

**FILED**  
**11-10-2022**  
**CIRCUIT COURT**  
**DANE COUNTY, WI**  
**2022CX000019**

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE OF WISCONSIN

17 West Main Street

Post Office Box 7857

Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 22-CX-\_\_\_\_\_

Complex Forfeiture: 30109

UNITED LIQUID WASTE

RECYCLING, INC.

715 Morgan Street

Post Office Box 247

Clyman, Wisconsin 53016,

Defendant.

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

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**CIVIL COMPLAINT**

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The State of Wisconsin by its counsel, Attorney General Joshua L. Kaul and Assistant Attorneys General Bradley J. Motl and Jennifer S. Limbach, at the request of the Wisconsin Department of Natural Resources, brings this action against Defendant United Liquid Waste Recycling, Inc., and alleges as follows:

**PARTIES AND VENUE**

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

County, Wisconsin. It has enacted in Wis. Stat. chs. 283 and 292, statutes governing discharges into the waters of the state so as to prevent and eliminate water pollution, protect fish and wildlife, and improve water quality, and statutes requiring notice and remediation of discharges into the environment. Its Department of Natural Resources (DNR) administers regulations and issues permits and orders authorized by these statutes.

2. Defendant United Liquid Waste Recycling, Inc. (United) is a Wisconsin corporation with its principal office at 715 Morgan Street, Post Office Box 247, Clyman, Wisconsin, 53016. Its Registered Agent for receipt of service of process is Robert W. Tracy, Jr., located at the same address.

3. Pursuant to Wis. Stat. § 283.89(4), “[a]ny civil action on a violation shall be commenced in the circuit court for the county in which the violation occurred in whole or in part, unless all the parties consent to the commencement of the action in the circuit court for Dane County. . . .”

4. Pursuant to Wis. Stat. § 299.95, “the circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce...[chs. 281, 283 and 292]. . . .”

5. Pursuant to Wis. Stats. §§ 283.89(4) and 299.95, venue is proper in Dane County.

## BACKGROUND FACTS

6. United provides storage and land application of industrial liquid wastes, industrial sludge and byproduct solids sewage sludges, and septage to businesses across the state as well as outside of Wisconsin.

7. United has approximately 500 locations that it owns or leases for land application of wastes in Wisconsin, totaling approximately 15,000 acres.

8. United has three separate facilities in the area of Clyman, Wisconsin, that serve its operations: a corporate office in the Village of Clyman, a main waste storage facility in the Town of Clyman (Main Facility), and a secondary waste storage facility (Secondary Facility) in the Town of Clyman.

9. United's Main Facility includes eight waste storage units: four storage tanks with a combined capacity of 4,215,000 gallons, three lagoons with a combined capacity of 25,000,000 gallons, and one 1,000 cubic yard concrete pad.

10. United's Secondary Facility includes four waste storage units: two storage tanks with a combined capacity of 2,200,000 gallons and two storage pads with a combined capacity of 1,900 cubic yards.

11. United manages millions of gallons of industrial liquid waste, industrial sludge, industrial byproduct solids, sewage sludges, and septage annually.

12. United either immediately landspreads the waste it receives or stores the waste at its Main Facility or Secondary Facility for later landspreading.

13. United landspreads the waste it receives at a variety of sites near its Main Facility and elsewhere in Dodge and other counties, including Columbia, Dane, Fond du Lac, Green Lake, and Jefferson County.

14. DNR issued Wisconsin Pollutant Discharge Elimination System (WPDES) Individual Permit No. WI-0061514-03-0 (the Permit) to United, which took effect July 1, 2014.

15. Before DNR issued the Permit, United operated under its previous DNR-issued WPDES Individual Permit No. WI-0061514-02-2 (the 2007 Permit), which took effect November 1, 2007.

16. The Permit authorizes United to store and discharge industrial wastes, sewage sludges, and septage in watersheds in multiple counties by land applying these wastes subject to the limitations, monitoring requirements, reporting requirements, sampling requirements, and other conditions set forth in the Permit as well as Wis. Stat. § 283.31 and Wis. Admin. Code chs. NR 113, NR 204, and NR 214.

17. The waste that United stores and land spreads in Dodge and other counties is regulated under Wis. Stat. chs. 281, 283 and 292, administrative regulations promulgated under these statutes, including, but not limited to, Wis. Admin. Code chs. NR 108, NR 113, NR 213, NR 214, NR 200, et seq., and NR 700, et seq, and the Permit.

18. Pursuant to Wis. Admin. Code § NR 205.07(1)(a), a WPDES “permittee shall comply with all conditions of the permit.”

## **VIOLATIONS**

### **First Violation**

#### **Failure to report a hazardous substance spill**

19. Pursuant to Wis. Stat. § 292.01(5), hazardous substance is defined to include any waste, “which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics.”

20. Pursuant to Wis. Stat. § 292.11(2)(a), “[a] person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify [DNR] immediately. . . .”

21. The largest of United’s liquid waste storage lagoons at its Main Facility is Outfall 020, commonly referred to as the “Big Pond.”

22. The Big Pond is a below-ground storage lagoon surrounded by an earthen berm and lined with a synthetic liner.

23. The Big Pond has a capacity to store 18 million gallons of industrial liquid waste regulated pursuant to Wis. Admin. Code ch. NR 214 and the Permit.

