



Road AB, Luxemburg, Wisconsin 54217. Its registered agent is Wanda Gaedtke at the same address.

3. At all times relevant to this Complaint, Rolling Hills Dairy owned and operated a large concentrated animal feeding operation (CAFO). Rolling Hills Dairy operates its main dairy at N3265 County Road AB, Luxemburg, Kewaunee County, Wisconsin (the main dairy). Rolling Hills Dairy operates a smaller heifer farm at N1974 County Road AB, Denmark, Kewaunee County, Wisconsin (the Christoff farm).

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

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

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

7. 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.

8. On February 28, 2012, DNR issued Rolling Hills Dairy Wisconsin Pollutant Discharge Elimination System permit no. WI-0062707-02-0 that authorized Rolling Hills Dairy to discharge to the East Twin River watershed and groundwaters

of the state in accordance with the terms of the permit (the WPDES permit). The WPDES permit was effective March 1, 2012 and expired on February 28, 2017.

9. Pursuant to Wis. Stat. §§ 227.51(2) and 283.53(3) and Wis. Admin. Code § NR 200.06, after February 28, 2017, Rolling Hills 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**

10. 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 inspection, maintenance and record keeping requirements in s. NR 243.19.

11. Section 1.1 of the WPDES permit restates the discharge limitation in Wis. Admin. Code § NR 243.13(2)(a). It also states that the 25-year, 24-hour rain event for Kewaunee County is 4.2 inches of rain.

12. Pursuant to Wis. Admin. Code § NR 243.03(54), the “production area” at the main dairy includes the feed storage area and animal containment areas.

13. Pursuant to Wis. Admin. Code § NR 243.03(53), “process wastewater” includes leachate and runoff from the feed storage area and animal confinement areas.

14. At all times relevant to the allegations in this Complaint, at the main dairy, the feed storage area has been located north of the main barns adjacent to State Highway 29.

15. Runoff from the feed storage area flows south through the barns to a leachate collection tank buried in the ground southwest of the small Slurrystore.

16. The leachate collection tank is designed to collect leachate and runoff from the feed storage area generated during the first 0.5 inches of a rain event. The leachate and runoff is pumped to the large, concrete waste storage facility at the main dairy. Runoff generated after the first 0.5 inches of a rain event overflows into a culvert that runs under the calf hutch area (the calf-hutch culvert).

17. The calf-hutch culvert discharges the overflow feed storage area runoff east of the calf-hutch area.

18. The feed storage area runoff discharged from the calf-hutch culvert flows downhill through a swale (the dairy swale) into a road culvert under County Road AB (the road culvert).

19. The feed storage area runoff flows under County Road AB through the road culvert and is discharged on the east side of County Road AB.

20. The feed storage area runoff then flows through a grassed swale across the farm field east of the main dairy (the field swale) into an unnamed tributary.

21. The unnamed tributary is a navigable water.

22. The unnamed tributary flows into the East Twin River. Upstream of the where the unnamed tributary flows into the East Twin River, the East Twin River is

classified as a class 1 trout stream. Class 1 trout streams have naturally reproducing, sustainable populations of wild trout at or near the carrying capacity of the stream. Downstream of where the unnamed tributary flows into the East Twin River, the East Twin River is a class 2 trout stream. Class 2 trout streams have some natural reproduction of wild trout and good survival and carryover of adult trout. However, Class 2 trout streams require stocking.

23. The East Twin River is listed on Wisconsin's Clean Water Act section 303(d) list of impaired waters for phosphorus. The unnamed tributary is on Wisconsin's proposed list of impaired waters for phosphorus, which is being reviewed by the U.S. Environmental Protection Agency.

24. The runoff controls for the feed storage area were not designed and constructed to contain all the process wastewater, including runoff and direct precipitation, from the 25-year, 24-hour rain event in Kewaunee County.

25. On June 14, 2017, DNR Agricultural Runoff Specialists Ben Uvaas and Andrea Gruen conducted an inspection of Rolling Hills Dairy in anticipation of reissuing the dairy's WPDES permit.

