

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

Plaintiff,

v.

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

SOUTHWESTERN WISCONSIN DAIRY
GOAT PRODUCTS COOPERATIVE
A.K.A. MT. STERLING CHEESE
Post Office Box 103
Mt. Sterling, Wisconsin, 54645,
and

PATRICIA LUND,
1492 Linton
Monona, Iowa, 52159,

Defendants.

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

CIVIL COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General Tressie K. Kamp, 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 Southwestern Wisconsin Dairy Goat Products Cooperative, a.k.a. Mt. Sterling Cheese (Mt. Sterling) is a membership cooperative with its principal office located at P.O. Box 103, Mt. Sterling, Wisconsin 54645. Mt. Sterling does not have a registered agent listed on the Wisconsin Department of Financial Institutions website.

3. Defendant Patricia Lund is an adult resident of the State of Iowa, residing at 1492 Linton, Monona, Iowa 52159 during all times relevant to the allegations in this Complaint.

4. Ms. Lund was the Vice President of Mt. Sterling at all times relevant to the allegations in this Complaint. As the Vice President of Mt. Sterling, Ms. Lund was personally involved in authorizing, supervising, directing, performing, and failing to perform the acts that constitute the violations alleged in this Complaint.

5. At all times relevant to the allegations in this Complaint, Mt. Sterling owned and operated a facility that processed goat milk, located at 505 Diagonal Street, Mt. Sterling, Crawford County, Wisconsin 54645 (the Facility).

6. The State of Wisconsin enacted Wis. Stat. ch. 283 and DNR administers regulations to prevent and minimize water pollution in the State.

7. 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.

8. At all times relevant to the allegations in this Complaint, Mt. Sterling held Wisconsin Pollutant Discharge Elimination System permit no. WI-0062839-03-0 (WPDES Permit).

9. The WPDES Permit authorized Mt. Sterling to landspread and otherwise dispose of wastewater generated by the Facility.

10. Pursuant to Wis. Admin. Code § NR 214.02(1) and the WPDES Permit, Mt. Sterling was subject to the requirements in Wis. Admin. Code ch. NR 214, which regulates the land treatment of industrial liquid wastes.

11. The WPDES Permit became effective on May 11, 2016, and expires on March 21, 2021.

VIOLATION ONE: UNPERMITTED DISCHARGE OF POLLUTANTS TO WATERS OF THE STATE ON JUNE 5 AND JUNE 6, 2018

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

13. The Facility has estimated that it produces approximately 337,600 gallons of wastewater per year, which consists of wash-water and liquid whey.

14. The Facility's wastewater contains elevated levels of chlorides and nitrates.

15. Wastewater generated at the Facility is a pollutant.

16. WPDES Permit condition 1.1 limits permissible discharge(s) from Mt. Sterling to "land application of the waste type(s) designated for the listed sampling point(s) on [DNR] approved land spreading sites or by hauling to another facility."

17. The WPDES Permit therefore does not authorize any point source discharge(s) from the Facility.

18. On June 5, 2018, DNR Conservation Warden Cody Adams (Warden Adams) inspected the Facility.

19. On June 5, 2018, Warden Adams observed the discharge of wastewater from the Facility.

20. On June 5, 2018, wastewater was flowing in a south-southeast direction from a manhole behind the Facility through a cornfield and into a pond on the property of Darryl Aspenson (Aspenson pond).

21. The WPDES Permit does not authorize Mt. Sterling to discharge wastewater from the manhole behind the Facility.

22. The pond on the Aspenson property is a water of the State.

23. On June 5, 2018, Warden Adams took a sample of the wastewater being discharged from the manhole behind the Facility.

24. On June 5, 2018, Warden Adams took a sample of water from the Aspenson pond.

25. On June 6, 2018, Warden Adams inspected the Facility.

26. On June 6, 2018, Warden Adams observed the discharge of wastewater from the Facility.

27. On June 6, 2018, wastewater was flowing in a south-southeast direction from a manhole behind the Facility through a cornfield and into the Aspenson pond.