24. United is authorized under the Permit to store industrial liquid waste in the Big Pond and thereafter land apply the waste on approved sites in compliance with the terms and conditions of the Permit.

25. If spilled or discharged in sufficient quantities or concentrations, industrial liquid waste poses risks to human health and the environment due to its physical, chemical, or infectious characteristics.

26. On or before the morning of October 13, 2016, industrial liquid waste spilled from the Big Pond onto the surrounding land.

27. The spilled industrial liquid waste was a hazardous substance.

28. United possesses and controls the Big Pond from which industrial liquid waste was spilled.

29. United is responsible for the maintenance and operation of the Big Pond, including monitoring the waste levels in the Big Pond, shutting any overflow valves, and monitoring waste that is pumped into the crock which houses the loadout center at the northwest corner of the Big Pond.

30. Tracy Brothers, LLC (Tracy Bros.) owns the field road and low-lying areas where the waste spilled.

31. The field road and low-lying areas where the waste spilled were not approved sites for landspreading waste.

32. The spill of industrial liquid waste was not an approved application of waste under the Permit or applied according to the terms and conditions of the Permit.

33. Robert Tracy, Jr. operates both Tracy Bros. and United.

34. United controls the field road and low-lying areas where the waste spilled. The fields into which waste flowed were adjacent to both a stream and a wetland.

35. At approximately 2:10 p.m. on October 13, 2016, DNR staff received an anonymous call to the DNR Hotline reporting a spill of approximately 100,000 gallons of an unknown liquid waste from United's Big Pond.

36. DNR staff arrived at United's Main Facility, located at N2797 State Highway 26, Watertown, WI 53098, to verify the complaint at approximately 2:45 p.m. on October 13, 2016.

37. Before DNR staff arrived at United's Main Facility and before United reported the spill, industrial liquid waste from the Big Pond had spilled from the northwest corner of the Big Pond, flowed west down a field road, and flowed south of the road into lower-lying areas.

38. Before DNR staff arrived onsite and before United reported the spill, industrial liquid waste had already begun to infiltrate the ground.

39. By the time DNR arrived onsite and before United reported the spill, there still were areas of ponded wastewater and residual solids on the field road and in the fields west of the Big Pond.

40. By the time DNR arrived onsite and before United reported the spill, United had finished scraping the contaminated soil from a portion of its field access road northwest of the Big Pond, including any residual waste solids, into a pile such that the contamination northwest of the Big Pond was less evident.

41. United had not scraped up contaminated soil anywhere but the immediate vicinity of the spill source at the northwest corner of the Big Pond.

42. By the time DNR staff arrived onsite and before United reported the spill, United had hired a contractor, allowed the contractor to enter the area of the spill, and instructed the contractor to lay cobble on top of waste that had settled along a field road leading west from the spill source at the northwest corner of the Big Pond.

43. United did not remove or clean up the contaminated soil along the field road before placing cobble on top of it.

44. When DNR staff arrived at United's property, and before United reported the spill, United initially denied that there had been a spill.

45. When DNR staff arrived at United's property, and before United reported the spill, Robert Tracy, Jr. met with DNR but did not identify the location of the spill.



46. During DNR staff's inspection and before United reported the spill, Robert Tracy, Jr. accompanied a DNR staff member along the areas east and northeast of the Big Pond, but not the spill source at the northwest corner of the pond.

47. While accompanying a DNR staff member along the east and northeast sides of the Big Pond, Mr. Tracy Jr. did not identify or direct the staff member to the spill source at the northwest side of the Big Pond.

48. While Mr. Tracy Jr. accompanied a DNR staff member on the east and northeast sides of the Big Pond, two DNR wardens identified the source of the spill at the northwest side of the Big Pond.

49. United did not contact DNR to report the spill until 3:50 p.m. on October 13, 2016.

50. United did not call the 24-hour DNR hotline to report the spill.

51. United's environmental compliance manager reported the spill by sending an email to one of the DNR staff members who was at that time onsite inspecting the spill.

52. By the time United emailed DNR staff regarding the spill, DNR staff had been investigating the spill on United's property for approximately one hour.

53. On or about October 13, 2016, United violated Wis. Stat. § 292.11(2)(a) by failing to immediately report a hazardous substance spill that it caused, possessed, and/or controlled.

## Second Violation

### Failure to take remedial action after a hazardous substance discharge

54. Wisconsin Admin. Code ch. NR 708 was promulgated pursuant to Wis. Stat. ch. 292.

55. Pursuant to Wis. Admin. Code § NR 700.03(51), “responsible party” includes any person required to conduct a response action under Wis. Stat. ch. 292.

56. A response action, as defined by Wis. Admin. Code § NR 700.03(50), includes “any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions, and remedial actions.”

57. Wisconsin Stat. § 292.11(3) requires any person who causes, possesses or controls a discharge of a hazardous substance to take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state.

58. Wisconsin Admin. Code § NR 708.05(1) requires responsible parties to take immediate action to halt a hazardous substance discharge and to minimize the harmful effects of the discharge unless otherwise directed by DNR.

59. Wisconsin Admin. Code § NR 708.05(3) requires responsible parties to “take all necessary, non-emergency immediate actions to halt the discharge of a hazardous substance and to contain, treat or remove discharged hazardous substances, environmental media or both, in order to minimize the harmful effects of

the discharge to the air, lands and waters of the state and to restore the environment to the extent practicable.”

