

EXHIBIT 1

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby petition for a review of the department's decision to issue Wisconsin Pollutant Discharge Elimination System (WPDES) Permit No. WI-0061701-01-0 to the Catawba-Kennan Joint Sewage Commission, which is dated January 30, 2002. This petition is made pursuant to section NR 203.16 of the Wisconsin Administrative Code. The undersigned hereby request that a hearing be treated as a contested case under s. 227.42, Stats.

The specific issues requested to be reviewed are the reasonableness of this WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and the necessity for additional effluent limitations for phosphorus.

The substantial interest injured or threatened with injury by agency action or inaction is that the individual petitioners and members of the organizational petitioners own property near the proposed discharge site, live near the proposed discharge site, and use the proposed receiving waters (the Jump River) for fishing, swimming, recreation, and other uses; the proposed discharge will adversely affect these uses; and the proposed discharge will adversely affect the water quality of the Jump River.

Evidence of legislative intent that the interest is to be protected is found in s. 283.001, Stats., where the Legislature declared that, "It is the policy of this state to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water" and that, "It is the goal of the State of Wisconsin to eliminate the discharge of pollutants into the waters of the state by 1985."

The injury to the persons requesting the hearing is different in kind or degree from injury to the general public caused by agency action or inaction because the individual petitioners and members of the organizational petitioners own property near the proposed discharge site, live near the proposed discharge site, and use the proposed receiving waters (the Jump River) for fishing, swimming, recreation, and other uses.

The reasons why a hearing is warranted are that:

1. This WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and this WPDES permit's absence of effluent limitations for phosphorus are unreasonable because they fail to maintain and protect the quality of waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, as required by the federal antidegradation

RECEIVED RECEIVED

- policy, as set forth in section 131.12(a)(2) of title 40 of the Code of Federal Regulations;
2. This WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and this WPDES permit's absence of effluent limitations for phosphorus are unreasonable because they fail to maintain and protect the existing instream water uses and level of water quality necessary to protect the existing uses, as required by the federal antidegradation policy, as set forth in section 131.12(a)(1) of title 40 of the Code of Federal Regulations;
 3. This WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and this WPDES permit's absence of effluent limitations for phosphorus are unreasonable because they fail to prevent the lowering of water quality, as required by the state antidegradation policy, as set forth in section NR 102.05(1)(a) and chapter NR 207 of the Wisconsin Administrative Code;
 4. This WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and this WPDES permit's absence of effluent limitations for phosphorus are unreasonable because they fail to protect cold water communities, as required by the standards for cold water fish and aquatic life, as set forth in section NR 102.04(4)(e) of the Wisconsin Administrative Code;
 5. This WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and this WPDES permit's absence of effluent limitations for phosphorus are unreasonable because they fail to protect waters classified for fish and aquatic life, as required by the dissolved oxygen and temperature standards for fish and aquatic life, as set forth in sections NR 102.04(4)(a) and NR 102.04(4)(b) of the Wisconsin Administrative Code; and
 6. This WPDES permit's absence of effluent limitations for phosphorus is unreasonable because such limitation will result in an improvement in water quality or preserve the quality of surface waters where long-term discharges may result in impairment of water quality, as authorized by section NR 102.06 of the Wisconsin Administrative Code.

There are disputed issues of material fact, and the disputed facts are:

1. Whether the quality of the waters in this section of the Jump River exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water;
2. Whether this section of the Jump River was a cold water fishery at any time since November 28, 1975;
3. Whether an existing use of this section of the Jump River is as a cold water fishery;

4. Whether this section of the Jump River is capable of supporting a community of cold water fish and other aquatic life;
5. What the background level of dissolved oxygen is for this section of the Jump River;
6. What the flow amount is for this section of the Jump River; and
7. Whether effluent limitations for phosphorus incorporated into this permit would result in an improvement in water quality or preserve the quality of surface waters where long-term discharges may result in impairment of water quality.

The statute or administrative rule other than s. 227.42, Stats., which accords a right to a hearing is section NR 203.16 of the Wisconsin Administrative Code.

Date: 3-26-02

Daniel Haupt
Daniel Haupt

Address: W9511 Ridge Rd.
Catawba, WI 54515

Date: 3-26-02

Catherine Haupt
Catherine Haupt

Address: W9511 Ridge Rd.
Catawba, WI 54515

Date: 3-26-02

Donald A. Retzlaff
Donald Retzlaff

Address: N3395 Cty. Rd. I
Catawba, WI 54515

Date: 3-26-02

Marjorie Retzlaff
Marjorie Retzlaff

Address: N3395 Cty. Rd. I
Catawba, WI 54515

Date: 3-26-02

3-26-02

Richard V. Baum

Richard V. Baum
N3438 Woodlawn Rd
Address: Kennan, WI 54531


Date: 3-26-02

Daniel Haupt

Friends of the Jump River
By: Daniel Haupt, President

Address: W9511 Ridge Rd.
Catawba, WI 54515

Date: 3/27/02



River Alliance of Wisconsin
By: Todd Ambs, Executive Director

Address: 306 E. Wilson St.
Madison, WI 53703

Please send notices, correspondence, and all other documents to:

Marc N. Melnick
Law Offices of Marc N. Melnick
1801 Keyes Avenue
Madison, WI 53711
(608) 441-9461
State Bar No. 1037572

and

Melissa K. Scanlan
Midwest Environmental Advocates, Inc.
22 East Mifflin Street, Suite 301
Madison, WI 53703
(608) 251-5047
State Bar No. 1034783

VERIFICATION

STATE OF WISCONSIN)
)
COUNTY OF Price) ss.

