

2. The State of Wisconsin, through the Wisconsin Legislature, enacted Wis. Stat. ch. 283, and it administers, through its Department of Natural Resources (DNR), regulations designed to prevent and minimize water pollution in the state and issues permits and orders authorized by these statutes. Wisconsin Admin. Code ch. NR 243 was promulgated under Wis. Stat. ch. 283.

3. Defendant Johannes Wakker (Wakker) is an adult resident of Kewaunee County, who resides at 821 Dodge Street, Kewaunee, Wisconsin 54216.

4. Wakker Dairy Farm, Inc. (Wakker Dairy) is a permitted concentrated animal feeding operation (CAFO) located at N2348 Hwy 42, Kewaunee, Kewaunee County, Wisconsin 54216. Wakker Dairy is not an incorporated entity registered with the Wisconsin Department of Financial Institutions.

5. In 2017, Wakker Dairy had about 2,200 cows and produced and landspread about 18.1 million gallons of manure and process wastewater. At that time, Wakker Dairy had approximately 3,300 acres of land available for the landspreading.

6. Wakker owns and operates Wakker Dairy. As the owner and the operator of Wakker Dairy, Wakker was personally involved in authorizing,

supervising, directing, performing, and failing to perform the acts that constitute the violations alleged in this Complaint.

APPLICABLE STATUES AND RULES

7. Wisconsin Stat. § 283.31(1) prohibits the discharge of any pollutant into any waters of the state except in compliance with a Wisconsin Pollutant Discharge Elimination System (WPDES) permit.

8. Wisconsin Stat. § 283.01(20) defines “[w]aters of the state” as including “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”

9. Animal manure and process wastewater are pollutants under Wis. Stat. § 283.01(13), and all CAFOs that are required to be covered by a WPDES discharge permit are regulated as “[p]oint source[s]” as defined in Wis. Stat. § 283.01(12), under the WPDES permitting program.

10. Wisconsin Admin. Code § NR 243.12(1) states that “[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.”

11. Wisconsin Admin. Code § NR 243.03(31) defines “[l]arge CAFO” as “an animal feeding operation that has 1,000 animal units or more at any time.”

12. Wisconsin Admin. Code § NR 205.07(1)(a), which was promulgated under the authority of Wis. Stat. ch. 283, requires WPDES permittees to comply with all the conditions of their WPDES permit.

13. A WPDES permittee is defined under Wis. Admin. Code § NR 243.03(50) as “an owner or operator of a WPDES permitted CAFO.”

14. Wisconsin Admin. Code § NR 243.14(2)(a) states that “[a] permittee’s land application practices for manure and process wastewater shall comply with this section, the terms and conditions of the WPDES permit and the permittee’s approved nutrient management plan.”

15. Wisconsin Admin. Code § NR 243.14(2)(a) further states that “[t]he permittee is responsible for ensuring that the manure and process wastewater generated or handled at the operation is land applied or disposed of in a manner that complies with this subchapter and the terms and conditions of the WPDES permit.”

WAKKER’S PERMIT

16. DNR issued Wakker WPDES Permit No. WI-0063673-02-0 (2012 Permit), which became effective December 10, 2012 and expired on November 30, 2017.

17. DNR issued Wakker WPDES Permit No. WI-0063673-03-0 (2018 Permit), which became effective January 1, 2018 and expires on December 31, 2022.

18. Condition 3.1.1 of the 2012 Permit and 2018 Permit states that “[t]he permittee shall comply with all conditions of the permit. Any permit noncompliance is a violation of the permit and is grounds for enforcement action”

19. On March 23, 2017, Wakker Dairy submitted a nutrient management plan (NMP) to DNR for review as part of the 2012 Permit reissuance process (Wakker’s NMP).

20. On July 21, 2017, DNR conditionally approved Wakker’s NMP.

21. Wakker’s NMP identifies the following fields, among others, that Wakker Dairy spreads manure on: K2, Albrecht-Front, MP-1, BD-1-2-3-4, RV-1, LK-6-7, BD-9-10, Koss-1, Koss-4, MP-11+12, JW-9, S1, H-4-7-11, MP-6, and K1.