26. Significant rain had fallen in the 24-hour period before the inspection.

27. Specialists Uvaas and Gruen observed runoff from the feed storage area flowing south through the barn and into the leachate collection tank. Uvaas and Gruen observed the area around the inlet of the calf-hutch culvert was wet. Uvaas and Gruen observed water flowing from the outlet of the calf-hutch culvert downhill

through the dairy swale to the inlet of the road culvert. The water in the dairy swale was foamy, discolored, and smelled like manure.

28. On July 31, 2017, DNR sent Rolling Hills Dairy a Notice of Violation (the July 2017 Notice of Violation). A copy of the June 14, 2017 inspection report was attached to the July 2017 Notice of Violation. The July 2017 Notice of Violation stated that during the June 14, 2017 inspection, DNR staff observed runoff from the feed storage area in the dairy swale that leads to the unnamed tributary. The notice stated that although DNR did not directly observe a discharge to the unnamed tributary on June 14, 2017, “the department is confident that any amount of rain would produce a discharge of pollutants to the navigable waterway [the unnamed tributary] that would not be authorized by the [WPDES] Permit.”

29. The June 14, 2017 inspection report requested that Rolling Hills Dairy submit prior to permit reissuance or as soon as possible “proposed measures to prevent discharges from the [main dairy] feed storage area runoff controls while permanent measures are developed.”

30. On August 22, 2017, DNR met with Rolling Hills Dairy for an enforcement conference to discuss the July 2017 Notice of Violation. The dairy stated that the cost for infrastructure to contain the runoff from the feed storage area for the 25-year, 24-hour rain event was significant. The dairy stated that DNR needed to be “reasonable.” DNR stated that, at a minimum, while developing plans for improved permanent runoff controls, Rolling Hills Dairy must install interim runoff controls

for the feed storage area at the main dairy. DNR requested the dairy submit by September 12, 2017, a proposal for interim runoff controls.

31. On September 12, 2017, Rolling Hills Dairy submitted a proposal to DNR for interim runoff controls at the main dairy's feed storage area. The dairy proposed to increase the time that the pump on the leachate collection tank ran to collect more runoff. The dairy stated that this change would be made by September 29, 2017.

32. On September 29, 2017, Rolling Hills Dairy submitted a report to DNR stating that it had increased the time that the pump on the leachate collection tank ran from 12 minutes to 18 minutes.

33. On October 4, 2017, DNR received a complaint that black, smelly runoff was flowing through the field swale. The complainant suspected the runoff was coming from the main dairy.

34. On October 4, 2017, DNR Agricultural Runoff Specialists Gruen and Heidi Schmitt Marquez investigated the complaint.

35. From the night of October 3, 2017, into the morning of October 4, 2017, it had rained at the main dairy. The National Oceanic and Atmospheric Administration (NOAA) meteorological station at Green Bay, which is 14 miles west of the main dairy, recorded 0.42 inches of precipitation on October 3, 2017. The NOAA meteorological station at Kewaunee, which is 8 miles east of the main dairy, recorded 0.13 inches of precipitation on October 4, 2017.

36. A 25-year, 24-hour rain event did not occur at the main dairy in the 24-hour period before DNR's October 4, 2017 investigation.

37. On October 4, 2017 at approximately 3:30 p.m., Specialists Gruen and Schmitt Marquez arrived at the farm field east of the main dairy on County Road AB.

38. Specialists Gruen and Schmitt Marquez walked the flow path from the road culvert down the field swale to the unnamed tributary. Rolling Hills Dairy refused to allow Specialists Gruen and Schmitt Marquez to enter the main dairy.

39. Water was in the road culvert, and it was brown and smelled like manure.

40. The field swale had water running its entire length from the road culvert to the unnamed tributary.

41. Specialists Gruen and Schmitt Marquez observed the dairy swale from the public right-of-way on County Road AB. The dairy swale did not have water in it but was covered in brown residue.

42. Specialists Gruen and Schmitt Marquez collected a sample of the water in the road culvert (the road culvert sample).

43. Specialists Gruen and Schmitt Marquez collected a sample of the water in the field swale before it entered the unnamed tributary (the field swale sample).

