

STATE OF WISCONSIN CIRCUIT COURT COLUMBIA COUNTY
BRANCH ____

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

Plaintiff,

V.

Case No. 2022-CX-____
Complex Forfeiture: 30109

DIDION MILLING, INC.,
121 South Bristol Street
Sun Prairie, Wisconsin 53590,

and

DIDION ETHANOL, LLC,
121 South Bristol Street
Sun Prairie, Wisconsin 53590.

Defendants.

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

CIVIL COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General Joshua L. Kaul, Assistant Attorneys General Tressie K. Kamp and Zachary B. Corrigan, brings this complaint against Didion Milling, Inc., and Didion Ethanol, LLC, at the request of the Department of Natural Resources (DNR), and alleges as follows:

1. The plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal office at the State Capitol in Madison, Dane County, Wisconsin.

2. Defendant Didion Milling, Inc. (Didion Milling) is a domestic corporation with its principal office located at 121 South Bristol Street, Sun Prairie, Wisconsin 53590. Its registered agent is John A. Didion, located at the same address.

3. Defendant Didion Ethanol LLC (Didion Ethanol) is a domestic limited liability company with its principal office located at 121 South Bristol Street, Sun Prairie, Wisconsin 53590. Its registered agent is John Didion, located at the same address.

4. Didion Milling owns and operates a grain milling facility located at 501 South Williams Street, Cambria, Columbia County, Wisconsin.

5. Didion Ethanol owns and operates an ethanol production facility located at W2015 Cabbage Road, Courtland, Columbia County, Wisconsin. The Didion Ethanol facility is located directly south across the road from Didion Milling.

6. Didion Milling receives and dries corn that is milled, dried, grinded, and then separated by mills to be used in various capacities to make finished products.

7. Didion Ethanol produces ethanol from the milled corn products that are of insufficient quality for use in finished products.

8. Didion Milling and Didion Ethanol are considered a single source for air permitting purposes and are currently jointly covered under Air Pollution Control Operation Permit Number 11108152A-P08, the primary enforcement permit.

9. Didion Milling and Didion Ethanol were previously jointly permitted under Air Pollution Control Operation Permit Numbers 111081520-P01 and 11081520-P03, in conformity with the applicable provisions, that are permanently in effect and carried through in the primary enforcement permit, Air Pollution Control Operation Permit Number 11108152A-P08.

10. Didion Milling and Didion Ethanol are collectively referred to herein as “Didion.” Didion’s corn milling and ethanol production locations are collectively referred to herein as “the Facility”.

11. The Facility is a major source for carbon monoxide, nitrogen oxides, particulate matter (PM), PM₁₀, and volatile organic compound (VOC) emissions subject to prevention of significant deterioration permitting as that term is defined in Wis. Stat. § 285.01(24) and Wis. Admin. Code § NR 405.02(22).

GENERAL ALLEGATIONS

16. The Plaintiff has enacted in Wis. Stat. ch. 285 statutes governing sources of air contaminant emissions to prevent and reduce air pollution. DNR administers regulations and issues permits authorized by these statutes.

17. Wisconsin Stat. § 285.60(1)(a)1. states that “no person may commence construction, reconstruction, replacement, or modification of a stationary source unless that person has a construction permit.”

18. Wisconsin Stat. § 285.01(41) defines a “[s]tationary Source” as “any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an

air contaminant source that is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant.”

19. Wisconsin Stat. § 285.60(1)(b)1. states that “no person may operate a new source or a modified source unless the person has an operation permit under s. 285.62.”

20. Wisconsin Stat. § 285.01(33) defines “person” as “an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.”

21. Defendants are “operators” of the Facility as that term is defined in Wis. Admin. Code § NR 400.02(113) and used in Wis. Stat. § 285.01(33).

22. In May 1996, DNR referred Didion to DOJ for failure to obtain a construction permit, failure to control excess particulate emissions, and failure to use air pollution control equipment at their Prairie du Chien, Wisconsin facility. DOJ referred the matter to the Environmental Protection Agency (EPA). Didion and EPA entered into a Consent Agreement in 2000 to settle violations of the Clean Air Act, including a \$107,500.00 penalty.

23. On March 26, 2010, the State of Wisconsin filed a complaint against Didion alleging 23 violations of Wisconsin laws and regulations governing air pollution and pollution discharge in Columbia County case number 10-CX-002, *State of Wisconsin v. Didion Milling, Inc. and Didion Ethanol, LLC*.

24. On April 23, 2010, the Honorable Judge Gregory J. Potter issued an Order for Judgment in the above-referenced matter to resolve claims 6–23 of the Complaint, which required Didion to pay \$525,000.00 in forfeitures, statutory surcharges, penalty surcharges, costs, and attorney fees, and to complete certain injunctive relief.

25. On April 26, 2010, Judge Potter issued an Order for Judgment in the above-referenced matter to resolve claims 1–5 of the Complaint, which required Didion to pay \$525,000.00 in forfeitures, statutory surcharges, penalty surcharges, and costs.

26. On May 31, 2017, multiple explosions occurred at the Facility after employees reported smelling smoke. Two employees detected an explosion and fire and were exiting the Facility when the explosions occurred. Five employees were fatally injured due to burns and/or blunt force trauma. Three employees received serious injuries requiring hospitalization, and nine employees received serious enough injuries that they required medical attention.

27. The Occupational Safety and Health Administration (OSHA) found that the May 31, 2017 explosions were likely caused by Didion's failure to correct leaks, by the accumulation of highly combustible grain dust, and by Didion's failure to properly maintain equipment to control ignition sources. OSHA has assessed a fine, which Defendants are contesting.

28. On May 1, 2017, DNR issued Didion Construction Permit No. 16-RAB-045 (Construction Permit 1), valid through November 1, 2018, allowing

Didion to construct corn cleaning and additional mill capacity, and initially operate a corn milling and ethanol production facility, subject to permit conditions.

29. On February 15, 2018, DNR issued Didion Construction Permit No. 17-MMC-165 (Construction Permit 2), valid through August 5, 2019, allowing Didion to construct and initially operate processes P104 through P113 and B15 at the Facility, subject to permit conditions.