60. By the time DNR arrived onsite on October 13, 2016, the discharged hazardous substance had not been fully contained, remediated, or removed.

61. DNR staff did not identify any areas other than the scraped portion of the field road where cleanup of spilled waste occurred.

62. During DNR’s October 13, 2016 inspection, there were no trucks vacuuming up the standing ponds of spilled waste.

63. During DNR’s October 13, 2016 inspection, no United employees or other persons were working to scrape or remove contaminated soil.

64. During DNR’s October 13, 2016 inspection, no United employees or other persons were working to test for contamination in the wetland, stream, or groundwater around the spill area.

65. During DNR’s October 13, 2016 inspection, United was not taking any action to contain, treat, or remove the discharge of the waste.

66. While DNR was onsite on October 13, 2016, United had not brought in any other company to work on containing, treating, or removing the waste from the contaminated areas.

67. While DNR was onsite on October 13, 2016, the only action United had taken with regard to the spill was to hire a contractor to lay cobble on top of waste that had spilled onto the field road.

68. Laying cobble on top of the waste on the field road did not serve the purpose under Wis. Stat. § 292.11(3) and Wis. Adm. Code §§ NR 708.05(1) and (3) of restoring the environment to the extent practicable or minimizing the harmful effects from the discharged hazardous substance.

69. When DNR left the Main Facility on October 13, 2016, additional work was needed to contain, treat, and/or remove the spilled waste, including vacuuming ponded liquid waste and removing contaminated soil and residual waste solids.

70. Before DNR left the site on October 13, 2016, DNR requested that United provide a spill cleanup report and documentation that ponded waste had been vacuumed up.

71. On October 17, 2016, DNR inspected the Main Facility.

72. On October 17, 2016, several low-lying areas still contained residual solids left from the spilled industrial liquid waste.

73. On October 17, 2016, several low-lying areas still contained ponded water containing industrial waste.

74. On October 17, 2016, United needed to do additional work to remediate the spill, including vacuuming ponded water containing industrial waste and raking residual solids.

75. On October 17, 2016, the areas on which industrial wastewater had spilled still retained the odor of the spilled industrial liquid waste.

76. From October 13, 2016 until at least October 17, 2016, United violated Wis. Stat. § 292.11(3) and Wis. Admin. Code §§ NR 708.05(1) and (3) by failing to take all necessary, immediate action to halt the discharge of a hazardous substance and to contain, treat, and/or remove a discharged hazardous substances that it caused, possessed, or controlled in order to minimize the harmful effects of the discharge to the air, lands, and waters of the state and to restore the environment to the extent practicable.

### **Third Violation**

#### **Failure to report a hazardous substance spill**

77. Port Wing Wastewater Treatment Facility generates sewage sludge.

78. On or about August 10, 2011, United emptied sewage sludge from a lagoon at the Port Wing Wastewater Treatment Facility and transported the sewage sludge to a local farm for land application.

79. The farm to which United transported the waste was owned by Ken Johnson and located in Bayfield County along Pudas Road between County Highway B and Boulevard Road.

80. While at the farm, a pump United was using to land apply the sewage sludge developed a leak.

81. The leak caused sewage sludge to spill onto the ground around the pump for as long as the pump was operating.

82. United did not cease operations after the pump began to leak.

83. United did not replace or repair the pump after it began to leak.

84. United continued to use the leaking pump.

85. The leaking pump continued to spill sewage sludge onto the ground around the pump as United used it to land apply sewage sludge to the farm field.

86. Enough sewage sludge leaked that it formed a pool around the pump.

87. Sewage sludge contains human pathogens.

88. If spilled or discharged in sufficient quantities or concentrations, sewage sludge poses risks to human health and the environment due to its physical, chemical, or infectious characteristics.

89. The discharge of sewage sludge to the area immediately surrounding the leaking pump was not authorized under any permit.

90. The sewage sludge that spilled around the pump was a hazardous substance.

91. United caused a hazardous substance discharge around the pump by continuing to use the leaking transfer pump.

92. United was aware of the spill.

93. United did not call the DNR spill hotline.

94. United did not notify DNR of the sewage spill.

95. United did not clean up the spill.

96. On or about August 10, 2011, United violated Wis. Stat. § 292.11(2)(a) by failing to immediately notify DNR of an unauthorized discharge of a hazardous substance that it caused.

#### **Fourth Violation**

##### **Failure to take immediate action to remediate a hazardous substance spill.**

97. United did not vacuum up or remove the sewage sludge that United spilled around the pump on Mr. Johnson's Bayfield County farm on August 10, 2011.

98. United did not remediate the contaminated area.

99. United continued to use the leaking pump for all of its land spreading on August 10, 2011 without stopping to repair or replace the pump.

100. United did not take any action to contain, remediate, and/or remove the sewage sludge from the spill site.

101. Sewage sludge spills such as the one caused by United on August 10, 2011 pose potential public health concerns due to the infectious characteristics of sewage sludge and the potential for ponded sewage that is left unremoved to contaminate groundwater or surface water.

102. Sewage sludge spills such as the one caused by United on August 10, 2011 pose potential environmental concerns due to the overapplication of nitrogen and other pollutants.