**VIOLATION ONE: MANURE DISCHARGE FROM
APPLICATION SITE**

22. Wisconsin Admin. Code § NR 243.14(2)(b)2. states that “[a] permittee who land applies manure or process wastewater shall land apply all manure and process wastewater in compliance with the following requirements: . . . 2. During dry weather conditions, manure or process wastewater may not run off the application site, nor discharge to waters of the state through subsurface drains.”

23. Condition 1.5.1 of the 2012 Permit and 2018 Permit states that “[t]he permittee shall land apply manure and process wastewater in compliance with the following: . . . During dry weather conditions, manure or process wastewater may not run off the application site, nor discharge to waters of the state through subsurface drains.”

24. On November 6, 2017, Wakker Dairy land applied manure to the K2 field during dry weather conditions.

25. DNR inspected the K2 field on November 8, 9, 10, 11, and 12, 2017.

26. On November 8, 9, 10, 11, and 12, 2017, manure or process wastewater discharged to an unnamed tributary to the East Twin River, a water of the state, through subsurface drains from the K2 field.

27. On November 28, 2018, Wakker Dairy land applied manure to the Albrecht-Front field during dry weather conditions.

28. On November 28, 2018, Wakker Dairy land applied manure to the MP-1 field during dry weather conditions.

29. On November 30, 2018, Wakker Dairy land applied manure to the BD-1-2-3-4 field during dry weather conditions.

30. DNR staff inspected the Albrecht-Front, MP-1 and BD-1-2-3-4 fields on November 30, 2018 and December 1, 2018.

31. On November 30, 2018 and December 1, 2018, manure ran off from the Albrecht-Front field.

32. On November 30, 2018 and December 1, 2018, manure discharged to an unnamed tributary to Lake Michigan that is a water of the state through subsurface drains from the MP-1 and BD-1-2-3-4 fields.

33. On or around August 20, 2019, Wakker Dairy land applied manure to the RV-1 field during dry weather conditions.

34. On August 22, 2019, DNR inspected the RV-1 field.

35. On August 22, 2019, manure ran off from the RV-1 field.

36. On November 20, 2019, Wakker Dairy land applied manure to the LK-6-7 field during dry weather conditions.

37. On November 20, 2019, DNR inspected the LK-6-7 field.

38. On November 20, 2019, manure ran off from the LK-6-7 field into an unnamed tributary to Lake Michigan that is a water of the state.

39. On December 5, 2019, Wakker Dairy land applied manure to the MP-1 field during dry weather conditions.

40. On December 7, 2019, Wakker Dairy land applied manure to the BD-9-10 field during dry weather conditions.

41. On December 7, 2019, DNR inspected the BD-9-10 field.

42. On December 7, 2019, manure discharged to an unnamed tributary to Lake Michigan that is a water of the state through subsurface drains from the BD-9-10 field.

43. On December 8, 2019, Wakker Dairy land applied manure to the Koss-1 and Koss-4 fields during dry weather conditions.

44. On December 9, 2019, DNR inspected the MP-1, Koss-1 and Koss-4 fields.

45. On December 9, 2019, manure discharged through subsurface drains from the MP-1, Koss-1 and Koss-4 fields into an unnamed tributary to Lake Michigan that is a water of the state.

46. On December 9, 2019, Wakker Dairy land applied manure to the MP-11+12 field during dry weather conditions.

47. On December 9, 2019, DNR inspected the MP-11+12 field.

48. On December 9, 2019, manure ran off from the MP-11+12 field.

49. On December 9, 2019, Wakker Dairy land applied manure to a field identified as RP-1 in Heim's Hillcrest Dairy's nutrient management plan during dry weather conditions.

50. The transfer of manure from Wakker Dairy to Heim's Hillcrest Dairy was not approved in writing by DNR in accordance with the conditions of the 2018 Permit.