30. On April 3, 2018, DNR issued Air Pollution Control Operation Permit No. 111081520-P01 (Operation Permit P01), valid through April 2, 2023, to Didion, authorizing Didion's grain milling operations and ethanol production, subject to permit conditions.

31. On May 4, 2020, DNR issued Air Pollution Control Operation Permit No. 111081520-P03 (Operation Permit P03), valid through April 2, 2023, to Didion, authorizing Operation Permit Revision(s) to Didion's Permit P01 authorizing Didion's corn milling and ethanol production facility, subject to permit conditions.

32. On August 16, 2021, DNR issued Air Pollution Control Operation Permit No. 11108152A—P08 (Operation Permit P08), valid through April 2, 2023, to Didion, authorizing Operation Permit Revision(s) to Didion's Permit P03, authorizing Didion's corn milling and ethanol production facility, subject to permit conditions.

33. Didion's Construction Permit 1 and 2, and Operation Permit P01, P03, and P08 are collectively referred to as the "Permits."

34. Wisconsin Stat. § 285.60(7) states that "a person who obtains a permit under this section shall comply with all terms and conditions of the permit."

35. Wisconsin Stat. § 285.65 provides that “[DNR] may prescribe conditions for an air pollution control permit to ensure compliance with this chapter and s. 299.15 and rules promulgated under this chapter and [Wis. Stat. §] 299.15 and to ensure compliance with the federal clean air act.”

36. Wisconsin Stat. § 285.66(1) provides that permit conditions which originate in a construction permit are permanent and may only be revised through a revision of the construction permit condition, revision of a construction permit, or through the issuance of a new construction permit.

37. When Didion receives corn, if the moisture content exceeds that required for milling, it is sent to a whole grain dryer before the milling process. Some of this dried grain is used to produce ethanol.

38. The grain used to produce ethanol is ground into a mash and placed into a tank to ferment. This mash is later distilled and placed into a centrifuge to draw out the liquids. The product left from this process, known as “whole stillage,” is then dried and mixed with condensed thin stillage to make distillers dried grains with solubles (DDGS). This DDGS is lighter and more practicable for shipping.

39. On May 1, 2019, DNR received a complaint about visible emissions from the DDGS dryer at the Facility. DNR followed up with a site visit later that same day.

40. On May 13 and May 15, 2019, DNR conducted a two-day announced full compliance evaluation (FCE) at the Facility to satisfy federal inspection requirements.

41. DNR was unable to complete the FCE in May. DNR returned on June 14, 2019, unannounced ahead of time, to complete the FCE.

42. During DNR's June 14, 2019 inspection, Didion denied access to DNR. DNR thus had to obtain a special inspection warrant under Wis. Stat. § 66.0199 in order to complete the federally required evaluation.

43. DNR identified a number of violations as a result of the FCE. DNR sent a Notice of Violation (NOV) to Didion on September 13, 2019, that set forth and described the violations.

44. On October 21, 2019, DNR conducted an enforcement conference that included DNR staff and Didion staff, to discuss the results of the FCE and the NOV.

45. On December 5, 2019, DNR provided an enforcement conference summary to Didion that again set forth and described the violations and also included information that had been provided by Didion in response to the alleged violations.

46. On June 17, 2020, DNR sent an NOV to Didion that set forth and described Didion's failure to conduct a required performance test for S58. Didion responded in writing on June 29, 2020.

47. On February 15, 2021, DNR sent an NOV to Didion that set forth and described Didion's emissions exceedances of PM from S46.

48. On March 16, 2021, DNR conducted an enforcement conference that included DNR staff and Didion staff, to discuss the NOV.

49. On March 22, 2021, DNR provided an enforcement conference summary to Didion that again set forth and described the S46 exceedance violations and also

included information that had been provided by Didion in response to the alleged violations.

50. On May 28, 2021, DNR conducted a Full Compliance Evaluation of the Facility. DNR completed the FCE with site visits on June 15 and 16, 2021.

51. DNR identified a number of violations of Didion's air pollution permit as a result of the 2021 FCE. DNR sent an NOV to Didion on September 9, 2021, that set forth and described the violations.

EMISSIONS CONTROL VIOLATIONS

VIOLATION 1 - FAILURE TO DIRECT EMISSIONS EXITING THE DDGS DRYER TO A CONTROL DEVICE

52. Conditions I.B.1.a.(l) and I.B.3.a.(l) of Construction Permit 2 and Operation Permit P01 provide, in relevant part, that for Stack S46, Control Device C53, and Processes P49 (DDGS Dryer) and P50 (DDGS Fluid Bed Cooling), that whenever processes P49 and P50 are in operation, the Facility shall control the emissions exiting the DDGS dryer (P49) and the DDGS cooling collection system and control devices (P50, C30, and CF40), by directing emissions to either RTO#3 (C53/S46) or to RTO#1 (C32/S32).

53. On April 9, 2019, a service contractor visited the Facility and inspected RTO#3.

54. The contractor found that Didion had installed a valve that prevented emissions for RTO#3 from going to RTO#1.

55. On May 1, 2019, in response to a complaint of malodorous emissions from the DDGS dryer stack, DNR inspected the Facility. On that date there were leaks on the dryer duct and on the fresh air intake leading to RTO#3.

56. During the June 14, 2019, FCE, there were more leaks on the dryer duct work and on RTO #3. Leaks that had been identified on May 1, 2019, had not yet been repaired.

57. Defendants could not provide a scheduled time for when the leaks would be repaired.

58. On August 8, 2019, DNR sent Defendants a letter of inquiry regarding the operation of RTO#3. DNR requested additional information on shutdowns of RTO#3 for June, July, and August, the results of the inspections and maintenance on RTO#3 since June, and any existing plans of how Defendants address releases of emissions from openings other than stack S46.

59. Defendants responded to DNR's letter of inquiry on August 15, 2019. Defendants claimed that the RTO#3 leaks had been repaired on July 16, 2019.

