

2. Defendant K & D Manure Handling, Inc. (K & D Manure Handling) is a domestic close corporation with its principal office located at 3190 Canary Avenue, Sparta, Wisconsin 54656. Its registered agent is Kevin D. Hintz located at the same address.

3. Defendant Kevin D. Hintz is an adult resident of the State of Wisconsin who resides at 3190 Canary Avenue, Sparta, Wisconsin 54656.

4. At all times relevant to the allegations in this Complaint, Kevin D. Hintz was an owner and an operator of K & D Manure Handling. As an owner and an operator of K & D Manure Handling, Mr. Hintz 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, K & D Manure Handling operated as a custom manure hauling business. Dairies and other agricultural facilities hired K & D Manure Handling to land apply manure and process wastewater (collectively referred to as “manure”) generated by those facilities to agricultural fields.

6. Manke Farms, Inc., (Manke Farms) located at W2241 County Road I, Bangor, Wisconsin 54614, hired K & D Manure Handling to land apply manure from its farm to agricultural fields owned by Manke Farms.

7. On June 7, 2019, K & D Manure Handling was land applying manure from Manke Farms to agricultural fields. Mr. Hintz participated in and oversaw the land application of manure on June 7, 2019.

8. On June 7, 2019, K & D Manure Handling employees and Mr. Hintz laid a hose line running north and east from the liquid manure storage facility at Manke Farms to agricultural fields north of County Highway I and west of Knutson Road (“the land application site”).

9. On June 7, 2019, K & D Manure Handling employees and Mr. Hintz connected ten individual hoses running approximately a mile from the liquid manure storage facility to the land application site.

10. On June 7, 2019, around approximately 1:30 p.m., K & D Manure Handling employees and Mr. Hintz began pumping manure through the hose line. A clamp connecting an 8-inch hose to a 6-inch hose failed, and the hoses broke apart in an agricultural field located north of the intersection of Knutson Road and Larson Road (“the corn field”).

11. On June 7, 2019, manure discharged out of the 8-inch hose and flowed downhill through the corn field and a hay field into an unnamed tributary located west of Knutson Road.

12. On June 7, 2019, the manure discharged with such force that it carried corn stubble from the corn field into the hay field and knocked down the hay as it flowed into the unnamed tributary.

13. On June 7, 2019, Mr. Hintz realized there was an issue with the hose line because manure was not reaching the land application site. Mr. Hintz told a K & D Manure Handling employee to shut down the pumps on the hose line, and Mr. Hintz began checking the hose line.

14. On June 7, 2019, Mr. Hintz found the break in the hose line in the corn field. Mr. Hintz told a K & D Manure Handling employee to use a tractor to work the manure on the surface of the corn field into the field.

15. On June 7, 2019, K & D Manure Handling and Mr. Hintz took no further action to minimize the effects of the manure discharge on the environment or restore the environment.

16. On June 7, 2019, Mr. Hintz did not notify Manke Farms or DNR about the manure discharge.

17. On June 7, 2019, Mr. Hintz and K & D Manure Handling reconnected the hoses and continued land applying manure.

18. On June 7, 2019, enough manure reached the unnamed tributary to raise the water level in the unnamed tributary by several inches.

19. The unnamed tributary flows south along Knutson Road, then west along and north of Larson Road, and discharges into Bostwick Creek north of the intersection of County Highway I and Larson Road.

20. On June 7, 2019, manure flowed downstream through the unnamed tributary into Bostwick Creek.

21. On June 7, 2019, shortly after Mr. Hintz discovered the hose break, a K & D Manure Handling employee reported to Mr. Hintz that Bostwick Creek looked murky and had foam on the surface.

22. On June 7, 2019, the manure discharge caused a fish kill in Bostwick Creek from the confluence of the unnamed tributary to approximately 2.5 miles downstream.

23. On June 8, 2019, DNR received an anonymous complaint of a fish kill in Bostwick Creek near Bangor. DNR Conservation Wardens Shawna Stringham and Edward McCann investigated the complaint.

