

The State of Wisconsin by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General Emily M. Ertel, brings this action against the above-named defendants at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

THE PARTIES

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin.

2. The defendants in this action are Ledgeview Farms LLC, Ledgeview Facility LLC, Roy Pansier, Glen Pansier, and Jason Pansier.

3. Defendant Ledgeview Farms LLC (Ledgeview Farms) is a domestic limited liability company with its principal office located at 3870 Dickinson Road, De Pere, Wisconsin 54115-9796. Its registered agent is Roy Pansier located at the same address.

4. Defendant Ledgeview Facility LLC (Ledgeview Facility) is a domestic limited liability company with its principal office located at 3870 Dickinson Road, De Pere, Wisconsin 54115. Its registered agent is Roy Pansier located at the same address.

5. Defendant Roy Pansier is an adult resident of the State of Wisconsin and resides at 3870 Dickinson Road, De Pere, Wisconsin 54115.

6. Defendant Glen Pansier is an adult resident of the State of Wisconsin and resides at 2294 Dollar Road, De Pere, Wisconsin 54115.

7. Defendant Jason Pansier is an adult resident of the State of Wisconsin and resides at 4888 Dickinson Road, De Pere, Wisconsin 54115.

8. At all times relevant to this Complaint, Defendants owned or operated a dairy farm located at 3875 Dickinson Road, De Pere, Brown County, Wisconsin 54115 (the “main farm”).

9. A portion of the main farm is located on land owned by Ledgeview Facility (Brown County tax parcel number D-254).

10. A portion of the main farm is located on land owned by Roy Pansier and Glen Pansier (Brown County tax parcel number D-220).

11. At all times relevant to this Complaint, Defendants owned or operated a second, satellite dairy farm located at 3688 Lime Kiln Road, De Pere, Brown County, Wisconsin 54115 (the “heifer farm”).

12. A portion of the heifer farm is located on land owned by Ledgeview Farms (Brown County tax parcel number D-168-1).

13. A portion of the heifer farm is located on land owned by Ledgeview Facility (Brown County tax parcel number D-168).

14. A portion of the heifer farm is located on land owned by Roy Pansier and Glen Pansier (Brown County tax parcel number D-169).

15. At all times relevant to this Complaint, defendant Ledgeview Farms was an owner and operator of the main farm and heifer farm.

16. At all times relevant to this Complaint, defendant Ledgeview Facility was an owner and operator of the main farm and heifer farm.

17. At all times relevant to this Complaint, defendant Jason Pansier was an operator of the main farm and the heifer farm. Jason Pansier has served as DNR's facility contact for and oversees the daily operations of the main farm and heifer farm. Jason Pansier was personally involved in authorizing, supervising, directing, performing, or failing to perform the acts that constitute the violations alleged in this Complaint.

18. At all times relevant to this Complaint, defendant Roy Pansier was an owner and operator of the main farm and the heifer farm. Roy Pansier was personally involved in authorizing, supervising, directing, performing, or failing to perform the acts that constitute the violations alleged in this Complaint.

19. At all times relevant to this Complaint, defendant Glen Pansier was an owner and operator of the main farm and the heifer farm. Glen Pansier was personally involved in authorizing, supervising, directing, performing, or failing to perform the acts that constitute the violations alleged in this Complaint.

20. Defendants hired Roach & Associates, LLC (Roach & Associates) to conduct engineering-related work for the main farm and heifer farm.

21. Defendants hired GHD to conduct engineering-related work for the main farm and heifer farm.

22. David Wetenkamp with the Brown County Land and Water Conservation Department has completed engineering-related work for the main farm and heifer farm.

LEGAL AND FACTUAL BACKGROUND

23. The State of Wisconsin enacted Wis. Stat. ch. 283 to prevent and minimize water pollution in the state.

24. Wisconsin Stat. § 283.31(1) states, “The discharge of any pollutant into any waters of the state . . . by any person is unlawful unless such discharge . . . is done under a permit issued by [DNR] under this section or s. 283.33.”

25. Wisconsin Stat. § 283.01(5) defines “discharge of pollutant” as “any addition of any pollutant to the waters of this state from any point source.”

26. Wisconsin Stat. § 283.01(13) defines “pollutant” as “any . . . biological materials, . . . rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.”

27. Wisconsin Stat. § 283.01(11) defines “person” as “an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.”

28. Wisconsin Stat. § 283.01(12)(a) defines “point source” as:

A discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged . . . into the waters of the state
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29. Wisconsin Admin. Code ch. NR 243 governs issuance of permits required by Wis. Stat. § 283.31(1) for confined animal feeding operations (CAFO).

30. Wisconsin Admin. Code § NR 243.11(3)(a) states:

[A]ny person owning or operating a large CAFO that stores manure or process wastewater in a structure that is at or below grade or that land applies manure or process wastewater shall have a WPDES permit. A discharge of pollutants

from manure or process wastewater to waters of the state by an unpermitted animal feeding operation with 1,000 animal units or more is prohibited.

31. Wisconsin Admin. Code § NR 243.03(31) defines “large CAFO” as “an animal feeding operation that has 1,000 animal units or more at any time.”

32. Wisconsin Admin. Code § NR 243.03(4) defines “animal feeding operation” as:

[A] lot or facility . . . where animals have been, are or will be stabled or confined, and will be fed or maintained for a total of 45 days or more in any 12-month period. Two or more animal feeding operations under common ownership or common management are a single operation if at least one of the following is true:

- (a) The operations are adjacent.
- (b) The operations utilize common systems for the landspreading of manure or other wastes, including a nutrient management plan or landspreading acreage.
- (c) Manure, barnyard runoff or other wastes are commingled in a common storage facility prior to landspreading.

33. Since February 24, 2011, the main farm and the heifer farm have been under common ownership and common management.

34. Since February 24, 2011, the main farm and heifer farm utilized common systems for landspreading of manure.

35. Since February 24, 2011, one nutrient management plan has been prepared for manure generated at both the main farm and heifer farm.

36. The main farm and heifer farm constitute one “animal feeding operation” as that term is defined in Wis. Admin. Code § NR 243.03(4). The main farm and heifer farm will be collectively referred to as “the dairy” throughout this Complaint.

37. The dairy has been operated as a dairy farm since at least April 1, 2003.

38. Wisconsin Admin. Code § NR 243.03(5) defines “animal unit” as “a unit of measure used to determine the total number of single animal types or combination of animal types . . . that are at an animal feeding operation.” Wisconsin Admin. Code § NR 243.05 describes how to determine the number of animal units at an animal feeding operation.

39. Wisconsin Admin. Code § NR 243.03(53) defines “process wastewater” as:

[W]astewater from the production area directly or indirectly used in the operation of [the] animal feeding operation that results from any or all of the following:

- (a) Spillage or overflow from animal or poultry watering systems.
- (b) Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities.
- (c) Direct contact swimming, washing, or spray cooling of animals or dust control.
- (d) Water that comes into contact with any raw materials or animal byproducts including manure, feed, milk, eggs or bedding.

40. On March 14, 2019, DNR issued to Ledgeview Farms WPDES permit no. WI-0065421-01-0 authorizing it to discharge to unnamed tributaries within the Bower Creek and East River watersheds and groundwater in compliance with the terms and conditions of the permit (the “WPDES permit”). The effective date of the WPDES permit is March 15, 2019.

PRIOR NONCOMPLIANCE

41. On February 19, 2009, DNR sent a Notice of Violation to Roy Pansier on behalf of Ledgeview Farms. The Notice of Violation alleged that Ledgeview Farms was operating a large CAFO and had not obtained a WPDES permit from DNR as required by Wis. Admin. Code § NR 243.11(3)(a). The Notice of Violation explained

that DNR had conducted an inspection on October 14, 2008, and determined that Ledgeview Farms had over 1,000 animal units. After the inspection, DNR staff contacted Ledgeview Farms multiple times requesting that Ledgeview Farms submit an application for a WPDES permit to DNR, but Ledgeview Farms had not done so. The Notice of Violation requested that Ledgeview Farms attend an enforcement conference with DNR staff.

