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Clerk of Circuit Court
Manitowoc County, WI
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STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY
BRANCH __

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

Plaintiff,

v.

Case No. 21-CX-____
Complex Forfeiture: 30109

MAPLE LEAF DAIRY, INC.
6832 County Road X
Cleveland, Wisconsin 53015,

Defendant.

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

COMPLAINT

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 defendant 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 Maple Leaf Dairy, Inc. (Maple Leaf Dairy) is a domestic business with its principal office located at 6832 County Road X, Cleveland, Wisconsin 53015. Its registered agent is Diane Leiteritz at the same address.

3. At all times relevant to this Complaint, Maple Leaf Dairy owned and operated a large concentrated animal feeding operation (CAFO) at several locations. Maple Leaf Dairy operates at the following locations: 6832 County Road X, Cleveland, Manitowoc County (the Home Farm); 7920 County Road X, Cleveland, Manitowoc County (the West Farm); 11228 South Union Road, Newton, Manitowoc County (the K&K Farm); 11711 Centerville Road, Cleveland, Manitowoc County (the Milton Farm); 6028 County Road X, Cleveland, Manitowoc County (the Koenig Farm); and 13317 Point Creek Road, Newton, Manitowoc County (the Ketelhohn Farm).

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

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

6. Wisconsin Stat. § 283.01(20) defines “waters of the state” as “those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction.”

7. Wisconsin Admin. Code ch. NR 243 governs issuance of permits required by Wis. Stat. ch. 283 for animal feeding operations.

8. 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.

9. On July 5, 2012, DNR issued Maple Leaf Dairy Wisconsin Pollutant Discharge Elimination System permit no. WI-0058602-03-0 that authorized Maple Leaf Dairy to discharge to the surface and groundwater in the Sevenmile and Silver Creeks watershed and Pigeon River watershed in accordance with the terms of the permit (the WPDES permit). The WPDES permit was effective July 6, 2012 and expired on June 30, 2017.

10. Pursuant to Wis. Stat. §§ 227.51(2) and 283.53(3) and Wis. Admin. Code § NR 200.06, after June 30, 2017, Maple Leaf Dairy continues to operate under the terms and conditions of the expired WPDES permit until DNR reissues the permit.

VIOLATION ONE: UNAUTHORIZED DISCHARGES TO WATERS OF THE STATE

11. 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.

12. Section 1.1 of the WPDES permit restates the discharge limitation in Wis. Admin. Code § NR 243.13(2)(a).

13. Wisconsin Admin. Code § NR 243.13(5)(a) states, “If a discharge of manure or process wastewater pollutants to waters of the state occurs, including a discharge allowed under subs. (2) to (4), the discharge shall comply with groundwater and surface water quality standards.”

14. Around March 26, 2015, staff from the Manitowoc County Soil and Water Department received a complaint about water quality in an unnamed tributary directly north of the Home Farm (the tributary). This tributary flows southeast into Fisher Creek.

15. The tributary is a water of the state.

16. The tributary is a navigable water.

17. On March 26, 2015, staff from the Manitowoc County Soil and Water Department inspected the tributary where it flows under Center Road. The tributary contained dark, opaque water.

18. Staff from the Manitowoc County Soil and Water Department walked the tributary upstream to the impoundment located west of Center Road. The impoundment contained dark, opaque water.

19. Manitowoc County Soil and Water Department staff notified Maple Leaf Dairy of water quality issues in the tributary and asked Maple Leaf Dairy to investigate the source of contamination immediately.

20. On April 2, 2015, Manitowoc County Soil and Water Department staff forwarded photographs from their March 26, 2015 inspection to DNR Agricultural Runoff Management Specialist Danielle Block.

21. On April 8, 2015, Specialist Block and DNR Agricultural Runoff Management Specialist Andrea Gruen inspected the Home Farm and West Farm. Former Maple Leaf Dairy owner Tod Leiteritz and Maple Leaf Dairy operator Steve Ohlrogge were present during the inspection.

22. Maple Leaf Dairy transported feed storage leachate from the West Farm to the Home Farm through a tile line (the leachate tile line). The leachate tile line was buried generally along a grass waterway in the agricultural field between the two farms.

23. On April 8, 2015, Maple Leaf Dairy said the leachate tile line had blown out in the agricultural field. The dairy had repaired the leachate tile line a week earlier.