60. On February 24, 2020, there was an incident of release from the DDGS dryer; and on February 26, 2020, there was an incident of bypassing of the RTO#3 stack; both of which indicate that noncompliance persists. There have also been multiple deviation notifications related to valve control malfunction leading to visible emissions from the DDGS dryer.

61. The Defendants violated Conditions I.B.1.a.(l) and I.B.3.a.(l) of Construction Permit 2 for at least 98 days, from at least April 9, 2019, through at

least July 16, 2019, when they operated the DDGS dryer (P49) without properly routing emissions to RTO#3 (C53/S46), or to RTO#1(C32/S32).

62. The Defendants violated Conditions I.B.1.a.(l) and I.B.3.a.(l) of Operation Permit P01 for two days, on February 24 and 26, 2020, by operating the DDGS dryer (P49) without properly routing emissions to RTO#3 (C53/S46), or to RTO#1(C32/S32).

**VIOLATION 2 – FAILURE TO MAINTAIN TEMPERATURE OF THE
COMBUSTION CHAMBER OF RTO#1 WITHIN PERMIT RANGE**

63. Condition I.A.1.b.(5)(a) of Construction Permit 1 and 2, and Operation Permit P01 and P03 provide, in relevant part, that for Stack S32, Control Device C32, Processes P200 (Cook), P201 (Fermentation), P202 (Distillation), P203 (Centrifuge), P204 (Concentration) and P205 (Ethanol Recovery System), that when RTO#1 (C32) is being used, the 1-hour average temperature of RTO#1 shall be maintained within the range of at least 1515° Fahrenheit (F) and not more than 1650° F. The set point shall be not less than the 3-hour average temperature maintained during the most recent compliance demonstration test that demonstrates compliance. An alternative temperature range may be maintained if approved by DNR in writing.

64. RTO#1 temperature readings from 2017 through 2019 provided by Defendants revealed at least 58 days in which temperature readings for RTO#1 were outside of the ranges required by Construction Permits 1 and 2, and Operation Permits P01 and P03.

65. During emission testing on November 20, 2020, the 3-hour average chamber temperature of RTO#1 was 1603.4 degrees F. At least 156 days of

temperature readings for records provided since that date are below 1603.4°F, in violation of Condition I.A.1.b.(5)(a) of Defendants' Operation Permit P03.

66. Defendants' records failed to indicate that emissions were being routed away from RTO#1 when temperature readings were less than that required by the Permit.

67. At all times relevant to the violations alleged, Defendants did not request from DNR an alternative temperature operating range or set point for operating RTO#1.

68. Defendants violated Condition I.A.1.b.(5)(a) of Construction Permit 1 and 2 and Operation Permits P01 and P03 on at least 214 occasions, from at least December 24, 2017, through June 2, 2021, when they operated RTO#1 outside of permitted temperature operating range or set point.

VIOLATION 3 – FAILURE TO MAINTAIN TEMPERATURE OF THE COMBUSTION CHAMBER OF RTO#3 WITHIN PERMIT RANGE

69. Condition I.B.1.b.(4)(a) of Construction Permit 1 provides, in relevant part, that that for Stack S46, Control Device C53, Processes P49 (DDGS Dryer) and P50 (DDGS Fluid Bed Cooling), that when RTO#3 (C53) is being used, the one-hour average temperature of RTO#3 shall be maintained within the range of at least 1515° F and not more than 1650° F. The set point shall be not less than the 3-hour average temperature maintained during the most recent compliance demonstration test that demonstrates compliance. An alternative temperature range may be maintained if approved by DNR in writing.

70. Condition I.B.1.b.(3)(a) of Didion's Construction Permit 2, and Operation Permits P01 and P03 provide, in relevant part, that for Stack S46, Control Device C53, Processes P49 (DDGS Dryer) and P50 (DDGS Fluid Bed Cooling), that when RTO#3 (C53) is being used, the 1-hour average temperature of RTO#3 shall be maintained within the range of at least 1515° F and not more than 1650° F. The set point shall be not less than the 3-hour average temperature maintained during the most recent compliance demonstration test that demonstrates compliance. An alternative temperature range may be maintained if approved by DNR in writing.

71. Defendants' records failed to include the operational status of the DDGS dryer when the temperature readings from RTO#3 were outside of the permitted range, as required by Condition I.B.1.b. of the permit in force at the time.

72. During emission testing in November of 2020, the average chamber temperature of RTO#3 was 1684° F. At least 197 days of temperature readings for records were outside of the range of at least 1515° F and not more than 1650° F from May 4 to November 20, 2020 and below 1684° F after November 20, 2020 in violation of Condition I.B.1.b.(3)(a) of Defendants' Operation Permit P01 and P03.

73. At all times relevant to the violations alleged, Defendants never requested a change in the compliance requirements in Condition I.B.1.b. of the Construction and Operation Permits, for an alternative temperature operating range or set point when operating RTO#3.

74. Defendants violated Condition I.B.1.b.(4)(a) of Construction Permit 1 on at least 5 days from December 23, 2017 through February 14, 2018, when they operated RTO#3 outside of the permitted temperature operating range.

75. Defendants violated Condition I.B.1.b.(3)(a) of Construction Permit 2 and Operation Permits P01 and P03, on at least 604 days, from at least February 15, 2018 through May 12, 2019, and again from August 1, 2020 through June 2, 2021, by operating RTO#3 outside of permitted temperature operating range or set point.

VIOLATION 4 – FAILURE TO OPERATE EMISSION CONTROLS WHILE LOADING DDGS INTO RAIL CARS

76. Condition I.D.1.b.(1) of Construction Permit 2 and Operation Permit P01 provide, in relevant part, that for Stack S33, Processes P54 (DDGS elevator), P55 (DDGS truck loadout), P65A (DDGS rail loadout), and P65B (DDGS Silo), control device C33 (DDGS baghouse) shall be in line and operated at all times when a process is in operation. The DDGS loadout processes shall be directly vented to and controlled by the DDGS baghouse (C33).

