



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 Tri-Star Dairy, Inc. (Tri-Star) is a domestic business corporation with its principal office located at 10270 North Road, Auburndale, Wisconsin 54412. Its registered agent is Mark A. Vobora (Vobora), located at the same address.

3. Defendant Vobora is an adult resident of Wood County, Wisconsin, who resides at 6000 Elm Road, Auburndale, Wisconsin 54412.

4. At all times relevant to the allegations in this Complaint, Vobora co-owned and operated a large concentrated animal feeding operation (CAFO) located at 10270 North Road, Auburndale, Wisconsin 54412 (the CAFO).

5. At all times relevant to the allegations in this Complaint, Vobora made manure management decisions for Tri-Star.

### **LEGAL BACKGROUND**

6. The State of Wisconsin enacted in 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 waters of the state except in compliance with a permit issued by DNR.

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

9. Wisconsin Stat. § 283.01(9) defines “owner or operator” as “any person owning or operating a point source of pollution.”

10. Wisconsin Stat. § 283.01(20) defines “waters of the State” as “all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater.”

11. Wisconsin Admin. Code ch. NR 243 governs the issuance of permits required by Wis. Stat. ch. 283 and permit terms for large CAFOs.

12. Wisconsin Admin. Code ch. NR 243 is promulgated pursuant to Wis. Stat. chs. 281 and 283.

13. 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 (WPDES) permit.

14. Wisconsin Admin. Code § NR 243.12(1) states, “A large CAFO may not discharge pollutants from manure or process wastewater to waters of the

state unless the discharge is covered by and in compliance with a WPDES permit.” *See also* Wis. Stat. § 283.31(1).

15. Wisconsin Admin. Code § NR 243.13(1) requires DNR to “include conditions in a WPDES permit for the production area and ancillary service and storage areas to ensure that clean water is diverted, as appropriate, from the production area and that are necessary to achieve compliance with surface water and groundwater quality standards contained in chs. NR 102 to 105, 140 and 207, and the livestock performance standards and prohibitions prescribed in ch. NR 151.”

16. Wisconsin Admin. Code § NR 243.13(2)(a) states in pertinent part that:

[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.

17. Wisconsin Admin. Code § NR 243.03(70) defines a “25-year, 24-hour rainfall event” as “a rainfall event measured in terms of the depth of rainfall occurring within a 24-hour period and having an expected recurrence interval of once in 25 years . . . .”

18. Wisconsin Admin. Code § NR 243.13(5) provides that a discharge of manure or process wastewater from a CAFO production area to waters of the state may not exceed surface water quality standards.

19. Wisconsin Admin. Code § NR 243.15(2) provides, “Runoff control systems in the production area shall be designed to comply with the applicable standards in NR 243.13 using permanent runoff control systems that are consistent with accepted management practices such as wastewater treatment strips, sediment basins, waste storage facilities, roof runoff management, grassed waterways and clean water diversions.”

20. Wisconsin Admin. Code § NR 243.03(54) defines production area to include

that part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas but not CAFO outdoor vegetated areas . . . The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

Wis. Admin. Code § NR 243.03(54).

21. Process wastewater includes wastewater from the production area “that comes into contact with any raw materials or animal byproducts including manure, feed, milk, eggs or bedding.” Wis. Admin. Code § NR 243.03(53)(d).

22. Wisconsin Admin. Code § NR 151.08(4) provides that a CAFO may not have “direct runoff from a feedlot or stored manure into waters of the state.”

23. Direct runoff is defined as “[r]unoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state.” Wis. Admin. Code § NR 151.015(7)(a).

### **GENERAL ALLEGATIONS**

24. At all times relevant to the allegations in this Complaint, Tri-Star held Wisconsin Pollutant Discharge Elimination System permit no. WI-0062111-03-0 (WPDES Permit), which authorized Tri-Star to discharge to surface and groundwaters in the Mill Creek Watershed of the Central Wisconsin River Basin from the CAFO in accordance with the terms of the permit.

