

Court of Appeals, State of Michigan

ORDER

Sierra Club v Department of Environmental Quality

Docket No. 308072

LC No. 11-000353-AA

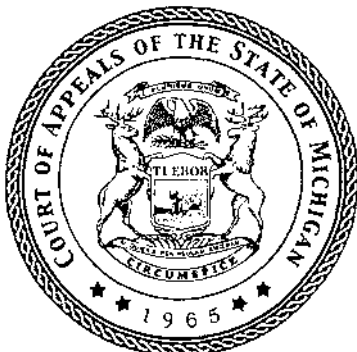
William C. Whitbeck
Presiding Judge

Peter D. O'Connell

Michael J. Kelly
Judges

The Court orders that the motion to dismiss pursuant to MCR 7.211(C)(2) is DENIED. Respondent-appellee Department of Environmental Quality (DEQ) has cited no court rule or statute establishing a flat rule precluding a party from ever having a second appeal of right to this Court after an initial appeal of right to a circuit court from an agency decision, and we have found none. Rather, the December 27, 2011 circuit court order appealed from is a final order under MCR 7.202(6)(a)(i) because it disposed of the claim in this case and adjudicated the rights and liabilities of the parties by affirming the permit at issue. In light of DEQ's acknowledgment that it is neither a court nor a tribunal, MCR 7.203(A)(1)(a) is inapposite. Accordingly, the December 27, 2011 order is appealable of right to this Court, MCR 7.203(A)(1), notwithstanding the overly broad language in a staff comment to that rule inaccurately stating that an appeal to this Court from a lower court judgment after review of an agency decision can be by leave only. See *People v Petit*, 466 Mich 624, 632 n 9; 648 NW2d 193 (2002) (staff comment not part of text of court rule and not binding interpretation of rule).

Appellant's motion to hold this appeal in abeyance is GRANTED. Appellant shall provide the Clerk's Office of this Court with a copy of DEQ's final decision as to PTI #93-09B forthwith after that decision is released. DEQ shall provide the Clerk's Office with notice of any petition for review of that final decision under MCL 324.5505(8) filed by any person or entity in any circuit court as well as with a copy of the circuit court's final order disposing of any such appeal. If no petition for review is filed in any circuit court within 90 days after release of the DEQ's final decision as to PTI #93-09B, the time for filing appellant's brief in this appeal under MCR 7.212(A)(1) shall begin to run on the 91st day following release of that final decision. If an appeal is taken to any circuit court from the DEQ's final decision in PTI #93-09B, the time for filing appellant's brief in this appeal under MCR 7.212(A)(1) shall begin to run on the date that the circuit court order is entered disposing of the last such pending circuit court appeal.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAR 16 2012

Date


Chief Clerk