103. On August 10, 2011, United violated Wis. Stat. § 292.11(3) and Wis. Admin. Code §§ NR 708.05(1) and (3) by failing to take the immediate actions necessary to restore the environment to the extent practicable and minimize the harmful effects to the air, lands, or waters of this state from the hazardous substance discharge that it caused.

### **Fifth Violation**

#### **Failure to properly operate and maintain facilities**

104. Wisconsin Admin. Code ch. NR 205 was promulgated pursuant to Wis. Stat. ch. 283.

105. Wisconsin Admin. Code § NR 205.07(1)(j) requires that every WPDES “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit.”

106. United’s Permit, Section 5.2.4, requires it to properly operate and maintain all of its facilities and treatment and control systems.

107. Wisconsin Admin. Code § NR 205.07(1)(k) requires that every WPDES permittee “shall take all reasonable steps to minimize or prevent the likelihood of any adverse impacts to public health, the waters of the state, or the environment resulting from noncompliance with the permit.”



108. The synthetic material liner of the Big Pond is meant to prevent stored waste from leaking into groundwater.

109. Pressure beneath the liner, which can result from inadequate gas ventilation beneath the liner or from a leak allowing waste to travel beneath the liner, can cause the liner to bulge or balloon up from the bottom of the lagoon.

110. A bulge or balloon in the liner that breaches the surface of the waste in the lagoon is commonly referred to as a “whale” due to its appearance.

111. Excess pressure on the liner of a lagoon can cause the liner to tear and leak waste.

112. Excess pressure beneath the liner of a lagoon can push liquid waste over the edge of a lined lagoon.

113. A whale indicates that maintenance is required to avoid malfunction and/or a spill of the lagoon contents.

114. On October 3, 2016, DNR staff received an anonymous call claiming that the liner of United’s Big Pond was lifting up to create a giant bulge coming out the top of the lagoon.

115. United did not report a whale in the Big Pond on or around October 3, 2016.

116. DNR staff inspected United’s Main Facility on October 3, 2016.

117. On October 3, 2016, there was a large whale in the Big Pond.

118. On October 3, 2016, the whale displaced approximately 20 to 25 percent of the Big Pond's volume.

119. The large size of the whale posed a risk that the pressure beneath the liner could cause it to rip, allowing waste to leak out through the bottom of the Big Pond.

120. If allowed to grow larger, the whale posed a risk that the waste in the Big Pond would be pushed out and spill onto the ground.

121. If the waste leaked or spilled onto the ground, it could enter and contaminate groundwater or be washed into and contaminate surface water.

122. Several times between October 3, 2016 and October 16, 2018, DNR staff requested that United drain the Big Pond and repair the liner to the Big Pond.

123. United did not repair the liner of the Big Pond until October 16, 2018, two years after DNR staff first requested the repair.

124. From at least October 3, 2016 until October 16, 2018 United violated Wis. Admin. Code § NR 205.07(1)(j) and (k), as well as Section 5.2.4 of the Permit, by failing to properly maintain the Big Pond.

### **Sixth Violation**

#### **Prohibited winter land application of waste and land spreading on unapproved sites**

125. Wisconsin Admin. Code ch. NR 214 was promulgated pursuant to Wis. Stat. ch. 283.

126. Pursuant to Wis. Admin. Code § NR 214.17(2)(a), “[a]ll landspreading sites shall be approved by [DNR] prior to waste spreading.”

127. Pursuant to Wis. Admin. Code § NR 214.17(2)(f), “[w]hen the ground is frozen or snow covered, landspreading shall be restricted to sites with slopes of 2% or less. Sites with slopes of 2-6% may be approved for winter time spreading on a case-by-case basis.”

128. Pursuant to Wis. Admin. Code § NR 214.17(2)(f), sites with a slope of greater than six percent are not eligible to receive approval for winter landspreading.

129. Section 5.3.6 of the Permit specifies that any permitted landspreading must adhere to the requirements of Wis. Admin. Code § NR 214.17(2).

130. On or around January 14 through 16, 2017, United landspread industrial liquid waste on fields in Trenton Township, Dodge County, located approximately southwest of N9173 County Highway A.

131. One of the fields on which United was landspreading is identified by DNR number 104564 or, alternatively, the site-field name used by United, MZP-8 (Field MZP-8).

132. On January 14, 2017, DNR staff received a complaint that the landspreading occurring at Field MZP-8 was odorous.

133. On January 14, 2017, a DNR warden investigated the landspreading at Field MZP-8.

134. Portions of Field MZP-8 have a slope between two and six percent, and other portions of Field MZP-8 have a slope greater than six percent.

135. In 2013, DNR approved portions of Field MZP-8, all with a slope of six percent or less, for winter landspreading.

136. When DNR approved a portion of Field MZP-8 for winter landspreading, DNR provided United a map identifying the portions of Field MZP-8 that could not receive land application of waste during any conditions and a map identifying the portions of Field MZP-8 that could not receive land application of waste during winter conditions.

137. Between January 14 through January 16, 2017, United land applied waste on portions of Field MZP-8 that were not approved for winter landspreading.

138. Field MZP-8 was frozen and/or snow-covered during the time that United was landspreading on it in January of 2017, including January 14, 2017 through January 16, 2017.

139. Another field on which United was landspreading from January 14 through January 16, 2017 was near Field MZP-8 but was not approved by DNR for landspreading at any time and did not have a DNR-issued number as a land application site.

140. By January 18, 2017, water and waste were pooling in the areas that were not approved for any landspreading and at the south property line of Field MZP-8.