25. The WPDES Permit became effective on November 1, 2014, and expired on October 31, 2019.

26. Pursuant to Wis. Stat. §§ 227.51(2) and 283.53(3) and Wis. Admin. Code § NR 200.06, after October 31, 2019, Tri-Star continues to operate under the terms and conditions of the expired WPDES Permit until DNR reissues the permit.

27. The CAFO includes three freestall barns, a dairy parlor and holding area, and a feed storage system.

28. The CAFO also has a 400,000-gallon waste storage facility and a 11.7 Million-gallon waste storage facility (large WSF), which is located at the southeast corner of the CAFO.

29. The large WSF has two compartments, east and west, that are separated by a concrete barrier. The west compartment has a concrete floor and is designed to settle sand and solids from the waste. The concrete barrier separating the compartments is designed to allow liquids to flow over the top to the east compartment.

30. Sand can spill from the west compartment of the large WSF to the east compartment, thereby reducing storage capacity for manure.

31. The east compartment of the large WSF was required by a July 12, 2004 stipulation between Tri-Star and the Department of Justice (DOJ), which was intended to resolve violations stemming from inadequate manure storage and management at Tri-Star.

32. On August 13, 2014, DNR inspected the CAFO.

33. On September 4, 2014, DNR sent an inspection report to Tri-Star, stating in pertinent part that:

The amount of sand in the east compartment [of the large WSF] is of concern. This basin, designed for settling of sand bedding, is almost at capacity with sand alone. Sand materials are migrating into the west cell and threaten the competency of the barrier between the two (2) basins as well as the waste storage cells themselves, particularly when agitation and removal efforts are implemented. [DNR] recommends immediate actions to remove the solids content.

34. As of June 2017, Tri-Star had not completely emptied the sand from the large WSF for five years.

35. As of June 2017, the east compartment of the large WSF, which is intended for liquid manure storage, was about half full of sand.

36. An unnamed tributary to Mill Creek (Unnamed Tributary) flows from the northwest to the southeast along the west side of the CAFO.

37. The Unnamed Tributary is a navigable waterway and a water of the state.

38. There are wetlands located immediately to the south and east of the large WSF (the Wetland).

39. The Wetland is a water of the state.

40. The Wetland discharges into the Unnamed Tributary.

41. Section 1.1 of the WPDES Permit prohibits Tri-Star from discharging manure or process wastewater from the CAFO to navigable waters unless all of the following apply:

- Precipitation causes an overflow of manure or process wastewater from a containment or storage structure.
- 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 rainfall event for this location (Wood County- 4.6 inches).
- The production area is operated in accordance with the inspection, maintenance and record keeping requirements in s. NR243.19.
- The discharge complies with surface water quality standards.

## **VIOLATION ONE: ILLEGAL DISCHARGE TO A NAVIGABLE WATER**

42. On May 3, 2017, DNR received a hotline complaint stating that the large WSF was overflowing.

43. On May 3, 2017, after receiving the hotline complaint, DNR Warden Erika Taylor (Taylor) and Agricultural Runoff Management Specialist Adam Scheunemann (Scheunemann) went to the CAFO.

44. On May 3, 2017, Taylor and Scheunemann were able to see from North Road that the large WSF was at least close to overflowing, but DNR could not confirm as much without access to the CAFO.

45. On May 3, 2017, DNR could not reach Vobora by phone, so Scheunemann asked an employee in the CAFO's milking parlor to call Vobora.

46. The CAFO employee was able to reach Vobora via phone, but the CAFO employee told DNR that Vobora was not available.

47. Scheunemann returned to the CAFO on the morning of May 4, 2017.

48. On May 4, 2017, Vobora told DNR that the large WSF had been overflowing since Monday, May 1, 2017.

49. On May 4, 2017, manure was overflowing the west side of the large WSF and flowing south into cropland.

50. On May 4, 2017, Scheunemann walked the flow path of manure flowing from the northeast side of the large WSF to the Wetland.