24. On June 8, 9, and 10, 2019, the owners and operators of Manke Farms assisted and cooperated with Wardens Stringham and McCann. Manke Farms identified the location of the manure discharge in the corn field after being notified of the fish kill by Warden Stringham and showed the location to Warden Stringham. Manke Farms mitigated the effects of the discharge by tilling the corn field and leaving the hay on the hay field for an extra week to hold residual solids.

25. On June 10, 2019, Warden McCann interviewed Mr. Hintz.

26. On June 10, 2019, Mr. Hintz admitted that he was overseeing the land application activities on June 7, 2019.

27. On June 10, 2019, Mr. Hintz admitted that he was the person who clamped the hoses together that broke apart.

28. On June 10, 2019, Mr. Hintz admitted that he discovered the hose break and manure discharge in the corn field. Mr. Hintz admitted that he saw manure ponded and puddled all over the corn field.

29. On June 10, 2019, Mr. Hintz admitted that he saw manure in the unnamed tributary on June 7, 2019.

30. On June 10, 2019, Mr. Hintz admitted that he did not tell Manke Farms or notify DNR about the manure spill because he did not think anything would come of it.

31. On June 10, 2019, Mr. Hintz admitted that when manure discharges have happened in the past during his work, he handled those situations by finding the leak, clamping it down, damming up the stream, notifying the DNR Spills Hotline and the farmer, and then pumping out the stream.

32. On June 8, 9, 10, 11, and 13, 2019, DNR fisheries staff investigated the fish kill in Bostwick Creek.

33. Bostwick Creek is a class I trout stream where the fish kill occurred. Class I trout streams are the highest quality trout streams in Wisconsin. They have natural reproduction of wild trout at sustainable population sizes.

34. DNR staff collected dead fish from Bostwick Creek. DNR collected 1,052 brown trout and 2 brook trout.

35. On June 13, 2019, DNR staff completed electrofishing surveys in Bostwick Creek to assess the impact of the manure discharge.

36. On June 13, 2019, DNR staff surveyed 100 meters of Bostwick Creek upstream of where it flows under Larson Road (“the upstream location”). This area was not impacted by the manure discharge.

37. On June 13, 2019, DNR staff surveyed 100 meters of Bostwick Creek north of the intersection of Halderson Road and County Highway I (“the downstream location”). This area was impacted by the manure discharge.

38. On June 13, 2019, DNR staff collected 2 live trout in the downstream location. DNR staff collected 86 live trout in the upstream location.

**VIOLATION ONE: DISCHARGE TO WATERS OF THE STATE
WITHOUT A PERMIT**

39. Wisconsin Stat. § 283.31(1) states, “The discharge of any pollutant into any waters of the state . . . 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.”

40. Wisconsin Stat. § 283.01(5) defines “discharge of pollutant” as “any addition of any pollutant to the waters of this state from any point source.”

41. Wisconsin Stat. § 283.01(13) defines “pollutant” as “any . . . biological materials, . . . rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.”

42. Wisconsin Stat. § 283.01(12)(a) defines “point source” as “[a] discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well.”

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

44. At all times relevant to the violations in this Complaint, K & D Manure Handling did not have a permit issued by DNR pursuant to Wis. Stat. §§ 283.31 or 283.33 authorizing it to discharge pollutants to waters of the state.

45. At all times relevant to the violations in this Complaint, Mr. Hintz did not have a permit issued by DNR pursuant to Wis. Stat. §§ 283.31 or 283.33 authorizing him to discharge pollutants to waters of the state.

46. The unnamed tributary is a water of the state as that term is defined in Wis. Stat. § 283.01(20).

47. Bostwick Creek is a water of the state as that term is defined in Wis. Stat. § 283.01(20).

48. Manure is a pollutant as that term is defined in Wis. Stat. § 283.01(13).

49. On June 7, 2019, K & D Manure Handling and Mr. Hintz violated Wis. Stat. § 283.31(1) when they discharged manure into the unnamed tributary and Bostwick Creek without a permit issued by DNR pursuant to Wis. Stat. §§ 283.31 or 283.33.

