STATE OF MICHIGAN
IN THE COURT OF APPEALS

MICHIGAN FARM BUREAU; MICHIGAN MILK PRODUCERS ASSOCIATION; MICHIGAN PORK PRODUCERS ASSOCIATION; MICHIGAN ALLIED POULTRY INDUSTRIES; DAIRY FARMERS OF AMERICA; SELECT MILK PRODUCERS, INC.; MICHIGAN CATTLEMEN'S ASSOCIATION; ADAM PORK POWERHOUSES LLC; SNIDER FARMS, LLC d/b/a and permitted as Airport View Turkeys; ALPINE PORK, LLC; ATE FARMS, LLC; BEBOW DAIRY FARM, INC.; BENNETT FARMS LIVESTOCK, LLC; BENTHEM BROTHERS INC.; BERLYN ACRES, LLC; BLEICH FAMILY FARMS, LLC, d/b/a and permitted as Bleich Dairy; BRADFORD DAIRY FARMS, LLC.; BROOK VIEW DAIRY, LLC; BURNS FAMILY FARM, LLC; BURNS POULTRY FARMS, INC.; CAR-MIN-VU FARMS, LLC d/b/a and permitted as Car-Min-Vu Dairy; CARY DAIRY FARM, INC.; CARY'S PIONEER FARM, INC.; CENTERWOOD FARMS, LLC; CENTRAL MICHIGAN MILK PRODUCTION, LLC; CLOVER FARMS, LLC d/b/a and permitted as Clover Family Farms; CONTRACT FINISHERS, INC.; COURTER FARMS EAST FEEDLOT, LLC, d/b/a and permitted as Courter Farms East; COURTER FARMS WEST FEEDLOT, LLC d/b/a and permitted as Courter Farms West; CROSSROADS DAIRY, LLC; D & K FARMS; DJN CATTLE FARMS, INC., d/b/a and permitted as Halliwill Farms; DAVIS FARMS, LLC; DAVIS PORK, LLC; DEN DULK DAIRY FARM, LLC; DEYOUNG PORK, INC., d/b/a and permitted as DeYoung Pork Inc.-Plainwell; DOUBLE QUAD FARMS, LLC; DUTCH MEADOWS DAIRY, LLC, d/b/a and permitted as Meadowbrook

COA Case No.

Ingham County Circuit Court
Case No. 2025-6752-AA

Dairy; DYKHUIS FARMS, INC., d/b/a and permitted as Baseline Farm, Ehinger Farm, Riverbend Farm, Shamrock Farm, and Village Central Sandy Ridge; DYNASTY DAIRY, LLC; EDGE WOOD DAIRY, LLC; FAIRGROVE FARMS, INC.; FLOWER CREEK SWINE, LLC; GDW FARMS, LLC; GDW TURKEY FARM-FILLMORE; GDW TURKEY FARMS-LAND OF TURKEY; GW DAIRY, LLC; GAGNON FARMS, LLC, d/b/a and permitted as Gagnon Hog Farm; GALLAGHER DAIRY FARM, INC.; GEERLINGS HILLSIDE FARMS, LLC d/b/a and permitted as Hillside Farms – Fennville, Hillside Farms-Overisel, and Hillside Farms-Overisel Hog Barns; GERNAAT DAIRY, LLC, d/b/a and permitted as Gernaat Family Farms; GRAND RIVER GRAIN, LLC; GRAND RIVER GRAIN NORTH; HALBERT DAIRY, LLC; HARVEST HILL FARM, by its permittee Ron Klein; HASS FEEDLOT, LLC, d/b/a and permitted as Hass Feedlot Home Farm and Hass Feedlot 2; HIGH LEAN PORK, INC. d/b/a and permitted as High-Lean Pork 3 – Hoover; HEINZE PORK; HICKORY GABLES, INC.; HIGHLAND DAIRY, LLC; HOEVE FARMS; HOGQUEST FARMS LLC; HOLLOO FARMS, LLC; HURON PORK, LLC; INGLESIDE FARMS; J & J RUSSCHER PROPERTIES, LLC; J AND A PORK, LLC; JAHN FARMS, LLC; JBC DAIRY RECYCLING, LLC; JMAX, LLC d/b/a and permitted as JMax Dairy; JOHN B. SCHAENDORF DAIRY, LLC; KARNEMAAT'S, LLC; KLEINHEKSEL FARMS LAND, LLC, d/b/a and permitted as Kleinheksel Farms; KOBER FARMS, LLC; KONOS, INC., d/b/a and permitted as Konos, Inc., and Konos Martin Organics; KY-10 FARMS, LLC; LAIER FARMS, INC.; LIBERTY FARMS, LLC, d/b/a and permitted as Liberty Beef Farm; LITLE BEND PIGGERY, LLC; LORENZ FAMILY FARMS,

LLC; LUCKY 7 DAIRY, LLC; LUCKY 7 FARMS, LLC; MAKIN BACON FARM, LLC; MEADOWBROOK FARMS LLC; MYERS FARMS, LLC; NEW FLEVO DAIRY, INC.; NOBIS FARMS, LLC d/b/a and permitted as Nobis Dairy Farms; NVF, INC.; OOMEN BROTHERS, INC. d/b/a and permitted as Oomen Brothers Hogs; OOMEN FARMS LTD.; PACKARD FARMS, LLC; PAYLA MEADOWS, LLC; PEACEFUL ROAD FARM, LLC d/b/a and permitted as Peaceful Road Farms; PERFORMANCE FARMS, LLC; POLL FARMS, INC.; PRAIRIE VIEW DAIRY, LLC; PRECISION PORK FARM, INC; PREFERRED HOG FARMS, INC. d/b/a and permitted as Preferred Hog 146th,; SCHAPER FARMS, LLC, d/b/a and permitted as Les Schaper Farm; PRIDGEON FARMS, LLC; PSY FARMS; R & R PORK, LLC; RAPID RIDGE FARMS, LLC d/b/a and permitted as Rapid Ridge; RED ARROW DAIRY, LLC; RICH-RO DAIRY, LLC, d/b/a and permitted as Rich-Ro Dairy-North and Rich-Ro Dairy-South; RIVER RIDGE FARMS, INC.; RUGGLES BEEF FARMS, LLC; S&T BARNS, LLC d/b/a and permitted as S & T Barns – Booth, S & T Barns - Fawn River, S&T Barns – TSC, and S & T Barns-Haenni; SAND CREEK DAIRY, LLC; SANDY RIDGE DAIRY, LLC; SCENIC VIEW DAIRY, LLC; SCHURING FARMS, LLC; SCHURING SWINE, LLC; SCOTT MCKENZIE FARMS; SELDOM REST HOG FARM, LLC; SHUPE DAIRY INC.; SIDE STREET PORK, LLC; SIMON DAIRY FARM, LLC; SKINNER FARMS, LLC; SLATER FARMS, LLC; SOL VISTA, LLC; STEENBLIK DAIRY INC.; STEWART FARMS, LLC; STOREY FARMS, LLC; STOUGHTON CREEK FARMS, LLC; STUTZMAN POULTRY FARMS, LLC, d/b/a and permitted as Stutzman Poultry – Graber; SWISSLANE DAIRY FARMS, INC. d/b/a and