51. On May 4, 2017, Scheunemann and DNR Water Resource Management Specialist Scott Provost (Provost) entered the Unnamed Tributary to the southeast of the CAFO. Scheunemann and Provost walked north in the Unnamed Tributary and found turbid, odorous water flowing into the Unnamed Tributary from a second navigable tributary (the discharge point). Scheunemann and Provost continued walking upstream in the second navigable tributary until they arrived at the Wetland.

52. The Wetland at the discharge point had manure on the surface and was strongly odorous.

53. On May 4, 2017, water upstream of the discharge point was clear and numerous fish were present, while water downstream of the discharge point was turbid and odorous.

54. On May 4, 2017, Scheunemann and Provost took water samples from the Unnamed Tributary at three locations: upstream from the discharge point, at the discharge point, and downstream from the discharge point.

55. The water samples were all taken from navigable waters.

56. DNR sent the water samples to the Wisconsin State Laboratory of Hygiene for analysis.

57. *E. coli* levels in the water samples were: 9 colony-forming units per 100 milliliters (CFU/100 mL) (upstream); 36,540 CFU/100 mL (discharge point); and 5120 CFU/100 mL (downstream). For purpose of comparison,

DNR's Beach Monitoring Program requires closure of public beaches on lakes when water quality samples are above 1000 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*.

58. Total Phosphorus levels in the water samples were: .0856 milligrams per Liter (mg/L) (upstream); 10.3 mg/L (discharge point); and 1.39 mg/L (downstream). For purpose of comparison, the surface water quality standard for a small stream is .075 mg/L pursuant to Wis. Admin. Code § NR 102.06(3)(b).

59. Ammonia levels in the water samples were: .0295 mg/L (upstream); 65.9 mg/L (discharge point); and 12.3 mg/L (downstream). For purpose of comparison, the acute toxicity level of ammonia for a warm water forage fish stream in the summer is 24.1 mg/L as calculated pursuant to Wis. Admin. Code § NR 105.06, Table 2c.

60. Dissolved oxygen levels in the water samples were: 12.5 mg/L (upstream); 1.2 mg/L (discharge point); and 4.9 mg/L (downstream). For purpose of comparison, the water quality standard for dissolved oxygen is 5.0 mg/L pursuant to Wis. Admin. Code § NR 102.04(4)(a). Dissolved oxygen levels below 5.0 mg/L are less likely to support aquatic life.

61. Water samples taken by DNR on May 4, 2017, demonstrate that the manure discharge caused an exceedance of surface water quality standards in navigable waters.

62. In total, about 165,000 gallons of manure spilled from the large WSF (the manure discharge) as a result of the manure discharge that began around May 1, 2017.

63. The manure discharge continued until at least May 4, 2017, when Tri-Star started to take manure out of the pit and take other actions to prevent a continued discharge.

64. On June 1, 2017, DNR Investigative Warden Barry Fetting (Fetting) interviewed Corey Lobner (Lobner), an employee of Tri-Star.

65. Lobner told DNR on June 1, 2017, that the manure discharge occurred because “they don’t take the sand out.”

66. Lobner also told DNR that Tri-Star had hired haulers to remove manure from the large WSF in the past, but that the CAFO had not done so in 2017.

67. On June 12, 2017, Fetting interviewed Vobora.

68. On June 12, 2017, Vobora changed his statement regarding when he became aware of the manure discharge, stating that he “knew [that the large WSF] was going to be close [to full]” on May 1, 2017, but that he did not know until May 2, 2017, that the large WSF was overflowing.

69. Vobora admitted at the June 12, 2017 interview that manure from the large WSF had flowed into the field south of the large WSF during the manure discharge.

70. Vobora admitted at the June 12, 2017 interview that he saw “a little bit” of manure from the large WSF in the Unnamed Tributary during the manure discharge.