24. Specialists Block and Gruen walked along the leachate tile line and discovered a second blow out in the agricultural field between the Home Farm and West Farm. Water was flowing out of the leachate tile line and down the grass waterway. The water was clear to brown in color and smelled like feed storage leachate.

25. The grass waterway ends in the agricultural field.

26. The agricultural field contains buried field tile lines that drain water off the field and carry it to the tributary and impoundment.

27. On April 8, 2015, Specialists Block and Gruen walked up to the impoundment on the tributary. The impoundment contained greyish brown, opaque water.

28. Specialist Block told Maple Leaf Dairy to stop using the leachate tile line.

29. Specialists Block and Gruen inspected the vegetated treatment area (VTA) at the West Farm.

30. A grass swale runs north of the West Farm (the West Farm swale). The West Farm swale runs north of the feed storage area and VTA to a road culvert under Westview Road.

31. The road culvert under Westview Road discharges into a waterway (the waterway) that flows east into the tributary.

32. The waterway is a water of the state.

33. The waterway is navigable from Westview Road downstream.

34. The VTA at the West Farm had areas where runoff had channelized and ponded on the northern and eastern edges of the VTA.

35. Channelized runoff had created a deep gully on the northeastern end of the VTA. Runoff was flowing through this gully into the West Farm swale.

36. Runoff from the VTA was flowing into the West Farm swale, through the road culvert under Westview Road, and into the waterway.

37. Specialists Block and Gruen inspected the feed storage area at the West Farm.

38. Feed leachate was weeping out of the north side of the feed bunker.

39. Patches of burned out and dead vegetation led from the feed storage bunker to the West Farm swale.

40. On May 28, 2015, Specialist Block inspected the West Farm. Mr. Ohlogge was present during the inspection.

41. Feed leachate was weeping out of the north side of the feed bunker. The leachate pooled on the ground and was dark brown and foamy.

42. The pooled feed leachate was flowing into the West Farm swale north of the feed storage area.

43. The VTA had areas where runoff had channelized and ponded. Runoff was flowing from the VTA into the West Farm swale. The runoff was brown and opaque.

44. Water in the West Farm swale immediately upstream of the road culvert under Westview Road was brown to black in color.

45. Water in the waterway on the east side of Westview Road was brown to grey in color and opaque.

46. Specialist Block collected a water sample in the West Farm swale on the west side of Westview Road immediately upstream of the road culvert (the first water sample).

47. The first water sample was sent to the Wisconsin State Laboratory of Hygiene for analysis.

48. The first water sample had total phosphorus of 9.45 mg/L. For comparison, pursuant to Wis. Admin. Code § NR 102.06(3)(b), the phosphorous water quality criteria for the waterway and tributary is 0.075 mg/L (75 µg/L).

49. The first water sample had ammonia nitrogen at 7.55 mg/L. For comparison, ammonia nitrogen is considered toxic to aquatic life when levels exceed 0.4 mg/L.

50. On June 22, 2015, DNR sent a Notice of Violation to Maple Leaf Dairy alleging the dairy was discharging feed storage leachate and runoff to the waterway in violation of its WPDES permit.

51. On July 9, 2015, DNR staff met with Maple Leaf Dairy to discuss the Notice of Violation. The dairy stated that it was and would continue to collect 100 percent of the runoff from the feed storage area at the West Farm until the dairy could make modifications to the VTA to adequately treat process wastewater.

52. On September 29, 2016, Specialist Gruen and former DNR Agricultural Runoff Management Specialist Casey Jones performed an unannounced inspection of the West Farm from the Westview Road right-of-way.

53. The VTA had areas of ponded, dark-colored runoff.

54. The runoff on the VTA was flowing into the West Farm swale and through the road culvert under Westview Road into the waterway.

55. The dark-colored runoff had a strong odor of feed leachate.

56. The water in the waterway on the east side of Westview Road was dark, opaque, and had a strong odor.

57. Specialists Gruen and Jones collected a water sample from the waterway on the east side of Westview Road (the second water sample).

58. The water sample was sent to the Wisconsin State Laboratory of Hygiene for analysis.

59. The second water sample had *E. coli* of 61,310 CFU/100 mL. For comparison, DNR's Beach Monitoring Program requires closure of public beaches on lakes when water quality samples are above 1,000 CFU/100 mL for *E. coli*. The Beach Monitoring Program requires an advisory notice warning the public to swim at their own risk when water quality samples are above 235 CFU/100 mL for *E. coli*.

