Part 327, Great Lakes Preservation, of the NREPA. MCL 324.32701, *et seq.* Part 327 provides the right to a contested case to a party who is “aggrieved.” MCL 324.32723(12). Specifically, Part 327 grants the right to a contested case hearing to “[a] person who is aggrieved by a determination of the department under this section related to a water withdrawal permit....” *Id.* Because the word “aggrieved” is not defined within the statute, it is necessary to review extant case law to determine if Petitioner meets this prerequisite for standing.

Instead of citing to *Lansing Schools*, *supra*, Permittee cites to an appeal of a decision of the Zoning Board of Appeals (ZBA), *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 593; 983 NW2d 798 (2022). In his review of this case, Petitioner correctly notes that the Supreme Court found three prerequisites for standing under the Michigan Zoning Enabling Act (MZEA):

³ “Contested case means a proceeding ... in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing....” MCL 24.203(3).

- First, the appellant must have participated in the challenged proceedings by taking a position on the contested decision, such as through a letter or oral public comment.
- Second, the appellant must claim some legally protected interest or protected personal, pecuniary, or property right that is likely to be affected by the challenged decision.
- Third, the appellant must provide some evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community.

509 Mich at 595. The first prong of this test is inapplicable in all cases other than ZBA cases. In essence, the Supreme Court held that, to have standing to challenge a decision of the ZBA, the plaintiff must have also been a party to the case before the ZBA. However, the second and third prongs of this test are simply a restatement of *Lansing Schools*, which this Tribunal has consistently applied. Hence, to have standing in this case, Petitioner must demonstrate that (1) he has a legally protected interest or protected personal, pecuniary, or property right that is likely to be affected by the permit issued by the WRD; and (2) that he has special damages arising from the challenged permit in the form of an actual or likely injury to or burden that is different from the citizenry at large.

The controlling question in this case is whether Petitioner has suffered "special damages" different from the citizenry at large. In *Saugatuck Dunes*, the Supreme Court set forth the following four factors to aid in this determination:

(1) the type and scope of the change or activity proposed, approved, or denied; (2) the nature and importance of the protected right or interest asserted, (3) the immediacy and degree of the alleged injury or burden and its connection to the challenged decision as compared to others in the local community; and (4) if the complaining party is a real-property owner or lessee, the proximity of the property to the site of the proposed development or approval and the nature and degree of the alleged effect on that real property.

509 Mich at 596.

In applying these factors to Petitioner, it is helpful to review his Response to the Motion. Initially, this Tribunal believes that it is important to recite the introduction to Petitioner's Response, which expresses his claim of special damages, to-wit:

Petitioner spent the last four days shivering in a 37 degree apartment without light or heat because for decades Consumers Energy has emitted greenhouse gas warming the climate and creating the conditions for freezing rain. Meanwhile Consumers spends money on executive salaries, greenwashing advertising, and treasonous contributions to christian [sic] candidates for public office who want to put their religion on the secular government of the United States, instead of properly maintaining their power lines. Petitioner is aggrieved.

(Petitioner's Response at p 1). In this paragraph, it becomes clear that Petitioner is not a real property owner who can allege that Permittee's water withdrawal will damage the water supply underneath his property. The emission of greenhouse gas is not relevant to this contested case, which concerns a water withdrawal permit issued under Part 327 of the NREPA. The amount of funds expended by Permittee on executive salaries, advertising, or contributions to candidates for public office is similarly irrelevant to a contested case brought under Part 327. Hence, this paragraph does not provide any evidence of "special damages" suffered by Petitioner.

In his Response to Permittee's Motion, Petitioner next incorrectly asserts that "[t]here should be more leeway in a dispute over water, which moves and has no owner, unlike land which is stationary and subject to ownership." (Petitioner's Response at p 4). However, he correctly notes that "the requirement still hinges on the ability to show some damage, injury or burden that is different in kind or degree from others in the local community." *Id.* Finally, Petitioner alleges the following "special damages":

- A. Petitioner is aggrieved by EGLE's issuance of the permit in this case since he receives his water from the City of Jackson water system which Consumers abandoned in a dispute over water rates to apply for this well permit. EGLE's issuance of this permit ensures that residents of the City of Jackson will pay higher water rates. The Petitioner is a low income resident earning less than \$11,000 a year and thus claims economic damages more significant in degree than those affecting all citizens in the local community who are connected to the City water system.
- B. Petitioner is aggrieved because EGLE's issuance of this permit nullifies the decision by his elected officials on the City of Jackson's City Council that water conservation would be a goal of municipal government. Petitioner is an ardent environmentalist who spoke on behalf of the goal of water conservation before City Council, thus distinguishing himself from other members of the local community concerned solely with economic fairness or economic injuries. The scope of the change EGLE initiated in approving this permit, from a policy of water conservation to a policy of nearly unlimited free water for Consumers Energy, is sufficient to create standing for the Petitioner to appeal EGLE's decision.