permitted as Swisslane Farms; T AND H FARMLAND DEVELOPMENT, LLC, d/b/a and permitted as T & H Dairy; THE PRESTON FARMS, LLC, d/b/a and permitted as Preston Hog Farms; TERREHAVEN FARMS, INC.; TERRELL PORK, LLC; TIMMERMAN FARMS, LLC; TRESTLE TOWN TURKEYS, INC.; VALLEY VIEW PORK, LLC; VAN OEFFELEN FARM SERVICES, LLC; VANDERPLOEG HOLSTEINS, LLC; VDS FARMS, LLC d/b/a and permitted as VDS Farms-Fulton and VDS Farms-S Avenue; VELD FARMS, LLC; WALNUTDALE FARMS, INC. d/b/a and permitted as Walnutdale Farms Dorr Twp; WHITE ACRES TURKEY FARMS; WHITE FARMS; WIL-LE FARMS, INC.; WILLOW CREEK FARMS FEED MILL, LLC, d/b/a and permitted as Willow Creek Farms; WILLOW POINT DAIRY, LLC; WILSON CENTENNIAL FARM, LLC; Y B FARMIN LLC; BAKERLADS FARM; DEER CREEK FARMS, INC., d/b/a and permitted as Deer Creek Poultry Farm; HARTLAND FARMS, INC.; HEASLEY SEEDS, LLC, d/b/a and permitted as Heasley Farm; MAYFLOWER DAIRY, LLC; MEADOW ROCK, LLC d/b/a and permitted as Meadow Rock Dairy; NOBEL FAMILY DAIRY, LLC; OTTAWA TURKEY FARM, permitted as Ottawa Turkey Farm 112th; and CROCKERY CREEK TURKEY FARMS, LLC d/b/a and permitted as Crockery Creek – 74th and Crockery Creek – 80th,

Appellees,

v.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY,

Appellants

and

THE ENVIRONMENTAL LAW & POLICY CENTER, THE MICHIGAN ENVIRONMENTAL COUNCIL, THE ENVIRONMENTALLY CONCERNED CITIZENS OF SOUTH-CENTRAL MICHIGAN, FRESHWATER FUTURE, FOR LOVE OF WATER, FOOD & WATER WATCH, MICHIGAN LEAGUE OF CONSERVATION VOTERS, AND THE ALLIANCE FOR THE GREAT LAKES,

Intervenor-Appellants.

INTERVENOR-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID

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June 29, 2026

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Constititional Provisions

Other Authorities

STATEMENT OF JURISDICTION

Intervenor-Appellants assert that this Court has jurisdiction over this application for leave to appeal from the order of a circuit court on appeal from an administrative body under MCR 7.203(B)(1) and MCR 7.205. Intervenor-Appellants seek leave to appeal an order issued by the Ingham County Circuit Court ("Circuit Court") on June 8, 2026 (Intv-App. at 1–5), which invalidated a significant portion of an environmental permit issued by the Department of Environment, Great Lakes and Energy ("EGLE"). The Circuit Court's decision improperly struck down much of EGLE's General Permit for concentrated animal feeding operations ("CAFOs") based on the erroneous conclusions that a duly issued executive order of the Governor violated the CAFOs' due process rights, and that administrative law judges do not have the authority to strengthen environmental permits (though they can weaken them).

Pursuant to MCR 7.205(A)(1)(b), this application for leave to appeal is timely because it is filed within 21 days after entry of the Circuit Court's order of June 8, 2026.

QUESTIONS PRESENTED

1. Did the Circuit Court err in ruling that contested case decisionmakers, including administrative law judges, overseeing challenges to environmental permits cannot add necessary terms to a publicly-noticed agency permit, and can only subtract terms?

   Intervenor-Appellants' answer: Yes.

   Appellant EGLE's answer: Yes.

   Appellees' answer: No.

2. Did the Circuit Court err in ruling that Executive Order 2024-25 violated the CAFOs' due process rights?

   Intervenor-Appellants' answer: Yes.

   Appellant EGLE's answer: Yes.

   Appellees' answer: No.

CONSTITUTIONAL PROVISIONS, STATUES, AND RULES INVOLVED

Michigan's 1963 Constitution

Const 1963, art 5, § 2

All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

Notwithstanding any other provision of this constitution or any prior judicial decision, as of the effective date of the constitutional amendment adding this provision, which amends article IV, sections 1 through 6, article V, sections 1, 2 and 4, and article VI, sections 1 and 4, including this provision, for purposes of interpreting this constitutional amendment the people declare that the powers granted to independent citizens redistricting commission for state and congressional districts (hereinafter, "commission") are legislative functions not subject to the control or approval of the governor, and are exclusively reserved to the commission. The commission, and all of its responsibilities, operations, functions, contractors, consultants and employees are not subject to change, transfer, reorganization, or reassignment, and shall not be altered or abrogated in any manner whatsoever, by the governor. No other body shall be established by law to perform functions that are the same or similar to those granted to the commission in article IV, section 6.

Const 1963, art 1, § 17

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

Const 1963, art 6, § 28

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders

are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

Const 1963, art 4, § 52

The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

Executive Order No. 2024-5

Acting pursuant to the Michigan Constitution of 1963 and Michigan law, [Governor Gretchen Whitmer] order[s] the following:

* * *

6. Department of Environment, Great Lakes, and Energy

(a) Environmental Permit Review Commission

(1) The Environmental Permit Review Commission, as established by MCL 324.1313, is transferred by Type III transfer to the Department of Environment, Great Lakes, and Energy ("EGLE").

(2) The Environmental Permit Review Commission is hereby abolished by Type III transfer.

(3) Permit application review petitions submitted under MCL 324.1315 pending on or submitted after the effective date of this Order shall be decided by the Chief Deputy Director of EGLE or her or his designee. The Chief Deputy Director or designee shall constitute a quorum.

(4) As of the effective date of this Order, the authority to hear permit review appeals filed under MCL 324.1317 is transferred to the Director of EGLE or her or his designee. The Director or designee shall constitute a quorum.

Michigan's Natural Resources and Environment Protection Act ("NREPA")

MCL 324.3103(1)

The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. The department may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments and governmental units and agencies in making the surveys,

studies, and investigations. The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature. The department, in the public interest, shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district.