60. The second water sample had total phosphorus of 47.3 mg/L.

61. The second water sample had ammonia nitrogen at 73.7 mg/L.

62. The second water sample had a biological oxygen demand of 2,580 mg/L. For comparison, untreated municipal wastewater generally has a biological oxygen demand between 100 and 300 mg/L.

63. On September 29, 2016, after the inspection, Specialist Gruen sent an email to Mr. Leiteritz instructing the dairy to stop discharging feed storage leachate and runoff to the waterway immediately.

64. On October 10, 2016, Specialist Gruen and DNR Agricultural Runoff Management Specialist Ben Uvaas inspected the West Farm. Mr. Leiteritz, Mr. Ohlogge, and Kevin Beckard were present during the inspection.

65. Mr. Ohlogge said the dairy was in the process of constructing new runoff controls on the feed storage area. Mr. Ohlogge admitted the previous runoff

controls were removed on September 23, 2016. Mr. Ohlrogge admitted no runoff controls were operating for the feed storage area from September 23 to September 29, 2016.

66. On October 10, 2016, a new concrete tank had been recently installed on the eastern end of the feed storage area.

67. Feed storage leachate and runoff was flowing off the feed storage area, around the north side of the concrete tank, and across the former VTA.

68. Feed storage leachate and runoff was ponded on the northern and eastern ends of the former VTA.

69. Ponded feed storage leachate and runoff was black, odorous, foamy, and had algae blooms.

70. The feed storage leachate and runoff was flowing into the West Farm swale, through the culvert under Westview Road, and into the waterway.

71. On the east side of Westview Road, the vegetation on the banks of the waterway was burned out and dead.

72. On October 10, 2016, no mechanisms were in place to collect feed storage leachate and runoff.

73. On October 10, 2016, Maple Leaf Dairy had not stopped discharges to the waterway after being advised to do so by Specialist Gruen on September 29, 2016.

74. On October 19, 2016, DNR staff met with Maple Leaf Dairy representatives to discuss noncompliance at the dairy. Mr. Leiteritz admitted that

from September 23, 2016 to September 29, 2016, the feed storage area at the West Farm did not have any runoff controls.

75. Upon information and belief, on March 26, 2015, April 8, 2015, May 28, 2015, and from around September 23, 2016 through at least October 10, 2016, Maple Leaf Dairy violated Wis. Admin. Code § NR 243.13(2)(a) and section 1.1 of the WPDES permit or Wis. Admin. Code § NR 243.13(5)(a) when it discharged manure and process wastewater from the West Farm and the Home Farm to the waterway or tributary.

**VIOLATION TWO: FAILURE TO PROPERLY OPERATE AND MAINTAIN
THE VTA AT THE WEST FARM**

76. Wisconsin Admin. Code § NR 243.17 states, “The permittee shall operate all constructed facilities and systems in accordance with applicable requirements of s. NR 243.13, the operation and maintenance plan for a given facility or system, and WPDES permit conditions.”

77. On April 15, 2009, DNR received an Operation and Maintenance Plan for the leachate collection system, including the VTA, at the West Farm from Maple Leaf Dairy’s engineer.

78. The Operation and Maintenance Plan stated Maple Leaf Dairy must:

1. Inspect and remove any foreign debris from the vegetated treatment strip monthly;
2. Check and restore grades to original design as required;
3. Maintain vigorous growth of vegetative coverings. This includes reseeded, fertilization, and application of herbicides when necessary

7. Limit traffic over the vegetated treatment strip to maintain excellent vegetative cover; and

8. Immediately repair any vandalism, vehicular, or livestock damage.

79. On April 8, 2015, the VTA at the West Farm had tire tracks on it. This allowed runoff to flow through the channels created by the tire tracks.

80. On April 8, 2015, the VTA had areas of dead vegetation.

81. On April 8, 2015, the VTA had areas of channelization on its northern and eastern edges.

82. On April 8, 2015, Specialist Block told Maple Leaf Dairy that the VTA did not comply with permit conditions and the dairy needed to address the VTA's deficiencies.

83. On May 28, 2015, a significant amount of solid material was accumulated before the first spreader bar.

84. On May 28, 2015, the VTA had areas of dead vegetation.

85. On May 28, 2015, the VTA had areas of channelization on its northern and eastern edges.

86. On July 9, 2015, Maple Leaf Dairy said it was and would continue to collect 100 percent of the runoff from the feed storage area at the West Farm until the dairy could make modifications to the VTA to adequately treat process wastewater.