44. DNR sent the road culvert and field swale samples to the Wisconsin State Laboratory of Hygiene for analysis.

45. The road culvert sample had *E. coli* of 3,076,000 CFU/100 mL and the field swale sample had *E. coli* of 198,630 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*.

46. The road culvert sample had total phosphorus of 6.05 mg/L and the field swale sample had total phosphorus of 4.19 mg/L. For comparison, pursuant to Wis. Admin. Code § NR 102.06(3)(b), the phosphorus water quality criteria for the unnamed tributary is 0.075 mg/L (75 µg/L).

47. The road culvert sample had a biological oxygen demand of 272 mg/L and the field swale sample had a biological oxygen demand of 159 mg/L. For comparison, untreated municipal wastewater generally has a biological oxygen demand between 100 and 300 mg/L.

48. The road culvert sample had total nitrogen at 37.0 mg/L and the field swale sample had total nitrogen at 26.3 mg/L.

49. The road culvert sample had ammonia nitrogen at 11.3 mg/L and the field swale sample had ammonia nitrogen at 13.0 mg/L. For comparison, ammonia nitrogen is considered toxic to aquatic life when levels exceed 0.4 mg/L.

50. On October 4, 2017, Rolling Hills Dairy discharged manure and process wastewater from the production area at the main dairy to the unnamed tributary.

51. On October 19, 2017, DNR sent Rolling Hills Dairy a Notice of Violation stating that on October 4, 2017 the dairy had an unauthorized discharge to the unnamed tributary (the October 2017 Notice of Violation). The October 2017 Notice

of Violation stated: “To limit the Dairy’s potential liability, it is in its best interest to determine the origin of the discharge and re-evaluate its interim runoff control measures in order to comply with the [WPDES] Permit. Immediate action is necessary to prevent additional unpermitted discharges.”

52. On November 30, 2017, DNR met with Rolling Hills Dairy for an enforcement conference to discuss the October 2017 Notice of Violation. Rolling Hills Dairy’s engineer and attorney also attended the enforcement conference. Rolling Hills Dairy stated that the October 4, 2017 discharge did not come from the main dairy. Rolling Hills Dairy stated that its equipment was functioning properly and that other sources could have caused the discharge, such as runoff from County Road AB or from the agricultural field itself.

53. On May 9, 2018, DNR completed an unannounced, wet-weather inspection of the main dairy.

54. From May 1, 2018 through May 9, 2018, it rained repeatedly at the main dairy. The NOAA meteorological station at Green Bay recorded rain on May 1, 2, 3, 4, 5, 6, and 9, 2018. The highest 24-hour precipitation total was 0.83 inches of rain on May 4, 2019. The NOAA meteorological station at Kewaunee recorded rain on May 2, 3, 4, 5, 6, and 7, 2019. The highest 24-hour precipitation total was 2.70 inches of rain on May 4, 2019.

55. A 25-year, 24-hour rain event did not occur at the main dairy in the 24-hour period before DNR’s May 9, 2018 inspection.

56. On May 9, 2018, at approximately 12:15 p.m., Specialists Gruen and Schmitt Marquez arrived at the main dairy. At that time, Rolling Hills Dairy refused to grant Specialists Gruen and Schmitt Marquez access to the main dairy. Specialists Gruen and Schmitt Marquez inspected the field swale and road culvert. It was actively raining while Specialists Gruen and Schmitt Marquez inspected the field swale and road culvert.

57. Specialists Gruen and Schmitt Marquez walked the flow path from the road culvert down the field swale to the unnamed tributary. Water was actively flowing through the entire flow path.

58. Specialists Gruen and Schmitt Marquez collected a sample of water in the field swale before it entered the unnamed tributary (the second field swale sample).

59. Specialists Gruen and Schmitt Marquez collected a sample of water on the east side of the road culvert (the second road culvert sample).

60. Water on the east side of the road culvert was brown, opaque, and smelled acrid.

61. Around 12:50 p.m., Specialists Gruen and Schmitt Marquez collected a sample of water on the west side of the road culvert (the dairy swale outlet sample). Specialists Gruen and Schmitt Marquez remained in the public right-of-way on County Road AB.