42. On March 19, 2009, DNR staff met with Jason Pansier. DNR staff explained that Ledgeview Farms either needed to reduce its animals and operate with less than 1,000 animal units or, if it continued to operate with over 1,000 animal units, obtain a WPDES permit. Jason Pansier stated that Ledgeview Farms would reduce its animals to go below the 1,000-animal-unit threshold. Jason Pansier stated that Ledgeview Farms could not afford to build the manure storage facility that would be required for it to obtain a WPDES permit.

43. After the March 19, 2009 meeting, Ledgeview Farms submitted documentation to DNR stating that Ledgeview Farms had sold animals and reduced its animal units to 933.

44. On May 10, 2010, DNR sent a No Further Enforcement Action letter to Ledgeview Farms. The letter stated that because Ledgeview Farms had submitted documentation to DNR demonstrating that it had reduced its animal units below 1,000, DNR would take no further enforcement action at that time. The letter further stated:

The Department is aware that you plan to apply for a WPDES permit for a CAFO once Ledgeview has the required 6 months of liquid manure storage and process wastewater. Please understand Ledgeview will need to stay below

1,000 AUs [animal units] until the permit is issued. It is a violation of s. 283.01, Wis. Stats., for a facility to operate above the permit threshold of 1,000 AUs without first obtaining permit coverage. Should that occur, the Department will consider escalated enforcement action which may include referral to the Department of Justice for operating without a permit.

VIOLATION 1: FAILURE TO SUBMIT A TIMELY APPLICATION FOR A WPDES PERMIT

45. Wisconsin Admin. Code § NR 243.12(1)(a) states:

[A] person who is proposing to own or operate a large CAFO that will store manure or process wastewater in a storage facility constructed at or below grade or that will land apply manure or process wastewater shall file a preliminary application for a WPDES permit at least 12 months prior to the intended date on which the operation will become a large CAFO. . . . The owner or operator shall then submit a completed final WPDES permit application under sub. (2) at least 180 days prior to the intended date on which the operation would become a large CAFO.

46. Since February 24, 2011, manure generated at the dairy has been land applied on agricultural fields.

47. Since February 24, 2011, manure generated at the dairy has been stored in structures or facilities that are at or below ground surface.

48. On January 25, 2013, Defendants submitted to DNR an animal unit verification form. Based on this form, Defendants had 780 animal units at the dairy.

49. On March 14, 2014, Defendants submitted an annual report for their 2013 operations to EPA and DNR (the “2013 annual report”). Based on the 2013 annual report, Defendants had 1,568 animal units at the dairy.

50. Sometime after January 25, 2013, and before January 1, 2014, Defendants exceeded 1,000 animal units at the dairy.

51. Sometime after January 25, 2013, and before January 1, 2014, the dairy became a large CAFO.

52. Defendants did not submit to DNR a preliminary application for a WPDES permit at least 12 months before becoming a large CAFO.

53. Defendants did not submit to DNR a completed, final application for a WPDES permit at least 180 days before becoming a large CAFO.

54. Sometime prior to January 1, 2014, Defendants violated Wis. Admin. Code § NR 243.12(1)(a) when they failed to timely submit to DNR a preliminary application and a completed, final application for a WPDES permit before becoming a large CAFO.

VIOLATION 2: OPERATING A LARGE CAFO WITHOUT A WPDES PERMIT

55. Sometime after January 25, 2013, and before January 1, 2014, the dairy became a large CAFO.

56. Between January 1, 2014, and March 14, 2019, Defendants submitted various documents to DNR over time demonstrating that they had between 1,568 and 2,763 animal units at the dairy.

57. From sometime between January 25, 2013, and January 1, 2014 until March 14, 2019, Defendants continuously owned or operated a large CAFO.

58. At all times on or before March 14, 2019, Ledgerview Farms had not been issued a WPDES permit for the dairy.

59. At all times on or before March 14, 2019, Ledgerview Facility had not been issued a WPDES permit for the dairy.

60. At all times on or before March 14, 2019, Roy Pansier had not been issued a WPDES permit for the dairy.

61. At all times on or before March 14, 2019, Glen Pansier had not been issued a WPDES permit for the dairy.

62. At all times on or before March 14, 2019, Jason Pansier had not been issued a WPDES permit for the dairy.

63. From sometime between January 25, 2013, and January 1, 2014 until March 14, 2019, Defendants continuously violated Wis. Admin. Code § NR 243.11(3)(a) by owning or operating a large CAFO without a WPDES permit.

VIOLATIONS 3 AND 4: REPEATED DISCHARGES TO WATERS OF THE STATE FROM THE DAIRY WITHOUT A WPDES PERMIT

I. Violation 3: Discharges to waters of the state from the main farm without a WPDES permit

64. On April 18, 2013, EPA Enforcement Officer Donald R. Schwer III inspected the main farm. Jason Pansier was present for the inspection.

65. On April 18, 2013, Pit 2 had a hole in the northeastern corner. Liquid that smelled septic and was dark in color was discharging through the hole and flowing north in a channelized flow path on the east side of the main farm to an unnamed tributary north of the main farm (“Tributary 1”).

66. On April 18, 2013, the feedlot and feed storage area had no runoff controls. Contaminated runoff from these structures was flowing north in channelized flow paths to a field north of the main farm.

67. On April 18, 2013, waste feed, bedding, and manure solids covered the surface of the field north of the main farm.

68. On April 18, 2013, contaminated runoff flowed north from the field in a concentrated flow path to Tributary 1.

69. Tributary 1 is a water of the state.

70. On April 18, 2013, Officer Schwer took samples of the contaminated runoff that was flowing from the main farm into Tributary 1. The samples showed elevated levels of fecal coliform bacteria, biochemical oxygen demand, total nitrogen, ammonia nitrogen, and total phosphorus.

71. On September 13, 2013, EPA issued an administrative order to Ledgeview Farms requiring it, among other items, to immediately implement, operate, and maintain interim runoff controls to eliminate all unpermitted discharges from the main farm to navigable waters. EPA sent the order to Roy Pansier on behalf of Ledgeview Farms.

72. On April 9, 2015, Officer Schwer inspected the main farm. Jason Pansier was present for the inspection.

73. On April 9, 2015, contaminated runoff was flowing from the barns, feed storage area, manure pits, and access ways between structures to the field north of the main farm.

74. On April 9, 2015, the field north of the main farm had manure solids, bedding, and feed solids on its surface.

75. On April 9, 2015, contaminated runoff was flowing north across the field into an area Defendants were using as a source of soil to construct a new waste storage facility (the “borrow area”).

76. On April 9, 2015, contaminated runoff was flowing across the borrow area into Tributary 1.

77. On April 9, 2015, Officer Schwer took samples of the contaminated runoff that was flowing from the main farm into Tributary 1. The samples showed elevated levels of fecal coliform, biochemical oxygen demand, total nitrogen, ammonia nitrogen, and total phosphorus.

78. On April 21, 2015, EPA held a conference call with representatives of Ledgeview Farms. EPA asked Ledgeview Farms to submit a plan to install interim controls and a schedule to install permanent controls to eliminate discharges from the main farm to navigable waters.

79. By 2017, the borrow area north of the main farm had filled with water forming a pond. A flow path from the northern end of the pond discharges to Tributary 1.

80. On July 18, 2017, former DNR Wastewater Specialist Heidi Schmitt Marquez inspected the main farm.

81. On July 18, 2017, contaminated runoff was discharging from the calf barn and flowing south to the road ditch along Dickinson Road. The ditch along Dickinson Road flows to an unnamed tributary to Bower Creek ("Tributary 2").

82. Tributary 2 is a water of the state.

83. On July 18, 2017, contaminated runoff was discharging from the feed storage area and flowing through the field north of the main farm into the pond.

84. On September 21, 2017, DNR by letter requested that Ledgeview Farms install interim runoff controls immediately on the calf barn, feed storage area, feedlot, and stacking areas for used bedding at the main farm to prevent discharges of contaminated runoff to waters of the state. DNR sent the letter to Jason Pansier.

85. On October 5, 2017, Roach & Associates submitted a plan to DNR to install interim runoff controls on the calf barn, feed storage area, feedlot, and stacking areas for used bedding at the main farm.

86. On December 15, 2017, Ledgeview Farms submitted to DNR an engineering evaluation of the feed storage area at the main farm. The engineering evaluation stated that the feed storage area at the main farm had no runoff controls and runoff flowed into the “surface water drainage system.” Ledgeview Farms also submitted an engineering evaluation for the runoff controls on the feedlot at the main farm. The engineering evaluation stated the feedlot at the main farm had no runoff controls.