51. On December 9, 2019, DNR inspected the RP-1 field.

52. On December 9, 2019, manure discharged to a water of the state through subsurface drains from the RP-1 field.

53. On April 15, 2020, Wakker Dairy land applied manure to the JW-9 field during dry weather conditions.

54. On April 15, 2020, DNR inspected the JW-9 field.

55. On April 15, 2020, manure discharged to mapped wetlands, a water of the state, through subsurface drains from the JW-9 field.

56. Wakker violated Wis. Admin. Code § NR 243.14(2)(b)2. and Condition 1.5.1 of either the 2012 Permit or the 2018 Permit on 20 occasions between November 2017 and April 2020 by allowing landspread manure to run off the application site or discharge to waters of the state through subsurface drains.

VIOLATION TWO: MANURE PONDING ON APPLICATION SITE

57. Wisconsin Admin. Code § NR 243.14(2)(b)1. states that “[a] permittee who land applies manure or process wastewater shall land apply all manure and process wastewater in compliance with the following requirements: 1. Manure or process wastewater may not pond on the application site.”

58. Condition 1.5.1 of the 2012 Permit and the 2018 Permit states that “[t]he permittee shall land apply manure and process wastewater in compliance with the following: Manure or process wastewater may not pond on the application site.”

59. On November 3, 2017, Wakker Dairy land applied manure to the S1 field.

60. On November 6, 2017, Wakker Dairy land applied manure to the K2 field.

61. On November 9, 2017, DNR inspected the S1 field.

62. On November 9, 2017, manure was ponded on the S1 field.

63. On November 10, 2017, DNR inspected the K2 field.

64. On November 10, 2017, manure was ponded on the K2 field.

65. On November 28, 2018, Wakker Dairy land applied manure to the Albrecht-Front field.

66. On November 29, 2018, Wakker Dairy land applied land applied manure to the H-4-7-11 field.

67. On November 30, 2018 and December 1, 2018, DNR inspected the Albrecht-Front field.

68. On November 30, 2018 and December 1, 2018, manure was ponded on the Albrecht-Front field.

69. On December 3, 2018 and December 4, 2018, DNR inspected the H-4-7-11 field.

70. On December 3, 2018 and December 4, 2018, manure was ponded on the H-4-7-11 field.

71. On August 20, 2019, Wakker Dairy land applied manure to the RV-1 field.

72. On August 22, 2019, DNR inspected the RV-1 field.

73. On August 22, 2019, manure was ponded on the RV-1 field.

74. On November 20, 2019, Wakker Dairy land applied manure to the LK-6-7 field.

75. On November 20, 2019, DNR inspected the LK-6-7 field.

76. On November 20, 2019, manure was ponded on the LK-6-7 field.

77. On December 7, 2019, Wakker Dairy land applied manure to the MP-6 field.

78. On December 8, 2019, Wakker Dairy land applied manure to the Koss-1 field.

79. On December 9, 2019, Wakker Dairy land applied manure to the MP-11+12 field.

80. On December 9, 2019, DNR inspected the Koss-1, MP-11+12, and MP-6 fields.

81. On December 9, 2019, manure was ponded on the Koss-1, MP-11+12, and MP-6 fields.

82. Wakker violated Wis. Admin. Code § NR 243.14(2)(b)1. and Condition 1.5.1 of either the 2012 Permit or the 2018 Permit on 11 occasions

between November 2017 and December 2019 for manure ponding on an application site.

VIOLATION THREE: MANURE SPREAD THROUGH A CONCENTRATED FLOW CHANNEL

83. Condition 1.5.1 of the 2018 Permit states that “[t]he permittee shall land apply manure and process wastewater in compliance with the following: . . . Manure may not be spread in a waterway, terrace channel or any areas where there may be a concentration of runoff.”

84. On August 20, 2019, Wakker Dairy land applied manure to the RV-1 field through a concentrated flow channel within the RV-1 field.

85. On December 9, 2019, Wakker Dairy land applied manure to the MP-11+12 field through a concentrated flow channel within the MP-11+12 field.

86. Wakker violated Condition 1.5.1 of the 2018 Permit on August 20, 2019 and December 9, 2019 by applying manure through a concentrated flow channel.