MCL 324.3106

The department shall establish pollution standards for lakes, rivers, streams, and other waters of the state in relation to the public use to which they are or may be put, as it considers necessary. The department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state. The department may set permit restrictions that will assure compliance with applicable federal law and regulations. The department may ascertain and determine for record and in making its order what volume of water actually flows in all streams, and the high and low water marks of lakes and other waters of the state, affected by the waste disposal or pollution of any persons. The department may promulgate rules and issue orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake, river, stream, or other waters of the state. The department shall take all appropriate steps to prevent any pollution the department considers to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream, or other waters of the state.

MCL 324.1317(1)

In a contested case regarding a permit, an administrative law judge shall preside, make the final decision, and issue the final decision and order for the department. Any party to the contested case, including the department, may, within 21 days after receiving the final decision and order, seek review of the final decision and order by an environmental permit panel by submitting a request to the director and a notice to the hearing officer.

Michigan's Administrative Procedures Act

MCL 24.304(1)

A petition shall be filed in the court within 60 days after the date of mailing notice of the final decision or order of the agency, or if a rehearing before the agency is timely requested, within 60 days after delivery or mailing notice of the decision or order thereon. The filing of the petition does not stay enforcement of the agency action but the agency may grant, or the court may order, a stay upon appropriate terms.

MCL 24.281(1)

When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the officials who are to make the decision. Oral argument may be permitted with consent of the agency.

MCL 24.281(3)

The decision, without further proceedings, shall become the final decision of the agency in the absence of the filing of exceptions or review by action of the agency within the time provided by rule. On appeal from or review of a proposal of decision the agency, except as it may limit the issue upon notice or by rule, shall have all the powers which it would have if it had presided at the hearing.

MCL 24.282

Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in a contested case before the financial institutions bureau, the insurance bureau or the public service commission insofar as the case involves rate-making or financial practices or conditions.

MCL 24.288

In a contested case regarding a permit, as that term is defined in section 1301(g) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1301, the designation of a presiding officer, the effect of a decision by a presiding officer, the availability of other administrative remedies, and judicial review are controlled by sections 1315 and 1317 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1315 and 324.1317.

MCL 24.205(h)

"Party" means a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case. In a contested case regarding an application for a license, party includes the applicant for the license.

Michigan Administrative Code

Mich Admin Code, R. 323.2137

When applicable, a permit issued by the department shall contain terms and conditions deemed necessary by the department to ensure compliance with at least the following effluent standards and limitations:

a) Effluent limitations for publicly owned treatment works and other point source discharges when promulgated by the administrator of EPA pursuant to sections 301, 302, 307, and 308 of the federal act, in accordance with and subject to the date of compliance prescribed therein, if the limitations are not in conflict with part 31 of the act or the federal act.
b) Standards of performance, when promulgated by the administrator of EPA, for new sources within the categories defined in section 306 of the federal act.
c) If the permit is for a discharge from a publicly owned treatment works, standards of performance, pretreatment standards or effluent limitations or prohibitions when promulgated by the administrator of EPA for toxic substances, monitoring, and charges pursuant to sections 204(b), 307, and 308 of the federal act, if the standards, limitations, or prohibitions are not in conflict with part 31 of the act or the federal act.
d) Any other more stringent limitation deemed necessary by the department to meet applicable water quality standards, treatment standards, or schedules of compliance established pursuant to part 31 of the act or rules promulgated pursuant thereto, or necessary to meet other federal law or regulation enacted or promulgated subsequent to these rules, or required to meet any applicable water quality standards, including applicable requirements necessary to meet maximum daily loads established by and incorporated into the state's continuing planning process required pursuant to section 303 of the federal act.

Michigan Court Rules

MCR 7.119(H)

The court may affirm, reverse, remand, or modify the decision of the agency and may grant further relief as appropriate based on the record, findings, and conclusions.

(1) If the agency's decision or order is not supported by competent, material, and substantial evidence on the whole record, the court shall specifically identify the finding or findings that lack support.

(2) If the agency's decision or order violates the Constitution or a statute, is affected by a material error of law, or is affected by an unlawful procedure resulting in material prejudice to a party, the court shall specifically identify the agency's conclusions of law that are being reversed.

INTRODUCTION

This application arises from an ongoing campaign by concentrated animal feeding operations ("CAFOs") to avoid legally required and practically necessary Clean Water Act permits. This appeal is essential to protect Michigan's waters from CAFO pollution and protect the integrity of the contested case process consistent with this Court's decision in *Nat'l Wildlife Federation v Dep't of Environmental Quality (No. 2)*, 306 Mich App 369; 856 NW2d 394 (2014) ("*NWF 2*").

Nearly all Michigan CAFOs are operating under an eleven-year-old general permit that is badly failing to control pollution. The Michigan Department of Environment, Great Lakes and Energy ("EGLE") acknowledged this and updated the General Permit for CAFOs in 2020. While the 2020 General Permit contained some important improvements, it was still insufficient to protect water quality and reflected a compromise with the CAFOs. The CAFOs nonetheless responded with two-pronged litigation, including filing a case in the Court of Claims broadly challenging EGLE's permitting authority. The CAFOs ended up losing that case before the Michigan Supreme Court, which held that CAFO permits must contain all conditions "necessary to achieve" compliance with water quality standards. *Mich Farm Bureau v Dep't of Environment, Great Lakes, & Energy*, 515 Mich 481, 497–98; 28 NW3d 629 (2024) reh den sub nom *Mich Farm Bureau v Dep't of Environment, Great Lakes, & Energy*, 515 Mich 984; 11 NW3d 808 (2024) ("*MFB*").

The CAFOs also filed an administrative contested case that gave rise to this application for leave to appeal. Intervenor-Appellants ("Intervenors")—a coalition of environmental and conservation groups—intervened in the contested case, both to help defend the 2020 Permit and

ask that it be strengthened.[1] An administrative law judge ("ALJ") heard the contested case and issued a written order. EGLE and Intervenors appealed that order to EGLE Director Phil Roos, who slightly modified it and issued a final CAFO General Permit on October 29, 2025 ("2025 Permit").

The CAFOs then filed this case in the Circuit Court, arguing that all permit modifications ordered by Director Roos violated their due process rights and that certain permit conditions the ALJ upheld were not necessary to assure compliance with water quality standards.[2] While the Circuit Court correctly rejected the second argument, it incorrectly accepted the first. In doing so, the Circuit Court agreed with the CAFOs that contested case decisionmakers can only subtract, and not add, conditions to a challenged permit.

As explained below, this holding is directly contrary to this Court's holding in *NWF 2*. It also effectively deprives Intervenors, and other members of the public, of a meaningful contested case remedy if a proposed permit is too weak and requires additional terms. Turning contested cases into a "one way ratchet" toward weaker permits would also frustrate EGLE's ability to issue permits that "will assure compliance" with water quality standards as required by the state Supreme Court. *MFB*, 515 Mich at 497.