- C. Petitioner is aggrieved that a potential future impact of EGLE's issuance of this permit will include depletion of the Marshall aquifer, something that is already occurring in Ottawa County. Climate change is solid science, not fantasy or mere possibility arising from some unknown future contingency. The nature and importance of the right to water and the Petitioner's religious status as a Druid with a special religious responsibility for protecting surface and well water, (also trees and wild creatures) distinguishes the Petitioner from other members of the local community. Petitioner claims a special religious interest in water. Water is life.
- D. Petitioner is aggrieved that the issuance of this permit to a company engaged in the treasonous activity of funding candidates for office who want to place christian [sic] morality on our secular government may eliminate the rights of non-christian [sic] citizens under our Constitution. The nature and importance of these constitutional rights cannot be minimized. Petitioner is a Pagan who would lose all of his civil rights should this christian [sic] nationalist takeover of our government succeed, making his potential injury more significant in degree than the effects on others in the local community.

(Petitioner's Response at pp 5-7).

Paragraph A does not state a claim for special damages. Petitioner states that the WRD's "issuance of this permit ensures that residents of the City of Jackson will pay higher water rates." Initially, this argument was discounted by the WRD when it issued the permit.⁴ Even so, Petitioner has not explained how he will be damaged differently from other citizens of the City of Jackson. He argues that, because his annual salary is \$11,000.00 annually, the economic damages will be more significant to him than to other wage earners. However, all citizens of the City of Jackson could potentially argue that they may suffer an incremental increase in water utility rates. Wage earners from every economic level could make similar arguments based on the percentage of the increase on their budgets. Because each wage earner will suffer proportionate increases, Petitioner has not suffered special damages different and apart from the citizenry at large.

⁴ In its decision-making, the WRD noted:

Some comments expressed concern that if the [Jackson Generating Station (JGS)] uses the proposed withdrawal and stops purchasing water from the City, water rates for remaining customers would increase to compensate for the lost revenue. Water rates for remaining customers are likely to increase by an unknown amount if the JGS stops or drastically reduces purchasing water from the City as proposed. However, some of the loss of revenue incurred by the City, if not a significant majority, will be offset by lower cost-of-service expenditures (i.e., less water will be withdrawn, treated, and pumped through the distribution system). Some comments correctly noted that future water rate increases are likely to occur regardless of whether the JGS remains a significant purchaser or not, due to aging infrastructure in need of replacement and additional lead service line replacement required by state law.

In Paragraph B, Petitioner argues that the issuance of the permit nullifies the decision by his elected officials on Jackson City Council that water conservation would be a goal of municipal government. He contends that he will suffer special damages because he is an environmentalist. However, Petitioner does not explain how Permittee's withdrawal of 5 million GPD from the City of Jackson constitutes water conservation while the withdrawal of 5 million GPD from a water well does not. Moreover, the fact that Petitioner considers himself an environmentalist does not constitute damages different from the citizenry at large.

In Paragraph C, Petitioner's argues that his religious status as a Druid with a special religious responsibility for protecting surface and well water distinguishes him from other members of the local community. Religious affiliation does not provide grounds for special damages. Petitioner simply fails to demonstrate how Druids are different from any other religious or non-religious environmentally conscious members of the public. Each religious or environmental group is equally affected by the issuance of the permit. Again, Petitioner has failed to distinguish himself from other members of the citizenry at large.

Finally, in Paragraph D, Petitioner contends that he has been damaged by the "treasonous" activity of Permittee. However, a claim of treason is beyond the scope of this contested case. This contested case is contemplated to determine whether Permittee is entitled to a water withdrawal permit. Treason is not a statutory element for the issuance of a water withdrawal permit, is not relevant to this contested case, and cannot constitute evidence of special damages.

Because Petitioner has failed to establish that he will suffer special damages that are different and apart from the citizenry at large, Permittee's Motion for Summary Disposition is **GRANTED** and this contested case is **DISMISSED**. Therefore, the Pre-Hearing Conference that is scheduled to reconvene on April 11, 2023 is hereby **CANCELLED**.