141. On January 18, 2017, the waste that was pooling at the southern property line of Field MZP-8 was flowing over the property boundary and into an intermittent stream.

142. Both the pooled waste in the areas that were not approved for landspreading and the water in the intermittent stream contained elevated levels of pollutants including total Kjeldahl nitrogen (TKN), phosphorus, chloride, and e. coli.

143. United was not authorized to discharge waste materials into the intermittent stream near Field MZP-8.

144. From January 14 through January 16, 2017, United violated Wis. Admin. Code § NR 214.17(2)(f) and Section 5.3.6 of the Permit by landspreading on a frozen or snow-covered field with a slope of two to six percent that was not approved for spreading under those conditions.

145. From January 14 through 16, 2017, United violated Wis. Admin. Code § NR 214.17(2)(a) and Section 5.3.6 of the Permit by landspreading on a field that was not approved for landspreading.

### **Seventh Violation**

#### **Failure to timely produce reports**

146. Wisconsin Admin. Code § NR 205.07(1)(r) requires monitoring results to be reported at intervals specified in a WPDES permit.

147. Wisconsin Admin. Code § NR 205.07(1)(r)1. requires monitoring results to be reported on electronic discharge monitoring reports or a form approved by DNR for the results of monitoring sludge use or disposal practices.

148. Section 5.3.2 of the 2007 Permit, which was effective from November 1, 2007 until the Permit took effect on July 1, 2014, required United to submit the analytical results from testing liquid wastes, by-product solids, and sludges that are land applied using Wastewater Characteristic Form 3400-049 (“Wastewater Characteristic Report”) no later than the date indicated on the form.

149. Section 5.3.2 of the Permit requires United to submit the analytical results from testing of liquid wastes, by-product solids, and sludges that are land applied using the Wastewater Characteristic Report no later than the date indicated on that form.

150. Section 5.1.1 of the Permit requires United to submit monitoring results on a DNR Wastewater Discharge Monitoring Report no later than the date indicated on the form.

151. Section 6 of the Permit includes a table listing the deadlines when all Wastewater Discharge Monitoring Reports and Wastewater Characteristic Reports must be submitted to DNR.

152. Pursuant to Section 6 of the Permit, the Waste Characteristic Reports and Wastewater Discharge Monitoring Reports must be submitted to DNR by the date listed on the forms.

153. United failed to ever submit 38 Wastewater Characteristic Reports due between January 1, 2012 and January 31, 2015; these remain outstanding.

154. Between July 1, 2014 and April 2, 2019, United failed to submit 67 Wastewater Discharge Monitoring Reports and Characteristic Reports by the required deadlines.

155. Between January 1, 2012 and April 2, 2019, United violated Wis. Admin. Code § NR 205.07(1)(r), Section 5.3.2 of the 2007 Permit, and Sections 5.1.1 and 5.3.2 of the Permit by failing to submit reports by the required deadline.

### **Eighth Violation**

#### **Failure to notify DNR prior to landspreading**

156. Section 3.6.4 of the Permit requires United to notify DNR prior to any landspreading in accordance with the terms of the approved management plan.

157. Between June 8, 2018 and November 12, 2018, United landspread waste on at least 75 different dates and/or sites.

158. On each of these 75 landspreading occasions, United failed to notify DNR before landspreading.

159. During these 75 landspreading occasions, United spread approximately 15,512,559 gallons of waste on 18 fields totaling 497.3 acres.

160. Prior notice of landspreading allows DNR to verify compliance with the Permit and the conditions of the field approval, as well as identify any potential impacts to public health and/or the waters of the state.

161. Between June 8, 2018 and November 12, 2018, United violated Section 3.6.4 of the Permit by landspreading waste without notifying DNR in advance.

### **Ninth Violation**

#### **Failure to complete landspreading logs**

162. Section 3.6.3 of the Permit requires United to maintain daily landspreading logs that include the site, volume, application rate, date, and characterization of waste applied to each site.

163. Pursuant to Section 3.6.3 of the Permit, United must make its daily landspreading logs available to DNR for inspection upon request.

164. Between July 1, 2014 and June 5, 2019, on multiple separate occasions, DNR staff requested copies of certain daily landspreading logs.

165. Between July 1, 2014 and June 5, 2019, DNR staff inspected the landspreading logs produced by United in response to these requests.

166. Between July 1, 2014 and June 5, 2019, 401 of the daily landspreading records United produced were missing one or more of the following categories of information required by Section 3.6.3 of the Permit: site, volume, application rate, date, and characterization of waste applied to each site.

167. Between July 1, 2014 and June 5, 2019, United violated Section 3.6.3 of its Permit by failing to record all of the information required to be maintained in its daily landspreading logs.



### Tenth Violation

#### **Failure to obtain DNR approval to modify an existing facility and failure to notify DNR before commencing construction of facility modifications**

168. Pursuant to Wis. Admin. Code § NR 108.02(13)(e), reviewable projects include any modification or alteration of an existing industrial wastewater facility.

169. Pursuant to Wis. Admin. Code § NR 108.03(1), “[n]o person may commence or cause to be commenced, construction of any reviewable project until final plans and specifications for such project have been reviewed and approved by [DNR] . . . .”

170. Pursuant to Wis. Admin. Code § NR 108.03(4), “[DNR] shall be notified when construction has commenced and again when the facilities are placed in operation.”