77. Defendants submitted Loading Manifest documentation from February and March 2019 that revealed DDGS was loaded into railcars on at least four occasions outside the DDGS structure, without use of the baghouse or other control device. This occurred on at least February 13, 18, and 25, and on March 14, 2019.

78. DNR asked Defendants about this situation during the June 14, 2019, inspection. Defendants did not show that any fugitive dust controls were implemented during the rail loading, as is required by Condition I.D.1.b.(1) of the permit in force at the time.

79. Loading DDGS into railcars (P65A) requires the permittee to use a the DDGS baghouse (C33) to control PM emissions.

80. Defendants violated Condition I.D.1.b.(1) of Construction Permit 2 and Operations Permit P01 on at least February 13, February 18, and February 25, 2019, and March 14, 2019, when they loaded DDGS into rail cars without use of the DDGS baghouse to control PM emissions.

VIOLATION 5 – OPEN BURNING

81. Condition II.C.2.j. of Construction Permit 2 and Operation Permit P01 provide, in relevant part, that open burning is prohibited, with exceptions provided in Wis. Admin. Code § NR 429.04, that are inapplicable to this matter.

82. On June 14, 2019, DNR inspected the Facility and documented conditions on the property.

83. On that date, there was an area east of the ethanol production facility where construction and demolition materials, including metal debris and wood cable spools, were stored.

84. On that date, there was evidence of open burning on Didion's property east of the ethanol plant. There was a burn pile with remains of wood and metal debris.

85. Defendants violated Condition II.C.2.j. of Construction Permit 2 and Operation Permit P01, and Wis. Admin. Code § NR 429.04 on at least one occasion prior to June 14, 2019, by allowing open burning of waste materials to take place on its property.

EQUIPMENT LEAK DETECTION

VIOLATION 6 – FAILURE TO INSPECT PUMPS IN VOLATILE ORGANIC COMPOUND SERVICE

86. Condition III.A.1.a. of Construction Permit 2 and Operation Permit P01 provide, in relevant part, that for Process F05 (Process Equipment Leaks) the permittee is subject to new source performance standards in Wis. Admin. Code § NR 440.62 and 40 C.F.R. § 60.482-2a(a), that requires each pump in light liquid service to be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 60.485a(b), with some non-applicable exceptions.

87. During DNR's inspection of the Facility on May 15, 2019, Defendants were unable to demonstrate how leak checks for the approximately 1095 pumps, valves, and other connections for the pumps in VOC service were performed. Defendants stated that the analyzer used to detect leaks was out of order and off site for repairs.

88. On May 29, 2019, Defendants' Environmental Manager emailed DNR to advise that the required Leak Detection and Repair (LDAR) monthly testing for May could not be completed because the analyzer needed a sensor replaced and it would remain off site for repairs until at least the end of May. Defendants requested an extension of time to complete the May LDAR inspections.

89. DNR replied to Defendants' email on the same day and advised Defendants to review 40 C.F.R. § 60.482-1a for guidance on the timing of tests.

90. DNR informed Didion in a telephone conversation that DNR has no authority to provide an extension, and that missing the deadline would constitute a deviation.

91. During DNR's inspection of the Facility on June 14, 2019, Defendants stated that the analyzer used in leak detection was still out for repairs.

92. On November 5, 2019, Defendants provided the LDAR monthly report for May 2019 identifying the process equipment inspected and inspection results. The LDAR report was not inclusive of all 1095 pumps, valves, and other connections for the pumps in VOC service as required by Condition III.A.1.a. of Didion's Construction Permit 2 and Operation Permit P01.

93. Defendants violated Condition III.A.1.a. of Construction Permit 2 and Operation Permit P01 for at least the month of May 2019 by failing to properly conduct the required monthly monitoring of the pumps in light liquid service.

INSPECTION AND RECORD-KEEPING VIOLATIONS

VIOLATION 7 – FAILURE TO PROVIDE RECORDS OF INSPECTIONS ON BAGHOUSES INSTALLED TO CAPTURE PM EMISSIONS FROM DDGS HANDLING AND LOADING

94. Condition I.D.1.c.(3) of Construction Permits 1 and 2, and Operation Permit P01, provide, in relevant part, that for Stack S33, Processes P54 (DDGS elevator), P55 (DDGS truck loadout), P65A (DDGS rail loadout), and P65B (DDGS Silo) controlled with DDGS baghouse (C33), the permittee shall keep records of all inspections, checks, and any maintenance or repairs on the DDGS baghouse, containing the date of the action, initials of the inspector, and the results.

95. Wisconsin Admin. Code § NR 439.04(1)(d) provides, in relevant part, that “the owner or operator of an air contaminant source to which chs. NR 400 to 499 apply, shall maintain records . . . relating to the emission of air contaminants.”

96. On May 13, 2019, DNR asked Defendants to provide records of the last bag change for baghouse C33. Defendants did not have any records of bag changes for baghouse C33.

97. Defendants violated Condition I.D.1.c.(3) of Construction Permits 1 and 2, and Operation Permit P01 at least 26 times, from at least May 2017 through June 2019 by failing to maintain monthly records of all inspections, checks, and any maintenance or repairs on baghouse C33.

VIOLATION 8 – FAILURE TO INSPECT BAG FILTERS FOR LEAKS AND TEARS ON MILLING SECTION BAGHOUSES

98. Condition I.L.1.b.(3) of Construction Permit 2 and Operation Permit P01, provide, in relevant part, that for Stacks 50–59, using Control Devices C57 through C66 (baghouses) for Processes P104–P114, baghouses C57–C66 shall be inspected once per month for any leaks or tears.

99. Condition I.L.1.c.(4) of Construction Permit 2 and Operation Permit P01 require Didion to “keep records of all inspections, checks and any maintenance or repairs performed on the baghouse[s] [C57–C66]. These records shall include the date of action and a description of any corrective actions taken.”

100. On May 15, 2019, DNR asked Defendants to provide records of the baghouse inspection records for the milling section, baghouses C57 to C66.

Defendants stated that inspections and calibrations were not in place and there were no specific preventative maintenance work orders at that time.