By wrongly striking the conditions Director Roos added to the CAFO Permit, the Circuit Court's ruling fails to protect Michigan's waters from CAFO pollution and seriously prejudices

[1] The Intervenors are Environmental Law & Policy Center; Michigan Environmental Council; Environmentally Concerned Citizens of South Central Michigan; Freshwater Future; For Love of Water; Food & Water Watch, Michigan League of Conservation Voters; and Alliance for the Great Lakes.

[2] The CAFOs also initially argued that the 2025 Permit amounted to an unconstitutional taking of property but apparently abandoned that argument, and the Circuit Court never reached it.

anyone who might advocate for clean water in future contested cases. Intervenors respectfully ask this Court to accept this appeal and reverse the due process portion of the Circuit Court's order.

STATEMENT OF FACTS AND PROCEEDINGS

CAFOs are complicated, industrial-scale facilities that generate billions of gallons of waste products every year. CR-00256. [3] CAFO waste—the feces, urine, cleaning chemicals, pharmaceuticals and other wastewaters generated by CAFOs—contains a host of pollutants, including phosphorus and nitrogen, which cause toxic algal blooms, as well as *E. coli* and other pathogens, which pose significant risk to human health and close dozens of beaches every summer. A CAFO can produce as much sewage waste as a city. *MFB*, 515 Mich at 492. Unlike other industrial facilities, CAFOs do not treat their waste before disposing of it; instead, they spread it untreated on fields.

It is well established that when CAFOs do not properly manage and dispose of their waste, that waste pollutes rivers, lakes, streams, and groundwater. *MFB*, 515 Mich 492. NPDES permits are how EGLE manages and controls surface water pollution, as required by the federal Clean Water Act and Michigan state law, including from CAFOs. CR-00261–62. EGLE issued its first General CAFO NPDES Permit in 2005, "follow[ing] industry standards for many practices, instead of establishing new requirements from a water quality perspective. The 2015 CAFO General Permit (2015 Permit) was not significantly different from the 2005 and 2010 CAFO General Permits." CR-00258.

EGLE staff observed that CAFO pollution was not being controlled by the 2015 General CAFO Permit, and when EGLE issued the draft 2020 Permit, it included long-overdue conditions

[3] References to "CR-XXXXX" are to the pages of the administrative record below.

that EGLE found necessary to assure compliance with water quality standards. From Intervenors' perspective, the draft permit still came far short, but it was an important step in the right direction. In the face of pressure from the CAFOs' representatives, however, EGLE's final permit dropped some key improvements originally included in the publicly issued draft. The result was a compromise permit that EGLE staff expressly acknowledged would be insufficient to protect water quality. See, e.g., CR-12595. Intervenors intervened in the contested case to advocate that the 2020 Permit's specific terms were not only justified, but that they needed to be stronger. As noted above, in a parallel companion case, the Michigan Supreme Court confirmed that EGLE has broad authority to regulate CAFO pollution, and that the agency not only may, but must, include any and all specific permit terms that are necessary to reduce pollution enough that achieve water quality standards can be achieved. *MFB*, 515 Mich at 497.

Intervenors are eight non-profit advocacy organizations whose members and supporters have a specific interest in protecting Michigan's inland waterways and the Great Lakes from excessive nutrient and bacterial loading, including from CAFOs. The Intervenors' members rely on these waterways for their drinking water and recreation, and as a result, they are personally at risk of injury and bodily harm from exposure to the dangerous bacteria and harmful algal blooms that result when CAFO pollution is not adequately controlled by EGLE permits.

I. Michigan Supreme Court review of the CAFO General Permit (July 31, 2024 decision)

On August 6, 2020, the CAFOs challenged the new conditions of the 2020 Permit in the Court of Claims, arguing that EGLE lacked authority to impose them unless it promulgated a new rule. In July 2024, the Michigan Supreme Court decisively rejected that argument, clarifying EGLE's authority to issue CAFO Permits and protect the state's waters, including that:

- EGLE may add as permit terms "discretionary conditions" that go beyond the "mandatory" minimum conditions of Rule 2196;
- EGLE must include whatever discretionary terms are "necessary to achieve applicable Part 4 water-quality standards or to comply with applicable laws and regulations";
- EGLE retains discretion to determine, and must "genuinely evaluate," whether the discretionary conditions in a general permit "are necessary as applied to the particular CAFO";
- A CAFO's certificate of coverage, not the general permit, "grants the rights and imposes obligations on the CAFO."

MFB, 515 Mich at 492, 496-98, 500-01 (internal quotations omitted). The Michigan Supreme Court made it clear that the key question to be answered in a contested case challenge to an EGLE permit is whether the proposed permit terms are "necessary to achieve applicable Part 4 water-quality standards or to comply with applicable laws and regulations." *Id.* at 497.

II. Administrative review (contested case proceeding and January 13, 2025 Final Decision and Order)

In parallel with their Court of Claims case, the CAFOs also filed a contested case challenge on May 26, 2020. The case was assigned to ALJ Daniel L. Pulter, and the Intervenors sought and were granted intervention in those proceedings. In particular, the ALJ noted that the Intervenors "are affected in a manner different from the citizenry at large" by the General CAFO Permit, and have a right to "advocate that the environmental protections afforded by the General Permit should be maintained or strengthened." CR-15295. The ALJ held a nearly three-week Zoom trial and the parties filed extensive post-hearing briefs concluding in July 2022. The ALJ, however, stayed his decision in the contested case while the parallel Supreme Court appeal was pending, restarting the case in August 2024 and entering his Final Decision and Order on January 13, 2025 ("FDO").

The FDO upheld most, but not all of the challenged permit conditions. CR-00239–00403. While the ALJ properly declined to rule on various constitutional claims, the FDO erroneously ruled that "this tribunal does not have jurisdiction to craft provisions to be included in the 2020 Permit." CR-00368.

III. Administrative appeal (petitions for review and October 29, 2025 decision of EGLE Director Phil Roos)

Pursuant to MCL 324.1317(2) as amended by Executive Order 2024-5,[4] EGLE and Intervenors filed petitions to review the ALJ's FDO. CR-00198–00203. These petitions asked EGLE Director Phil Roos to modify certain conclusions in the FDO and included red-lined versions of the permit comparing the requested changes to the permit as modified by the ALJ.

On April 23, 2025, the CAFOs filed a 32-page brief, fully responding to EGLE's and Intervenors' proposed modifications. In addition, Director Roos (or his designee) held four public meetings throughout this process, which were subject to the Open Meetings Act, publicly noticed by EGLE, and provided opportunity for public comment. In addition to submitting briefs, counsel for the CAFOs, EGLE, and Intervenors each presented extensive oral arguments before the Director during an August 8, 2025 public meeting. On October 29, 2025, Director Roos issued a final decision ("Director's Decision")—based on the factual record developed in the contested case—largely upholding the FDO but also adding a handful of new permit provisions that the ALJ had not adopted. Intv-App. at 6–19. The Director's Decision also properly corrected the ALJ's erroneous conclusion that the ALJ did not have the ability to add new permit terms and could only delete them.

