

**FILED**  
**07-19-2022**  
**Clerk of Circuit Court**  
**Monroe County, WI**  
**2022CX000004**

STATE OF WISCONSIN    CIRCUIT COURT    MONROE COUNTY  
   BRANCH \_\_

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STATE OF WISCONSIN,  
 17 West Main Street  
 Post Office Box 7857  
 Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 22-CX-\_\_\_\_\_  
 Complex Forfeiture: 30109

PHIL G. MLSNA,  
 9770 Kansas Ave.  
 Sparta, Wisconsin 54656,

and

MLSNA DAIRY SUPPLY, INC.,  
 1126 Front Street,  
 Cashton, Wisconsin 54619

Defendants.

THE AMOUNT CLAIMED IS  
 GREATER THAN THE AMOUNT  
 CLAIMED UNDER WIS. STAT.  
 § 799.01(1)(d).

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**COMPLAINT**

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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:

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. Defendant Phil G. Mlsna is an adult resident of the State of Wisconsin and resides at 9770 Kansas Ave., Sparta, Wisconsin 54656.

3. Defendant Mlsna Dairy Supply, Inc. is a domestic business with its principal office located at 1126 Front Street, Cashton, Wisconsin 54619. Its registered agent is Phil G. Mlsna located at the same address.

4. The State of Wisconsin enacted Wis. Stat. chs. 281 and 283 to prevent and minimize water pollution in the state.

5. 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 or disposal is done under a permit issued by the [DNR] under this section or s. 283.33.”

6. 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.”

7. 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.”

8. Wisconsin Stat. § 283.01(12)(a) defines “point source” to include a concentrated animal feeding operation (CAFO).

9. Wisconsin Admin. Code ch. NR 243 governs issuance of permits required by Wis. Stat. ch. 283 for CAFOs.

10. Wisconsin Admin. Code § NR 243.11(3)(a) requires any person owning or operating a large CAFO to have a Wisconsin Pollutant Discharge Elimination System permit.

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

12. At all times relevant to this Complaint, Defendants owned or operated a dairy farm located at 9314 Kansas Avenue, Sparta, Monroe County, Wisconsin (the “dairy”).

13. At all times relevant to this Complaint, Mlsna personally owned the land on which the dairy is located.

14. At all times relevant to this Complaint, Mlsna leased the land on which the dairy is located to Mlsna Dairy Supply, Inc.

15. Mlsna was personally involved in authorizing, supervising, directing, performing, or failing to perform the acts that constitute the violations alleged in this Complaint. At all times relevant to this Complaint, Mlsna was DNR’s facility contact for the dairy.

16. At all times relevant to this Complaint, the dairy has been a large CAFO as defined in Wis. Admin. Code § NR 243.03(31).

17. On January 1, 2011, DNR issued to “MDS Dairy, Inc.” Wisconsin Pollutant Discharge Elimination System permit no. WI-0062880-02-0 that authorized it to discharge from the dairy to the Little La Crosse River watershed of the Bad-Axe

La Crosse River Basin in accordance with the terms of the permit (the “2011 WPDES permit”).

**VIOLATION ONE: FAILURE TO REAPPLY FOR A WPDES PERMIT**

18. Wisconsin Admin. Code § NR 243.12(1)(d) states: “An owner or operator of a large CAFO that already holds a WPDES permit shall reapply at least 180 days prior to the expiration date of its current WPDES permit,” subject to an exception not applicable here.

19. The 2011 WPDES permit expired on December 31, 2015.

20. Defendants did not reapply for a WPDES permit prior to July 4, 2015.

21. On July 4, 2015, Defendants violated Wis. Admin. Code § NR 243.12(1)(d) when they did not reapply for a WPDES permit for the dairy at least 180 days prior to the expiration of the 2011 WPDES permit.

**VIOLATION TWO: OPERATING A LARGE CAFO WITHOUT A WPDES PERMIT**

22. Wisconsin Stat. § 283.31(1) prohibits any person from discharging any pollutant from a point source, including from a CAFO, into any waters of the state except in compliance with a permit issued by DNR.

23. Wisconsin Admin. Code § NR 243.11(3)(a) states, “Except as provided in par. (b), any 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.”

24. Since January 1, 2016, Defendants have stored manure or process wastewater in a structure that is at or below grade at the dairy.