62. Water on the west side of the road culvert was brown, opaque, and smelled acrid.

63. Specialists Gruen and Schmitt Marquez observed water flowing down the dairy swale into the road culvert. The water flowing down the dairy swale was brown and opaque.

64. At 1:32 p.m., Rolling Hills Dairy granted Specialists Gruen and Schmitt Marquez access to the main dairy. Specialists Gruen and Schmitt Marquez walked to the outlet of the calf-hutch culvert above the dairy swale. Water flowing out of the calf-hutch culvert was dark brown and smelled acrid.

65. Specialists Gruen and Schmitt Marquez collected a sample of water at the outlet of the calf-hutch culvert (the calf-hutch culvert sample).

66. The calf-hutch culvert sample was collected significantly after the other samples. In the time between samples, the rain and runoff lessened. The dairy also had time to adjust its runoff controls, including manually turning on the pump on the leachate collection tank.

67. Specialists Gruen and Schmitt Marquez walked to the leachate collection tank. At this time, it had stopped raining. The leachate collection tank was not full and was not discharging overflow feed storage area runoff into the calf-hutch culvert.

68. DNR sent the calf-hutch culvert sample; the dairy swale outlet sample; the second road culvert sample; and the second field swale sample to the Wisconsin State Laboratory of Hygiene for analysis.

69. The calf-hutch culvert sample had *E. coli* of 19,180 CFU/100 mL; the dairy swale outlet sample had *E. coli* of 198,630 CFU/100 mL; the second road culvert

sample had *E. coli* of 198,630 CFU/100 mL; and the second field swale sample had *E. coli* of 120 CFU/100 mL.

70. The calf-hutch culvert sample had biological oxygen demand of 101 mg/L; the dairy swale outlet sample had biological oxygen demand of 13.3 mg/L; the second road culvert sample had biological oxygen demand of 14.4 mg/L; and the second field swale sample had biological oxygen demand of 15.2 mg/L.

71. The calf-hutch culvert sample had total phosphorus of 6.59 mg/L; the dairy swale outlet sample had total phosphorus of 1.45 mg/L; the second road culvert sample had total phosphorus of 1.39 mg/L; and the second field swale sample had total phosphorus of 1.77 mg/L.

72. The calf-hutch culvert sample had total nitrogen of 9.62 mg/L; the dairy swale outlet sample had total nitrogen of 4.29 mg/L; the second road culvert sample had total nitrogen of 4.40 mg/L; and the second field swale sample had total nitrogen of 3.80 mg/L.

73. The calf-hutch culvert sample had ammonia nitrogen of 1.17 mg/L; the dairy swale outlet sample had ammonia nitrogen of 0.62 mg/L; the second road culvert sample had ammonia nitrogen of 0.59 mg/L; and the second field swale sample had ammonia nitrogen of 1.52 mg/L.

74. On May 9, 2018, Rolling Hills Dairy discharged manure and process wastewater from the production area at the main dairy to the unnamed tributary.

75. On October 4, 2017, and May 9, 2018, Rolling Hills Dairy violated Wis. Admin. Code § NR 243.13(2)(a) and WPDES permit section 1.1 when it

discharged manure and process wastewater from the production area at the main dairy to the unnamed tributary.

## **VIOLATION TWO: DENYING DNR STAFF ENTRY TO INSPECT THE CAFO**

76. Wisconsin Stat. § 283.55(2) states:

(a) Any duly authorized officer, employee or representative of the department shall have right to enter upon or through any premises in which an effluent source that is required to be covered by a permit issued under s. 283.31 is located . . . and may at reasonable times . . . inspect any monitoring equipment or method required by this section, and sample any effluents which the owner and operator of such source is required to sample under this section.

(b) No person shall refuse entry or access to any authorized representative of the department who requests entry under this subsection, and who presents appropriate credentials nor shall any person obstruct, hamper or interfere with any such inspection.

77. Section 3.1.5 of the WPDES permit states:

The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:

- enter upon the permittee's premises where a regulated facility or activity is located or conducted, . . .
- inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under the permit; and
- sample or monitor at reasonable times, for the purpose of assuring permit compliance, any substances or parameters at any location.