87. Upon information and belief, from at least April 8, 2015 until around July 9, 2015, Maple Leaf Dairy violated Wis. Admin. Code § NR 243.17 by failing to

operate the VTA at the West Farm in compliance with the Operation and Maintenance Plan for the VTA.

**VIOLATIONS THREE THROUGH FIVE: CONSTRUCTION OF
REVIEWABLE FACILITIES WITHOUT APPROVED PLANS
AND SPECIFICATIONS**

88. Wisconsin Admin. Code § NR 243.15(1)(a)1. requires owners and operators of CAFOs to submit plans and specifications for proposed reviewable facilities or systems to DNR for review.

89. 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 [DNR] in writing.”

90. Pursuant to Wis. Admin. Code § NR 243.03(56), “reviewable facility or system” means “runoff control structures, feed and other raw materials storage, . . . 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.”

I. Violation Three: Construction of Slurrystore at Milton Farm

91. On September 8, 2015, Specialists Block and Gruen inspected the Milton Farm.

92. A blue Slurrystore had been constructed at the Milton Farm.

93. The blue Slurrystore had the capacity to store 750,000 gallons of manure.

94. The blue Slurrystore was constructed in 2014.

95. The blue Slurrystore is a “reviewable facility” as defined in Wis. Admin. Code § NR 243.03(56).

96. Based upon information and belief, Maple Leaf Dairy had not submitted plans and specifications to DNR to construct the Slurrystore at the Milton Farm.

97. Based upon information and belief, in 2014, Maple Leaf Dairy violated Wis. Admin. Code § NR 243.15(1)(a)1. when it constructed the blue Slurrystore at the Milton Farm before plans and specifications had been approved by DNR.

II. Violation Four: Construction of Runoff Controls on the Calf Hutch Area at the K&K Farm

98. On September 8, 2015, Specialists Block and Gruen inspected the K&K Farm.

99. Maple Leaf Dairy was constructing a calf hutch area with a runoff control system.

100. The runoff control system for the calf hutch area is a “reviewable facility or system” as defined in Wis. Admin. Code § NR 243.03(56).

101. Based upon information and belief, Maple Leaf Dairy had not submitted plans and specifications to DNR to construct a runoff control system for the calf hutch area at the K&K Farm.

102. On February 24, 2017, Maple Leaf Dairy submitted post-construction documentation and an engineering evaluation for the runoff control system for the calf hutch area to DNR.

103. On March 29, 2017, DNR responded to the engineering evaluation by letter to Maple Leaf Dairy. DNR said that the runoff control system was not in

compliance with Wis. Admin. Code § NR 243.15(4) and NRCS Standard 634. DNR said the transfer system transported runoff from the calf hutch area to the existing VTA. The existing VTA had an eight-inch tile line that discharged runoff into a wetland.

104. Based upon information and belief, sometime prior to September 8, 2015, Maple Leaf Dairy violated Wis. Admin. Code § NR 243.15(1)(a)1. when it began construction of a runoff control system for the calf hutch area at the K&K Farm before plans and specifications had been approved by DNR.

III. Violation Five: Construction of Runoff Controls and Expansion of the Feed Pad at the West Farm

105. On November 19, 2015, Maple Leaf Dairy's engineer submitted plans and specifications to DNR for modifications to the runoff control system on the feed storage area at the West Farm.

106. On February 4, 2016, DNR issued a written decision rejecting Maple Leaf Dairy's plans and specifications for modifications to the runoff control system on the feed storage area at the West Farm. DNR rejected the plans and specifications because a calculation error led to a gross underestimate of the amount of runoff from the feed storage area.

107. On September 29, 2016, Specialists Gruen and Jones observed construction occurring near the southeast corner of the feed storage area at the West Farm.

108. On September 30, 2016, Maple Leaf Dairy's engineer submitted revised plans and specifications to DNR for modifications to the runoff control system on the feed storage area at the West Farm.

109. On October 10, 2016, Specialists Gruen and Uvaas observed construction occurring at the feed storage area and on the runoff controls for the feed storage area at the West Farm.

110. A new concrete tank had been recently installed by Maple Leaf Dairy to collect runoff from the feed storage area.

111. The area surrounding the tank was disturbed and piles of material, including gravel, were located near the tank.

112. The runoff control system on the feed storage area at the West Farm is a "reviewable facility" as defined in Wis. Admin. Code § NR 243.03(56).

113. On October 10, 2016, the feed pad in the feed storage area had been recently expanded.

114. Maple Leaf Dairy was storing feed in the newly constructed feed pad expansion.

115. The expansion of the feed pad in the feed storage area at the West Farm is a "reviewable facility" as defined in Wis. Admin. Code § NR 243.03(56).