VIOLATION TWO: FAILURE TO REPORT THE MANURE DISCHARGE

50. Wisconsin Stat. § 292.11(2)(a) states, “A person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify [DNR] immediately of any discharge not exempted under sub. (9).”

51. Wisconsin Stat. § 292.01(3) defines “discharge” as “not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.”

52. Wisconsin Stat. § 292.01(5) defines “hazardous substance” as “any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form . . . which may pose a substantial present or potential hazard

to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics.”

53. Manure is a hazardous substance as that term is defined in Wis. Stat. § 292.01(5).

54. On June 7, 2019, K & D Manure Handling possessed and controlled the manure and caused the discharge of manure in the corn field and into the unnamed tributary and Bostwick Creek.

55. On June 7, 2019, Mr. Hintz possessed and controlled the manure and caused the discharge of manure in the corn field and into the unnamed tributary and Bostwick Creek.

56. K & D Manure Handling did not immediately notify DNR of the manure discharge.

57. Mr. Hintz did not immediately notify DNR of the manure discharge.

58. On June 7, 2019, K & D Manure Handling and Mr. Hintz violated Wis. Stat. § 292.11(2)(a) when they possessed and controlled manure and caused the discharge of manure and did not immediately notify DNR of that discharge.

**VIOLATION THREE: FAILURE TO RESTORE THE ENVIRONMENT AND
MINIMIZE HARMFUL EFFECTS OF THE MANURE DISCHARGE**

59. Wisconsin Stat. § 292.11(3) states, “A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.”

60. On June 7, 2019, K & D Manure Handling did not take actions necessary to restore and minimize the harmful effects of the manure discharge to the corn field, the unnamed tributary, and Bostwick Creek.

61. On June 7, 2019, Mr. Hintz did not take actions necessary to restore and minimize the harmful effects of the manure discharge to the corn field, the unnamed tributary, and Bostwick Creek.

62. On June 7, 2019, K & D Manure Handling and Mr. Hintz violated Wis. Stat. § 292.11(3) when they failed to take actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, and waters of the state.

PENALTIES AUTHORIZED

63. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. chs. 283 and 292 by “injunctive and other relief appropriate for enforcement,” subject to exceptions not applicable in this case.

64. 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. 283 and 292.

I. Penalties authorized pursuant to Wis. Stat. ch. 283

65. Wisconsin Stat. § 283.89(1) requires DNR to refer any person who violates Wis. Stat. ch. 283 to the Department of Justice (DOJ) for prosecution.

66. Wisconsin Stat. § 283.91(1) states DOJ may “initiate a civil action for a temporary or permanent injunction for any violation of this chapter.”

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

In an action against any person who violates this chapter . . . or chs. . . . 289 to 299 relating to water quality [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 the waters of the state, including the cost of replacing fish or other wildlife destroyed by the discharge or deposit.

68. Wisconsin Stat. § 283.91(2) states:

Any person who violates 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.

69. 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.

II. Penalties authorized pursuant to Wis. Stat. ch. 292

70. Wisconsin Stat. § 292.99(1) states, “[A]ny person who violates 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.”

71. Wisconsin Stat. § 292.99(2) states, “In addition to the penalties provided under subs. (1) . . ., the court may award [DOJ] the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees.”

PENALTIES REQUESTED

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

1. Forfeitures as provided for in Wis. Stat. §§ 283.91(2) and 292.99(1);

2. The costs of removing, terminating, and remedying the adverse effect of K & D Manure Handling and Mr. Hintz's manure spill upon the water environment, including the costs of replacing fish, as provided for in Wis. Stat. § 283.87(1);

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 292.99(2);

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

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

Dated this 16th day of April, 2021.

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Electronically signed by Emily M. Ertel

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