87. On June 20, 2018, DNR Water Biologist Andrew Hudak investigated Tributary 1 and Tributary 2.

88. From June 15, 2018 to June 19, 2018, cumulatively 4.2 inches of rain fell at the main farm over several individual rain events.

89. On June 20, 2018, Biologist Hudak took two samples. Sample D-1 was from immediately downstream of the pond north of the main farm. Sample R-1 was from the flow path on the east side of the main farm immediately north of Pit 2. Contaminated runoff from both locations flows to Tributary 1. Sample D-1 showed

elevated levels of biochemical oxygen demand and total phosphorus. Sample R-1 showed elevated levels of *E. coli*.

90. On July 2, 2018, Specialist Schmitt Marquez inspected the main farm.

91. On July 2, 2018, numerous flow paths ran from the main farm through the field north of the main farm into the pond.

92. On July 2, 2018, accumulations of dried manure, bedding, and feed were present in the flow paths between the main farm and the pond.

93. On July 31, 2018, Roach & Associates told DNR that Defendants had constructed the interim runoff controls at the main farm proposed in the October 5, 2017 plan.

94. On October 30, 2018, Specialist Schmitt Marquez inspected the main farm.

95. On October 30, 2018, contaminated runoff was ponding around the northeast corner of the feed storage area.

96. On October 30, 2018, contaminated runoff was flowing into the field north of the main farm.

97. On October 30, 2018, vegetation in the field was saturated with contaminated runoff and was dead or burnt out.

98. On October 30, 2018, the contaminated runoff was very dark brown to black with an oily sheen.

99. On November 14, 2018, DNR by letter requested that Ledgeview Farms monitor the condition of the clay around the feed storage area at the main farm at

least weekly to ensure that contaminated runoff was not discharging from the feed storage area. The letter was sent to Jason Pansier.

100. Upon information and belief, as of March 14, 2019, Defendants had not remediated the conditions causing the discharge of pollutants from the main farm into Tributaries 1 and 2.

101. From at least April 18, 2013 until March 14, 2019, Defendants repeatedly violated Wis. Stat. § 283.31(1) and Wis. Admin. Code § NR 243.11(3)(a) when they discharged contaminated runoff from the main farm to Tributaries 1 and 2 and they did not have a WPDES permit.

II. Violation 4: Discharges to waters of the state from the heifer farm without a WPDES permit

102. On April 18, 2013, Officer Schwer inspected the heifer farm.

103. On April 18, 2013, portions of the feedlot and the feed storage area had no runoff controls.

104. On April 18, 2013, contaminated runoff was flowing east from the feed storage area and feedlot into a grassy area north of the heifer barn.

105. On April 18, 2013, contaminated runoff was flowing across the grassy area into the road ditch along Lime Kiln Road.

106. On April 18, 2013, contaminated runoff was flowing east under Lime Kiln Road through a road culvert. The contaminated runoff was flowing north in the road ditch along Lime Kiln Road to Silver Lane.

107. On April 18, 2013, contaminated runoff was flowing east in the road ditch along Silver Lane approximately 100 feet before flowing north under

Silver Lane through a road culvert. The road culvert discharged the contaminated runoff into a grassed waterway flowing northeast through a field.

108. On April 18, 2013, contaminated runoff was flowing northeast through the field and a wooded area before discharging into an unnamed tributary to Bower Creek east of the heifer farm (“Tributary 3”).

109. Tributary 3 is a water of the state.

110. On April 18, 2013, Officer Schwer took a sample of the contaminated runoff adjacent to the feedlot and another sample of the contaminated runoff in the road ditch along Lime Kiln Road. The samples showed elevated levels of fecal coliform bacteria, biochemical oxygen demand, ammonia nitrogen, and total phosphorus.

111. On September 13, 2013, EPA issued an administrative order to Ledgeview Farms requiring it, among other items, to immediately implement, operate, and maintain interim runoff controls to eliminate all unpermitted discharges from the heifer farm to navigable waters. EPA sent the order to Roy Pansier on behalf of Ledgeview Farms.

112. On April 9, 2015, Officer Schwer inspected the heifer farm.

113. On April 9, 2015, contaminated runoff from the feedlot and feed storage area was flowing east to the grassy area north of the heifer barn.

114. On April 9, 2015, feed solids were present throughout the grassy area north of the heifer barn.

115. On April 9, 2015, contaminated runoff was flowing into the road ditch along Lime Kiln Road.

116. On April 9, 2015, Officer Schwer took a sample of the contaminated runoff in the grassy area north of the heifer barn and another sample of the contaminated runoff in the road ditch along Lime Kiln Road. The samples showed elevated levels of fecal coliform bacteria, biochemical oxygen demand, ammonia nitrogen, and total phosphorus.

117. Prior to April 9, 2015, Defendants constructed a new bunker in the feed storage area immediately west of the existing feed storage bunkers.

118. A ditch is located less than 50 feet to the west of the new feed bunker.

119. The ditch is fed by a natural spring located upstream of the heifer farm.

120. The ditch flows along the west side of the heifer farm, east along the southern end of agricultural fields 11G4 and 11G-3 East, and then north between agricultural fields 11G3 and 11G-3 East.

121. The ditch discharges into an unnamed tributary to Bower Creek northwest of the heifer site at the northwestern corner of field 11G-3 East (“Tributary 4”).

122. The ditch is a water of the state.

123. Tributary 4 is a water of the state.

124. On April 9, 2015, contaminated runoff was leaching out of the north and south sides of the new feed bunker in the feed storage area.

125. On April 9, 2015, contaminated runoff from the feed storage area was flowing into the ditch.

126. On April 9, 2015, Officer Schwer took samples of the contaminated runoff from the feed storage area. The samples showed elevated levels of biochemical oxygen demand, ammonia nitrogen, and total phosphorus.

127. On April 21, 2015, EPA held a conference call with representatives of Ledgeview Farms. EPA asked Ledgeview Farms to submit a plan to install interim controls and a schedule to install permanent controls to eliminate discharges from the heifer farm to navigable waters.

128. On July 18, 2017, Specialist Schmitt Marquez inspected the heifer farm.

129. On July 18, 2017, flow paths led east from the freestall heifer barn and feedlot to the grassy area north of the heifer barn.

130. On July 18, 2017, contaminated runoff was ponded around the feed storage area.

131. On July 18, 2017, contaminated runoff from the feed storage area was flowing into the ditch.

132. On July 18, 2017, contaminated runoff from the feed storage area was also flowing east to the grassy area north of the heifer barn.

133. On August 8, 2017, Specialist Schmitt Marquez and former Wastewater Specialist Andrea Gruen inspected the heifer farm.

134. On August 8, 2017, contaminated runoff was ponded around the feed storage area.

135. On August 8, 2017, Specialists Schmitt Marquez and Gruen took a sample of the contaminated runoff ponded around the feed storage area. The sample

showed elevated levels of ammonia, biochemical oxygen demand, phosphorus, and *E. coli*.

136. On September 21, 2017, DNR by letter requested that Ledgerview Farms install interim runoff controls immediately on the feed storage area, feedlot, and stacking areas for used bedding at the heifer farm to prevent discharges of contaminated runoff to waters of the state. DNR sent the letter to Jason Pansier.

137. On October 5, 2017, Roach & Associates submitted a plan to DNR to install interim runoff controls on the feed storage area, feedlot, and stacking areas for used bedding at the heifer farm.

138. On June 15, 2018, Specialist Schmitt Marquez completed a wet-weather inspection of the heifer farm from the right-of-ways along Lime Kiln Road and Silver Lane.

139. On June 15, 2018, contaminated runoff was flowing across the grassy area north of the heifer barn into the ditch along Lime Kiln Road.

140. On June 15, 2018, the contaminated runoff in the road ditch along Lime Kiln Road was turbid, opaque, and smelled strongly like agricultural waste.

141. On June 15, 2018, the contaminated runoff was flowing east under Lime Kiln Road through a road culvert, north to Silver Lane, and then east in the road ditch along Silver Lane.