78. On October 4, 2017, at approximately 4:20 p.m., Specialists Gruen and Schmitt Marquez finished inspecting the field swale and road culvert. Specialist Gruen called Ms. Kim Kroll, DNR's authorized representative for Rolling Hills Dairy, on the telephone.

79. Ms. Kroll is aware that Specialist Gruen is a duly authorized employee of DNR. Ms. Kroll attended the June 14, 2017 inspection of Rolling Hills Dairy completed by Specialists Uvaas and Gruen.

80. On October 4, 2017, Specialist Gruen requested permission to inspect the main dairy to observe how the dairy's interim runoff controls for the feed storage area were functioning.

81. On October 4, 2017, Ms. Kroll stated that she was out of town and would not be able to return to the dairy to allow DNR to inspect it.

82. On October 4, 2017, Specialist Gruen asked whether any other individuals at the dairy were available to accompany her for an inspection.

83. On October 4, 2017, Ms. Kroll stated that no individuals were available.

84. On October 4, 2017, Rolling Hills Dairy denied Specialists Gruen and Schmitt Marquez access to inspect the main dairy.

85. On May 9, 2018, around 12:00 p.m., Specialist Gruen left a voicemail message for Ms. Kroll requesting permission to access the main dairy to conduct a wet-weather inspection.

86. On May 9, 2018, around 12:15 p.m., Specialists Gruen and Schmitt Marquez arrived at the main dairy. They approached the residence at the main dairy to attempt to locate a representative of Rolling Hills Dairy.

87. On May 9, 2018, Specialists Gruen and Schmitt Marquez knocked on the front door at the residence. An unidentified individual answered the door. Specialists Gruen and Schmitt Marquez identified themselves and asked if the individual could reach an authorized representative of Rolling Hills Dairy. That individual called Scott Gaedtke and handed the telephone to Specialist Gruen.

88. On May 9, 2018, Specialist Gruen explained to Mr. Gaedtke that DNR wanted to conduct a wet-weather inspection of the main dairy. Mr. Gaedtke stated that he was traveling back to the main dairy and would be there in 30 to 45 minutes and DNR could inspect the dairy then.

89. Mr. Gaedtke is aware that Specialist Gruen is a duly authorized employee of DNR. Mr. Gaedtke attended the June 14, 2017 inspection of Rolling Hills Dairy completed by Specialists Uvaas and Gruen.

90. On May 9, 2018, at approximately 12:45 p.m., Ms. Kroll called Specialist Gruen and stated that she had spoken to her attorney and would not allow DNR to perform an inspection of the main dairy. Specialist Gruen explained DNR's authority to conduct an inspection under section 3.1.5 of the WPDES permit and Wis. Stat. § 283.55(2). Ms. Kroll stated that she wanted to discuss this with her attorney.

91. On May 9, 2018, at approximately 12:50 p.m., Ms. Kroll called Specialist Gruen. Ms. Kroll stated that DNR could access the main dairy once Nicholas Coady, Rolling Hills Dairy's engineer, arrived at the main dairy. Ms. Kroll stated it would take approximately 45 minutes for Mr. Coady to arrive at the main dairy.

92. On May 9, 2018, at 1:32 p.m., Ms. Kroll called Specialist Gruen and stated that Mr. Coady had arrived at the main dairy. She stated that DNR could now conduct an inspection.

93. On May 9, 2018, Ms. Kroll, Mr. Gaedtke, and Mr. Coady met Specialists Gruen and Schmitt Marquez outside the residence at the main dairy.



94. On May 9, 2018, Rolling Hills Dairy denied Specialists Gruen and Schmitt Marquez access to perform a wet-weather inspection of the main dairy from 12:00 p.m. until 1:32 p.m. Rolling Hills Dairy refused to provide access to the main dairy until after the wet weather had passed.

95. On October 4, 2017 and May 9, 2018, Rolling Hills Dairy violated Wis. Stat. § 283.55(2) and WPDES permit section 3.1.5 when it denied Specialists Gruen and Schmitt Marquez access to the main dairy to perform an inspection.