I, Daniel Haupert, being duly sworn, state that I am one of the petitioners in this petition, that I have read the foregoing petition and know the contents thereof, and that I believe the petition to be true and correct to the best of my knowledge and belief.

Daniel Haupert

Sworn to and subscribed before me this 26th day of March, 2002.

Anna M. Threlfall
Notary Public, State of Wisconsin
My commission expires: is permanent



VERIFICATION

STATE OF WISCONSIN)
)
COUNTY OF PRICE) ss.

I, Donald A. Retzlaff, being duly sworn, state that I am one of the petitioners in this petition, that I have read the foregoing petition and know the contents thereof, and that I believe the petition to be true and correct to the best of my knowledge and belief.

Donald A. Retzlaff

Sworn to and subscribed before me this 26 day of March, 2002.

Anna M. Threlfall
Notary Public, State of Wisconsin
My commission expires: is permanent



VERIFICATION

STATE OF WISCONSIN)

COUNTY OF Marathon)

ss.

I, Marjorie Retzlaff, being duly sworn, state that I am one of the petitioners in this petition, that I have read the foregoing petition and know the contents thereof, and that I believe the petition to be true and correct to the best of my knowledge and belief.

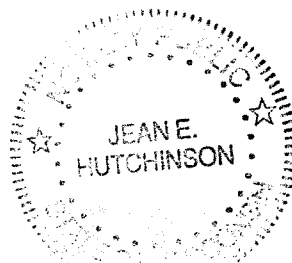
Marjorie Retzlaff

Sworn to and subscribed before me this 27TH day of March, 2002.

Jean E Hutchinson

Notary Public, State of Wisconsin

My commission expires: 9/31/02



VERIFICATION

STATE OF WISCONSIN)
)
COUNTY OF PRICE)

ss.

I, Richard V. Baum being duly sworn, state that I am one of the petitioners in this petition, that I have read the foregoing petition and know the contents thereof, and that I believe the petition to be true and correct to the best of my knowledge and belief.

Richard V. Baum

Sworn to and subscribed before me this 26 day of March, 2002.


Anna M. Threlfall
Notary Public, State of Wisconsin
My commission expires: ~~is permanent~~

ANNA M. THRELFALL
NOTARY PUBLIC
STATE OF WISCONSIN

VERIFICATION

STATE OF WISCONSIN)
)
COUNTY OF DANE) SS.

I, TODD AMBS, being duly sworn, state that I represent the River Alliance of Wisconsin, one of the petitioners in this petition, that I have read the foregoing petition and know the contents thereof, and that I believe the petition to be true and correct to the best of my knowledge and belief.



Sworn to and subscribed before me this 27th day of March, 2002.

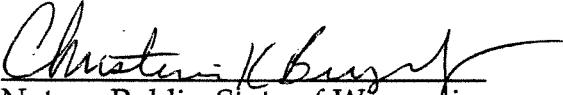
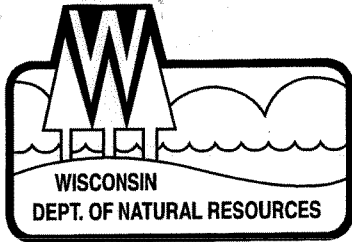

Notary Public, State of Wisconsin
My commission expires: 1/29/04

EXHIBIT 2



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

April 18, 2002

REC'D
4/26/02

Mr. Marc N. Melnick
Attorney at Law
1801 Keyes Avenue
Madison, WI 53711

Subject: Petition to Review WPDES Permit No. WI-0061701-01-0

Dear Mr. Melnick:

The Department has reviewed the above-referenced Petition for Review filed by you on March 28, 2002 and hereby grants in part and denies in part the Petition.

Hearing under Wis. Stats., s. 283.63

WPDES permits are issued under Wis. Stats. ch. 283. Section 283.63 **Review of permits, decisions, terms and conditions**, establishes a 60 day time period in which to file a petition as well as the exclusive review procedures for those permit-related actions specifically identified in that section. Those actions subject to review under s. 283.63 include, and are limited to, "permit denial, modification, suspension or revocation, the reasonableness of or necessity for any term or condition of any issued, reissued or modified permit, any proposed thermal effluent limitation established under s. 283.17 or any water quality based effluent limitation established under s. 283.13(5)." The Petition does not reference Wis. Stats., 283.63, however, it does cite Wis. Admin. Code s. NR 203.16, the administrative rule adopted pursuant to s. 283.63 which sets out who may petition for such hearings.