101. Defendants failed to provide documentation of monthly baghouse inspections for January, March, and April 2019.

102. Defendants violated Conditions I.L.1.b.(3) and I.L.1.c.(4) of Construction Permit 2 and Operation Permit P01, on at least January, March, and April of 2019, by failing to conduct monthly inspections of Baghouses C57 through C66 for any leaks or tears and failing to keep records of such monthly inspections.

VIOLATION 9 – FAILURE TO MAINTAIN RECORDS OF INSPECTIONS, CHECKS AND MAINTENANCE OR REPAIRS ON BAGHOUSE C14

103. Condition I.O.1.c.(4) of Construction Permit 1 and 2, and Operation Permit P01, provide, in relevant part, that for Stack S14, Control C14, Processes P22, P23, P101 (Product Storage (Silos) and Transfer), the permittee shall keep records of all inspections, checks and any maintenance or repairs performed on the baghouse (C14), including the date of action and a description of any corrective actions taken.

104. During the May 15, 2019, inspection, Defendants failed to provide records of baghouse C14. Defendants later provided records on May 21, 2019.

105. Defendants were unable to identify where the pressure drop readings for baghouse C14 were recorded on the inspection report.

106. Defendants' inspection reports for baghouse C14 contained various dates without any pressure drop readings for the baghouse.

107. Defendants violated Condition I.O.1.c.(4) of Construction Permit 1 and 2, and Operation Permit P01 at least 25 times, from at least May 2017 through

May 2019 by failing to maintain monthly records of all inspections performed on baghouse C14.

VIOLATION 10 – FAILURE TO MAINTAIN RECORDS OF THE MAXIMUM TRUE VAPOR PRESSURE OF ALL LIQUIDS STORED IN THE STORAGE TANK

108. Condition I.H.1.c.(2) of Construction Permit 2, Operation Permit P01, and Wis. Admin. Code § NR 440.285(7)(c) provide in relevant part, that for Storage Tanks T01, T02, T04 and T05 containing 200 proof ethanol product, and Storage Tank T03 containing gasoline, the permittee shall maintain a record of the volatile organic liquid (VOL) stored, and the maximum true vapor pressure of the VOL during the respective storage period. The maximum true vapor pressure is the equilibrium partial pressure exerted by the VOL based on the maximum local monthly average ambient temperature.

109. Defendants were unable to provide records containing any information to determine the true vapor pressure of all liquids stored in the tanks at any specific period during the FCE held in May and June of 2019.

110. Defendants violated Condition I.H.1.c.(2) of Construction Permit 2, Operation Permit P01, and 40 C.F.R. § 60.116b at least 23 times, from at least February 2018 through December 2019, by failing to maintain monthly records of the maximum true vapor pressure of the VOLs stored in the tanks.

VIOLATION 11 – FAILURE TO MAINTAIN RECORDS OF REQUIRED TEMPERATURE READINGS OF THE GRAIN DRYER

111. Condition I.S.4.c.(3) of Construction Permit 1 and 2, and Operation Permit P01, provide, in relevant part, that for Stack 23, Process 16 (Grain Dryer No.

3), that the permittee is subject to (New Source Performance Standards) for Grain Elevators pursuant to 40 C.F.R. § 60 subpart DD, and shall maintain records of the grain dryer operating temperature, and record the dryer temperature and temperature setting at least once every eight hours. These records shall be submitted to the DNR upon request.

112. Defendants were unable to provide records to show the grain dryer temperature every eight hours during the FCE held in May and June of 2019.

113. Defendants claimed that the dryer temperature is set but is not recorded every eight hours as required by the permit.

114. Defendants violated Condition I.S.4.c.(3) of Construction Permit 1 and 2, and Operation Permit P01 for at least 774 days, from at least May 1, 2017 through June 14, 2019, by failing to maintain records of the grain dryer operating temperature every eight hours.

VIOLATION 12 – FAILURE TO MAINTAIN RECORDS OF ROAD CONDITIONS AND DUST REMOVAL ANALYSIS

115. Condition I.V.1.c.(2) of Construction Permit 1 and 2, and Operation Permit P01, provide, in relevant part, that for fugitive PM emissions from the total facility, including F01, F02, F03, F04, F06, F07, F08, and F09 for Process P21 (grain conveyor to the ethanol plant), the permittee shall keep detailed daily records of the road conditions, evaluations, cleaning, sweeping and dust removal activities. The records shall include the time, method and duration of each cleaning and documentation of follow-up evaluations to ensure roads have been successfully cleaned. Didion shall document the protocol used to evaluate the road, scale, parking,

and material handling area conditions and determine when cleaning, sweeping and dust removal are needed.

116. Condition I.V.1.c.(2)(a) of Construction Permit 1 and 2, and Operation Permit P01, provide, in relevant part, that the Facility shall incorporate observations of visible emissions (as measured using Method 22 for a 10-minute period with no more than 5% observation of visible emissions) from the Facility, particularly from lines of trucks at the Facility, both prior to and following cleaning activities.

117. During the May 15, 2019 inspection, DNR discussed the required Daily Road Conditions records with Defendants. Defendants were unable to provide such records.

118. Defendants were not aware of any recent sweepings, even though sweeping as needed was included in their dust control plan.

119. During the May 15, 2019 inspection, Defendants told DNR they were unfamiliar with Method 22 to measure visible emissions.

120. Document 1-2019-Fugitive Dust Record maintained by the Defendants contains instructions on how to perform visual inspections for fugitive dust emissions.

121. Defendants' 1-2019-Fugitive Dust Record revealed that testing for visible emissions using Method 22 was performed on only one occasion in 2019.

122. Defendants' 1-2019-Fugitive Dust Record revealed that testing for visible emissions using Method 22 was not performed in 2017 and 2018.

123. Defendants violated Condition I.V.1.c.(2) of Construction Permit 1 and 2, and Operation Permit P01 for at least 689 days, from at least May 1, 2017, through

March 21 2019, by failing to maintain daily records of the road conditions, evaluations, cleaning, sweeping and dust removal activities.