**VIOLATION THREE: FAILURE TO COMPLY WITH CONDITIONAL PLAN APPROVAL FOR THE FEED STORAGE RUNOFF CONTROLS**

96. Wisconsin Admin. Code § NR 243.15(1) requires CAFO owners and operators to obtain DNR approval of plans and specifications for reviewable facilities and systems before they are constructed.

97. Pursuant to Wis. Admin. Code § NR 243.03(56), feed storage runoff control systems and storage or containment structures for process wastewater are reviewable facilities.

98. DNR reviews and issues a decision on plans and specifications pursuant to its authority in Wis. Stat. § 281.41 and Wis. Admin. Code § NR 243.15.

99. Wisconsin Admin. Code § NR 243.15(2) and (3)(d) require runoff control systems and storage or containment structures for process wastewater to be designed and constructed to comply with the discharge standards in Wis. Admin. Code § NR 243.13.

100. The discharge standard in Wis. Admin. Code § NR 243.13(2)(a) prohibits a large CAFO from discharging manure or process wastewater to a navigable water

unless precipitation causes an overflow and the containment structure is properly designed, constructed, and maintained to contain manure, process wastewater, and runoff from a 25-year, 24-hour rain event.

101. Wisconsin Admin. Code § NR 243.15(1)(d) authorizes DNR to include in its approval of plans and specifications more stringent operational or design requirements or practices based on site-specific conditions. One of the site-specific conditions is “[a]dditional requirements or practices necessary to prevent exceedance of groundwater or surface water quality standards.” Wis. Admin. Code § NR 243.15(1)(d)5.

102. In 2011, Rolling Hills Dairy’s engineer submitted plans and specifications to DNR to construct feed storage area runoff controls at the main dairy. The plans and specifications included the construction of the leachate collection tank and overflow calf-hutch culvert.

103. On May 6, 2011, Rolling Hills Dairy’s engineer submitted an addendum to the plans and specifications that proposed a “Leachate Collection System Monitoring Program” (the May Addendum). The May Addendum explained that the proposed feed storage area runoff controls only would capture 100 percent of the feed storage area leachate and runoff generated by the first 0.5 inches of a rain event. Instead of containing the runoff from the 25-year, 24-hour rain event, Rolling Hills Dairy’s engineer proposed that the dairy monitor and sample the overflow from the leachate collection tank during six rain events and submit the sample results to DNR for review. The May Addendum stated that if the sample results showed exceedances

of water quality standards, then “Rolling Hills Dairy will collect additional runoff volume from the feed storage area until a vegetated treatment area [a type of runoff treatment practice] can be engineered, approved by WDNR and installed.”

104. On May 24, 2011, DNR issued a conditional approval for Rolling Hills Dairy’s plans and specifications (the Conditional Plan Approval). The Conditional Plan Approval included the condition requested by Rolling Hills Dairy. It stated:

1. Monitoring Plan: Grab sample results shall be submitted to the [DNR] region after each overflow event from the leachate collection tank. The region shall review the grab sample results and determine if a surface water standards violation has occurred. If a grab sample results exceeds surface water standards, the WDNR does not intend to seek monetary penalties through formal enforcement actions against the Dairy unless there is significant damage to the environment, as determined by the WDNR, such as a fish kill or contamination of a public or private water supply or groundwater. After 6 samples have been collected and no grab sample exceeded the surface water standards, the region will meet with the owner to discuss further options.

105. Rolling Hills Dairy did not submit to DNR any results from samples of overflow from the leachate collection tank after the Conditional Plan Approval.

106. At the August 22, 2017 enforcement conference, DNR discussed with Rolling Hills Dairy the requirement in the Conditional Plan Approval that the dairy sample overflow from the leachate collection tank and that the dairy had not complied with this requirement.

107. After the November 30, 2017 enforcement conference, DNR sent a letter to Rolling Hills Dairy requesting that it comply with the Conditional Plan Approval and complete the sampling required in that approval.

108. On January 10, 2018, Rolling Hills Dairy’s attorney sent a letter to DNR stating that the dairy had not completed the sampling required by the Conditional

Plan Approval because it was confused and did not understand that it was required to complete this sampling. Rolling Hills Dairy's attorney further stated that DNR could not legally require Rolling Hills Dairy to complete the sampling and so it would not do so.