This is a final order that resolves the last pending matter and closes the contested case.



Daniel L. Pulte
Administrative Law Judge

REVIEW OF THIS DECISION

In light of the 2018 amendments to the Natural Resources and Environmental Protection Act (NREPA), MCL 324.1301, et seq., the right to seek review of this decision may vary based on the particular Part of the NREPA under which this contested case was brought. To ascertain the correct manner to seek review of this decision, and the correct time frame for review, the parties and/or their legal counsel should examine the applicable statutes and administrative rules. See Section 1317 of the NREPA, being MCL 324.1317; Sections 301-306 of the APA, being MCL 24.301-306; and the Department of EGLE website information regarding petitions for review at: www.michigan.gov/eble.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 16th day of March 2023.

R. Tidwell

R. Tidwell
Michigan Office of Administrative
Hearings and Rules

Via Electronic Delivery

Mr. Christopher Conn
Department of Environment, Great Lakes, and Energy
Enforcement Unit
Water Resources Division
P.O. Box 30458
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Appendix D

Michigan Court Of Appeals Order, Filed December 19, 2024

Court of Appeals, State of Michigan

ORDER

PETER BORMUTH V DEP'T OF ENVIRONMENT GREAT
LAKES AND ENERGY

Docket No. 370598

LC No. 2023-001508-AA

Thomas C. Cameron
Presiding Judge

Stephen L. Borrello

Christopher P. Yates
Judges

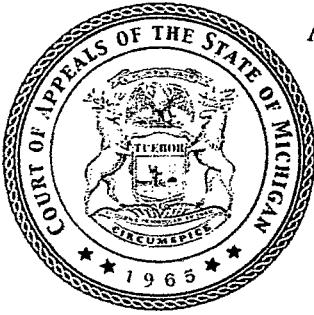
The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.



Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on



December 19, 2024

Date



Chief Clerk

Appendix D

Appendix E

- 1. Michigan Supreme Court Order, Filed July 25, 2025**
- 2. Michigan Supreme Court Order, Filed May 22, 2025**

Order

Michigan Supreme Court
Lansing, Michigan

July 25, 2025

168019 (45)(50)

PETER BORMUTH,
Petitioner-Appellant,

v

DEPARTMENT OF ENVIRONMENT, GREAT
LAKES, AND ENERGY, a/k/a EGLE,
Respondent-Appellee,

and

CONSUMERS ENERGY, a/k/a CONSUMERS
ENERGY COMPANY,
Intervenor-Appellee.

SC: 168019
COA: 370598
Jackson CC: 2023-001508-AA

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

On order of the Court, the motion to allow a reply brief is GRANTED. The motion for reconsideration of this Court's May 22, 2025 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 25, 2025

s0722

Clerk

Order

Michigan Supreme Court
Lansing, Michigan

May 22, 2025

Megan K. Cavanagh,
Chief Justice

168019

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

PETER BORMUTH,
Petitioner-Appellant,

v

DEPARTMENT OF ENVIRONMENT, GREAT
LAKES, AND ENERGY, a/k/a EGLE,
Respondent-Appellee,

and

CONSUMERS ENERGY, a/k/a CONSUMERS
ENERGY COMPANY,
Intervenor-Appellee.

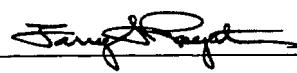
SC: 168019
COA: 370598
Jackson CC: 2023-001508-AA

On order of the Court, the application for leave to appeal the December 19, 2024 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 22, 2025



Clerk

b0519

Appendix E-2

Appendix F

Order Of The EPRC, Filed December 15, 2021

STATE OF MICHIGAN
ENVIRONMENTAL PERMIT REVIEW COMMISSION

In the Matter of

The Petition of Wayne County Conservation
District on the permit issued to
Waste Management of Michigan,

MOAHR Docket No. 20-026200

Wayne County Conservation District, Petitioner,

DECISION OF ENVIRONMENTAL PERMIT REVIEW COMMISSION

DECEMBER 15, 2021

JURISDICTION

This case is before the Environmental Permit Review Panel (Panel) of the Environmental Permit Review Commission as a result of the Petitioner's timely appeal of an Administrative Law Judge (ALJ) Order on Pending Motions, issued on July 1, 2021 (Order). The Order granted the motions for summary disposition filed by the Department of Environment, Great Lakes, and Energy (EGLE) and the Permittee, Waste Management of Michigan (WMMI), dismissing the contested case hearing in this matter, stating Petitioner lacks standing to request a formal hearing under MCL 324.30319(2). The petition for contested case hearing was filed on December 7, 2020, by the Wayne County Conservation District (WCCD). WCCD challenged a permit that was issued by EGLE to WMMI on October 9, 2020, under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. MCL 324.30301, *et seq.* The Order stated that Petitioner was not "aggrieved" by the issuance of the permit within the meaning of MCL 324.30319(2).