71. On June 7, 2017, DNR issued a notice of violation to Tri-Star, alleging violations stemming from the manure discharge.

72. On June 28, 2017, DNR and Vobora held an enforcement conference.

73. At the June 28, 2017 enforcement conference, Vobora stated that the rain caused the large WSF to overflow on May 1, 2017.

74. Pursuant to Section 1.1 of the WPDES Permit, 4.6 inches of precipitation constitutes a 25-year, 24-hour rainfall event for Tri-Star’s location.

75. A 25-year, 24-hour rain event did not occur at Tri-Star in the 24-hour period before the large WSF started overflowing on May 1, 2018.

76. The manure discharge was not a discharge that was compliant with the limitations of Section 1.1 of the WPDES permit.

77. Tri-Star and Vobora continuously violated Wis. Stat. § 283.31(1); Wis. Admin. Code §§ NR 243.13(2)(a), 243.13(5)(a), and 243.17(6); as well as

Sections 1.1 and 1.3.2 of the WPDES Permit, at least between May 1, 2017, and May 4, 2017, by allowing the manure discharge from the large WSF to discharge to a navigable water, resulting in an exceedance of surface water quality standards in a navigable water.

**VIOLATION TWO: EXCEEDANCE OF MARGIN OF SAFETY LEVEL  
IN LARGE WSF**

78. Wisconsin Admin. Code § NR 243.03(37) defines “[m]argin of safety level” as “the level in a liquid storage or containment facility that is vertically one foot below the lowest point of the top of the facility or structure.”

79. Wisconsin Admin. Code § NR 243.03(38) defines “maximum operating level” as

the level in a liquid storage or containment facility, measured vertically from the lowest point of top of the facility, that is the sum of the margin of safety level and the level necessary to contain the precipitation and runoff that will enter the facility as a result of 100-year, 24-hour rainfall event for swine, veal and poultry operations that are new source CAFOs or a 25-year, 24-hour storm event for all other operations.

Wis. Admin. Code § NR 243.03(38).

80. Wisconsin Admin. Code § NR 243.17(6) states in pertinent part that:

DISCHARGE PREVENTION. A permittee shall operate and maintain storage and containment facilities to prevent overflows and discharges to waters of the state.

....

(b) The permittee shall maintain a margin of safety in liquid storage or containment facilities that levels of manure, process wastewater and other wastes contained in the storage or containment facility may not

exceed. Materials shall be removed from the facility in accordance with the permittee's nutrient management plan to ensure that the margin of safety is not exceeded. Wis. Admin. Code § NR 243.17(6).

81. Section 1.3.2 of the WPDES Permit requires Tri-Star to maintain a margin of safety in “liquid storage or containment facilities.”

82. The CAFO reported on April 12, 2019, that manure was 1.5 feet below the top of the large WSF.

83. The CAFO reported the large WSF reaching the maximum operating level on April 19, 2017.

84. The CAFO's reading on April 19, 2017, was actually one foot below the top of the large WSF, which is the margin of safety level.

85. The large WSF reached the margin of safety level, not the maximum operating level, on April 19, 2017.

86. The CAFO reported on April 26, 2019, that manure was one-half of a foot below the top of the large WSF.

87. The CAFO reported on May 3, 2019, that the large WSF was full.

88. On at least April 26, 2017, Tri-Star and Vobora failed to maintain a margin of safety in the large WSF.

89. On at least April 26, 2017, Tri-Star and Vobora violated Wis. Admin. Code § NR 243.17(6) and Section 1.3.2. of the WPDES Permit by failing to maintain a margin of safety in the large WSF.

**VIOLATION THREE: FAILURE TO REPORT  
UNAUTHORIZED DISCHARGE**

90. Wisconsin Admin. Code ch. NR 205 “sets forth permit general conditions for all WPDES permits.” *See* Wis. Admin. Code § NR 205.01.

91. Wisconsin Admin. Code § NR 205.07(1)(s)1. states in pertinent part that:

Permittees shall report all other noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Wis. Admin. Code § NR 205.07(1)(s)1.