142. On June 15, 2018, the contaminated runoff was flowing north under Silver Lane and then northeast into Tributary 3.

143. On July 31, 2018, Roach & Associates told DNR that Defendants had constructed some of the interim runoff controls proposed in the October 5, 2017 plan. Roach & Associates stated that a detention basin near the feed storage area at the heifer farm would be constructed by September 3, 2018.

144. On September 21, 2018, Specialist Schmitt Marquez inspected the heifer farm.

145. On September 21, 2018, Defendants had constructed a temporary detention basin south of the feed storage area at the heifer farm to collect contaminated runoff.

146. On September 21, 2018, the contaminated runoff had exceeded the detention basin's capacity and runoff was overflowing from the northeast and southwest corners of the basin.

147. On November 14, 2018, DNR by letter requested that Ledgeview Farms monitor the detention basin near the feed storage area at the heifer farm daily to ensure that it does not overflow. DNR requested additional information from Ledgeview Farms to determine whether the interim controls for the feedlot adequately contained runoff. The letter was sent to Jason Pansier.

148. Upon information and belief, as of March 14, 2019, Defendants had not remediated the conditions causing the discharge of pollutants from the heifer farm into Tributary 3, the ditch, and Tributary 4.

149. From at least April 18, 2013, until March 14, 2019, Defendants repeatedly violated Wis. Stat. § 283.31(1) and Wis. Admin. Code § NR 243.11(3)(a)

when they discharged contaminated runoff from the heifer farm to Tributary 3, the ditch, and Tributary 4 and they did not have a WPDES permit.

VIOLATION 5: FAILURE TO MAINTAIN FUNCTIONAL INTERIM RUNOFF CONTROLS IN VIOLATION OF THE WPDES PERMIT

150. Section 2.5 of the WPDES permit requires Ledgeview Farms to install functioning interim runoff controls on the feed storage areas at the dairy by March 15, 2019.

151. Section 2.6 of the WPDES permit requires Ledgeview Farms to install functioning interim runoff controls on the feedlots at the dairy by March 15, 2019.

152. On March 15, 2019, Specialist Schmitt Marquez and Wastewater Specialist Andy Gilsdorf inspected the dairy.

I. Failure to maintain functional interim runoff controls at the main farm

153. On March 15, 2019, manure and waste bedding was piled higher than the concrete walls of and was on the ground outside of the feedlot at the main farm.

154. On March 15, 2019, Specialist Schmitt Marquez told Jason Pansier and Roy Pansier that all solid manure must be contained within the concrete walls of the feedlot to prevent discharges to waters of the state.

155. On March 15, 2019, process wastewater was ponded on top of the clay berm along the east wall of the feed storage area at the main farm.

156. On March 15, 2019, the process wastewater was very dark in color and opaque.

157. On March 15, 2019, process wastewater was flowing through an eroded channel in the clay berm and into the field north of the main farm towards the pond.

158. On March 15, 2019, vegetation in the field north of the main farm was dead and burnt out.

159. On September 3, 2019, Roach & Associates told DNR that Ledgeview Farms was removing solid manure after cleaning the feedlot at the main farm, and was inspecting on a daily basis the clay around the feed storage area at the main farm.

II. Failure to maintain functional interim runoff controls at the heifer farm

160. On March 15, 2019, the earthen berms of the detention basin at the heifer farm had settled over winter. An established flow path existed through the southern berm of the basin allowing process wastewater to flow out of the basin.

161. On March 15, 2019, Specialist Schmitt Marquez told Jason Pansier and Roy Pansier to rebuild and stabilize the earthen berms of the detention basin to prevent discharges and to monitor the basin at least weekly to prevent discharges.

162. On September 3, 2019, Roach & Associates told DNR that Ledgeview Farms had repaired the temporary detention basin at the heifer farm.

163. On October 8, 2019, DNR received a complaint regarding contamination in Tributary 4 near Meadow Sound Drive.

164. On October 8, 2019, DNR LTE Wastewater Specialist Brandon Flenz and Specialist Gruen inspected Tributary 4 at Meadow Sound Drive.

165. On October 8, 2019, the water in Tributary 4 was cloudy, whitish gray, and smelled strongly like silage leachate.

166. On October 8, 2019, DNR staff walked upstream in Tributary 4 to trace the contaminated water back to the source of the contamination.

167. On October 8, 2019, DNR staff traced the contaminated water upstream in Tributary 4 from Meadow Sound Drive through the ditch flowing along agricultural fields 11G3, 11G-3 East, and 11G4 to the heifer farm.

168. On October 8, 2019, process wastewater from the feed storage area at the heifer farm was flowing into the ditch west of the feed storage area.

169. On October 8, 2019, DNR staff observed two flow paths from the feed storage area to the ditch.

170. On October 8, 2019, water in the ditch upstream of the heifer farm was clear and odorless.

171. On October 8, 2019, DNR staff notified Jason Pansier of the discharge. Roy Pansier and Jason Pansier built clay berms around the feed storage area and in the ditch to contain the process wastewater.

172. On October 8, 2019, Specialists Flenz and Gruen took a sample from Tributary 4 at Meadow Sound Drive, a sample from the ditch downstream of the heifer farm, and a sample from the ditch upstream of the heifer farm. The samples from Tributary 4 and the ditch downstream of the heifer farm showed elevated levels of *E. coli*, total phosphorus, biochemical oxygen demand, total nitrogen, and ammonia nitrogen.

173. On October 17, 2019, DNR received a complaint regarding contamination in Tributary 4 near Meadow Sound Drive.

174. On October 17, 2019, Specialist Flenz and DNR Nonpoint Source Coordinator Erin Carviou inspected Tributary 4 at Meadow Sound Drive.

175. On October 17, 2019, Tributary 4 was cloudy, whitish gray, and smelled strongly like silage leachate.

176. On October 17, 2019, Specialist Flenz and Coordinator Carviou inspected the heifer farm with David Wetenkamp and Lee Jennings from Brown County Land and Water Conservation.

177. On October 17, 2019, process wastewater was pooled behind the clay berm around the feed storage area.

178. On October 17, 2019, process wastewater was seeping through the soil under the clay berm into the ditch west of the feed storage area.

179. On October 17, 2019, water in the ditch upstream of the heifer farm was clear and odorless.

180. On October 17, 2019, Roy Pansier agreed to construct a trench along the southwestern end of the feed storage area to collect process wastewater seeping through the soil and pump it to the temporary detention basin.

181. On October 17, 2019, Specialist Flenz and Coordinator Carviou took a sample from Tributary 4 at Meadow Sound Drive, a sample from the ditch downstream of the heifer farm, and a sample from the ditch upstream of the heifer farm. The samples from Tributary 4 and the ditch downstream of the heifer farm

showed elevated levels of total phosphorus, biochemical oxygen demand, total nitrogen, and ammonia nitrogen.

182. On October 22, 2019, Mr. Wetenkamp inspected the heifer farm.

183. On October 22, 2019, the trench along the southwestern end of the feed storage area was not capturing process wastewater runoff. The pump in the trench was stuck in mud, and the hose connecting the trench to the temporary detention basin had been disconnected.

184. On October 22, 2019, process wastewater from the feed storage area was flowing into the ditch west of the feed storage area.

185. On October 22, 2019, Mr. Wetenkamp fixed the hose and pump in the trench.

186. On October 23, 2019, Coordinator Carviou and DNR Runoff Supervisor Joe Baeten inspected the feed storage area at the heifer farm.

187. On October 23, 2019, Defendants had installed a new pump and pipe connecting the trench to the temporary detention basin.

188. On October 23, 2019, Coordinator Carviou and Supervisor Baeten told Defendants that they must maintain the runoff controls and prevent any future discharges to the ditch.

189. From March 15, 2019, until at least October 23, 2019, Ledgerview Farms continuously violated sections 2.5 and 2.6 of the WPDES permit by failing to construct functional interim runoff controls to prevent discharges to waters of the state from the feed storage areas and feedlots at the dairy.

