



Before The  
**State of Wisconsin**  
**DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Wisconsin Pollutant Discharge  
Elimination System Permit No. WI-0026689-09-0  
(WPDES Permit) Reissued to Fonks Home Center,  
Inc., Harvest View Estates

Case No. DNR-18-0009

**NOTICE OF PREHEARING CONFERENCE AND ORDER FOR PUBLICATION**

On December 16, 2015, the Department of Natural Resources (DNR) issued a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit, No. WI-0030660-08-0, to Fonks Home Center, Inc., Harvest View Estates. The permit was reissued to regulate the discharge from a facility located at 15941 Durand Ave, Union Grove, Wisconsin, which would discharge into the East Branch of the Root River Canal (Root River Watershed, Root River Basin), in accordance with the effluent limitations, monitoring requirements, and other conditions specified in the permit.

On February 12, 2016, Fonks Home Center filed a Petition for a Contested Case Hearing with the DNR to review the reasonableness of and necessity for certain terms in the permit, pursuant to Wis. Stat. § 283.63 and Wis. Admin. Code Chapter NR 2 and §§ NR 203.14 through NR 203.20.

By letter dated August 24, 2016, the DNR granted the request for contested case hearing and limited the hearing to the following issues:

1. Are the final water quality based effluent limits (WQBELs) for phosphorus in ss. 2.2.1, 2.2.1.2, 2.2.1.3, and 2.2.1.4 of the permit reasonable and necessary?
2. Is the phosphorus compliance schedule in s. 4.1 of the permit reasonable?

On September 25, 2018, the Division of Hearings and Appeals received, for filing, an original request for hearing from the DNR.

**NOTICE IS HEREBY GIVEN** that the State of Wisconsin Division of Hearings and Appeals will hold a prehearing conference on the above-captioned matter pursuant to Wis. Stat. § 227.46(1), Wis. Admin. Code Ch. NR 203, Wis. Admin. Code § NR 2.08(5), and Wis. Admin. Code § NR 2.12, **at 1:30 PM on December 19, 2018**, at the offices of the Division of Hearings and Appeals, 819 N. 6<sup>th</sup> Street, Room 85, Milwaukee, Wisconsin 53203.

Any person, organization or governmental unit wishing to become a party to this proceeding must attend the conference in person or by an authorized representative. The purpose

of the prehearing conference will be to identify parties to the proceeding, to simplify or clarify the issues which may be contested at the hearing, identify witnesses, discuss the exchange of exhibits, establish a discovery schedule, address any other matters as may aid in the disposition of the action, and schedule a date for the contested case hearing. No testimony will be heard at the prehearing conference. However, a date may be selected for a contested case hearing.

Pursuant to Wis. Admin. Code § NR 203.136, the DNR may modify the permit if the DNR and the Petitioner enter into a signed stipulation to resolve the contested case hearing and the stipulation specifies a change to the permit term or condition that was the subject of the contested case hearing.

If a contested case hearing is scheduled, it will be a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a). The procedures set forth in Wis. Stat. § 283.63(1)(b) and the procedures relating to contested cases set forth in Wis. Admin. Code Ch. NR 203 and Ch. NR 2 will be followed. Said procedures will closely resemble those that are normally followed at a trial in State circuit court. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the contested case hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request prior to the date of the scheduled prehearing or hearing.

#### ORDER FOR PUBLICATION

THE DIVISION, THEREFORE, ORDERS:

Pursuant to Wis. Admin. Code § NR 2.08(5), § NR 203.18(3), and § NR 203.02(4)(a), the DNR shall cause a copy of the foregoing Notice to be published once at least 30 days before the date of hearing as a class 1 notice under Ch. 985, Stats., in a newspaper of general circulation in the area affected by the discharge. Furthermore, pursuant to Wis. Admin. Code § NR 2.08(5), the DNR shall comply with all of the requirements of Wis. Admin. Code §§ NR 203.18(3), 203.02 (4) and 203.03 (4). Finally, the DNR shall furnish proof of publication to the Division of Hearings and Appeals by **November 30, 2018**.

Dated at Milwaukee, Wisconsin on October 8, 2018.

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DIVISION OF HEARINGS AND APPEALS  
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By



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KRISTINE M. KERIG  
ADMINISTRATIVE LAW JUDGE