IV. Judicial review (appeal to Circuit Court and Circuit Court's stay ruling)

On December 18, 2025, the CAFOs filed an appeal pursuant to MCL 24.304(1) and MCR 7.119 before the Circuit Court. On the same date, the CAFOs also filed an "emergency" motion to stay, seeking to prevent the implementation of the entire General CAFO Permit. On January 15, 2026, the Circuit Court heard arguments on the motion to stay, which the Circuit Court granted in

[4] See above at page vi; Intv-App. at 123–141.

part and denied in part on February 3, 2026. Specifically, the Circuit Court agreed that EGLE could implement the permit that the ALJ had approved but could not implement the Director's Decision. On April 29, 2026, Intervenors sought leave to appeal that stay but filed a stipulation of dismissal of that case (Case No. 380505) after the Circuit Court issued its final ruling on the merits ("Final Ruling")—challenged here—which mooted the stay.

The Final Ruling consists of two parts: "DUE PROCESS" and "ALJ OPINION." The CAFOs had also asserted a constitutional takings claim, insisting that the General CAFO Permit effected an unlawful taking of property but the Final Ruling does not address this claim. Intervenors do not challenge the second part of the Final Ruling ("ALJ OPINION") but do challenge the court's two erroneous "DUE PROCESS" holdings, that: (1) the new procedure for seeking review of ALJ decisions established by Executive Order 2024-5 violated the CAFOs' due process rights by depriving them of an impartial decisionmaker; and (2) the Director's Decision deprived the CAFOs of notice by including new permit terms that had not been part of the publicly-noticed versions of the Permit (the 2019 Draft and the 2020 Final). The Circuit Court did not engage with the key, relevant inquiry for a Circuit Court sitting in its position: determining whether the factual record supports a conclusion that each permit term in the Director's Decision is "necessary to achieve" compliance water quality standards. *MFB*, 515 Mich at 497. Instead, the Circuit Court invalidated the Director's Decision whole cloth, based on the inaccurate belief that these perceived due process violations rendered the entire post-ALJ review process irrevocably tainted "[a]s applied to this case." Intv-App. at 2.

Notably, the Final Ruling acknowledges that CAFOs are contributing to pollution of Michigan's waters. Intv-App. at 5. As the record below shows, fifty percent of the state's waters are impaired by *E. coli*, a fecal bacterial pollutant that threatens drinking water sources across the

state and impacts "roughly 20 percent of Michigan's beaches." CR-00320-21. The state's waters are also suffering from nutrient pollution and harmful algal blooms, which contaminate drinking water, lead to fish kills, and produce breathable toxins. CR-00281. There is no reasonable dispute that CAFOs are contributing to that pollution, and that the 2015 Permit is failing to control CAFO discharges. CR-00289, CR-00327; see also CR-00323 (even a "moderate correlation" between CAFOs and water pollution requires reducing pollutant levels in NPDES permits). The Circuit Court rejected the CAFOs' attempt to avoid the ALJ's factual findings along these lines, noting:

- "Michigan's farmland is infused with a substantial amount of phosphorous";
- "[A]gricultural runoff is the major source of stream and lake contamination that prevent attainment of legislatively mandated water quality goals"; and
- "CAFOs contribute to phosphorus pollution in Michigan's rivers and lakes, including the Great Lakes."

Intv-App. at 4-5.

The Director's Decision, if implemented, would have meaningfully changed this unacceptable trajectory.

STANDARD OF REVIEW

This appeal raises questions of law, including matters of statutory or constitutional interpretation, which this Court reviews de novo. *Oshtemo Charter Twp v Kalamazoo Co Road Comm*, 288 Mich App 296, 302; 792 NW2d 401 (2010); see also *Attorney Gen v Mich Pub Serv Comm*, 249 Mich App 424, 434; 642 NW2d 691 (2002).[5] The CAFOs' underlying appeal arises

[5] As noted above, Intervenors are not seeking review of the "ALJ DECISION" portion of the Final Ruling, which involves the circuit court's review of factual findings by an agency decisionmaker. If other parties challenge that portion to the Final Ruling, this Court's review would be "limited to

under the Administrative Procedures Act ("APA"), MCL 24.301 *et seq.*, and the Circuit Court's review was governed by Michigan Court Rule 7.119.

ARGUMENT

Although the Circuit Court deemed its due process holding "limited" to the facts at hand, it still has serious negative consequences—both immediate and long-term—that require reversal. By invalidating the necessary water quality protections added by Director Roos, the Final Ruling prevents EGLE from issuing permits that "assure compliance with water quality standards" as required by the Michigan Supreme Court. This directly harms the public's interest in "protection of the air, water and other natural resources of the state from pollution, impairment and destruction," which the Michigan Constitution declares to be of "paramount importance." Const 1963, art 4, § 52.

These harms are not abstract, and they are not limited to people, like many of Intervenors' members, who live near CAFOs (though they may experience them most acutely). Intervenors have attached five declarations from their members and employees explaining how they will be negatively impacted if Director Roos's decision is not implemented. See Intv-App. at 20 –43. Every day that EGLE continues to allow CAFOs to operate under failing permits, the Intervenors and the public will face threats to drinking water, closed beaches, and limited outdoor recreation. The public has a strong interest in reversing this state of affairs. See *City of Novi v Dep't of Environmental Quality*, unpublished per curiam opinion of the Court of Appeals, issued October

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determining whether the circuit court 'misapprehended or grossly misapplied' its review of the agency's factual findings." *City of Romulus v Mich Dep't of Environmental Quality*, 260 Mich App 54, 62; 678 NW2d 444 (2003).

14, 2010 (Docket No. 296405), p 1 (trial court abused discretion by failing to consider "the public interest of all residents in the state in improved water quality") (Intv-App. at 44–45).[6]

Additionally, the Circuit Court's second due process holding—that the Director's Decision violates the notice requirement of due process because it added new terms that were not in the draft permit—effectively eradicates the rights of Michiganders, including Intervenors, to intervene in contested case challenges to strengthen EGLE permits. This harm is not abstract, either. Even if the Final Ruling is not technically binding in future contested cases, ALJs might rely on the Circuit Court's legally baseless ruling and conclude that they, too, are unable to add new permit terms to EGLE permits. That is especially true because ALJ Pulter—who shares the Final Ruling's incorrect view on that issue—is assigned to most complex contested cases involving EGLE permits. Unless this Court acts, Intervenors and other members of the public will effectively lose their statutory right to hold EGLE to its obligations to issue permits that assure compliance with water quality standards in future contested cases.

As explained below, the Circuit Court's due process holding is as wrong as it is dangerous. It conflicts with binding precedent and rests on factual suppositions that are flatly contradicted by the record and historical reality. Intervenors respectfully ask this Court to grant this application and reverse the Circuit Court.