Consistent with MCL 324.1317(2), the Panel convened on August 31, 2021, and December 1, 2021. Meetings of the Panel were conducted consistent with the Open Meetings Act, 1976 PA 267, as amended, and the framework provided in MCL 324.1317, incorporating MCL 324.1315(2) and (3).

Consistent with MCL 324.1317(3), the Panel invited the parties to file written briefs to identify issues of concern with the ALJ's Order. A written brief was filed by WCCD; written responsive pleadings were filed by the Department of Attorney General on behalf of EGLE and by WMMI; and a written response to the responsive pleadings was filed by WCCD. On December 1, 2021, the Panel listened to oral arguments from the parties prior to deliberation and voting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issue before the Panel is whether WCCD is an aggrieved person as that term is used in MCL 324.30319(2). MCL 324.30319(2) states: "If a person is aggrieved by any action or inaction of the

department, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328." There is no dispute that WCCD meets the definition of "person" in Part 303 of the NREPA, therefore, the only issue is whether WCCD is "aggrieved" as that term is used in Part 303. Aggrieved is not defined in Part 303 or the NREPA.

The Panel agrees with the Order that it is clear from the statutory language that the legislature intended to place some limitation on which persons may request a formal hearing as the statute extends the right only to "a person aggrieved by any action or inaction of the department"¹ rather than simply stating that any person may request a formal hearing. However, the panel disagrees with the ALJ's interpretation of the meaning of "aggrieved". The ALJ interpreted the meaning of an aggrieved person in Part 303 to be one who is detrimentally affected by the department's action or inaction in some way distinct from a member of the general public.

WCCD, in its brief, provides that the definitions of "aggrieved" vary considerably by dictionary and edition, with some defining "aggrieved" more broadly than the definition relied on by EGLE, WMMI and the ALJ.² The Panel believes such a broader definition was more likely the legislature's intent in drafting Part 303, in keeping with the following: the legislative finding that "wetland conservation is a matter of state concern"³; NREPA's purpose "to protect the environment and natural resources of the state"⁴; and the Michigan Constitution, which states: "[t]he legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."⁵ The Panel interprets "aggrieved" as it is used in Part 303, to mean having a special interest in something that can be negatively impacted. The Panel finds that WCCD's petition and briefs include several provisions that equate to a special interest in the wetlands that are the subject of the permit at issue that, together with WCCD's belief that the wetlands may be negatively impacted, is sufficient to establish it as an aggrieved person. Specifically, these provisions include WCCD's enjoyment of the environment in Wayne County, the potential negative environmental impacts of the permitted activities, and WCCD's role in protecting natural resources in Wayne County.

After consideration of NREPA, Part 303, MCL 324.30319(2), the parties' briefs and oral argument, and the administrative record in this matter, the Panel finds that together, WCCD's enjoyment of the environment, its belief that the wetlands subject to the permit at issue may be negatively impacted, and its role in protecting natural resources in Wayne County establish it as an aggrieved person under MCL 324.30319(2) and therefore, WCCD has standing to petition for a contested case hearing regarding the permit issued.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law, and consistent with MCL 324.1317(4), at the conclusion of its December 1, 2021 meeting, a majority of the Panel voted to REVERSE the Order granting the motions for summary disposition and dismissing the matter for lack of standing, and

¹ MCL 324.30319(2)

² Petitioner's Brief to the Contested Case Review Panel, p. 13

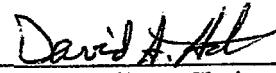
³ MCL 324.30302(1).

⁴ 1994 PA 451.

⁵ Const 1963, art 4, § 52

REMAND the case back to the ALJ for consideration of the merits of the case, and to proceed in accordance with the APA and all applicable statutes and rules.

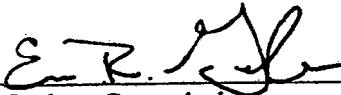
Pursuant to MCL 324.1317(4), this opinion is the final decision of the Department of Environment, Great Lakes, and Energy, and is subject to judicial review as provided under the APA and other applicable law.



David Hamilton, Chair



Bryan Burroughs, Commissioner



Erin Gerber, Commissioner