VIOLATION FOUR: FAILURE TO RETAIN LAND APPLIED MANURE ON APPLICATION SITE

87. Wisconsin Admin. Code § NR 243.14(2)(b)6. states that “[a] permittee who land applies manure or process wastewater shall land apply all manure and process wastewater in compliance with the following requirements: . . . 6. Land application practices . . . shall retain land applied

manure and process wastewater on the soil where they are applied with minimal movement.”

88. Condition 1.5.1 of the 2018 Permit states that “[t]he permittee shall land apply manure and process wastewater in compliance with the following: . . . Land application practices . . . shall retain land applied manure and process wastewater on the soil where they are applied with minimal movement.”

89. On November 20, 2019, Wakker Dairy land applied manure to the LK-6-7 field.

90. On November 20, 2019, DNR inspected the LK-6-7 field.

91. On November 20, 2019, manure migrated from the original application site within the LK-6-7 field.

92. On December 9, 2019, Wakker Dairy land applied manure to the MP-11+12 field.

93. On December 9, 2019, DNR inspected the MP-11+12 field.

94. On December 9, 2019, manure migrated from the original application site within the MP-11+12 field.

95. Wakker violated Wis. Admin. Code § NR 243.14(2)(b)6. and Condition 1.5.1 of the 2018 Permit on November 20, 2019 and December 9, 2019 for failing to land apply manure in a manner that retained the manure on the soil where it was applied with minimal movement.

**VIOLATION FIVE: FAILURE TO DRAFT COMPLIANT NUTRIENT
MANAGEMENT PLAN**

96. Wisconsin Admin. Code § NR 243.14(1)(a) states that “[p]ermittees shall submit a nutrient management plan developed by a nutrient management planner . . . to [DNR] for review and approval . . . the land application practices identified in the nutrient management plan shall, at a minimum, conform with the nutrient budgeting, soil test recommendations, application practices and restrictions contained in NRCS Standard 590.”

97. NRCS Standard 590, page 7, states that “[i]n the nutrient plan, document— . . . Location of designated sensitive areas and the associated nutrient application restrictions and setbacks.”

98. On August 22, 2019, DNR conducted a site inspection and observed a concentrated flow channel, considered to be a sensitive area, within the RV-1 field that was not on the associated restriction map contained within Wakker’s NMP.

99. On December 9, 2019, DNR conducted a site inspection and observed a concentrated flow channel, considered to be a sensitive area, within the MP-11+12 field that was not present on the associated restriction map contained in Wakker’s NMP.

100. During a file review, DNR found that there were areas classified as wet or “W” soils that were not identified on the associated restriction map within Wakker’s NMP.

101. Wakker violated Wis. Admin. Code § NR 243.14(1)(a) for failing to submit a NMP that identified all the environmentally sensitive areas within several of the fields he sought approval to spread manure on.

VIOLATION SIX: LAND APPLICATION OF MANURE IN SURFACE WATER QUALITY MANAGEMENT AREA

102. Condition 1.5.3 of the 2018 Permit states that “[o]n a field-by-field basis, the permittee shall select and implement one of the practices listed in s. NR 243.14(4) for manure and process wastewater applications in a SWQMA (defined in ch. NR 243), and include the selected practices in the nutrient management plan. Whenever manure or process wastewater is applied within a SWQMA, the permittee shall apply the material in compliance with the SWQMA practices specified in the approved nutrient management plan.”

103. Wisconsin Admin. Code § NR 243.03(66)(c) and (d) state that “[s]urface water quality management areas’ or ‘SWQMA’ means all of the following: . . . (c) The area within 300 feet from the ordinary high water mark of navigable waters that consist of a river or stream or other non-lake navigable waters. (d) The area within 300 feet of conduits to navigable waters.”

104. Wisconsin Admin. Code § NR 243.14(4)(a)1. states that “a permittee shall choose and implement one of the following options whenever manure or process wastewater is applied on areas of fields within the SWQMA:
1. Not apply manure or process wastewater within 25 feet of a navigable water, conduit to a navigable water or wetland; and inject or immediately incorporate manure and process wastewater in all other areas within the SWQMA.”