I. The Final Ruling's public notice holding directly conflicts with *NWF 2* and upends the contested case process.

The Circuit Court held that the Director's Decision violated the CAFOs' due process right to fair notice "because it added significant conditions to the final permit which were not part of

[6] Pursuant to MCR 7.215(C)(1), Intervenors were unable to find a published case that stands for the proposition that a trial court abused discretion by failing to consider "the public interest of all residents in the state in improved water quality."

the 2019 noticed draft permit, nor of the initial permit in 2020." Intv-App. at 3. In essence, the Circuit Court held that the contested case process—including but not limited to the Director's review of ALJ decisions—can only delete permit terms, it cannot add new ones without repeating the initial public notice process (which here took place in 2019). See *id.* The Circuit Court's holding directly mirrors and effectively adopts the ALJ's conclusion that he "lacked jurisdiction to craft provisions to be included in the 2020 Permit" and was limited to striking provisions opposed by the CAFOs. CR-00388.

This restriction on the contested process directly conflicts with this Court's opinion in *NWF 2* and core elements of the administrative review regime. In *NWF 2*, Plaintiffs challenged a Part 31 groundwater permit because the ALJ supposedly "erred by allowing the introduction of new evidence in the contested case proceedings, [and erred in] treating the contested case as an extension of the original process of deciding the permit application." *Id.* at 373–74. This Court flatly disagreed, holding "the contested case proceeding below [was] an extension of the initial application process for the purpose of arriving at a single final agency decision on the application for a groundwater discharge permit." *Id.* at 379. The Court emphasized that multiple provisions of the APA and EGLE rules allow introduction of new evidence in contested cases and that barring it would conflict with the broad scope of the contested case remedy, which "even strangers to the original permit proceedings" can initiate. *Id.* at 376. The Court also held that introducing such new evidence does not require re-starting the public notice and comment process:

> Appellants . . . cite no authority that stands for the proposition that, when the evidentiary record is supplemented for contested case proceedings, . . . any such new evidence must be limited to matters subjected to public notice and comment in accordance with the initial review process. We do not deem the Legislature's apparent satisfaction that public notice and comment apply to only the initial permitting process as suggesting that the Legislature envisioned proceeding to a contested case hearing as starting the appeal process instead of as continuing the original decisional mechanisms.

Id. at 379.

NWF 2 controls here. Because contested cases are "continuing" parts of the administrative process in which parties can introduce new evidence, contested case decisionmakers must be able to add new terms to permits without having to re-start the public comment process. This makes sense because otherwise public comment for EGLE permits would be a hollow exercise: the agency would be required to seek public input on draft permits but prohibited from adding terms in response to that input without starting the whole process over again. Nothing in MCL 324.1317, 1315, or the APA's contested case provisions impose this one-way limitation. In fact, MCL 324.1317(4), as modified by the Executive Order, says that the director "may adopt, remand, modify, or reverse, in whole or in part, a final decision and order." The Final Ruling does not even acknowledge *NWF 2* and instead relies on a case from 1950, *Mullane v. Central Hanover Bank & Tr Co*, 339 US 306, 318; 70 S Ct 652; 94 L Ed 865 (1950). That case, however, held only that a trustee failed to give sufficient notice of a judicial settlement to "known present beneficiaries" by publishing a notice in the newspaper. *Id.* As the Court explained, "[t]he trustee has on its books the names and addresses of the income beneficiaries represented by appellant, and we find no tenable ground for dispensing with a serious effort to inform them personally of the accounting . . . ." *Id*. The Court found the trustee's failure to personally notify the beneficiaries insufficient given that the trustee had their contact information readily available. That case is irrelevant to the administrative process here, where the CAFOs, through their counsel, personally and directly received full notice of every permit condition Director Roos added in EGLE's petition to review and had a full opportunity to file a brief and provide oral argument before the Director opposing that petition. The CAFOs did not argue otherwise. The Final Ruling does not attempt to explain why this notice was insufficient; it just assumes adequate "notice" of permit terms can only come

at the draft permit stage. But as *NWF 2* makes clear, public notice on a draft permit is just one stage of an ongoing process, and the initial public comment period does not need to be restarted to provide sufficient notice to the impacted parties.

Finally, as noted earlier, the Final Ruling also effectively guts the APA's contested case remedy, which allows a permittee, applicant, or "any other person" to file a contested case. MCL 324.3113(3). If the contested case process could not add new permit terms, only parties trying to weaken a permit would have a meaningful remedy. Parties like the Intervenors here, who believe EGLE needs to strengthen a permit, will be left with a right without a remedy, turning contested cases into a one-way ratchet for weakening permits.

In short, the CAFOs had more than sufficient notice of every permit condition in the Director's Decision and the Circuit Court's finding to the contrary conflicts with clear precedent from this Court and would, ironically, impair the due process rights of Intervenors or anyone else who seeks to participate a contested case to strengthen an environmental permit. As happened to the Intervenors here, such parties would be given the opportunity to nominally participate in the proceeding and expend significant resources presenting evidence to support their proposed permit additions but would be robbed of a fair hearing if the relief they seek has been effectively foreclosed in advance. See *Harrison v Dep't of State*, 111 Mich App 660, 664–65; 314 NW2d 552 (1981), citing *Armstrong v Manzo*, 380 US 545, 552; 85 S Ct 1187; 14 L Ed 2d 62 (1965) (due process requires that a hearing be held "at a meaningful time and in a meaningful manner").

II. The Circuit Court erred in finding that the CAFOs were deprived of an impartial decisionmaker.

The CAFOs argued that the Executive Order deprived them of an impartial decisionmaker by transferring authority to review the ALJ's decision from an Environmental Permit Review Committee to Director Roos. The CAFOs did not claim Director Roos had any personal bias but

rather that, as EGLE's Director, he was presumptively and inherently biased in reviewing any contested case involving an EGLE permit. As EGLE and Intervenors explained, this argument directly conflicts with a central tenet of Michigan administrative law: the "presumption of honesty and integrity in those serving as adjudicators," which applies even where an agency conducts a "combination of investigative and adjudicative functions." *Auto Serv Councils of Michigan v Sec'y of State*, 82 Mich App 574, 585–86; 267 NW2d 698 (1978), citing *Withrow v Larkin*, 421 US 35, 52; 95 S Ct 1456; 43 L Ed 2d 712 (1975).