VIOLATION 6: DISCHARGES TO NAVIGABLE WATERS FROM THE HEIFER FARM IN VIOLATION OF THE WPDES PERMIT

190. Wisconsin Admin. Code § NR 243.13(2)(a) states:

[A] large CAFO may not discharge manure or process wastewater pollutants to navigable waters from the production area, unless all of the following apply:

1. Precipitation causes an overflow of manure or process wastewater from a containment or storage structure.
2. The containment or storage structure is properly designed, constructed and maintained to contain all manure and process wastewater from the operation, including the runoff and the direct precipitation from a 25-year, 24-hour applicable rainfall event.
3. The production area is operated in accordance with the inspection, maintenance and record keeping requirements in s. NR 243.19

191. Section 1.1 of the WPDES permit repeats the prohibition in Wis. Admin. Code § NR 243.13(2)(a).

192. Wisconsin Admin. Code § NR 243.03(54) defines “production area” as:

[T]hat part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas The raw materials storage area includes but is not limited to feed silos, silage bunkers and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water.

193. The feed storage area at the heifer farm is part of the “production area” as it is defined in Wis. Admin. Code § NR 243.03(54).

194. Tributary 4 is a navigable water.

195. The 25-year, 24-hour rain event in Brown County is 4.3 inches.

196. During October 2019, the feed storage area at the heifer farm did not have permanent runoff controls.

197. During October 2019, the feed storage area at the heifer farm was not designed, constructed, and maintained to contain the process wastewater generated by a 25-year, 24-hour rain event.

198. From October 6, 2019, through October 8, 2019, there were no rain events at the heifer farm.

199. On October 8, 2019, process wastewater from the feed storage area at the heifer farm flowed into the ditch west of the feed storage area.

200. On October 8, 2019, process wastewater flowed west and north through the ditch into Tributary 4.

201. From October 12, 2019, through October 17, 2019, there were small rain events at the heifer farm. None was over 0.5 inches of rain in a 24-hour period.

202. On October 17, 2019, process wastewater from the feed storage area at the heifer farm flowed into the ditch west of the feed storage area.

203. On October 17, 2019, process wastewater flowed west and north through the ditch into Tributary 4.

204. On October 8 and 17, 2019, Ledgeview Farms violated Wis. Admin. Code § NR 243.13(2)(a) and section 1.1 of the WPDES permit when it discharged process wastewater from the feed storage area at the heifer farm to Tributary 4.

VIOLATION 7: FAILURE TO MITIGATE IMPACTS TO WATERS OF THE STATE

205. Section 3.1.7 of the WPDES permit states, “The permittee shall take all reasonable steps to minimize or prevent any adverse impact on the waters of the state resulting from noncompliance with the permit.”

206. On October 17, 2019, process wastewater from the feed storage area at the heifer farm flowed into Tributary 4.

207. On October 17, 2019, Specialist Flenz and Carviou walked approximately 220 feet downstream of Meadow Sound Drive in Tributary 4 to a waterfall.

208. On October 17, 2019, the waterfall was whitish gray, the water had a strong odor of silage leachate, and the rocks under the water were coated in white, filamentous bacterial growth. This white, filamentous bacterial growth occurs when excess nutrients are discharged to a waterway.

209. On October 17, 2019, Specialist Flenz and Coordinator Carviou inspected road crossings of Tributary 4 downstream of Meadow Sound Drive. The water in Tributary 4 appeared whitish gray and opaque at Meadow Ridge Drive, the stormwater pond downstream of Meadow Ridge Drive, Euro Lane, Tordeur Lane, and Bower Creek Road.

210. On October 18, 2019, Specialist Flenz told Jason Pansier that Ledgeview Farms must pump out the contaminated water in the stormwater pond downstream of Meadow Ridge Drive. Jason Pansier stated that they would attempt to recover water from the stormwater pond.

211. On Saturday, October 19, 2019, Jason Pansier left a voicemail message for Coordinator Carviou asking whether Ledgeview Farms could collect water from the stormwater pond or should hire someone else to do so. DNR received no further

communications from Ledgeview Farms stating that it had pumped out the contaminated water in the stormwater pond.

212. On Monday, October 21, 2019, Coordinator Carviou received the voicemail and inspected Tributary 4 at Meadow Sound Drive. The contaminated water previously in Tributary 4 had flown downstream by October 21, 2019.

213. Upon information and belief, between October 18, 2019, and October 21, 2019, Ledgeview Farms did not collect contaminated water from the stormwater pond.

214. Upon information and belief, following the October 17, 2019 discharge to Tributary 4, Ledgeview Farms did not take all reasonable steps to minimize adverse impacts to waters of the state.

215. From October 18 through 21, 2019, Ledgeview Farms violated section 3.1.7 of the WPDES permit when it failed to take all reasonable steps to minimize the adverse impact of the October 17, 2019 discharge on waters of the state.

VIOLATION 8: DISCHARGES TO WATERS OF THE STATE FROM LAND APPLICATION ACTIVITIES WITHOUT A WPDES PERMIT

216. Agricultural fields 11G4, 11G-3 East, and 11G3 are located north and northwest of the heifer farm off Lime Kiln Road.

217. At the times relevant to this violation, Field 11G4 was owned by Ledgeview Facility.

218. At the times relevant to this violation, Fields 11G-3 East and 11G3 were owned by Roy Pansier and Glen Pansier.

219. Defendants land apply manure and process wastewater to agricultural fields 11G4, 11G-3 East, and 11G3.

220. From March 12 through 14, 2019, the daily high temperature was above freezing, and rain occurred each day at the heifer farm. No rain event was equal to or greater than the 25-year, 24-hour rain event.

221. On March 14, 2019, Specialist Schmitt Marquez received a complaint that manure was running off fields 11G4, 11G-3 East, and 11G3. The complaint stated that Defendants frequently spread solid manure on the same area of these fields throughout the winter, including on March 14, 2019.

222. On March 14, 2019, Specialists Schmitt Marquez and Gilsdorf inspected fields 11G4, 11G-3 East, and 11G3.

223. On March 14, 2019, solid manure was visible on the surface of fields 11G4 and 11G-3 East.

224. On March 14, 2019, the snow on fields 11G4 and 11G-3 East was melting.

225. On March 14, 2019, runoff from rain and snowmelt was mixing with solid manure and feed storage leachate land applied to fields 11G4 and 11G-3 East.

226. On March 14, 2019, contaminated runoff was ponded across large portions of fields 11G4 and 11G-3 East.

227. On March 14, 2019, contaminated runoff was flowing north and west through channelized flow paths across fields 11G4 and 11G-3 East, concentrating along the northern boundary of these fields, and then flowing west into Tributary 4.

228. On March 14, 2019, the contaminated runoff was dark brown, foamy, and had a sheen on the surface.

229. On March 14, 2019, Specialists Schmitt Marquez and Gilsdorf drove to Meadow Sound Drive to inspect Tributary 4.

230. On March 14, 2019, the water in Tributary 4 was dark brown, was foamy, and had a sheen on the surface.

231. On March 14, 2019, the appearance of the water in Tributary 4 was consistent with the contaminated runoff in fields 11G4 and 11G-3 East.

232. On March 15, 2019, Specialists Schmitt Marquez and Gilsdorf inspected Tributary 4 and fields 11G3, 11G-3 East, and 11G4.

233. On March 15, 2019, the conditions in fields 11G3, 11G-3 East, and 11G4 were substantially similar to March 14, 2019. Contaminated runoff was flowing across fields 11G-3 East and 11G4 through manure and feed storage leachate that had been land applied to the surface of these fields. Contaminated runoff was ponding and concentrating along the northern boundary of these fields. Poned runoff was flowing through concentrated flow channels into Tributary 4.

234. On March 15, 2019, ponded runoff in the northwest corner of field 11G-3 East was overflowing into the ditch between 11G3 and 11G-3 East and flowing north into Tributary 4.

235. On March 15, 2019, Specialists Schmitt Marquez and Gilsdorf took samples of contaminated runoff in field 11G-3 East and the ditch between 11G3 and

11G-3 East. The samples showed elevated levels of *E. coli*, total phosphorus, biochemical oxygen demand, total nitrogen, and ammonia nitrogen.

236. On March 15, 2019, Roy Pansier admitted to Specialist Schmitt Marquez that he spread a load of solid manure from the heifer farm and some feed storage leachate from the detention basin at the heifer farm on field 11G4 on March 14, 2019.

237. On March 14, 2019, Defendants violated Wis. Stat. § 283.31(1) when they discharged pollutants from manure and feed storage leachate into Tributary 4 without a WPDES permit.

238. Wisconsin Admin. Code § NR 243.14(2)(a) states: “A permittee’s land application practices for manure and process wastewater shall comply with this section, the terms and conditions of the WPDES permit and the permittee’s approved nutrient management plan.”