The Petition does not challenge a "permit denial, modification, suspension or revocation" nor does it challenge "a thermal effluent limitation established under s. 283.17." The remaining challenges under s. 283.63 are to "the reasonableness of or necessity for any term or condition of any issued, reissued or modified permit . . . or any water quality based effluent limitation established under s. 283.13(5)." The Petition does challenge "the reasonableness of this WPDES permit's effluent limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS) and the necessity for additional effluent limitations for phosphorus." Inasmuch as the Petition was filed within 60 days of notice of permit issuance, the Petition is granted with respect to the challenge to the reasonableness of the effluent limitations for BOD₅ and TSS and the necessity for additional effluent limitations for phosphorus. The Department will shortly request the Division of Hearings and Appeals to schedule the matter for hearing.

Hearing under Wis. Stats., s. 227.42

The Petition also states "The undersigned hereby request that a hearing be treated as a contested case under s. 227.42, Stats." Wis. Stats., s. 227.42 provides for an independent right to a contested case hearing, and the conditions under which such a hearing may be obtained. Some statutes and administrative codes specifically incorporate by reference s. 227.42 as the hearing procedure, with

varying dates for filing of petitions. Section 283.63 does not do so. Any hearing sought pursuant to s. 227.42 on a matter related to a WPDES permit must rely solely on the law associated with s. 227.42, not s. 283.63. Accordingly, the Petition requesting that the hearing be conducted pursuant to s. 227.42, must have been filed within the 30 day period set by Wis. Admin. Code s. NR 2.05(5).

Wis. Stats., section 227.42(3) states "This section does not apply to rule-making proceedings or rehearings, or to actions where hearings at the discretion of the agency are expressly authorized by law." In the case of the WPDES permits, Wis. Stats., s. 283.49 grants the Department the discretion to hold hearings. In the case of WPDES Permit No. WI-0061701-01-0, the Department exercised that discretion by holding a hearing on December 14, 2001.

Because a hearing under Wis. Stats., 227.42, is not available when a discretionary hearing is expressly provided by law and because the Petition was filed beyond the 30 day period, the hearing requested pursuant to s. 227.42 is denied.

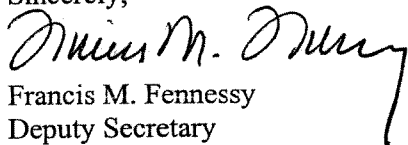
Challenges associated with stream classification

The Petition also raises issues associated with whether the Jump River has been placed in the appropriate water quality use classification. Water bodies are classified by administrative rule pursuant to Wis. Stats., s. 281.15. WPDES permits are issued pursuant to Wis. Stats., ch. 283 and must contain effluent limitations to achieve the water quality criteria associated with the stream classification of the stream to which the wastewater is discharged. Stream classifications adopted under ch. 281 are not reviewable in a proceeding held under s. 283.63. Therefore, any issues raised in the Petition regarding whether the Jump River is properly classified are denied.

Notice of appeal rights

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to Wis. Stats., ss. 227.52 and 227.53, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition must name the Department of Natural Resources as the respondent.

Sincerely,


Francis M. Fennessy
Deputy Secretary

cc. NOR
WT/2
LS/5

EXHIBIT 3

LAW OFFICES OF MARC N. MELNICK
1801 KEYES AVENUE
MADISON, WISCONSIN 53711
(608) 441-9461

April 23, 2002

Mr. Charles R. Hammer
Bureau of Legal Services
Department of Natural Resources
101 South Webster Street
Box 7921
Madison, WI 53707

RE: Petition for Review WPDES Permit No. WI-0061701-01-0

Dear Mr. Hammer:

Thank you for your time yesterday, clarifying the Department's letter of April 18, 2002. I am writing primarily to confirm our conversation, to ensure that we have the same understanding of the Department's letter. If you believe any of this letter does not accurately reflect our conversation, please let me know in writing immediately (and no later than May 1, 2002).

First, let me confirm that the Department's denial of a hearing under Section 227.42, Stats., does not mean that the contested case provisions in Chapter 227, Stats., do not apply. In fact, you confirmed that various of those provisions will apply, as this case is a contested case (as that term is defined in Section 227.01(3), Stats.).

Second, let me confirm your broad reading of the Department's denial of a hearing as to "any issues raised in the Petition regarding whether the Jump River is properly classified." As you explained it to me, this denial will prevent Petitioners from arguing that this section of the Jump River should be treated as anything other than as it has been classified by regulation (that is, as anything other than warm water sport fishery). This denial is meant to prevent Petitioners' arguments based on the federal Clean Water Act's antidegradation policy and any arguments based on state law which would protect the Jump River as a cold water fishery. My understanding of the Department's position is that the Department believes that, in issuing a permit to discharge pollutants to the waters of this state, it only needs to look at the classification as it is set by regulation, and that it has no obligation, under any circumstance, to look at the actual conditions which exist in the environment. As we discussed, this denial in effect denies the petition as to at least the first, second, and fourth reasons that review is warranted (as those reasons are set forth on pages 1 and 2 of the petition).