The CAFOs argument also conflicted with Article 5, § 2 of Michigan's 1963 Constitution, which expressly gives the governor the authority to "make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration." Const 1963, art 5, § 2. Michigan courts have interpreted this provision as giving the governor "nearly plenary" power to reorganize the executive branch (*Aguirre v Dep't of Corr*, 307 Mich App 315, 321; 859 NW2d 267 (2014)), which is "equal to the Legislature's." *House Speaker v Governor*, 443 Mich 560, 579; 506 NW2d 190 (1993).[7]

The Final Ruling did not expressly adopt the CAFOs' sweeping argument that all agency directors are inherently biased. Instead, it purported to take a more "limited" approach rooted in MCL 24.282, which, among other things, restricts *ex parte* communications by agency decisionmakers in contested cases. The Circuit Court found that the CAFOs were denied an

[7] In *House Speaker*, for example, the Court held that the Constitution authorized the governor to (1) abolish a legislatively-created agency, (2) replace it with a governor-created agency, (3) "abolish[] eighteen legislatively established boards and commissions," and (4) vest the authority of the abolished boards into the new, governor-created agency. *Id.* at 564–65. See also, e.g., *Morris v Governor*, 214 Mich App 604, 612; 543 NW2d 363 (1995) (upholding executive order transferring authority and power of a legislatively-created committee to an agency director).

unbiased decisionmaker because "the public interest is not served where, as here, it appears the government changed the rules midstream in response to litigation without confidence that MCL 24.282 was followed." Intv-App. at 3.

As explained below, this conclusion is factually and legally groundless. It misapplies MCL 24.282, disregards the proper due process test under which Director Roos is unquestionably impartial, and assumes a non-existent plot by "the government" to single out the CAFOs.

A. The Final Ruling misapplies MCL 24.282.

As noted above, MCL 24.282, among other things, restricts *ex parte* communications by agency decisionmakers in contested cases. As an initial matter, it is unclear whether MCL 24.282 even applies here, given that its prohibitions are only relevant when an agency is acting as both final decisionmaker and "investigat[or] or prosecut[or]." As the Michigan Supreme Court explained, the CAFO General Permit is nothing more than a "non-binding agency statement[]" that lacks the "force and effect of law" and does not "alter[] rights or impose[] obligations" on anyone. *MFB*, 515 Mich at 521–22, 543. Because the General Permit process does not involve any "prosecution" or "investigation" into wrongdoing, as a license revocation procedure might, it is not clear that EGLE was obliged to comply with MCL 24.282 at all.

Even assuming MCL 24.282 does apply, the Final Ruling lacks any support for its conclusion that noncompliance with 24.282 took place, let alone violated the CAFOs' constitutional due process rights. EGLE confirmed that Director Roos followed MCL 24.282[8] and

[8] As EGLE explained in detail in its April 1, 2026 response brief:

> Director Roos did not communicate with EGLE staff in connection with any issue involving the appeal of the 2020 General Permit, except on notice and opportunity for all parties to participate at the meeting. The Assistant Attorney General who provided him with legal counsel was walled off from discussing the case with

the CAFOs identified no evidence to the contrary. The Final Ruling nonetheless questions compliance because the CAFOs' lobbying organization, Michigan Farm Bureau, "met with the director on January 29, 2020" and "[t]he director was clearly intimately involved early in the [permit development] process." Intv-App. at 3. But those statements cannot be true with respect to Director Roos because he did not start working for EGLE until June 2023,[9] at which point the parties had already completed the evidentiary hearing before the ALJ and post-hearing briefs. Moreover, generalized suspicions and doubts are insufficient to establish noncompliance with MCL 24.282. See *Neumann v Dep't of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued December 15, 2015 (Docket No. 323513), p. 3 (Intv-App. at 121) (where "there is no evidence that [agency staff] was 'engaged in investigating or prosecuting functions in connection with the case . . . or a factually related case[]'. . . the evidence does not show the existence of error") (quoting MCL 24.282). [10]

In any event, there is no reason to assume—as the Circuit Court did—that noncompliance with MCL 24.282 (let alone unfounded suspicions of such noncompliance) would automatically render a decisionmaker biased for due process purposes. The due process test is entirely separate

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> undersigned counsel. The Director's review of the ALJ's decision complied with the Open Meetings Act; he deliberated only on the record.
>
> Intv-App. at 91.

[9] See Garrett Ellison, *Michigan businessman named state's top environmental regulator*, MLIVE (June 30, 2023) <https://www.mlive.com/public-interest/2023/06/michigan-businessman-named-states-top-environmental-regulator.html> (accessed June 29, 2026) (reporting on Director Roos's appointment in June 2023); see also CR-00003 (post-hearing briefing concluded in July 2022).

[10] Pursuant to MCR 7.215(C)(1), Intervenors were unable to find a published case that stands for the proposition that a lower court did not err in finding there was no violation of MCL 24.282 where "there is no evidence that [the agency staff] was 'engaged in investigating or prosecuting functions in connection with the case ... or a factually related case.'"

from MCL 24.282, and as shown below, it requires evidence of personal bias to overcome the presumption of integrity. That is a far more demanding standard than MCL 24.282, which a decisionmaker could run afoul of with a single inadvertent communication.

Finally, the APA provides a procedure for a party "who has reason to believe that the adjudicating officer's impartiality has been tainted can move for disqualification." *Russo v LARA*, 119 Mich App 624, 630; 326 NW2d 583 (1982). In other words, if the CAFOs had harbored concerns that MCL 24.282 may not have been followed or that Director Roos was otherwise tainted as a decisionmaker, they could have moved for disqualification. The fact that they did not speaks volumes and further discredits the Circuit Court's unfounded suspicions.

B. The Final Ruling disregards the applicable due process test, under which Director Roos is not biased.

As noted earlier, Michigan law applies a "presumption of honesty and integrity in those serving as adjudicators," even in cases where an agency conducts a "combination of investigative and adjudicative functions." *Auto Serv Councils*, 82 Mich App at 585–86. Defeating that presumption is a "difficult burden," requiring a party to show that "under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Id*.

The Circuit Court did not even acknowledge the presumption of integrity, let alone identify any evidence demonstrating that "under a realistic appraisal of psychological tendencies and human weakness," *id.*, Director Roos was incapable of being fair and impartial. Instead, the Circuit Court seems to rely on its (groundless) suspicions of noncompliance with MCL 24.282 and Director Roos' role as EGLE Director to assume bias. Intv-App. at 3.

That assumption conflicts with decades of Michigan law recognizing that agency decisionmakers are not inherently biased. For example, in *Matter of Del Rio*, the Michigan Supreme Court rejected a claim that combining investigative and adjudicative roles in the Judicial Tenure Commission created an "inherent" risk of bias or prejudgment. 400 Mich 665, 690-691; 256 NW2d 727 (1977). The Court emphasized that "authority is legion in support of the proposition that combining the investigative and adjudicative roles in a single agency does not necessarily violate due process in administrative adjudications." *Id*. at 690.