124. Defendants violated Condition I.V.1.c.(2)(a) of Construction Permit 1 and 2, and Operation Permit P01 for at least 689 days, from at least May 1, 2017, through March 21, 2019, by failing to use Method 22 and record daily visual observations of emissions both prior to and following cleaning activities.

**VIOLATION 13 – FAILURE TO MAINTAIN RECORDS OF OBSERVATIONS
OF TRUCKS LEAVING AND ENTERING THE FACILITY TO ASSURE
THAT OPEN TRUCK BEDS ARE COVERED**

125. Condition I.X.3.c.(6) of Construction Permit 1 and 2, and Operation Permit P01, provide, in relevant part, additional stack requirements for the entire Facility that require the Facility to maintain and document procedures and practices to assure that each open truck is covered prior to entering or exiting the Facility, and to maintain records of observations which insure that their trucking contractors are complying with this requirement.

126. During the May 15, 2019 inspection, DNR reviewed records related to truck cover monitoring for trucks entering and exiting the Facility. Defendants' records did not contain any information to show whether trucks entering and exiting the Facility were covered.

127. Defendants violated Condition I.X.3.c.(6) of Construction Permit 1 and 2, and Operation Permit P01 for at least 689 days, from at least May 1, 2017, through March 21, 2019, by failing to maintain records documenting that trucks entering or exiting the Facility had truck beds covered to control fugitive grain dust emissions.

CONTROL DEVICE MONITORING VIOLATIONS

VIOLATION 14 – FAILURE TO MAINTAIN PERMITTED PRESSURE DROP RANGE ACROSS CONTROL DEVICES

128. Condition I.B.1.b.(1) of Construction Permit 1 provides, in relevant part, that for Stack 46, Processes P49 (DDGS Dryer) and P50 (DDGS Fluid Bed Cooling), and Control Device C40 (Cyclone baghouse), the Facility shall maintain the pressure drop across the DDGS cooling system baghouse (C40) between 0.5 and 10 inches water column to control emissions routed to RTO#3, or between an alternative range approved by DNR in writing.

129. Condition I.B.1.b.(1)(a) of Construction Permit 2, and Operation Permit P01 provide, in relevant part, that for Stack 46, Processes P49 (DDGS Dryer) and P50 (DDGS Fluid Bed Cooling), and Control Device C40 (Cyclone baghouse), the Facility shall maintain the pressure drop across the DDGS cooling system baghouse (C40) between 0.4 and 10 inches water column to control emissions routed to RTO#3, or between an alternative range approved by DNR in writing.

130. Condition I.B.1.b.(2) of Construction Permit 1 provides, in relevant part, that for Stack 46, Processes P49 (DDGS Dryer) and P50 (DDGS Fluid Bed Cooling), and Control Device C39 (multi-clones), the Facility shall maintain the pressure drop across the multi-clones (C39) between 5 and 15 inches water column to control emissions routed to RTO#3, or between an alternative range approved by DNR in writing.

131. Condition I.B.1.b.(1)(b) of Construction Permit 2 and Operation Permit P01, provide, in relevant part, that for Stack 46, Processes P49 (DDGS Dryer) and

P50 (DDGS Fluid Bed Cooling), and Control Device C39 (multi-clones), the Facility shall maintain the pressure drop across the multi-clones (C39) between 5 and 15 inches water column to control emissions routed to RTO#3, or between an alternative range approved by DNR in writing.

132. DNR reviewed Defendants' records containing DDGS Cooling Baghouse (C40) readings from 2017, 2018, and 2019, during the May 15, 2019, inspection.

133. The records revealed at least 106 days, from May 1, 2017, through April 10, 2019, in which the pressure drop for the DDGS cooling system baghouse (C40) was recorded outside the permitted range.

134. DNR also reviewed Defendants' records containing DDGS dryer cyclones (C39) readings from 2017, 2018 and 2019. Records from 2017 and 2018 contain pressure drop readings for just one cyclone when multiple clones are used to control emissions.

135. The records revealed at least 197 days, from at least May 1, 2017, through May 12, 2019, in which the pressure drop for the DDGS Dryer Cyclones (C39) was recorded outside the permitted range.

136. At all times relevant to the allegations alleged, Defendants never requested a change in compliance requirements for the allowable pressure drop ranges for the DDGS Cooling Baghouse (C40) or DDGS Dryer Cyclones (C39) provided in Condition I.B.1.b. of their Construction and Operation Permits.

137. Defendants violated compliance requirements of Conditions I.B.1.b. of their Construction and Operation Permits for at least 106 days, from at least May 1,

2017, through April 10, 2019, by failing to maintain the pressure drop range of C40 within the permitted ranges.

138. Defendants violated compliance requirements of Conditions I.B.1.b. of their Construction and Operation Permits for at least 197 days, from at least May 1, 2017, through May 12, 2019, by failing to maintain the pressure drop range of C39 within the permitted ranges.

VIOLATION 15 – FAILURE TO MAINTAIN PERMITTED PRESSURE DROP RANGE ACROSS THE PRIMARY CO₂ SCRUBBER

139. Condition I.A.1.b.(3) of Construction Permit 1 and 2, and Operation Permit P01 and P03, provides, in relevant part, that for Stack 32, Control Device C32, and Processes P200 (Cook), P201 (Fermentation), P202 (Distillation), P203 (Centrifuge), P204 (Concentration), and P205 (Ethanol Recovery System), the Facility shall maintain the pressure drop across the primary (final) CO₂ scrubber between one to ten inches of water column gauge pressure, or an alternative range with written approval from DNR, which has been demonstrated to achieve compliance. Monitoring of the scrubbers shall be continued in accordance with Condition I.A.1.c.(3)(a), except as provided under c.(3)(b).

140. Defendants provided C30 Final Scrubber Readings from 2017, 2018. and 2019 which revealed at least 93 days, from May 1, 2017, through May 12, 2019, in which pressure drop readings were outside the permit range for all three scrubbers.

141. Review of Next Day Deviation Notices submitted by Didion between July 29, 2019, through August 5, 2020, showed at least 26 days of deviation in which

Defendants failed to maintain pressure drop across the CO₂ scrubber within the permit limit of one and ten inches of water column.