239. Wisconsin Admin. Code § NR 243.14(2)(b)4. states:

Manure or process wastewater may not run off the application site nor discharge to waters of the state through subsurface drains due to precipitation or snowmelt except if the permittee has complied with all land application restrictions in this subchapter and the WPDES permit, and the runoff or discharge occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event.

240. Section 1.6.1 of the WPDES permit repeats the prohibition in Wis. Admin. Code § NR 243.14(2)(b)4.

241. On March 15, 2019, Defendants violated Wis. Stat. § 283.31(1) when they discharged pollutants from manure and feed storage leachate into Tributary 4 without a WPDES permit. In the alternative, on March 15, 2019, Ledgerview Farms

violated Wis. Admin. Code § NR 243.14(2)(b)4. and section 1.6.1 of the WPDES permit when manure or process wastewater ran off the application site and the runoff was not the result of a rain event equal to or greater than a 25-year, 24-hour rain event.

VIOLATIONS 9 AND 10: FAILURE TO PROPERLY LAND APPLY MANURE AND PROCESS WASTEWATER PURSUANT TO WIS. ADMIN. CODE § NR 243.14(2) AND THE WPDES PERMIT

242. Wisconsin Admin. Code § NR 243.14(2)(b) states:

A permittee who land applies manure or process wastewater shall land apply all manure and process wastewater in compliance with the following requirements:

1. Manure or process wastewater may not pond on the application site. . . .
4. Manure or process wastewater may not run off the application site nor discharge to waters of the state through subsurface drains due to precipitation or snowmelt except if the permittee has complied with all land application restrictions in this subchapter and the WPDES permit, and the runoff or discharge occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event. . . .
13. Manure or process wastewater may not be surface applied when precipitation capable of producing runoff is forecast within 24 hours of the time of planned application. . . .

243. Section 1.6.1 of the WPDES permit states:

- Manure or process wastewater may not pond on the application site. . . .
- Manure or process wastewater may not run off the application site nor discharge to waters of the state through subsurface drains due to precipitation or snowmelt except if the permittee has complied with all land application restrictions in NR 243 and this permit, and the runoff or discharge occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event. . . .
- Manure or process wastewater may not be surface applied when precipitation capable of producing runoff is forecasted within 24 hours of the time of planned application.
- Manure or process wastewater may not be spread on surface waters, established concentrated flow channels, or non-harvested vegetative buffers.
- Fields receiving manure and process wastewater may not exceed tolerable soil loss (“T”).

I. Violation 9: Land application on fields 11U9, 11U9N, and 11U7N in April 2019

244. Agricultural fields 11U9, 11U9N, and 11U7N are located adjacent to each other north of County Road X in the Town of Ledgeview, Brown County.

245. On April 20, 2019, Ledgeview Farms land applied process wastewater and manure on 20 acres of field 11U7N. Ledgeview Farms land applied 40 loads of 5,500 gallons each to field 11U7N.

246. On April 22, 2019, Ledgeview Farms land applied process wastewater and manure on eight acres of field 11U9. Ledgeview Farms land applied ten loads of 5,500 gallons each to field 11U9.

247. On April 22, 2019, fields 11U9, 11U9N, and 11U7N received around 0.8 inches of rain.

248. On April 22, 2019, Ledgeview Farms surface applied manure when precipitation capable of producing runoff was forecasted within 24 hours of the time of planned application.

249. On April 23, 2019, Specialist Schmitt Marquez received a complaint regarding Ledgeview Farms' land application of manure and process wastewater on fields 11U9, 11U9N, and 11U7N.

250. On April 23, 2019, Specialist Schmitt Marquez inspected fields 11U9, 11U9N, and 11U7N.

251. On April 23, 2019, manure had not been incorporated in the center of field 11U9.

252. On April 23, 2019, ponded manure was present in fields 11U9, 11U9N, and 11U7N.

253. On April 23, 2019, manure-laden water had flown from the ponded areas in the northwest corner of field 11U9 into field 11U9N.

254. On April 23, 2019, manure had been applied within concentrated flow channels in field 11U7N.

255. On April 23, 2019, Specialist Schmitt Marquez observed severe gully erosion in field 11U9 and soil erosion in fields 11U9N and 11U7N.

256. Based on Specialist Schmitt Marquez's observations on April 23, 2019, fields 11U9, 11U9N, and 11U7N exceeded tolerable soil loss.

257. On April 23, 2019, Ledgeview Farms violated Wis. Admin. Code § NR 243.14(2)(b) and section 1.6.1 of the WPDES permit by failing to comply with land application restrictions on fields 11U9, 11U9N, and 11U7N.

II. Violation 10: Land application on field 16E in September 2019

258. Agricultural field 16E is located east of Bower Creek Road near Lime Kiln Road in the Village of Bellevue, Brown County.

259. On August 30, 2019, Ledgeview Farms land applied solid manure on three acres of field 16E. Ledgeview Farms land applied six loads of five tons each to field 16E.

260. On August 31, 2019, Ledgeview Farms land applied solid manure on four acres of field 16E. Ledgeview Farms land applied seven loads of five tons each to field 16E.

261. Between August 30, 2019, and September 10, 2019, a rain event equal to or greater than 4.3 inches did not occur at field 16E.

262. On September 10, 2019, DNR received a complaint that manure was washing off field 16E into Bower Creek.

263. Bower Creek is a water of the state.

264. On September 10, 2019, Coordinator Carviou and DNR Conservation Warden James Moore inspected field 16E.

265. On September 10, 2019, Bower Creek had flooded and water had overflowed the banks of Bower Creek into field 16E.

266. On September 10, 2019, the floodwater was mixing with solid manure on the surface of field 16E.

267. On September 10, 2019, Coordinator Carviou observed water ponded in the northeastern corner of field 16E that was foamy, brown, and contained manure solids.

268. On September 10, 2019, water was flowing off the western end of field 16E back into Bower Creek.

269. On September 10, 2019, Coordinator Carviou took a sample from Bower Creek upstream of field 16E at Lime Kiln Road, a sample of ponded water on the surface of field 16E, and a sample of the water flowing off field 16E at the southwestern corner of the field near Bower Creek Road. The samples of water from field 16E showed elevated levels of *E. coli*, biochemical oxygen demand, phosphorus, total nitrogen, and ammonia nitrogen.

270. On September 10, 2019, solid manure that Ledgeview Farms land applied to field 16E was running off field 16E.

271. On September 10, 2019, Ledgeview Farms violated Wis. Admin. Code § NR 243.14(2)(b)4. and section 1.6.1 of the WPDES permit when manure ran off field 16E into Bower Creek and the runoff did not occur as a result of a rain event equal to or greater than a 25-year, 24-hour rain event.

**VIOLATION 11: FAILURE TO REPORT NONCOMPLIANCE FOR
SEPTEMBER 10, 2019 RUNOFF EVENT**

272. Section 3.1.15 of the WPDES permit states:

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. This includes any upset which exceeds any effluent limitation in the permit, or violations of the discharge limitations listed in the permit.

273. Prior to September 10, 2019, Ledgeview Farms had not notified DNR that manure that Ledgeview Farms land applied to field 16E was running off into Bower Creek.

274. On September 10, 2019, DNR CAFO Enforcement Specialist Ben Uvaas called Jason Pansier and informed him that manure was running off field 16E into Bower Creek.

275. On September 10, 2019, Jason Pansier became aware that Ledgeview Farms had violated a discharge limitation in the WPDES permit because manure that Ledgeview Farms land applied was running off into Bower Creek.

276. On October 2, 2019, Ledgeview Farms submitted a written report of noncompliance for the September 10, 2019 runoff event.

277. Ledgeview Farms violated section 3.1.15 of the WPDES permit when it failed to submit a written report of noncompliance within five days of the discharge.

VIOLATION 12: FAILURE TO ABANDON OR SUBMIT PLANS AND SPECIFICATIONS FOR MANURE STORAGE AREAS

278. Section 2.8 of the WPDES permit requires Ledgeview Farms to submit to DNR for review by September 1, 2019, an abandonment plan for solid manure storage facilities before abandoning those areas. Section 2.8 of the WPDES permit requires Ledgeview Farms to abandon the solid manure storage facilities pursuant to the DNR-approved abandonment plan by March 1, 2020. Section 2.8 of the WPDES permit requires Ledgeview Farms to submit post-abandonment documentation to DNR within 60 days of completing the abandonment.