116. Specialist Gruen told Maple Leaf Dairy that DNR received plans and specifications for modifications to the runoff control system for the feed storage area on September 30, 2016, and that these plans and specifications had not been

approved. Specialist Gruen told Maple Leaf Dairy that DNR had not received any plans and specifications to expand the feed pad in the feed storage area.

117. Maple Leaf Dairy representatives stated that they believed plans and specifications for modifications to the runoff control system on the feed storage area and feed pad expansion had already been submitted to and approved by DNR.

118. On October 19, 2016, DNR staff met with Maple Leaf Dairy. Mr. Leiteritz said after DNR rejected the November 19, 2015 plans and specifications, “out of nowhere” the contract company had the runoff collection tank delivered. Mr. Leiteritz said there were only two days the large crane required to install the tank could be onsite, so the dairy went ahead and constructed the runoff controls.

119. Former DNR Enforcement Specialist Kody Hansen asked why the feed pad was expanded without approval as well. Mr. Leiteritz admitted the contractor was already onsite, so the dairy had the contractor expand the feed pad too.

120. On October 21, 2016, DNR issued a written decision rejecting Maple Leaf Dairy’s September 30, 2016 plans and specifications for modifications to the runoff control system on the feed storage area at the West Farm. DNR rejected the plans and specifications because the dairy had already begun construction on the modifications.

121. Upon information and belief, around September 23, 2016, Maple Leaf Dairy violated Wis. Admin. Code § NR 243.15(1)(a)1. when it began construction of the runoff control system for the feed storage area at the West Farm before plans and specifications had been approved by DNR.

122. Upon information and belief, sometime around September 23, 2016, Maple Leaf Dairy violated Wis. Admin. Code § NR 243.15(1)(a)1. when it constructed an expansion to the feed pad in the feed storage area at the West Farm before plans and specifications had been approved by DNR.

VIOLATION SIX: FAILURE TO EVALUATE FEED STORAGE AREA AT WEST FARM

123. Section 2.8 of the WPDES permit requires Maple Leaf Dairy to submit an engineering evaluation for the feed storage area and associated runoff controls at the West Farm by June 30, 2015. If the evaluation discloses any adverse conditions, section 2.8 of the WPDES permit requires Maple Leaf Dairy to submit plans and specifications to correct those conditions by September 30, 2015. Section 2.8 requires Maple Leaf Dairy to complete construction of any improvements to correct the adverse conditions by August 30, 2016.

124. Around September 2016, Maple Leaf Dairy expanded the feed pad and modified the runoff controls at the West Farm without approved plans and specifications by DNR.

125. On March 23, 2017, Maple Leaf Dairy submitted post-construction documentation and an engineering evaluation for only the expanded portion of the feed pad and modified runoff control system at the West Farm.

126. On July 28, 2017, DNR responded to the engineering evaluation by letter to Maple Leaf Dairy. DNR stated that the feed storage area was not in compliance with Wis. Admin. Code § NR 243.15(9) and NRCS Standard 629. DNR stated that the dairy failed to evaluate areas of the feed storage area that had been

previously constructed. The dairy also failed to discuss the volume of runoff that would be generated by the feed storage area.

127. On April 13, 2020, Maple Leaf Dairy submitted to DNR an engineering evaluation for the entire feed storage area and associated runoff controls at the West Farm. The evaluation did not disclose any adverse conditions.

128. From June 30, 2015 to April 13, 2020, Maple Leaf Dairy continuously violated section 2.8 of the WPDES permit by failing to submit an engineering evaluation of the feed storage area and associated runoff controls at the West Farm.

**VIOLATION SEVEN: FAILURE TO EVALUATE FEED STORAGE AREA
AND RUNOFF CONTROLS AT K&K FARM**

129. Section 2.9 of the WPDES permit requires Maple Leaf Dairy to submit an engineering evaluation for the feed storage area and associated runoff controls at the K&K Farm. This requirement applies if Maple Leaf Dairy stores feed in the feed storage area during the WPDES permit term. If the evaluation discloses any adverse conditions, section 2.9 of the WPDES permit requires Maple Leaf Dairy to submit plans and specifications to DNR to correct those conditions.

130. On September 8, 2015, Specialists Block and Gruen observed that Maple Leaf Dairy was storing feed in the feed storage area at the K&K Farm.