MR. CHARLES R. HAMMER
April 23, 2002
Page 2

As was evident from our conversation, we have a very different view of the Department's obligations. We believe that the Department has an obligation, under both federal and state law, to protect the actual existing uses of Wisconsin waters. This is certainly the case when the classification for these waters is a default classification. The world does not remain stagnant; and the Department's view of the world should not be stagnant either. We believe the effluent limitations in this permit are unreasonable (under Section 283.63, Stats.) because they fail to take into account the high quality and existing uses of the Jump River. Therefore, we believe that this petition should be granted, and that we should have a hearing on these issues to determine whether the permit terms need to be strengthened.

Moreover, this broad denial is not supported by the legal provision that the Department's April 18, 2002 letter relies on. The Department states that "Stream classifications adopted under ch. 281 are not reviewable in a proceeding held under s. 283.63." Presumably, the Department is relying on Section 283.63(5), Stats., which states in part that "Rules promulgated under s. 281.15 may not be reviewed under this section." The petition does not seek review of a rule, but rather seeks review of the reasonableness of specific permit terms. Neither Chapter 281 nor Chapter 283 prevents petitioners from relying on various provisions of federal or state law, as this petition does, to challenge the reasonableness of permit terms.

We ask that the Department reconsider this denial. If I do not hear from you in writing by May 1, 2002, I will assume that the Department stands by its decision. In that event, we will have to consider seeking judicial review.

Lastly, as is stated in the petition and as I requested in our conversation, please ensure that the Department sends copies of all future correspondence, pleadings, and other documents to my co-counsel on this case, Melissa Scanlan at Midwest Environmental Advocates.

Thank you for your courtesy and cooperation. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Marc N. Melnick

cc: Melissa Scanlan
Dan Hauptert, Friends of the Jump River
Todd Ambs, River Alliance of Wisconsin
Frances M. Fennessy, Deputy Secretary, DNR

JOINT COMMITTEE FOR REVIEW OF ADM. RULE.
ROOM #37, SOUTH STATE CAPITOL
P.O. BOX 7882
MADISON, WIS. 53707-7882

JUN 04 2002

RE: MERRIWEATHER-US-BERGE, CASE NO. 02-CU-1057

DANE COUNTY

Legislative committee,

enclosed please find both the original & first amended summons & complaint that has been filed with the court against the Defendants Gerald BERGE - Warden to challenge Rule.

Thanks for your time, services and considerations...

Dated 27th day of MAY, 2002

Respectfully Submitted



¹⁵¹ Tony G. MERRIWEATHER #188123
IN PERSON / Box 9900 (smc.t.)
Boscobel, Wis. 53805-9900

cc: Joint committee

T.G.M. #188123

J.J. Glinksi - Atty. Gen.

J.A. Coleman - clerk

LEGAL
CORRESPONDENCE

Certificate - Proof of Service

I Tony G. Merriweather #188123, hereby certify and declare under Penalty of Perjury, in case MERRIWEATHER-VS-BERGE, CASE NO. 02-CV-1057 Dane County that I have duly served co-party - Joint legislative committee for Review of Administrative Rule, Room #37, South State Capitol, P.O. Box 7882, Madison, Wis. 53707-7882, pursuant to ss. 227.40 (5) Wis. Stats. via ss. 302.02 (5)(2)(b) Wis. Stats. by certified U.S. Mail on this same day an authenticated copy of "the original "Complaint and summons", "Memorandum of Law", "Doc complaint no. #SMCI-2001-33480", "First Amended Complaint", "Summons", "Memorandum of Law" "Notice of claims" etc.

Dated 27th day of May, 2002

Title 28 § 1746 (2) U.S.C.

Notarial Act, ss. 706.07 stats.

Respectfully submitted

Tony G. Merriweather
1st

Tony G. Merriweather #188123

In Person / Box 9900 (SMCI-2)

Boscobel, Wis. 53805-9900

This document has been subscribed and sworn to before me on _____ day of _____, 2002

Notary Public / State of Wisconsin

My Commission Expires: _____

DANE COUNTY COURTHOUSE
213 - CITY-COUNTY BUILDING
210 MARTIN LUTHER KING JR. BLVD.
MADISON, WIS. 53709

02CV1057

021P0042

CIVIL ACTION

CASE NO.

CODE NO. 30707, 30701

MEMORANDUM OF LAW

Honorable Michael Nowicki

Before proceeding with the enclosed - Petition -
it must be clarified that the court in its REVIEW must take
- JUDICIAL NOTICE - and - JUDICIAL REVIEW - and - STATUTORY REQUIREMENT -
pursuant to ss. 227.40 Wis. Stats., which it is offered on demand
thereof or is prescribed, whereas ss. 801.02 (5) Wis. Stats. allows the
additional option of using an order to shorten the time for filing
a response to the complaint in lieu of summons.

This option is for emergency situations when
the case may be moot before a response would be fixed -
(PLAINTIFF - PETITIONER'S HEREIN REQUEST THAT COURT ISSUE AN ORDER FOR THE
DEFENDANTS - RESPONDENTS TO RESPOND WITHIN 15 DAYS LESSER THAN TIME FIXED)

wherein the Plaintiff - Petitioner have a protected
right to procedure due process where regulatory framework governing the
administration of a state person in giving rise to a right to due process
by going beyond simple procedural guidelines and by using language of
an unmistakably character requiring that certain procedure must be
employed.

whereby Plaintiff - Petitioner has been afforded
the statutory right to commence this petition of - writ of
certiorari jurisdiction with a civil action pursuant to 42 § U.S.C.
1983, as mandated under ss. 781.01 Wis. Stats.