279. Ledgeview Farms did not submit an abandonment plan for the solid manure storage facilities to DNR before May 31, 2019.

280. DNR did not approve an abandonment plan for the solid manure storage facilities before May 31, 2019.

281. Ledgeview Farms abandoned the solid manure storage facility at the heifer farm sometime before May 31, 2019.

282. Ledgeview Farms abandoned the solid manure storage facility at the main farm by May 31, 2019.

283. Ledgeview Farms did not abandon the solid manure storage facilities pursuant to DNR-approved abandonment plans.

284. Ledgeview Farms submitted an evaluation of the abandonment of the solid manure storage facilities to DNR on March 8, 2021.

285. Ledgeview Farms violated section 2.8 of the WPDES permit when it abandoned the solid manure storage facilities before submitting an abandonment plan to DNR for review and approval.

286. Ledgeview Farms violated section 2.8 of the WPDES permit when it abandoned the solid manure storage facilities not in compliance with a DNR-approved abandonment plan.

287. From at least July 30, 2019, until March 7, 2021, Ledgeview Farms continuously violated section 2.8 of the WPDES permit when it did not submit post-abandonment documentation to DNR within 60 days of completing the abandonment.

**VIOLATION 13: FAILURE TO ABANDON PIT 1 AND PIT 2 AT THE
MAIN FARM**

288. Section 2.9 of the WPDES permit requires Ledgeview Farms to submit to DNR an abandonment plan for Pit 1 and Pit 2 at the main farm by September 1, 2019. Section 2.9 of the WPDES permit then requires Ledgeview Farms to complete abandonment of Pit 1 and Pit 2 by March 1, 2020. Section 2.9 of the WPDES permit further requires Ledgeview Farms to submit documentation of the abandonment to DNR within 60 days of the abandonment.

289. On February 20, 2020, Roach & Associates submitted to DNR an abandonment plan for Pit 1 and Pit 2.

290. On April 1, 2020, DNR conditionally approved the abandonment plan for Pit 1 and Pit 2.

291. On August 21, 2020, and on November 13, 2020, Ledgeview Farms submitted to DNR documentation of the abandonment of Pit 1 and Pit 2.

292. Ledgeview Farms completed the abandonment of Pit 1 and Pit 2 on November 11, 2020.

293. From September 2, 2019, until February 20, 2020, Ledgeview Farms continuously violated section 2.9 of the WPDES permit by failing to submit an abandonment plan for Pit 1 and Pit 2.

294. From March 2, 2020, until November 10, 2020, Ledgeview Farms continuously violated section 2.9 of the WPDES permit by failing to complete the abandonment of Pit 1 and Pit 2.

VIOLATION 14: FAILURE TO ABANDON OR INSTALL RUNOFF CONTROLS ON THE FEED STORAGE AREA AT THE MAIN FARM

295. Section 2.10 of the WPDES permit requires Ledgeview Farms to submit to DNR plans and specifications for a permanent runoff control system for or an abandonment plan for the feed storage area at the main farm by September 1, 2019. Section 2.10 of the WPDES permit requires Ledgeview Farms to either complete construction of the plans and specifications or abandonment by March 1, 2020. Section 2.10 of the WPDES permit further requires Ledgeview Farms to submit documentation of the construction or abandonment to DNR within 60 days.

296. On February 20, 2020, Roach & Associates submitted to DNR an abandonment plan for the feed storage area at the main farm.

297. On April 1, 2020, DNR conditionally approved the abandonment plan for the feed storage area at the main farm.

298. On August 21, 2020, and on November 13, 2020, Ledgeview Farms submitted to DNR documentation of the abandonment of the feed storage area at the main farm.

299. Ledgeview Farms completed the abandonment of the feed storage area at the main farm on November 12, 2020.

300. From September 2, 2019, until February 20, 2020, Ledgeview Farms continuously violated section 2.10 of the WPDES permit by failing to submit plans and specifications or an abandonment plan for the feed storage area at the main farm.

301. From March 2, 2020, until November 11, 2020, Ledgeview Farms continuously violated section 2.10 of the WPDES permit by failing to abandon the feed storage area at the main farm.

**VIOLATION 15: FAILURE TO SUBMIT CONSTRUCTION SCHEDULE AND
CONSTRUCT RUNOFF CONTROLS ON FEED STORAGE AREA AT
HEIFER FARM**

302. Section 2.11 of the WPDES permit requires Ledgeview Farms to submit to DNR a construction schedule for installation of permanent runoff controls on the feed storage area at the heifer farm by July 1, 2019. Section 2.11 of the WPDES permit requires Ledgeview Farms to complete construction of the permanent runoff controls on the feed storage area at the heifer farm by December 1, 2020.

303. As of the date of this Complaint, Ledgeview Farms has not submitted to DNR a construction schedule for installation of permanent runoff controls on the feed storage area at the heifer farm.

304. As of the date of this Complaint, Ledgeview Farms has not completed construction of permanent runoff controls on the feed storage area at the heifer farm.

305. Since July 2, 2019, Ledgeview Farms has continuously violated section 2.11 of the WPDES permit by failing to submit a construction schedule for permanent runoff controls on the feed storage area at the heifer farm.

306. Since December 2, 2020, Ledgeview Farms has continuously violated section 2.11 of the WPDES permit by failing to complete construction of the permanent runoff controls on the feed storage area at the heifer farm.

VIOLATION 16: FAILURE TO SUBMIT ENGINEERING EVALUATION FOR RUNOFF CONTROLS ON FEEDLOT AT MAIN FARM

307. Section 2.12 of the WPDES permit requires Ledgeview Farms to submit to DNR an engineering evaluation for the runoff controls on the feedlot at the main farm by September 1, 2019.

308. On February 21, 2020, Roach & Associates submitted to DNR an evaluation for the runoff controls on the feedlot at the main farm.

309. On May 6, 2020, DNR issued a letter concurring with the conclusions of the evaluation that no further action was required for the feedlot at the main farm.

310. From September 2, 2019, until February 20, 2020, Ledgeview Farms continuously violated section 2.12 of the WPDES permit by failing to submit to DNR an engineering evaluation for the runoff controls on the feedlot at the main farm.

VIOLATION 17: MANURE STORAGE IN UNAPPROVED FACILITIES AND LOCATIONS

311. Section 1.8 of the WPDES permit authorizes Ledgeview Farms to store manure only in the facilities identified in that section of the WPDES permit unless written approval is obtained from DNR.

312. Wisconsin Admin. Code § NR 243.141(3) requires Ledgeview Farms to obtain DNR's approval prior to stacking solid manure outside of a DNR-approved manure storage facility. Section 1.4 of the WPDES permit repeats this requirement.

313. The feedlot at the main farm and the south end of the steer barn at the heifer farm are not included in section 1.8 of the WPDES permit for manure storage.

314. The feedlot at the main farm and the south end of the steer barn at the heifer farm have not been approved by DNR for manure storage.

315. On March 15, 2019, solid manure was stacked in the feedlot at the main farm. The manure stack was taller than the concrete walls of the feedlot.

316. On December 1, 2020, DNR CAFO Specialist Holly Stegemann observed the main farm and the heifer farm from the road rights-of-way adjacent to the farms.

317. On December 1, 2020, solid manure was stacked in the feedlot at the main farm. The manure stack was taller than the concrete walls of the feedlot.

318. On December 2, 2020, Specialist Schmitt Marquez observed the main farm and heifer farm from the road rights-of way adjacent to the farms.

319. On December 2, 2020, solid manure was stacked on the south end of the steer barn at the heifer farm.

320. On December 2, 2020, solid manure was stacked in the feedlot at the main farm. The manure stack was taller than the concrete walls of the feedlot.

321. On December 8, 2020, prior to beginning a site inspection, Specialists Schmitt Marquez and Stegemann observed the main farm and heifer farm from the road rights-of-way adjacent to the farms.

322. Specialists Schmitt Marquez and Stegemann observed solid manure stacked on the south end of the steer barn at the heifer farm.