28. DNR sent the water samples taken on June 5, 2018, from the Mt. Sterling manhole and the Aspenson pond to the Wisconsin State Laboratory of Hygiene for analysis.

29. The sample from the Mt. Sterling manhole had a Total Phosphorus concentration of 4.03 mg/L. The Aspenson pond sample had a Total Phosphorous concentration of 1.28 mg/L.

30. Total Phosphorous concentration in both samples tested over the state water quality based effluent limit of 1 mg/L in Wis. Admin. Code ch. NR 217.

31. Excessive phosphorous levels can lead to enhanced algal blooms and corresponding depleted oxygen levels.

32. The sample from the Mt. Sterling manhole had biological oxygen demand (BOD) concentration of 444 mg/L. The Aspenson pond sample had BOD concentration of 22.9 mg/L.

33. The BOD concentration in the sample from the Mt. Sterling manhole can prove lethal to fish and other aquatic organisms.

34. The BOD concentration in the sample from the Aspenson pond could lead to biological stress under certain conditions.

35. The sample from the Mt. Sterling manhole had total Kjeldahl Nitrogen (TKN) concentration of 13.7 mg/L, while the Aspenson pond tested at 0.651 mg/L.

36. Both of these TKN samples indicate that the Mt. Sterling manhole is a major source of organic material.

37. The sample from the Mt. Sterling manhole had chloride concentration of 51.7 mg/L. The Aspenson pond tested at 78.5 mg/L.

38. On June 5 and 6, 2018, Mt. Sterling and Ms. Lund violated Wis. Stat. § 283.31(1) and WPDES Permit condition 1.1 when they discharged wastewater into the Aspenson pond without a permit authorizing this discharge.

**VIOLATION TWO: UNAPPROVED/ABSENT LAND
MANAGEMENT PLAN**

39. WPDES Permit conditions 2.1 and 3.3.7 require Mt. Sterling to use only those land application sites included in a land management plan (LMP) that is approved by DNR.

40. The LMP must be consistent with other requirements of the WPDES Permit and with Wis. Admin. Code § NR 214.17(3),(6).

41. Condition 2.1 of the WPDES permit required Mt. Sterling to submit an LMP for the Facility to DNR by June 30, 2016.

42. Neither Mt. Sterling nor Ms. Lund submitted an LMP to DNR by June 30, 2016.

43. DNR received a final draft LMP from Mt. Sterling on November 6, 2018.

44. DNR approved an LMP for the Facility on November 20, 2018.

45. Mt. Sterling and Ms. Lund violated WPDES Permit conditions 2.1 and 3.3.7, Wis. Admin. Code § NR 214.17(3),(6), on June 30, 2016, by failing to submit an LMP to DNR.

VIOLATION THREE: DISPOSAL AT OR ON UNAPPROVED SITES

46. WPDES Permit condition 3.3.6 requires Mt. Sterling to landspread its wastewater only at locations approved in writing by DNR in accordance with Wis. Admin. Code §§ NR 214.17(2) and 214.18(3).

47. On June 13, 2018, at an enforcement conference between DNR and the Mt. Sterling Board of Directors, DNR emphasized the importance of disposing of wastewater only on approved landspreading fields or at approved manure storage structures.

48. DNR documented this discussion in an enforcement conference summary letter that was sent to Mt. Sterling on June 14, 2018.

49. On September 12, 2018, DNR staff received an email from Ms. Shannon Adams, cheesemaker at Mt. Sterling, with disposal logs demonstrating disposal of Mt. Sterling's wastewater at locations that were not approved by DNR.

50. DNR collected information from Ms. Adams detailing a total of 17 days of unapproved wastewater disposal, all between August 3, 2018 and October 4, 2018.

51. On August 3, 2018, Mt. Sterling disposed of 3,000 gallons of wastewater and/or whey at the Achenbach Pit Silo.

52. At no time relevant to the allegations in this complaint was the Achenbach Pit Silo a storage structure that DNR had approved to accept Mt. Sterling's wastewater and/or whey.