ADMINISTRATIVE REMEDIES EXHAUSTIONS

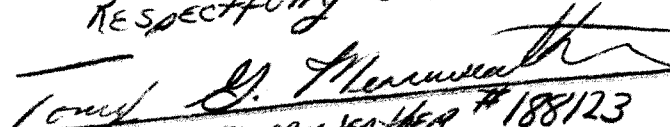
The Plaintiff - Petitioner contends that he has exhausted his administrative remedies on Doc complaint no. SMC I-2000 29942 to both ICE and CCE to which they both dismissed the complaint. Petitioner on 10-24-01 submitted inmate complaint Doc complaint no. # SMC I-2001-33480 to ICE, on 11-20-02 ICE dismissed complaint and Plaintiffs - Petitioner's submitted their 2nd step complaint to (CCE) corrections complaint examiner ~~on~~ on 11-25-01 to which on 1-13-02 CCE and Dept. of corrections secretary dismissed the Plaintiffs - Petitioner's complaint whereby both CCE and D.C secretary are the final decision makers therein...

That the Plaintiffs - Petitioner submitted by cert/fide mail their notice of claim on 10-16-00 and 7-11-00 to the attorney general office as required by ss. 893.82 wis. stats. additional notice of claim submitted on 1-10-02 to attorney general office.

Thereby having exhausted all his administrative remedies and hereby bring forth this civil action for redress. Which Plaintiff seeks writ of certiorari review on Doc complaint no. # SMC I-2001-33480

Dated 10th day of JANUARY, 2002

Respectfully submitted


1st Tony G. MERRINWEATHER #188123
IN PERSON / Box 9900 (SMCI)
Boscobel, Wis.

53805-9900

Tony G. McErineathy and those

02CV1057

similar situated inmates,

Plaintiffs - Petitioners

021P0042

- vs

APR 3 10 21 AM '02 CASE NO.

Code No. 30707, 30701

Gerald Beagle - Warden

Defendants - Respondents

CIRCUIT COURT
DANE COUNTY, WI

SUMMONS

State of Wisconsin to each person named as Defendants - Respondents:

Gerald Beagle - Warden 1101 Morrison Dr.
P.O. Box 1000, Moscobel, Wis. 53805-
1000

You are hereby notified that: the Plaintiffs - Petitioners named above has filed a lawsuit of other legal action above against you. The complaint which is attached states the nature and basis of the legal action...

Within 45 days of receiving this summons you must respond with a written answer, as that term is used, is Chapter 802 of the Wisconsin statute to the complaint.

The court may reject or disregard an answer that does not follow the requirements of the statutes...

The answer must be sent or delivered to the court whose address is Dane County Courthouse 213 City County Building 210 Madison Square and 5th Blvd. Madison, Wis. 53709 and to the Plaintiffs - Petitioners who address is Suzanne McErineathy 1101 Morrison Dr. P.O. Box 1000, Moscobel, Wis. 53805-1000

THIS IS AN AUTHENTICATED COPY OF THE ORIGINAL DOCUMENT FILED WITH THE DANE COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

You may have an attorney help or represent you.
IF you ~~do~~ do not provide a proper answer within
45 days the court may grant judgment against you for
the award of money or other legal action requested in
the complaint and lose your right to object to anything
that is or maybe in correct in the complaint.

A judgment may be enforced as proposed by law.
A judgment awarding money may be enforced as
provided by law or a lien against any real estate you
own now or in the future and may also be enforced
by property or garnishment...

Dated 10th day of JANUARY, 2002

Respectfully Submitted

Tony G. Merrinweather
1st Tony G. Merrinweather # 188123
IN PERSON / Box 9900 (S.W.C.)
Boscobel, Wis. 53805-9900

STATE OF WISCONSIN

Circuit Court

DANE County

Tony G. Merrinweather and those similar

02CV1057

SITUATED INMATES,

PLAINTIFFS-PETITIONERS

021P0042

-vs-

CASE NO.

GERALD BERGE-WARDEN

Code NO. 30707-30701

DEFENDANTS-RESPONDENT(S)

CIVIL ACTION

The Plaintiff's-Petitioners in the above-entitled action in their natural person capacity, commence this civil action against the Defendants-Respondents in their individual and personal capacities for acts and omissions consistent with ss. 801.05 (2), (3) Wis. Stats., Title 42 § U.S.C. 1983 in conjunction with Extraordinary Writ of Certiorari and Writ of Mandamus, pursuant to ss. 781.01 Wis. Stats., Wisconsin Common Law ss. 806.04 Wis. Stats., contrary to their ministerial duties to follow their own rules to their office and employment acting under color of law and as a result the Plaintiff's-Petitioners (both) persons and properties were injured thereby...

Costs or providing security for such fees and cost pursuant to ss. 814.29 (1) Wis. Stats. from the affidavit of indigence accompany the Plaintiff's-Petitioners proposed complaint should be concluded that the Plaintiff's-Petitioners is unable to pay the fees and costs of instituting the civil action.