109. As of the date of this Complaint, Rolling Hills Dairy has not submitted the sampling data required by the Conditional Plan Approval to DNR.

110. Rolling Hills Dairy violated the Conditional Plan Approval when it failed to submit sample results of overflow from the leachate collection tank for six rain events to DNR.

**VIOLATION FOUR: FAILURE TO SUBMIT PLANS AND SPECIFICATIONS  
AND CONSTRUCT FEED STORAGE RUNOFF CONTROLS AT THE  
CHRISTOFF FARM**

111. Section 2.3 of the WPDES permit requires Rolling Hills Dairy to submit plans and specifications to DNR to correct any adverse conditions identified at the feed storage area at the Christoff farm. These plans and specifications were due to DNR by November 1, 2012.

112. Section 2.3 of the WPDES permit required Rolling Hills Dairy to complete construction of improvements in the plans and specifications for the feed storage area at the Christoff farm by November 1, 2013.

113. The July 2017 Notice of Violation stated that Rolling Hills Dairy had not submitted plans and specifications to upgrade the feed storage area at the Christoff farm as required by section 2.3 of the WPDES permit.

114. At the August 22, 2017 enforcement conference, Rolling Hills Dairy stated that it would submit plans and specifications to DNR for upgrades to the feed storage area at the Christoff farm by September 29, 2017.

115. On September 29, 2017, Rolling Hills Dairy's engineer submitted plans and specifications to DNR for upgrades to the feed storage area at the Christoff farm. These plans and specifications included a leachate collection system and waste storage pond expansion. Rolling Hills Dairy stated that it would complete construction on the project by August 31, 2018.

116. On November 27, 2017, DNR issued a conditional approval of the plans and specifications.

117. On May 4, 2018, Rolling Hills Dairy's engineer submitted a letter to DNR stating that, due to financial constraints, it would not complete construction of the required upgrades in the approved plans and specifications during 2018.

118. On November 18, 2020, Rolling Hills Dairy's engineer submitted post-construction documentation to DNR for the construction of the required upgrades at the Christoff farm.

119. From November 1, 2012 until September 29, 2017, Rolling Hills Dairy continuously violated section 2.3 of the WPDES permit by failing to submit plans and specifications to upgrade the feed storage area at the Christoff farm.

120. From November 1, 2013 until sometime around November 2020, Rolling Hills Dairy continuously violated section 2.3 of the WPDES permit by failing to construct upgrades to the feed storage area at the Christoff farm.

**VIOLATION FIVE: STORING FEED IN AN UNAPPROVED LOCATION AND FAILING TO DIVERT CLEAN RUNOFF AT THE CHRISTOFF FARM**

121. Wisconsin Admin. Code § NR 243.15(1)(a)1. requires CAFO owners and operators to obtain DNR approval of plans and specifications for reviewable facilities and systems before they are constructed.

122. Pursuant to Wis. Admin. Code § NR 243.03(56), “feed and other raw materials storage” areas are reviewable facilities and systems.

123. Wisconsin Admin. Code § NR 243.15(1)(c) authorizes DNR to approve alternative practices or design standards when the owner or operator of a large CAFO demonstrates that accepted practices or design standards in Wis. Admin. Code § NR 243.15 are more stringent than necessary to avoid a detrimental effect on water quality.

124. Section 1.2 of the WPDES permit states, “Uncontaminated runoff shall be diverted away from . . . raw materials storage and containment areas . . . .”

125. On August 24, 2017, Rolling Hills Dairy’s engineer submitted a request to DNR to approve a temporary feed storage area at the Christoff farm. The request stated that 1,000 tons of haylage would be stored in the temporary feed storage area for approximately 18 months. It stated that the haylage “will be covered with plastic to exclude precipitation from the pile and weighted down with tires.”

126. On August 24, 2017, Specialist Uvaas approved Rolling Hills Dairy’s request for a temporary feed storage area at the Christoff farm.

127. DNR’s approval for Rolling Hills Dairy’s temporary feed storage area at the Christoff farm expired on February 24, 2019.

128. The temporary feed storage area at the Christoff farm was located south of the freestall barns between County Road AB and the outdoor feed lots.