105. The Wakker Dairy NMP states that “[f]or all fields, except those with alfalfa crop in rotation, Wakker Dairy will follow SWQMA option 1 – no application of manure or process wastewater within 25 feet of a navigable water, conduit to navigable water or wetland; and inject or immediately incorporate manure and process wastewater in all other areas within the SWQMA.”

106. On November 20, 2019, Wakker Dairy land applied manure to the LK-6-7 field.

107. On November 20, 2019, DNR inspected the LK-6-7 field.

108. On November 20, 2019, Wakker Dairy applied manure within 25 feet of a conduit to navigable water within the LK-6-7 field.

109. The LK-6-7 field was in a corn rotation during the 2019 growing season.

110. Wakker violated Wis. Admin. Code § NR 243.14(4)(a)1. and Condition 1.5.3 of the 2018 Permit on November 20, 2019 for spreading manure within 25 feet of a conduit to navigable water.

**VIOLATION SEVEN: FAILURE TO MITIGATE ADVERSE IMPACTS ON
WATERS OF THE STATE**

111. Condition 3.1.7 of the 2012 Permit and 2018 Permit states that “[t]he 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.”

112. Wakker Dairy applied manure to the K2 field on or around November 6, 2017; the Albrecht-Front field on or around November 30, 2018; the BD-1-2-3-4 field on or around December 1, 2018; the LK-6-7 field on or around November 20, 2019; and several fields on or around December 9, 2019 (collectively referred to as “the Applications”).

113. Each of the Applications resulted in manure and/or process wastewater being discharged into waters of the state.

114. Each of the Applications resulted in noncompliance with either the 2012 Permit or the 2018 Permit.

115. For each of the Applications, Wakker Dairy did not take all reasonable steps to minimize or prevent adverse impacts to the waters of the

state resulting from the manure and/or process wastewater being discharged into the waters of the state.

116. Wakker violated Condition 3.1.7 of either the 2012 Permit or the 2018 Permit on five occasions by failing to minimize or prevent adverse impacts of manure discharges on waters of the state.

VIOLATION EIGHT: FAILURE TO REPORT PERMIT NONCOMPLIANCE

117. Condition 3.1.15 of the 2018 Permit states that “[t]he 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 . . . or violations of the discharge limitations listed in the permit.”

118. On November 19, 2019, Wakker Dairy land applied manure on field LK-6-7.

119. On November 20, 2019, manure ran off the LK-6-7 field into an intermittent stream that is a water of the state.

120. The November 20, 2019 run off of manure from the LK-6-7 field into the intermittent stream was not in compliance with the 2018 Permit.

121. On November 20, 2019, Wakker Dairy became aware of the discharge of manure from the LK-6-7 field to waters of the state.

122. On November 29, 2019, Wakker Dairy submitted a written report to DNR regarding the events that led to the November 20, 2019 noncompliance.

123. Wakker violated Condition 3.1.15 of the 2018 Permit by failing to submit a written report to DNR within five days after a discharge of manure to waters of the state.

PENALTY PROVISIONS

124. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. ch. 283 and all rules promulgated and permits issued under those chapters, subject to exceptions not applicable to this case. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation(s) occurred has jurisdiction to enforce Wis. Stat. ch. 283 and all rules promulgated and permits issued under those chapters “by injunctive and other relief appropriate for enforcement.”

125. Wisconsin Stat. § 283.91(2) states that “[a]ny person who violates this chapter, any rule promulgated under this chapter, any term or condition of a permit issued under 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.”

126. Wisconsin Stat. § 283.91(5) states that “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 the department of justice the reasonable and necessary expenses of the prosecution, including attorney fees.”

RELIEF REQUESTED

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

1. Forfeitures 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 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in 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 under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);
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); and
4. Any other relief the Court deems just and appropriate.

Dated this 18th day of April 2022.

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Electronically signed by Bradley J. Motl

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