Jurisdiction

This court pursuant to Title 28 § U.S.C. 1343 (a)(2)(3), Article 7 § 8 Wis. Const. in issuing a 42 § U.S.C. 1983 with Article 3 § 2, cl. 1 U.S.C. in conjunction with ss. 781.01 Wis. Stats. and ss. 803.08 Wis. Stats., the court shall exercise its judicial powers over all cases arising under the constitution and laws of this land affecting persons and things.

PLAINTIFFS-PETITIONERS

Tony G. Merrinweather, having had his 1st, 4th, 5th, 6th, 8th and 14th amendments Rights U.S.C. Violated who is a natural born person and resident of the United States, residing at

SUPERMAX CORRECTIONAL INSTITUTION P.O. Box 9900, Boscobel, Wis. 53805-9900 whose address is the same. ---

DEFENDANTS - Respondents

GERALD BEERGE - WARDEN A CITIZEN OF THE UNITED STATES, employed by the state of Wisconsin Dept. of Corrections and Responsible for the discipline, safety and welfare of all Residents and prisoners at SUPERMAX CORRECTIONAL INSTITUTION, P.O. Box 1000, 1101 Morrison Dr, Boscobel, Wis. 53805-1000, whose mailing address is the same.

TRIAL BY JURY DEMANDED

Pursuant to Article 3 § 2 cl. 1 U.S.C. Article I, Sec. 5 Wis. Const. in conjunction with ss. 805.01(2) Wis. Stat. the PLAINTIFFS - PETITIONERS demand a Trial by Jury of (6) and pursuant to this the court shall extend its - JUDICIAL POWERS over all CIVIL and CRIMINAL matters arising under the laws of this land and constitution ---

Petition

1.) That the Defendants - Respondents GERALD BEERGE arbitrarily enforced the (SMCI) supermax correctional institution (P+P) Policy and Procedure No. # 300.00, violated the PLAINTIFFS - PETITIONERS 1st, 4th, 5th, 6th & 8th and 14th amendment U.S.C. Rights whereby it imposes punishment upon the PLAINTIFFS - PETITIONERS without providing PLAINTIFFS - PETITIONERS the minimum amount of due process requirements vested in WOLFF - VS - MC DONNELL 418 U.S. 539 (1974) wherein Defendant - Respondents failed to follow its own Rule, pursuant to Doc 309.20(1)(3)(a) Wis. adm. code, to have SMCI Policy # 300.00 approved by Wisconsin Dept. of Corrections Administrators; whereby, Defendants - Respondents SMCI Rule # 300.00 allows the PLAINTIFFS - PETITIONERS Properties and Privileges to be taken without prior hearing being provide to the PLAINTIFFS - PETITIONERS

2.) That Defendants-Respondents actions in Promulgating and enforcing smci Policy and Procedure, NO. 300.00 Requiring inmates in administrative confinement (Hereinafter as "A.C.") status, at a minimum of SEVENTEEN (17) months, PRIOR to being Removed from A.C. status and confinement at smci, constitutes intentional Violations of Plaintiffs-Petitioners (Hereinafter as "Plaintiffs") Rights to DUE PROCESS AS GUARANTEED BY ARTICLE I OF THE WISCONSIN CONSTITUTION THE STATUTES, LAWS AND REGULATIONS OF THE STATE OF WISCONSIN, AND DOC 308.04 (6)(10) WIS. ADM. CODE, AND THE LIBERTY INTEREST CREATED THEREIN.

3.) That Defendants-Respondents (Hereinafter as "Respondents") actions in using the smci Rule # 300.00 warning-level system in ways that directly affect the Plaintiffs' access to Properties, Privileges and Amenities By using warnings to prevent level increases or to demote Plaintiffs in levels and to affect the Plaintiffs' administrative confinement Review Committee's decisions (ACR) and (PAR) Program Review Committee's decisions, without providing any opportunity of DUE PROCESS to contest the warnings and to affect the length of time the Plaintiffs will spend at smci, and in the majority of instances not providing notification of the warnings until AFTER the warnings have been used against Plaintiffs, constitutes intentional Violations of Plaintiffs' Rights to DUE PROCESS AS GUARANTEED BY ARTICLE I OF THE WISCONSIN CONSTITUTION, THE STATUTES, LAWS AND REGULATIONS OF THE STATE OF WISCONSIN AND THE LIBERTY INTEREST CREATED THEREIN.