129. On July 11, 2019, Specialist Gruen inspected the Christoff farm from the public right-of-way on County Road AB.

130. On July 11, 2019, a pile of feed was located in the former temporary feed storage area.

131. On July 11, 2019, the pile of feed was uncovered and exposed to precipitation and runoff.

132. Based on information and belief, by September 25, 2019, Rolling Hills Dairy had removed the feed from the former temporary feed storage area.

133. From around February 24, 2019 until sometime after July 11, 2019 and before September 25, 2019, Rolling Hills Dairy violated Wis. Admin. Code § NR 243.15(1) and section 1.2 of the WPDES permit by storing feed in an unapproved location and failing to divert uncontaminated runoff from the feed.

#### **VIOLATION SIX: VIOLATION OF LAND APPLICATION RESTRICTIONS**

134. Wisconsin Admin. Code § NR 243.14(2)(b) states:

A permittee who land applies manure or process wastewater shall land apply all manure and process wastewater in compliance with the following requirements: . . .

4. Manure or process wastewater may not run off the application site nor discharge to waters of the state through subsurface drains due to precipitation or snowmelt except if the permittee has complied with all land application restrictions in this subchapter and the WPDES permit, and the runoff or discharge occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event.

135. Section 1.6.1 of the WPDES permit repeats the prohibition in Wis. Admin. Code § NR 243.14(2)(b).

136. On March 19, 2020, Rolling Hills Dairy land applied manure and process wastewater from the waste storage facility at the Christoff farm to an agricultural field located immediately west of the Christoff farm. This field is identified as the “Hanna” field in Rolling Hills Dairy’s nutrient management plan.

137. On March 19, 2020, after the land application, a rain event occurred. The rain event was less than the 25-year, 24-hour rain event.

138. DNR Agricultural Runoff Specialist James Salscheider inspected the Hanna field on the evening of March 19, 2020.

139. On March 19, 2020, precipitation was mixing with the manure and process wastewater on the Hanna field. Manure and process wastewater was flowing off the Hanna field into a depression south of the field. Manure and process wastewater was flowing off the Hanna field into the roadside ditch at the southeastern corner of the field.

140. On March 19, 2020, Specialist Salscheider collected samples of the manure and process wastewater that was flowing off the Hanna field. DNR sent the samples to the Wisconsin State Laboratory of Hygiene for analysis. The results showed that the runoff was high in *E. coli*, total phosphorus, ammonia, and chemical oxygen demand.

141. On March 19, 2020, Rolling Hills Dairy violated Wis. Admin. Code § NR 243.14(2)(b) and section 1.6.1 of the WPDES permit when manure and process



wastewater ran off the Hanna field and the runoff was not caused by a rain event equal to or greater than a 25-year, 24-hour rain event.

### **PENALTIES AUTHORIZED**

142. 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.

143. 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.

144. Wisconsin Stat. § 281.98(1) states: “[A]ny person who violates this chapter or . . . any plan approval . . . issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.”

145. Wisconsin Stat. § 281.98(2) states: “[T]he court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of this chapter, including attorney fees.”

146. Wisconsin Stat. § 281.98(3) states: “[T]he court may order the 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.”

147. 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.

148. Wisconsin Stat. § 283.87(1) states:

In an action against any person who violates this chapter . . . [DNR] may recover the cost of removing, terminating or remedying the adverse effects upon the water environment resulting from the unlawful discharge . . . of pollutants into waters of the state, including the cost of replacing fish or other wildlife destroyed by the discharge . . . .

149. 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.

150. 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. An injunction, pursuant to Wis. Stat. § 283.91(5), requiring Rolling Hills Dairy to bring the facilities at its CAFO into compliance with applicable law;
2. Forfeitures as provided for in Wis. Stat. §§ 281.98(1) and 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. §§ 281.98(2) and 283.91(5);

4. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18); the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12); the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1); the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3); the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2); the 1 percent jail assessment surcharge pursuant to Wis. Stat. § 814.75(14); and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15); and

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

Dated this 29th day of January, 2021.

JOSHUA L. KAUL  
Attorney General of Wisconsin

*Electronically signed by Emily M. Ertel*

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