142. Defendants did not request a deviation from permitted pressure drop reading in Condition I.A.1.b.(3) of their Permits.

143. Defendants violated Condition I.A.1.b.(3) of their Permits in effect from May 1, 2017, through August 5, 2020, on at least 119 days, by failing to maintain the pressure drop across the primary (final) CO₂ scrubber between one to ten inches of water column gauge pressure.

VIOLATION 16 – FAILURE TO MAINTAIN PERMITTED PRESSURE DROP RANGE FOR THE ETHANOL GRAIN HAMMERMILL BAGHOUSES

144. Condition I.ZZZ.b.(7)(b)(1) of Construction Permit 1 provides, in relevant part, that the pressure drop across each baghouse in the Facility, shall be normally maintained within the range of 1.5 to 8 inches of water column, or with approval from DNR in writing, at an alternative range which has been demonstrated to achieve compliance.

145. Condition I.N.1.b.(2)(b) of Construction Permit 2 and Operation Permits P01 and P03 provide, in relevant part, that for Stack 39, Controls C35 (east baghouse), C36 (west baghouse) and Processes P58 – P64 Hammermills (Ethanol plant dry grain milling and handling), the Facility shall normally maintain the pressure drop across each baghouse within the range of 0.4 to 8 inches of water column, or with approval from DNR in writing, at an alternative range which has been demonstrated to achieve compliance.

146. Defendants provided to DNR the C35 and C36 baghouse pressure drop readings from 2017, 2018, and 2019 for the Hammermills.

147. Defendants' records for the C35 and C36 baghouse pressure drop readings from 2017, 2018, and 2019..

148. At all times relevant to the allegations alleged, Defendants never requested a deviation in the pressure drop range for the C35 and C36 baghouses compliance requirements of their Permits.

149. Defendants violated I.ZZZ.b.(7)(b)(1) of Construction Permit 1 on at least 32 days from November 21, 2017 through February 14, 2018, by failing to maintain the pressure drop across baghouses C35 and C36 within the permitted range.

150. Defendants violated Condition I.N.1.b.(2)(b) of Construction Permit 2 and Operation Permit P01 on at least 77 days, from February 15, 2018, through May 3, 2019, by failing to maintain the pressure drop across baghouses C35 and C36 within the permitted range.

VIOLATION 17 – FAILURE TO MAINTAIN PERMITTED PRESSURE DROP RANGE ACROSS EACH BAGHOUSE IN THE MILLING SECTION

151. Condition I.L.1.b.(2)(b) of Construction Permit 2 and Operation Permits P01 and P03, provide, in relevant part, that for Stack 50/Control C57/Process P104 (Cyclones, Hammer Mill, Pin Mill, Sifting), Stack 51/Control C58/Process P105 (Cyclones, Conditioners, Extruders, Drying), Stack 52/Control C59/Process P106 (Aspirators, Classifiers), Stack 53/Control C60/Process P107 (Transfer bin, Aspiration of Packaging), Stack 54/Control C61/Process P108 (Roll Aspiration,

Hopper Aspiration), Stack S55/Control C62/Process P109 (Aspirator/Polisher), Stack S56/Control C63/Process P110 (Negative Lift Cyclones, Bin Aspiration), Stack S57/Control C64/Process P111 (Degermination Cyclones), Stack S58/Control C65/Process P112 (Corn Cleaning), and Stack S59/Control C66/Process P113 (A Milling-Milling, Sifting, Aspiration), the Facility shall maintain the pressure drop across each baghouse within 0.5 to 8 inches of water column, or with approval from DNR in writing, at an alternative range which has been demonstrated to achieve compliance.

152. DNR reviewed Defendants' records for the milling section baghouse pressure drop readings from 2019 during the May 15, 2019, inspection.

153. Defendants' records for the milling section baghouse pressure drop readings from January through May 2019, revealed at least 59 days in which the baghouse pressure drop readings were outside of the permitted range.

154. At all times relevant to the allegations alleged, Defendants never requested a deviation from the pressure drop range for the milling section baghouse compliance requirements of their Permits.

155. On May 28, 2021, DNR conducted a FCE of the Facility, reviewed Didion's records, and then completed the FCE with site visits on June 15 and 16, 2021. Defendants' records show that Defendants had 44 days of violations from the permitted pressure drop range for the mill dryer line, control devices C63 and C67, during 2020. The records reveal 68 days of violation from the permitted pressure drop range for the fine grind line, control device C57, during 2020.

156. Defendants violated Condition I.L.1.b.(2)(a) of Construction Permit 2 and Operation Permit P01 and P03 on at least 59 days in 2019 by failing to maintain the pressure drop across the milling section baghouse within 0.5 to 8 inches of water column; at least 44 days in 2020 by failing to maintain the pressure drop range for C63 and C67; and at least 68 days in 2020 by failing to maintain the pressure drop range for C57, all as required by the Permit, for a total of 171 days of violation.

VIOLATION 18 – FAILURE TO MAINTAIN PERMITTED PRESSURE DROP RANGE ACROSS THE GRAIN RECEIVING BAGHOUSE

157. Condition I.P.1.b.(4) of Construction Permit 1 and 2, and Operations Permit P01, provide, in relevant part, that for Stack S47, Control C54, Process P101 (Grain Receiving), the Facility shall measure and maintain the pressure drop across the baghouse (C54) within the range of 0.5 to 10 inches of water column.

158. DNR inspected the Facility and reviewed Defendants' baghouse records for the grain receiving baghouse (C54) for 2017, 2018, and 2019.

159. Defendants' records for the grain receiving baghouse (C54) pressure drop readings revealed at least 23 days from May 2017 through May 2019 in which the pressure drop readings for C54 were outside of the permitted range.

160. Defendants violated Condition I.P.1.b.(4) of Construction Permit 1 and 2, and Operation Permit P01 on at least 23 days from May 1, 2017, through May 2019, when they failed to maintain the pressure drop across the grain milling baghouse (C54) within the permitted range of 0.5 to 10 inches of water column, at all times the process was in operation.