53. On August 7, 2018, Mt. Sterling disposed of 3,000 gallons of wastewater and/or whey at the Achenbach Pit Silo.

54. On August 10, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at the Achenbach Pit Silo.

55. On August 11, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at the Achenbach Pit Silo,

56. On August 14, 2018, Mt. Sterling disposed of 3,000 gallons of wastewater and/or whey at Manning Farms.

57. At no time relevant to the allegations in this complaint did Manning Farms have any fields that DNR had approved to accept Mt. Sterling's wastewater and/or whey.

58. On August 15, 2018, Mt. Sterling disposed of 4,000 gallons of wastewater and/or whey at Manning Farms.

59. On August 19, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at Manning Farms.

60. On August 21, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at Manning Farms.

61. On August 25, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at Manning Farms.

62. On August 26, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at Manning Farms.

63. On September 4, 2018, Mt. Sterling disposed of 4,000 gallons of wastewater and/or whey at the Manning Pit.

64. At no time relevant to the allegations in this complaint did DNR approve the Manning Pit to accept wastewater and/or whey from Mt. Sterling.

65. On September 5, 2018, Mt. Sterling disposed of 2,100 gallons of wastewater and/or whey at the Manning Pit.

66. On September 5, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at the Sime/Gunderson Fields, which were not approved by DNR.

67. On September 16, 2018, Mt. Sterling disposed of at least 3,400 gallons of wastewater and/or whey at the Sime Field.

68. At no time relevant to the allegations in this complaint did DNR approve the Sime Field to accept wastewater/at or whey from Mt. Sterling.

69. On September 19, 2018, Mt. Sterling disposed of 6,000 gallons of wastewater and/or whey at the Sime Field.

70. On September 23, 2018, Mt. Sterling disposed of at least 3,800 gallons of wastewater and/or whey at the Sime Field.

71. On September 24, 2018, Mt. Sterling disposed of at least 2,000 gallons of wastewater and/or whey at the Sime Field.

72. On October 4, 2018, Mt. Sterling disposed of 2,000 gallons of wastewater and/or whey at the Sime Field.

73. DNR collected information in the forms of electronic mail and other documentation indicating that Mt. Sterling Vice President Patricia Lund

directed employees and waste haulers to improperly dispose of wastewater from the Facility.

74. On June 4, 2018, Ms. Lund sent Mt. Sterling employee Bjorn Unseth an email asking why Mr. Unseth has not sent Mt. Sterling's wastewater to a field at "Barb's place."

75. As of June 4, 2018, Mt. Sterling had no fields approved by DNR to accept wastewater from Mt. Sterling.

76. On August 27, 2018, DNR staff had a phone call with Ms. Adams to discuss ongoing concerns about disposal of wastewater at unapproved locations.

77. During the phone call on August 27, 2018, Ms. Adams stated that Mt. Sterling had been sending their waste to the Manning Pit.

78. Ms. Adams further stated that she knew the Manning Pit was not approved to accept Mt. Sterling's waste, but that Ms. Lund had "told" Ms. Adams to send waste to that location.

79. On September 12, 2018, DNR staff conducted an interview of Mr. Darrell Lee Colsch, the driver of the pump truck that hauls wastewater for Mt. Sterling.

80. Mr. Colsch indicated that Ms. Lund "tells him where to haul the wastewater and whey."

81. Mt. Sterling and Ms. Lund violated Wis. Admin. Code §§ NR 214.17(2) and 214.18(3), and WPDES Permit condition 3.3.6 on 17 days between August 3 and October 4, 2018, when they disposed of wastewater at unapproved locations.

VIOLATION FOUR: FAILURE TO MAINTAIN REQUIRED RECORDS

82. WPDES Permit condition 3.1.2 states that Mt Sterling:

[S]hall maintain records which provide the following information for each effluent measurement or sample taken: the date, exact place, method and time of sampling or measurements; the individual who performed the sampling or measurements; the date the analysis was performed; the individual who performed the analysis; the analytical techniques or methods used; and the results of the analysis.