92. Section 3.1.11 of the WPDES Permit states:

The permittee shall notify [DNR] in the event that a spill or accidental release of any material or substance results in the discharge of pollutants to the waters of the state at a rate or concentration greater than the effluent limitations or restrictions established in this permit, or the spill or accidental release of the material that is unregulated in this permit, unless the spill or release of pollutants has been reported to [DNR] in accordance with s. NR 205.07(1)(s), Wis. Adm. Code, and the Noncompliance – 24 Hour Reporting,” section of this permit.

93. Section 3.1.15 of the WPDES Permit states in pertinent part that:

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

This includes any upset which exceeds any effluent limitation in the permit, or violations of the discharge limitations listed in the permit.

94. The manure discharge was a violation of the discharge limitations in the WPDES Permit.

95. Tri-Star discovered the manure discharge on or before May 1, 2017.

96. On May 4, 2017, Scheunemann provided Vobora with DNR spill hotline information and told Vobora that the CAFO was required to report the manure discharge. Vobora failed to report the manure discharge to DNR.

97. Vobora admitted during the June 12, 2017 interview with DNR that Tri-Star failed to report the manure discharge to DNR.

98. Vobora stated that he did not report the manure discharge because he did not think that DNR could have done anything differently than what Vobora could do on his own.

99. Tri-Star and Vobora violated Wis. Admin. Code § NR 205.07(1)(s)1. and Sections 3.1.11 and 3.1.15 of the WPDES Permit by failing to orally report the manure discharge to DNR within 24 hours and failing to file a written submission within 5 days after it discovered the manure discharge.

**VIOLATION FOUR: FAILURE TO MITIGATE ADVERSE IMPACTS  
TO WATERS OF THE STATE RESULTING FROM  
UNAUTHORIZED DISCHARGE**

100. Wisconsin Admin. Code § NR 205.07(k) states, “The 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.”

101. Section 1.3.1 of the WPDES Permit states, “The permittee shall take all reasonable steps to minimize or prevent any adverse impact on the waters of the state resulting from noncompliance with the permit.”

102. Vobora admitted during the June 12, 2017 interview with DNR that he failed to take any action to mitigate the impact of the manure discharge upon the Wetland and Unnamed Tributary because Vobora did not think “there was much we could do.”

103. Vobora failed to take any action to mitigate the manure discharge or its impacts until instructed by Scheunemann to do so on May 4, 2017.

104. Starting on May 4, 2017, Tri-Star and Vobora began to take manure out of the pit and take other measures to prevent an ongoing discharge from the large WSF.

105. From at least May 1, 2017, through May 4, 2017, the manure discharge was adversely affecting the Wetland and the Unnamed Tributary.

106. From at least May 1, 2017, through May 4, 2017, Tri-Star took no reasonable steps to minimize or prevent adverse impacts to the Wetland and the Unnamed Tributary impacted by the manure discharge.

107. Tri-Star and Vobora violated Wis. Admin. Code § NR 205.07(k) and Section 1.3.1 of the WPDES Permit continuously between May 1, 2017, and May 4, 2017, by failing to take any reasonable steps to minimize or prevent any adverse impact on waters of the state resulting from the manure discharge.

### **PENALTIES AUTHORIZED**

108. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. chs. 281 and 283 and all rules promulgated and permits issued under that chapter by “injunctive and other relief appropriate for enforcement,” subject to exceptions not applicable in this case.

109. 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. chs. 281 and 283.

110. 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 DOJ for prosecution.

111. 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.

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

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

### **PENALTIES REQUESTED**

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

1. Forfeitures as to each Defendant provided for in Wis. Stat. §§ 281.98(1) and 283.91(2);
2. 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) and 283.91(5);
3. 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

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

Dated this 5th day of February, 2021.

JOSHUA L. KAUL  
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Electronically signed by Tressie K. Kamp

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