323. On December 8, 2020, Specialists Schmitt Marquez and Stegemann inspected the main farm first followed by the heifer farm. Jason Pansier was present during the inspection.

324. On December 8, 2020, solid manure was stacked in the feedlot at the main farm. The manure stack was taller than the concrete walls of the feedlot.

325. On December 8, 2020, Jason Pansier admitted that manure stacked in the feedlot was removed on an as-needed basis, like once or twice a week.

326. On December 8, 2020, when Specialists Stegemann and Schmitt Marquez arrived at the heifer farm, the solid manure stacked on the south end of the steer barn had been removed.

327. Specialist Schmitt Marquez observed the location where the solid manure had previously been stacked on the south end of the steer barn. Remnants of used bedding and solid manure were visible on the concrete and barn siding.

328. On December 8, 2020, Jason Pansier stated manure was not stacked on the south end of the steer barn more than two hours per day.

329. On January 4, 2021, Specialist Stegemann and DNR CAFO Specialist Bethani Chambers observed the heifer farm from the road right-of-way adjacent to the farm.

330. On January 4, 2021, manure was stacked on the south end of the steer barn at the heifer farm.

331. On March 15, 2019, and December 1, 2, and 8, 2020, and January 4, 2021, Ledgeview Farms violated section 1.8 of the WPDES permit and Wis. Admin. Code § NR 243.141(3) by storing manure in facilities and locations that were not approved by DNR for manure storage.

VIOLATION 18: WINTER APPLICATION OF MANURE ON FIELD 11H1

332. Wisconsin Admin. Code § NR 243.14(1) requires a permittee to submit a nutrient management plan to DNR for review and approval that identifies, among other things, the location and timing of land applications of manure and process wastewater.

333. Section 1.6.5 of the WPDES permit states that Ledgeview Farms must identify fields in the nutrient management plan on which it may spread manure when the ground is frozen or snow-covered.

334. Agricultural field 11H1 is located immediately east of the heifer farm, adjacent to Lime Kiln Road and south of Silver Lane, in the Town of Ledgeview in Brown County.

335. Field 11H1 is not identified in Ledgeview Farms' nutrient management plan for land application when the ground is frozen or snow-covered.

336. On December 30, 2020, DNR received a complaint that Ledgeview Farms had land applied manure on field 11H1 when it was snow-covered.

337. On January 4, 2021, Specialists Stegemann and Chambers observed field 11H1 from the rights-of-way on Lime Kiln Road and Silver Lane.

338. On January 4, 2021, a dark substance resembling manure was visible on the surface of field 11H1. Field 11H1 appeared to have snow two to three inches deep on it.

339. On January 5, 2021, Specialist Stegemann contacted Jason Pansier and arranged to inspect field 11H1 that day with him.

340. On January 5, 2021, Specialist Stegemann walked through field 11H1.

341. On January 5, 2021, used bedding contaminated with manure and waste feed was present on the surface of field 11H1. The material was dark in color and smelled like manure and waste feed.

342. On January 5, 2021, the snow on field 11H1 varied from one to three inches deep.

343. On January 5, 2021, Specialist Stegemann told Jason Pansier that field 11H1 was not included in Ledgeview Farm's nutrient management plan for land application of manure during snow-covered conditions.

344. On January 5, 2021, Jason Pansier stated that Ledgeview Farms would work the material into the field, and if that was not possible, would scrape it off and move it to a field that was approved for land application during snow-covered conditions.

345. On January 7, 2021, Ledgeview Farms provided its manure hauling log to DNR. According to the manure hauling log, a driver identified as “Roy” land applied “yard snow” on six acres of field 11H1 on December 30, 2020. The log identifies the surface conditions on field 11H1 as frozen and snow-covered at the time of application.

346. On December 30, 2020, Ledgeview Farms violated Wis. Admin. Code § NR 243.14(1) and section 1.6.5 of the WPDES permit when it land applied manure on a snow-covered field that was not approved for land application during snow-covered conditions.

VIOLATION 19: FAILURE TO HAVE 180 DAYS OF LIQUID MANURE STORAGE

347. Wisconsin Admin. Code § NR 243.15(3)(j) states:

By January 1, 2010, all existing source CAFOs shall have liquid manure storage or containment facilities that are properly designed to provide a minimum of 180 days of storage in accordance with para (k).

348. Wisconsin Admin. Code § NR 243.03(23) defines “existing source CAFO” to mean a permitted operation that is not a new source CAFO. A “new source CAFO” is an animal feeding operation constructed on or after April 14, 2003, on a new site where no other animal feeding operation has been located. Wis. Admin. Code § NR 243.03(41).

349. The dairy is an “existing source CAFO” as defined in Wis. Admin. Code § NR 243.03(23).

350. Section 1.3.1 of the WPDES permit states the permittee shall maintain a design storage capacity of 180 days for liquid manure unless DNR approves a temporary reduction.

351. DNR has not approved a temporary reduction for Ledgeview Farms.

352. Since March 15, 2019, the dairy has not had liquid manure storage or containment facilities capable of containing 180 days of liquid manure generated at the dairy.

353. Since March 15, 2019, Ledgeview Farms has continuously violated Wis. Admin. Code § NR 243.15(3)(j) and section 1.3.1 of the WPDES permit by failing to have properly designed facilities that can contain 180 days of liquid manure generated at the dairy.

PENALTIES AUTHORIZED

354. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. ch. 283 and all rules promulgated and permits issued under that chapter by “injunctive and other relief appropriate for enforcement,” subject to exceptions not applicable in this case.

355. Pursuant to Wis. Stat. §§ 283.89(4) and 299.95, the circuit court for the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 283.

356. Wisconsin Stat. § 283.89(1) requires DNR to refer any person who violates Wis. Stat. ch. 283 and rules or permits issued pursuant to Wis. Stat. ch. 283 to the Department of Justice (DOJ) for prosecution.

357. Wisconsin Stat. § 283.91(1) states the Department of Justice may “initiate a civil action for a temporary or permanent injunction” for any violation of Wis. Stat. ch. 283, rules promulgated pursuant to Wis. Stat. ch. 283, or terms and conditions of any permit issued pursuant to Wis. Stat. ch. 283.

358. Wisconsin Stat. § 283.91(2) states:

Any person who violates this chapter, any rule promulgated under this chapter, any term or condition of a permit issued under this chapter . . . shall forfeit not less than \$10 nor more than \$10,000 for each day of violation, except that the minimum forfeiture does not apply if the point source at which the violation occurred is an animal feeding operation.

359. Wisconsin Stat. § 283.91(5) states:

In addition to all other civil . . . penalties prescribed under this chapter, the court may assess as an additional penalty a portion or all of the costs of the investigation, including monitoring, which led to the establishment of the violation. The court may award [DOJ] the reasonable and necessary expenses of the prosecution, including attorney fees.

360. Wisconsin Stat. § 283.87(1) states:

In an action against any person who violates this chapter . . . [DNR] may recover the cost of removing, terminating or remedying the adverse effects upon the water environment resulting from the unlawful discharge . . . of pollutants into waters of the state, including the cost of replacing fish or other wildlife destroyed by the discharge

PENALTIES REQUESTED

WHEREFORE, the State of Wisconsin requests judgment as follows:

1. An injunction, pursuant to Wis. Stat. §§ 283.91(1) and 299.95, requiring Defendants to bring all of the facilities at the dairy into compliance with Wis. Stat. ch. 283, Wis. Admin. Code ch. NR 243, and the terms of the WPDES permit;
2. Forfeitures as provided for in Wis. Stat. § 283.91(2);

3. The costs of removing, terminating, and remedying the adverse effects of Ledgeview Farms' discharges upon the water environment as provided for in Wis. Stat. § 283.87(1);

4. The costs of the investigation and the reasonable and necessary expenses of the prosecution, including attorney fees, as provided for in Wis. Stat. § 283.91(5);

5. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18); the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12); the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1); the \$13.00 crime laboratory and drug surcharge pursuant to Wis. Stat. § 814.75(3); the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2); the 1 percent jail assessment surcharge pursuant to Wis. Stat. § 814.75(14); and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15); and

6. Such other relief as the Court deems appropriate.

Dated this 27th day of October, 2021.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
Assistant Attorney General
State Bar #1094232

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0432
(608) 294-2907 (Fax)
ertelem@doj.state.wi.us