171. Pursuant to Wis. Admin. Code § NR 108.04(2)(d):

If construction is not commenced within . . . 2 years from the date of approval for other systems, the approval is void. If approval lapses by passage of time, a new [DNR] approval of plans submitted in accordance with the requirements of s. NR 108.04 (2) must be received before construction can commence.

172. Wisconsin Admin. Code ch. NR 108 was promulgated pursuant to Wis. Stat. § 281.41.

173. Section 5.2.6 of the Permit requires United to report any facility expansion or process modification to DNR so that DNR may modify the WPDES permit to specify and limit any pollutants not previously regulated in the permit.

174. United’s Big Pond is part of its industrial wastewater facility.

175. On January 6, 2009, United submitted an application to modify its facility, which included the construction of the Big Pond.

176. The plans and specifications United submitted on January 6, 2009 included plans to build a ventilation system and a loadout center for the Big Pond.

177. On February 16, 2009, DNR approved United's application to modify its facility.

178. This approval expired on February 16, 2011.

179. United did not submit a new application to construct the ventilation system or the loadout center after February 16, 2011.

180. By February 16, 2011, United did not begin constructing either the ventilation system or the loadout center.

181. As of February 16, 2011, United had not constructed the ventilation system and loadout center for the Big Pond.

182. In November of 2018, United modified its wastewater facility by constructing the ventilation system and the loadout center for the Big Pond.

183. Both the ventilation system and loadout center are reviewable projects under Wis. Admin. Code ch. NR 108.

184. United did not obtain a new DNR approval after February 16, 2011 and prior to constructing the ventilation system and loadout center.

185. United did not notify DNR when it began construction of the ventilation system or the loadout center.

186. DNR was unable to inspect or review the construction of the alterations to United's industrial wastewater facility because it had not received any request for approval or notification that construction was commencing.

187. United violated Wis. Admin. Code §§ NR 108.03(1) and 108.04(2)(d) and Section 5.2.6 of the Permit by failing to obtain DNR approval for construction of its ventilation and loadout center after its February 2009 approval had lapsed.

188. United violated Wis. Admin. Code § NR 108.03(4) by failing to notify DNR when construction of the ventilation system and loadout center commenced.

### **Eleventh Violation**

#### **Exceeding of fecal coliform discharge limits**

189. Section 3.3 of the Permit requires United to comply with the limits established for each of its outfalls.

190. Section 3.3.3 of the Permit establishes a limit of 2,000,000 most probable number per gram of total solids (MPN/g TS) of fecal coliform 2,000,000 for waste discharged from Outfall 030.

191. Section 3.3.8 of the Permit establishes a limit of 2,000,000 MPN/g TS of fecal coliform for waste discharged from Outfall 101.

192. Section 3.3.7 of the Permit establishes a limit of 2,000,000 MPN/g TS of fecal coliform for waste discharged from Outfall 051.

193. Section 3.3.5 of the Permit establishes a limit of 2,000,000 MPN/g TS of fecal coliform for waste discharged from Outfall 111.

194. Section 5.2.1 of the Permit requires United to report any noncompliance which may endanger health or the environment and any violation of a maximum discharge limitation for any pollutants in the Permit to DNR within 24 hours of becoming aware of the noncompliance.

195. On August 29, 2018, United discharged waste from Outfall 030.

196. On August 29, 2018, United discharged waste from Outfall 101.

197. On August 29, 2018, United sampled waste discharged from Outfalls 030 and 101 for fecal coliform.

198. On August 29, 2018, the fecal coliform level for waste discharged from Outfall 030 was 2,040,000 MPN/g TS.

199. On August 29, 2018, the fecal coliform level for waste discharged from Outfall 101 was 2,190,000 MPN/g TS.

200. On February 14, 2019, United discharged waste from Outfall 051.

201. On February 14, 2019, United sampled waste discharged from Outfall 051.

202. On February 14, 2019, the fecal coliform level for waste discharged from Outfall 051 was 2,170,000 MPN/g TS.

203. On October 17, 2019, United discharged waste from Outfall 111.

204. On October 17, 2019, United sampled waste discharged from Outfall 111.

205. On October 17, 2019, the fecal coliform level for waste discharged from Outfall 111 was 12,000,000 MPN/g TS.

206. Waste with a fecal coliform level exceeding 2,000,000 MPN/g TS may pose a public health concern, particularly if waste enters groundwater or surface water.

207. United did not report the violations of the maximum discharge limitations for Outfalls 030, 101, 051, and 111 to DNR within 24 hours.

208. On or after Augusts 30, 2018, United violated Sections 3.3.3, 3.3.8, 3.3.7, 3.3.5, and 5.2.1 of the Permit by discharging waste from Outfalls 030 and 101 that exceeded permitted discharge limitations and by failing to report the noncompliance to DNR.

### **Twelfth Violation**

#### **Failure to provide analytical reports and waste profile sheets within thirty days of accepting a new influent client**

209. Wisconsin Stat. § 283.31(4)(b) requires DNR to prescribe conditions for WPDES permits that require permittees to report to DNR, pursuant to Wis. Stat. § 283.59(1) any “facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants at frequencies or levels in excess of the maximum discharges described in the permit. . . .”