131. Based on information and belief, prior to September 8, 2015, Maple Leaf Dairy had not submitted an engineering evaluation for the feed storage area to DNR.

132. On October 29, 2015, DNR sent a Notice of Violation to Maple Leaf Dairy stating that the dairy needed to complete an engineering evaluation of the feed storage area and runoff controls at the K&K Farm.

133. On November 19, 2015, DNR staff met with representatives of Maple Leaf Dairy. The dairy agreed to submit to DNR an evaluation of the feed storage area at the K&K Farm by January 4, 2016.

134. On October 10, 2016, Specialists Uvaas and Gruen inspected the feed storage area and runoff controls at the K&K Farm.

135. On October 10, 2016, Maple Leaf Dairy was storing feed in the feed storage area.

136. Runoff from the feed storage area was not being captured by the existing runoff controls. Runoff was flowing into and ponding on the driveway.

137. Leachate was leaking through the west wall of the feed bunker. The leachate had burned out and killed the vegetation downslope from the feed bunker. Substantial erosion had occurred and a deep gully had formed where the vegetation was dead.

138. On October 19, 2016, DNR met with Maple Leaf Dairy. Mr. Leiteritz said that he thought Maple Leaf Dairy's engineer had already submitted plans to DNR to replace the feed storage area and runoff controls at the K&K Farm. Mr. Leiteritz said that Maple Leaf Dairy's engineer would work on submitting plans and specifications to DNR immediately to replace the feed storage area and runoff controls.

139. Based upon information and belief, from October 2016 through September 2020, Maple Leaf Dairy did not submit an engineering evaluation or plans

and specifications to DNR for the feed storage area and runoff controls at the K&K Farm.

140. Based upon information and belief, during 2020, Maple Leaf Dairy decided to abandon the feed storage area at the K&K Farm.

141. On September 8, 2020, Maple Leaf Dairy submitted an abandonment plan for the feed storage area to DNR, which DNR conditionally approved on September 22, 2020.

142. On December 22, 2020, Maple Leaf Dairy submitted to DNR post-abandonment documentation for the feed storage area at the K&K Farm.

143. Upon information and belief, since at least September 8, 2015 through sometime during 2020, Maple Leaf Dairy continuously violated section 2.9 of the WPDES permit by storing feed in the feed storage area at the K&K Farm without first submitting an evaluation to DNR of the feed storage area and associated runoff controls.

VIOLATION EIGHT: FAILURE TO INSTALL PERMANENT MARKERS IN WASTE STORAGE FACILITIES

144. Section 2.6 of the WPDES permit requires Maple Leaf Dairy to install permanent markers in its liquid manure storage facilities by December 1, 2012. Section 2.6 of the WPDES permit requires Maple Leaf Dairy to submit documentation to DNR by January 31, 2013, showing the permanent markers are installed.

145. On October 15, 2015, Maple Leaf Dairy told DNR that it had installed maximum operating level markers in all of its liquid manure storage facilities and would provide post-construction documentation to DNR in its 2015 annual report.

146. Based on information and belief, Maple Leaf Dairy's 2015 annual report did not contain documentation that markers had been installed in all of its liquid manure storage facilities.

147. On December 9, 2016, Maple Leaf Dairy told DNR it would provide documentation to DNR in its 2016 annual report that the maximum operating level markers were correctly installed in all of its liquid manure storage facilities.

148. On January 31, 2017, Maple Leaf Dairy submitted its 2016 annual report to DNR. The annual report contained documentation that maximum operating level markers were installed in all of the dairy's liquid manure storage facilities except for the facilities at the Koenig and Ketelhohn farms.

149. On February 3, 2017, Maple Leaf Dairy submitted to DNR documentation that the maximum operating level markers were installed in the liquid manure storage facilities at the Ketelhohn and Koenig farms.

150. From January 31, 2013 until February 3, 2017, Maple Leaf Dairy continuously violated section 2.6 of the WPDES permit by failing to submit documentation to DNR that permanent markers were installed in its liquid manure storage facilities.

PENALTIES AUTHORIZED

151. 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.

152. 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.

153. 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.

154. 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.

155. 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.

PENALTIES REQUESTED

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

1. An injunction, pursuant to Wis. Stat. §§ 283.91(1) and 299.95, requiring Maple Leaf Dairy to bring its facilities into compliance with Wis. Admin. Code ch. NR 243 and the WPDES permit;

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 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

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

Dated this 8th day of February, 2021.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
Assistant Attorney General
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