Similarly, in *Auto Serv Councils,* this Court rejected plaintiffs' claim that a statute deprived them of an impartial decisionmaker by empowering the Secretary of State to make rules and investigate, prosecute, adjudicate, and impose sanctions for rule violations. 82 Mich App at 581. In *City of Livonia v DSS*, the Supreme Court upheld the constitutionality of an adjudicatory decision by the Director of the Department of Social Services even though he participated in the underlying permitting decision. 423 Mich 466, 511–12; 378 NW2d 402 (1985). In *Cain v Mich Dep't of Corrections*, the Supreme Court found a judge to be unbiased despite his public disputes with the governor about the case. 451 Mich 470, 515; 548 NW2d 210 (1996). And in *Monroe v State Employees' Retirement Sys*, the court rejected a due process claim where "a member of the Attorney General's office was both the advocate opposing an application and a member of the body that denied the application." 293 Mich App 594, 600; 809 NW2d 453 (2011) (cleaned up).

The CAFOs relied heavily on, and the Circuit Court cites, *Crampton v Dep't of State*, 395 Mich 347; 235 NW2d 352 (1975). But *Crampton* held only that a police officer sitting on a driver's license revocation appeal board was biased because the case involved testimony from his colleague on the same police force. *Id*. at 356. *Crampton* did not find that a designee of the Secretary of State—the agency trying to revoke the plaintiff's driver's license—was biased, and when the

Legislature responded to *Crampton* by replacing the entire appeal board with a designee of the Secretary of State, the Court upheld it in a separate due process challenge. *Auto Serv Councils*, 82 Mich App at 581, citing *Wolney v Secretary of State*, 77 Mich App 61; 257 NW2d 754 (1977). Over the past 50 years, *Crampton* has been limited to the policing context and is perfectly consistent with the numerous cases cited above refusing to find agency decisionmakers inherently biased.

This conclusion also goes hand in glove with the APA itself, which implements the Michigan Constitution's due process mandate. See *Westland Convalescent Center v Blue Cross & Blue Shield of Mich*, 414 Mich 247, 269; 324 NW2d 851 (1982). The APA expressly authorizes agency directors like Roos to review and revise ALJ decisions. Section 81 of the APA deems ALJ rulings "proposal[s] for decision" and states: "On appeal from or review of a proposal for decision[,] the agency, except as it may limit the issue upon notice or by rule, shall have all the powers which it would have had if it had presided at the hearing." MCL 24.281.[11] Here, the Executive Order provision abolishing the Environmental Permit Review Commission and empowering the Director of EGLE to issue the final permit was similar to other actions taken by previous governors and is perfectly legal under Michigan law. It also makes perfect sense that the EGLE Director would approve the final terms of an EGLE permit. That is how post-ALJ

[11] See also *Dignan v Mich Pub Sch Employees Retirement Bd*, 253 Mich App 571, 577; 659 NW2d 629 (2002) (it was "erroneous" for circuit court to "elevate [an ALJ's] proposed findings to the status of a final decision"); *Mich Dep't of Soc Servs v Arden*, 81 Mich App 210, 213; 265 NW2d 91 (1978) (agency director "upheld in part and reversed in part" ALJ decision as final agency decision).

challenges were resolved at EGLE before 2018 and how other agencies handle similar challenges pursuant to the APA. Intv-App. at 152–57.

Neither the CAFOs nor the Final Ruling identify any reason why Director Roos is biased under this well-settled legal regime. As noted above, Director Roos did not even join EGLE until 2023, after EGLE had completed the contested case hearing and post-hearing briefing. Like in *City of Livonia*, "the director did not personally conduct the initial investigation of the applicants and facilities; nor did he preside as the factfinder during the administrative hearing." 423 Mich at 510. While Director Roos did "issue[] the final decision after reviewing the hearing officer's findings," the law is clear that "mere familiarity with the facts of a case obtained during the performance of a statutory duty does not disqualify a decisionmaker." *Id*. Indeed, even if an agency head "take[s] a public position on an issue"—which Director Roos did not do here—that would not establish bias "unless there is a specific showing of incapability of judging that particular case fairly." *Id*. Director Roos was an impartial decisionmaker under Michigan law and the Final Ruling erred in finding otherwise.

C. The Final Ruling incorrectly assumes a government plot against the CAFOs.

More broadly, the Circuit Court had no basis to assume any plot by "the government" to deprive the CAFOs of due process by changing the contested case appeal process "in response to litigation." Intv-App. at 3. To begin with, no one has a "vested right [in] a mere expectation" that the existing legal landscape will continue as is. *Van Buren Twp v Garter Belt Inc*, 258 Mich App 594, 633; 673 NW2d 111 (2003). So long as the new procedure protects minimum due process rights—which the Executive Order does, as explained above—the Governor's exercise of lawful Constitutional authority does not violate due process. The CAFOs had no vested right in contested case appeals being heard by the Environmental Permit Review Committee as opposed to the

Director (which, as noted above, is how the process originally worked). This is especially true for the CAFOs because "there exists no right to pollute." *Detroit Edison Co v Mich Air Pollution Control Comm*, 167 Mich App 651, 661; 423 NW2d 306 (1988).

Moreover, Article 5, § 2 of the Michigan Constitution does not limit the Governor's authority to restructure executive agencies based on the status of any ongoing administrative cases. Indeed, some number of cases will inevitably be pending any time a Governor exercises their authority under Article 5, § 2. The Final Ruling implies there is something unsavory about applying the Executive Order's changes "retroactively to a pending contested case," Intv-App. at 3, but nothing happened "retroactively" here. Because the ALJ had not yet decided the contested case when the Governor issued the Executive Order in July 2024 (the contested case was stayed pending the Michigan Supreme Court's review of the parallel case, and the ALJ's final decision was not issued until January 2025), the Executive Order's change in how the parties might appeal that ALJ decision in the future was entirely prospective.

Finally, the Executive Order was 19 pages long and impacted eight executive agencies—of which the EGLE section comprised less than one page. Intv-App. at 129. The notion that the Governor issued it to target one set of litigants (the CAFOs) as part of a coordinated plot by "the government" to "change the process midstream in response to litigation" is, at best, implausible. It is certainly no basis to manufacture a due process violation that prevents EGLE from fulfilling its statutory duty to protect Michigan waters from unlawful CAFO pollution.

CONCLUSION AND RELIEF REQUESTED

For the reasons above, the "DUE PROCESS" portion of the Final Ruling is legally and factually groundless. Allowing it to stand will immediately and directly harm the environment as well as the statutory rights of Michiganders who care about the environment. Intervenors

respectfully ask the Court to accept this appeal and reverse the "DUE PROCESS" portion of the Final Ruling.

Dated: June 29, 2026

Respectfully submitted,

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WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.205(B)(1) and 7.212(B) because, excluding the part of the document exempted, this application for leave to appeal contains no more than 16,000 words. This document contains 6,722 words according to the word-processing system used to produce this document.

Dated: June 29, 2026

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PROOF OF SERVICE

On the date below, I served through the Michigan Mi-File system a copy of Intervenor Appellants' Application for Leave to Appeal to the counsel of record of all parties to this case.

The statement above is true to the best of my knowledge, formation and belief.

Date: June 29, 2026

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