210. Wisconsin Stat. § 283.59(1) requires WPDES permittees discharging pollutants into the waters of the state to report to DNR, “any facility expansion, production increases, or process modifications which result in new or increased discharges of pollutants exceeding the terms of the permit. Such report shall be by submission of a new permit application or, if the new or increased discharge does not violate the effluent limitations specified in the permit, by submission of notice to [DNR] of the nature of such new or increased discharge. . . .”

211. Section 5.2.6 of the Permit requires United to adhere to Wis. Stats. §§ 283.31(4) and 283.59 and further specifies what information must be included in the notice to DNR.

212. Section 1.2.1 of the Permit states:

Immediately prior to discharge of any food processing wastes into a storage or treatment unit, the permittee shall take a representative sample of the material. The sample shall be analyzed in accordance with the terms of this section and the analysis of the new material shall be submitted to the Department within 30 days from the date the sample was taken. If the food processing waste is not approved by the Department in accordance with ch. NR 214 the material may not be stored or land applied again under this permit. . .

213. Section 1.2.1 of the Permit further specifies that the reports to be submitted within 30 days shall include a waste profile sheet detailing the type of material, industrial category, and description of the process or system from which the waste originates.

214. Section 1.2.1 of the Permit further specifies that the reports to be submitted within 30 days shall include analytical reports containing laboratory analyses characterizing the chemical composition of the waste material.

215. After United temporarily stores waste in a storage unit, United later discharges that waste to waters of the state through landspreading.

216. On January 26, 2018, United notified DNR that it had accepted and stored waste from five new influent clients.

217. United failed to provide wastewater analytical reports for 3 of these clients within 30 days as required by Section 1.2.1 of its Permit.

218. United failed to provide waste profile sheets for all 5 clients within 30 days as required by Section 1.2.1 of its Permit.

219. DNR made repeated requests for the waste profile sheets for these five clients from January 25, 2018 to April 12, 2019.

220. United did not provide the five waste profile sheets until April 12, 2019.

221. United did not provide the three missing analytical reports until April 12, 2019.

222. Between January 26, 2018 and April 12, 2019, United stored approximately 2,935,414 gallons of waste without DNR approval.

223. Between January 26, 2018, and April 12, 2019, United violated Wis. Stats. §§ 283.31(4)(b) and 283.59(1) and Sections 1.2.1 and 5.2.6 of the Permit by failing to provide analytical reports and waste profile sheets within 30 days of discharging new client waste to its storage units.

### **Thirteenth Violation**

#### **Failure to report fecal coliform sample results for landsread waste**

224. Pursuant to Permit Section 3.3.3, United is required to sample waste from Outfall 030 for fecal coliform each quarter that waste from Outfall 030 is landsread and report the results to DNR quarterly on Form 3400-49.

225. Pursuant to Permit Section 3.3.8, United is required to sample waste from Outfall 103 for fecal coliform each quarter that waste from Outfall 103 is landsread and report the results to DNR quarterly on Form 3400-49.

226. Pursuant to Permit Section 3.3.7, United is required to sample waste from Outfall 110 for fecal coliform each quarter that waste from Outfall 110 is landsread and report the results to DNR quarterly on Form 3400-49.

227. In 2015, United landsread approximately 28,473,371 gallons of waste from Outfall 030.

228. United did not submit any Form 3400-49 reports of testing Outfall 030 for fecal coliform in 2015.

229. In 2016, United landsread approximately 18,500,624 gallons of waste from Outfall 030.

230. United did not submit any Form 3400-49 reports of testing Outfall 030 for fecal coliform in 2016.

231. In 2017, United landsread approximately 24,302,684 gallons of waste from Outfall 030.

232. United did not submit any Form 3400-49 reports of testing Outfall 030 for fecal coliform in 2017.



233. In 2018, United landspread approximately 769,500 gallons of waste from Outfall 103.

234. United did not submit any Form 3400-49 reports of testing Outfall 103 for fecal coliform in 2018.

235. In 2015, United landspread approximately 1,654 cubic yards of waste from Outfall 110.

236. United did not submit any Form 3400-49 reports of testing Outfall 110 for fecal coliform in 2015.

237. In 2016, United landspread approximately 2,070 cubic yards of waste from Outfall 110.

238. United did not submit any Form 3400-49 reports of testing Outfall 110 for fecal coliform in 2016.

239. In 2017, United landspread approximately 1,545 cubic yards of waste from Outfall 110.

240. United did not submit any Form 3400-49 reports of testing Outfall 110 for fecal coliform in 2017.

241. United violated Permit Section 3.3.3 between 2015 and 2017 by failing to sample and report fecal coliform sampling results during a quarter when waste from Outfall 030 was landspread.

242. United violated Permit Section 3.3.8 in 2018 by failing to sample and report fecal coliform sampling results during a quarter when waste from Outfall 103 was landspread.

243. United violated Permit Section 3.3.7 between 2015 and 2017 by failing to sample and report fecal coliform sampling results during a quarter when waste from Outfall 110 was landspread.

#### **Fourteenth Violation**

##### **Exceeding chloride landspreading limit**

244. Pursuant to Section 5.3.9 of the Permit, United may not apply more than 340 pounds of chloride per acre per 2-year period when it landspreads industrial liquid wastes or industrial by-product solids.

245. Pursuant to Wis. Admin. Code § NR 214.17(4)(d)7. and (e)4., the total pounds of chloride land applied when industrial liquid wastes or industrial byproduct solids are landspread shall be limited to either 170 pounds per acre per year or 340 pounds per acre per 2-year period.