4.) That the Defendants in subjecting the Plaintiffs to arbitrary level system that was not promulgated or approved by Dept. of Corrections (D.O.C.) administrator, as mandated by Doc 309.20 (1)(3)(a) WIS. ADM. CODE, AND sanctions for warnings when inmates in the same status at other Wisconsin penal institutions are not subjected to same, and in restricting Plaintiffs' access to Properties, Privileges and Amenities when allowed in Plaintiffs assigned location - AREA AND when other inmates in same assigned AREA are

Administrative confinement status at smci are allowed such Properties, Privileges and Amenities by virtue of being on "Level 5" in the Level System, constitutes intentional violations of the Plaintiffs Rights to Equal Protection as Guaranteed by Article I of the Wisconsin Constitution, the statutes, laws and Regulations of the state of Wisconsin and the Liberty interest created therein.--

5.) That Defendants arbitrary actions in creating and enforcing smci, ~~policy~~ Policy and Procedure Rule # 300.00 without legislative authority properly promulgating the Rule pursuant to both ch. s-227 Wis. stats. and Doc 302-20(3)(A) Wis. adm. code and the Rule directly affecting the interpretation and application of the Procedures, criteria and due process of ch. Doc 302 and ch. 308 Wis. adm. code. ss. 302.08 Wis. stats. constitutes intentional violations of Plaintiffs' Rights to Due Process as Guaranteed by Article I of the Wisconsin Constitution, the statutes, laws and Regulations of the State of Wisconsin, and the Liberty interest created therein.--;

6.) That the smci level-warnings system policy # 300.00 has subjected the Plaintiffs' to Prolong social isolation and sensory-perceptual and steep deprivation in ~~isolation~~ violation of the Plaintiffs' 8th Amendment U.S.C., Article I, section 6 Wisconsin Constitution and ss. 302.08 Wis. stats. against cruel, unusual and corporal punishment which Plaintiffs' have a Liberty protected against Prolonged social isolation pursuant to Doc 308.04 (3) - Appendix, wherein the Plaintiffs has been subjected to extreme social isolation in administrative confinement for 8 years and conditions at smci are designed to subject prisoners to almost total, social isolation and sensory deprivation;

CONDITIONS OF CONFINEMENT

7.) Prisoners (Plaintiffs) are locked in their cells for 24 hours a day, although some prisoners leave

their cells up to 4 hours per week. The cells are made of concrete walls and a solid "boxcar door." The cells have no windows. Plaintiffs never see the outdoors during their entire incarceration at SMCI.

8.) Plaintiffs at SMCI receive no outdoor exercise and indeed are never permitted to go outside at all. The only exercise space accessible to prisoners is a windowless concrete cell in which the temperature is the same as that of the outside air.

This cell contains little or no exercise equipment. Before a prisoner enters and after they ~~must~~ exit the recreation cell, they are subjected to a strip search. Because conditions are so harsh, many prisoners choose not to use the recreation cell and simply remain locked in their cell 24 hours a day.

9.) Many prisoners at SMCI are allowed only 1-6 minute telephone call per month.

10.) Plaintiffs at SMCI are permitted no family or other personal visits, except "video visits" in which the prisoner and his visitor see each other only on a video screen, which provides distorted, delayed and poor quality images. Due to the remote location of SMCI and the burdensome requirements SMCI imposes on visitors, many prisoners do not even receive these "video visits." Wisconsin Dept. of Corrections (WDOC) has the technology to provide distance visiting by video, which would allow families to visit a prisoner without traveling to SMCI, but has failed to provide that option to families.

11.) Plaintiffs' cells are fully illuminated 24 hours a day, and prisoners are instructed to sleep without covering their heads. Those who do not comply are awakened hourly throughout the night by security staff. These conditions result in chronic headaches and eye's pain psychological symptoms including confusions, low ~~energy~~ energy level, and depression. Whereas Plaintiff Tony G. Megalweather has undergone chronic sleep deprivation due to extreme lights and has had to

IBENADRYL since his arrival at smcI in to help him sleep which does not help against the 24 hours per day which violates the Plaintiff's 8th Amendment U.S.C. Rights to cruel, unusual and corporal punishment causing plaintiff mental anguish and (mental cruelty) the notion of Psychological harm, emotional distress which is directly caused by the "subjection" to 24 hour lights in cell.

12.) Due to poor temperature control at smcI, prisoners are subjected to both extreme heat and extreme cold. Plaintiff Tony G. McEriweather, has been subjected to all of the conditions set forth above, and has suffered physical injury, and psychological pain as a result.

Deprivation of Liberty and Property Without Due Process

13.) As a result of the foregoing conditions at smcI prisoners (Plaintiffs) are subjected to Regime of deprivations and enforced idleness that is unique in the (WIDOC) Wisconsin Dept. of Corrections. Plaintiffs are subjected to denial of Privileges, Restrictions on alleged protected and discretionary activities and limitations on educational, employment opportunities that are more onerous than those at any other Wisconsin prison. Access to legal materials and legal counsel is far more restricted at smcI than at any other Wisconsin prison. smcI prisoners are also subjected to a unique behavior modification program, known as the "Level system."

14.) The Plaintiff Tony G. McEriweather has arbitrarily been subjected to prolonged social isolation contrary to Doc 308.04(3) Wis. adm. code, violation of his 8th Amendment U.S.C. Rights, where as Plaintiff has been incarcerated at smcI since December 9, 1999. In August 31, 1994, he was placed in segregation and on 10-20-95, was placed in Administrative confinement. He participated in many counseling programs and continued to be a devout Muslim. He regretted his past mistakes and felt he had turned his life around. On August 11, 1999 at an administrative confinement hearing, the committee

Unanimously Recommend that clinical services Psychological services Supervisor at Waynes Correctional Institution Robert E. Wheeler Ph.D. develop a Release plan to Facilitate the process of ending Plaintiff Meagweather's Prolong social isolation in ~~administrative~~ administrative confinement. To which Dr. Wheeler Ph.D. developed such a Plan to:

- 1.) Place Plaintiff in single cell
- 2.) Eat meals in cell
- 3.) Go on passes Required by statute
- 4.) Continue individual Psychotherapy with Dr. Wheeler
- 5.) Evaluation for participation in CGIP Phase 1 and 2
- 6.) Increase movement upon agreement of clinical and Security.