25. Since January 1, 2016, Defendants have land applied manure or process wastewater generated at the dairy.

26. Since January 1, 2016, Defendants have not had a WPDES permit for the dairy.

27. Since January 1, 2016, Defendants have operated the dairy in a manner that threatens water quality and would violate Wis. Admin. Code ch. NR 243 and the terms of a WPDES permit issued pursuant to that chapter if Defendants had properly obtained such a permit. For example, in September 2016, the manure storage facility at the dairy overtopped, and in August 2018, the manure storage facility at the dairy overtopped again. In October 2021, manure discharged into a tributary of the Little Lacrosse River when a spill occurred during land application. JDF Pumping, Defendants' custom manure applicator, reported the spill to DNR and cleaned up the spill without significant assistance from Defendants. Defendants failed to comply with land application restrictions for CAFOs, including applying manure on fields with phosphorus levels exceeding 200 parts per million in September 2017, August 2018, and February 2020; surface applying manure before and during a rain event in May 2017; overapplying manure such that it ran off the application site in September 2017; and applying manure during the high-risk runoff period on frozen and snow-covered ground in February 2020.

28. Since January 1, 2016, Defendants have continuously violated Wis. Stat. § 283.31(1) and Wis. Admin. Code § NR 243.11(3)(a) by owning and operating a large CAFO without a WPDES permit issued by DNR.

**VIOLATION THREE: CONSTRUCTION OF A REVIEWABLE FACILITY  
WITHOUT APPROVED PLANS AND SPECIFICATIONS**

29. Wisconsin Admin. Code § NR 243.15(1)(a)1. states, “An owner or operator may not commence construction of a proposed reviewable facility or system until plans and specifications have been approved by the [DNR] in writing.”

30. Wisconsin Admin. Code § NR 243.03(56) defines “reviewable facility or system” as “runoff control structures, feed and other raw materials storage, permanent spray irrigation or other land application systems, groundwater monitoring systems, manure storage facilities, manure treatment or transfer systems, or other structures or systems associated with the storage, containment, treatment or handling of manure or process wastewater.”

31. On August 24, 2016, Defendants’ consultant, Auth Consulting & Associates, submitted plans and specifications to DNR for review for a sand separation system to treat manure-contaminated sand bedding.

32. The sand separation system is a reviewable facility or system as defined in Wis. Admin. Code § NR 243.03(56).

33. On October 13, 2016, DNR Engineer Supervisor Bernie Michaud requested additional information and changes to the plans and specifications to conform with the standards in Wis. Admin. Code ch. NR 243.

34. On October 28, 2016, Auth Consulting & Associates submitted revised plans and specifications for the sand separation system to DNR for review.

35. On November 14, 2016, Engineer Michaud again requested additional information and changes to the plans and specifications to conform to the standards in Wis. Admin. Code ch. NR 243.

36. At an enforcement conference with DNR on November 21, 2016, Mlsna stated that construction on the sand separation system had begun. Mlsna showed DNR Environmental Enforcement Specialist Deb Dix photos of concrete that had been poured for the sand separation system.

37. Sometime in 2016, Defendants began construction of the sand separation system.

38. DNR did not approve plans and specifications for the sand separation system before Defendants began construction.

39. In 2016, Defendants violated Wis. Admin. Code § NR 243.15(1)(a)1. when they began construction of the sand separation system before obtaining DNR's approval of plans and specifications for that system.

### **RELIEF AUTHORIZED**

40. 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.

41. 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.

42. 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.

43. 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 or conditions of any permit issued pursuant to Wis. Stat. ch. 283.

44. 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.

45. Wisconsin Stat. § 283.91(5) states the court may assess the costs of the investigation, including monitoring, and the reasonable and necessary expenses of the prosecution, including attorney fees, as an additional penalty.

### **RELIEF REQUESTED**

WHEREFORE, the State of Wisconsin asks for judgment as follows:

1. An injunction, pursuant to Wis. Stat. § 283.91(1), requiring Defendants to obtain a WPDES permit for the dairy and bring the dairy into compliance with the requirements of Wis. Stat. ch. 283 and Wis. Admin. Code ch. NR 243, or cease operations in compliance with Wis. Stat. ch. 283 and Wis. Admin. Code ch. NR 243;
2. Forfeitures as provided for in Wis. Stat. § 283.91(2);



3. 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);

4. 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 laboratories and drug law enforcement 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

5. Such other relief as the Court may deem appropriate.

Dated this 19th day of July, 2022.

JOSHUA L. KAUL  
Attorney General of Wisconsin

*Electronically signed by Emily M. Ertel*

EMILY M. ERTEL  
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