246. Section 5.3.9 of the Permit also applies when United landspreads a mixture of industrial and municipal waste.

247. On February 28, 2020, United submitted a report to DNR in which it estimated that, among sites where it landspread mixed industrial and municipal waste, the average total chloride landspread per year ranged from 350 pounds of chloride per acre per year to 776 pounds of chloride per acre per year in the years 2017, 2018, and 2019.

248. United stated in its February 28, 2020 report that it landspread an annual total ranging from 28.5 million gallons to 47 million gallons of mixed industrial and municipal waste in 2017, 2018, and 2019.

249. United landsread greater than 340 pounds of chloride per acre per 2-year period on at least one occasion in 2019.

250. United violated Section 5.3.9 of the Permit by landspreading greater than 340 pounds of chloride per acre per 2-year period in 2019.

### **Fifteenth Violation**

#### **Failure to report chloride landspreading**

251. Section 5.3.4 of the Permit requires United to report its annual land application loadings for each landspreading site on Form 3400-55 by January 31 of the following year.

252. Sections 3.3.1.1, 3.3.3.1, 3.3.4.1, 3.3.5.1, 3.3.7.1, and 3.3.8.1 of the Permit require United to report the total chlorides land applied from industrial or mixed industrial and municipal waste in United's annual 3400-55 report.

253. In its 3400-55 report for 2019, United reported landspreading industrial or mixed industrial and municipal waste on at least 53 landspreading sites

254. United did not report any chloride amount landsread in 2019 for 50 of the 53 landspreading sites on which it landsread industrial or mixed industrial and municipal waste.

255. For the remaining 3 of 53 landspreading sites on which United landsread industrial or mixed industrial and municipal waste in 2019, United only reported the total chloride applied from November 25, 2019 to December 31, 2019, and not the complete annual total chloride.

256. United violated Section 5.3.4 of the Permit by failing to report the total chloride applied to sites on which it landspread industrial or mixed industrial and municipal waste in 2019.

### **PENALTY PROVISIONS**

257. Wisconsin Stat. §§ 283.91(1) and 299.95 authorize the Wisconsin Department of Justice to enforce Wis. Stat. chs. 281, 283, and 292 and to initiate a civil action seeking injunctive relief for any violation of Wis. Stat. chs. 281, 283, and 292, rules promulgated under those chapters, and terms or conditions of permits issued under those chapters.

258. Under Wis. Stat. § 281.98(1), any person who violates Wis. Stat. ch. 281, any rule promulgated under it, or plan approval or license issued under it shall forfeit not less than \$10 nor more than \$5,000 for each violation.

259. Pursuant to Wis. Stat. § 281.98(1), each day of continued violation is a separate offense.

260. Wisconsin Stat. § 281.98(2) states that “the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of [Wis. Stat. ch. 281], including attorney fees.”

261. Under Wis. Stat. § 283.91(2), any person who violates Wis. Stat. ch. 283, a rule promulgated under it, or any term or condition of a permit issued under it shall forfeit not more than \$10,000 but not less than \$10 for each day of each violation.

262. Wisconsin Stat. § 292.99(1) provides that any person who violates Wis. Stat. ch. 292 shall forfeit not more than \$5,000 but not less than \$10 for each day of each violation.

263. Pursuant to Wis. Stat. § 292.99(1), each day of continued violation is a separate offense.

264. Wisconsin Stat. § 299.95 authorizes the circuit court for Dane County to hear any matter and to enforce chapters 281, 283 and 292 by injunction and other relief.

265. Wisconsin Stat. § 281.98(3) provides that the court may, in addition to imposing forfeitures, order a defendant to “abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.”

266. Wisconsin Stat. § 283.87(1)–(3) provides that the court may, in addition to imposing forfeitures, order a defendant to pay to the Department of Natural Resources the costs of removing, terminating, or remedying the adverse effects on the water environment resulting from the deposit of pollutants into the waters of the state in violation of Wis. Stat. ch. 283, including the cost of replacing fish destroyed by the discharge or deposit, and may authorize an award to be used to restore or develop the water environment for public use.

267. Wisconsin Stat. §§ 283.91(5) and 292.99(2) provide that the court may, in addition to imposing forfeitures, order a defendant to pay to the Department of

Natural Resources and to the Department of Justice the reasonable and necessary expenses of the investigation and prosecution of the defendant's violation of those chapters.

### **RELIEF REQUESTED**

Plaintiff State of Wisconsin asks for judgment as follows:

1. Forfeitures as provided for in Wis. Stat. §§ 281.98(1), 283.91(2) and 292.99(1) for each day of each violation of those chapters;
2. The 26 percent penalty surcharge provided for in Wis. Stat. § 814.75(18), the 20 percent environmental surcharge provided for in 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 surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);
3. The costs and disbursements of this action, including attorney fees incurred by the Department of Justice and the costs of investigation incurred by the Department of Natural Resources under Wis. Stat. §§ 283.91(5) and 292.99(2);
4. The costs of the investigation and the reasonable and necessary expenses of the prosecution, including attorney fees, as provided for in Wis. Stat. § 281.98(2);
5. Such other and further relief as the Court may find just and appropriate.

Dated this 10th day of November, 2022.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by Jennifer S. Limbach

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