83. WPDES Permit condition 3.1.3 requires Mt. Sterling to:

[R]etain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a permit of at least 3 years from the date of the sample, measurement, report or application

84. Wisconsin Admin. Code § NR 214.17(5)(a) requires facilities that utilize landspreading systems for liquid wastes and by-product solids to “monitor[] for total daily discharge volume.”

85. DNR issued a Notice of Noncompliance to Mt. Sterling on November 3, 2015, detailing the Facility’s failure to submit records, including failure to submit annual land application reports, missed analytical testing, and utilizing old data to calculate application rates of nitrogen and chloride.

86. The WPDES Permit contained the same record-keeping terms and conditions as the prior wastewater discharge permit with which Mt. Sterling was required to comply.

87. On June 11, 2018, DNR requested records at an inspection of the Facility.

88. On June 11, 2018, Mt. Sterling was unable to provide certain sampling records and unable to provide complete daily logs of discharge and monitoring activities.

89. On July 11, 2018, DNR again requested records at an inspection of the Facility.

90. On July 11, 2018, DNR discovered that the Facility's sampling and hauling logs were incomplete. The Facility was unable to document volume of waste generated, and Mt. Sterling did not maintain requisite receipts for hauling conducted by contracted hauling services.

91. Mt. Sterling and Ms. Lund violated Wis. Admin. Code § NR 214.17(5)(a) and WPDES Permit conditions 3.1.2 and 3.1.3 on June 11, 2018, and July 11, 2018, by failing to maintain records as required by the WPDES Permit.

VIOLATION FIVE: FAILURE TO REPORT NON-COMPLIANCE WITH THE WPDES PERMIT

92. Wisconsin Stat. § 283.55(1)(dm) requires Mt. Sterling to “[r]eport any unscheduled discharge of untreated sewage or other wastewater to [DNR] orally within 24 hours of the discharge and in writing within 5 days after the discharge.”

93. WPDES Permit Condition 3.2.1 requires Mt. Sterling to report to DNR regarding non-compliance with the WPDES permit.

94. WPDES Permit Condition 3.2.6 requires Mt. Sterling to report all spills and accidental releases that causes a discharge in violation of the WPDES Permit.

95. Neither Mt. Sterling nor Ms. Lund reported the unpermitted discharge from Mt. Sterling on June 5 and June 6, 2018.

96. Mt. Sterling and Ms. Lund violated WPDES Permit conditions 3.2.1, 3.2.6, and Wis. Stat. § 283.55(1)(dm) on June 5 and June 6, 2018, by failing to report an unscheduled discharge of wastewater to DNR.

PENALTIES AUTHORIZED

97. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 283 and all rules promulgated and permits issued under that chapter, subject to exceptions not applicable in this case.

98. Wisconsin Stat. § 283.89(1) authorizes 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 for prosecution.

99. Under 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 by “injunctive and other relief appropriate for enforcement.”

100. 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

101. Wisconsin Stat. § 283.91(5) provides that the Court may, in addition to imposing penalties, require a defendant to pay to the DNR and to the Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees.

RELIEF REQUESTED

WHEREFORE, the State asks for judgment as follows:

1. Forfeitures as to each Defendant as provided for in Wis. Stat. § 283.91(2);

2. 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);

3. Injunctive relief pursuant to Wis. Stat. § 299.95 that requires Mt. Sterling to install a system to accurately determine water use and whey and wastewater generation on a daily basis in compliance with Wis. Admin. Code § NR 214.17(5)(a);

4. Injunctive relief pursuant to Wis. Stat. § 299.95, ordering Mt. Sterling to install necessary controls to prevent wastewater discharges from the manhole to the Aspenson pond;

5. The reasonable and necessary expenses provided in Wis. Stat. § 283.91(5) for the investigation and prosecution of the violations and attorney fees; and

6. Such other relief as the court may deem appropriate.

Dated this 12th day of February, 2021.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Tressie K. Kamp

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