On 11-7-99, Dr. Robert E. Wheeler Ph.D. completed mental illness screening tool for SMC I and Dr. Wheeler gave the following Recommendations:

Recommendations: No

currently has clinical Hold.

Do Not Refer to SMC I. Currently (since 6/99) in treatment & making

Progress. Consider Releasing from Admin. Conf.

Despite Plaintiff's Meagweather's completion of anger management and individual Psychotherapy and the fact that Mr. Meagweather had not received a conduct Report nor misbehaved since August 31, 1994 to receive a major conduct Report violation. Despite all this Plaintiff was still subjected to the extreme social isolation of a SMC I when he was transferred to SMC I on December 9, 1999 where by Waynes officials alleged they could not accommodate Plaintiff's Dr. Wheeler Plan, which to the contrary

The Waupun officials accommodated the same plan done by clinical services physician on European-White inmate Scott Konitzer # 105033 even though inmate Konitzer continued to receive conduct reports for repeatedly stabbing another inmate and who did not complete/participate in anger management nor individual psychotherapy and inmate Gordon Hammer # 187563, who repeatedly beat county sheriff's and escaped from custody, were both released to General Prison Population after very short periods of less than 1 1/2 years segregation in administrative confinement; while the Defendants continue to subject Plaintiff Mergenthaler to SMOI LEVEL-WARNING system of extreme social isolation in administrative confinement contrary to DOC 308.04(3)-Appendix and contrary to advise of physician Dr. Robert E. Wheeler as mandated by ss. 302.10 Wis. Stats.; subjecting Plaintiff to cruel, unusual and corporal punishments;

15.) That administrative confinement, denial of privileges, additional arbitrary rules #300.00 and restrictions on protected and discretionary activities, the limitations on educational and employment opportunities, the behavior modification program and other programs and conditions at SMOI impose an atypical and significant hardship on Plaintiffs in relation to the ordinary incidents of prison life in the Wisconsin prison system.

16.) The actual and anticipated duration of the confinement at SMOI under such conditions, also result in an atypical and significant hardship on plaintiff in relation to the ordinary incidents of prison life in the Wisconsin prison system.

Therefore, set forth in articles I + 4 of the Wisconsin constitution by right of the people, peaceably to assemble to consult for any department thereof, shall never be abridged.

Wherefore, the Plaintiffs being natural persons born equally free and independent and being apart, thereof the people of Wisconsin being grateful to Almighty God for our freedom to obtain our right to this court for

Redress in our demands for judgment.

Relief

1.) INJUNCTIVE RELIEF: in that the arbitrary practice of warning-demotion and level system process be stopped/banded on those inmates in administrative confinement non-punitive status.

2.) Declaratory Judgment: That a declaration that the Defendants-Respondents Policy # 300.00 and the implementation of the warning-demotion or level system program process or step program be deemed invalid and not authorized to govern inmates under Doc 308.04 Wis. Adm. Code in administrative confinement non-punitive status, as it constitutes "Punishment" or a "Penalty of Punishment" for misconduct contrary to Doc 308.04 (2) - Appendix X and that in its operation imposes extreme social isolation upon non-punitive inmates contrary to Doc 308.04 (3) Appendix

3.) That Defendants-Respondents Policy # 300.00 is deemed invalid as it was not properly promulgated nor approved by Dept. of Corrections Administrator as mandated by Doc 309.20 (1)(3)(a) Wis. Adm. Code.

4.) That Defendants-Respondents Policy # 300.00 is deemed invalid as it was not properly promulgated by legislative committee as mandated under ch. s. 227 Wis. Stats.

5.) PUNITIVE DAMAGES: AGAINST THE DEFENDANTS-

Respondents both jointly and severally for a sum of \$600,00

● Six Hundred dollars per day for each day Plaintiffs-

Petitioner's was held under warning-demotion-level system and Plaintiffs - Petitioner be released from administrative confinement.

6.) COMPENSATORY DAMAGES: FROM EACH DEFENDANT-

Respondents both jointly and severally for the sum of one hundred thousand (\$100,000,00) dollars...

Note: Plaintiffs - Petitioner's submitted notice of claims on 7-11-00, 10-16-00 and 1-10-02 to attorney General office by certified mail...

Dated 10th day of January, 2002

Tony G. Merrinweather
151 Tony G. Merrinweather #188123
IN PERSON / Box 9900 (SMCI)
Boscobel, Wis. 53805-9900

Subscribed and sworn to before me
on 10 day of Jan, 2002
Catherine P. Broadbent
Notary Public / State of Wisconsin
My Commission Expires: 8/28/05