**VIOLATION 19 – FAILURE TO CALIBRATE PRESSURE DROP
MONITORING DEVICES INSTALLED ON THE ETHANOL DRY GRAIN
HAMMERMILL BAGHOUSES**

161. Condition I.N.1.b.(2) of Construction Permit 1 provides, in relevant part, that for Stack S39, Controls C35 and C36 (baghouses), for Processes P58-P64—Ethanol plant dry grain milling and handling (hammermills), the Facility shall install, calibrate, operate, and maintain the instrumentation necessary to monitor the pressure drop across each baghouse, or at an alternative range which has been demonstrated to achieve compliance.

162. Condition I.N.1.b.(2)(a) of Construction Permit 2 and Operation Permit P01 provide, in relevant part, that for Stack S39, Controls C35 and C36 (baghouses), for Processes P58-P64—Ethanol plant dry grain milling and handling (hammermills), the Facility shall install, calibrate, operate and maintain the instrumentation necessary to monitor the pressure drop across baghouses C35 and C36.

163. Condition II.C.2.q. of Didion's Permits provide, in relevant part, that all instruments used for measuring source or air pollution control equipment operational variables shall be calibrated at least yearly.

164. DNR reviewed Defendants' baghouse inspection records during the May 15, 2019, inspection.

165. During the June 14, 2019 FCE, Defendants admitted to not properly calibrating the pressure drop monitoring device installed on the hammermill baghouses.

166. Defendants' records contained no calibration records for the pressure drop gauges installed on hammermill baghouses (C35 and C36 C44), from May 2017 through June 2019, to ensure compliance with PM emission limits of Didion's Permits in effect at the time.

167. Defendants violated Condition I.N.1.b.(2) of Construction Permit 1 for the year of 2017, by failing to calibrate the pressure drop monitoring devices installed on each baghouse.

168. Defendants violated Condition I.N.1.b.(2)(a) of Construction Permit 2 and Operation Permit P01 for the years of 2018 and 2019, by failing to calibrate the pressure drop monitoring devices installed on the hammermill baghouses (C35 and C36).

**VIOLATION 20 – FAILURE TO CALIBRATE PRESSURE DROP
MONITORING DEVICES INSTALLED ON THE MILLING
SECTION BAGHOUSES**

169. Condition I.L.1.b.(2)(a) of Construction Permit 2 and Operation Permit P01 provide, in relevant part, that for Stack S50/Control C57/Process P104 (Cyclones, Hammer Mill, Pin Mill, Sifting), Stack S51/Control C58/Process P105 (Cyclones, Conditioners, Extruders, Drying), Stack S52/Control C59/Process P106 (Aspirators, Classifiers), Stack S53/Control C60/Process P107 (Transfer Bin, Aspiration of Packaging), Stack S54/Control C61/Process P108 (Roll Aspiration, Hopper Aspiration), Stack S55/Control C62/Process P109 (Aspirator/Polisher), Stack S56/Control C63/Process P110 (Negative Lift Cyclones, Bin Aspiration), Stack S57/Control C64/Process P111 (Degermination Cyclones), Stack S58/Control

C65/Process P11 (Corn Cleaning), and Stack S59/Control C66/Process P113 (A-Mill Milling, Sifting, Aspiration), the Facility shall install, calibrate, operate and maintain the instrumentation, necessary to monitor the pressure drop across the milling section baghouses (C57 through C66), to control PM emissions from the milling section.

170. Condition II.C.2.q. of Didion's Permits provide, in relevant part, that all instruments used for measuring source or air pollution control equipment operational variables shall be calibrated at least yearly.

171. Emissions from the milling section are controlled by use of baghouses.

172. During DNR's May 15, 2019 inspection, DNR reviewed Defendants' records, including calibration records for the milling section baghouses (C57 through C66) used to control emissions.

173. During the June 14, 2019, FCE, Defendants admitted to not properly calibrating the pressure drop monitoring device installed on the milling section baghouses.

174. Defendants' records contained no calibration records for the pressure drop gauges installed on the milling section baghouses (C57 to C66) from at least May 2017 through June 2019, to ensure compliance with PM emission limits of the permit.

175. Defendants violated Condition I.L.1.b.(2)(a) of Construction Permit 2 and Operation Permit P01 for at least the years of 2017, 2018, and 2019, by failing to

calibrate the pressure drop monitoring devices installed on the milling section baghouses (C57–C66).

**VIOLATION 21 - FAILURE TO CALIBRATE PRESSURE DROP
MONITORING DEVICES INSTALLED ON THE GRAIN
RECEIVING BAGHOUSE**

176. Condition I.P.1.b.(2)(b) of Didion's Construction Permits and Operation Permit P01 provide, in relevant part, that for Stack S47/Control 54/Process P101 (Grain Receiving), the Facility shall install, calibrate, operate, and maintain instrumentation necessary to monitor the pressure drop across the baghouse (C54), to control PM emissions.

177. Condition II.C.2.q. of Didion's Permits provides, in relevant part, that all instruments used for measuring source or air pollution control equipment operational variables shall be calibrated at least yearly.

178. The grain receiving baghouse (C54) is operated when grain is unloaded in order to control emissions.

179. DNR reviewed Defendants' baghouse inspection records during the May 15, 2019, inspection.

180. During the June 14, 2019, FCE, Defendants admitted to not properly calibrating the pressure drop monitoring device installed on the grain receiving baghouse.

181. Defendants had no calibration records for the pressure drop gauges installed on the grain receiving baghouse (C54) from May 2017 through June 2019, to ensure compliance with PM emission limits of the permit.

182. Defendants violated Condition I.P.1.b.(2)(b) of their Construction Permits and Operation Permit P01 for at least the years of 2017, 2018, and 2019, by failing to calibrate the pressure drop monitoring device installed on the grain receiving baghouse (C54).

**VIOLATION 22 – FAILURE TO CALIBRATE PRESSURE DROP
MONITORING DEVICES INSTALLED ON THE PRODUCT STORAGE AND
TRANSFER BAGHOUSE**

183. Condition I.O.1.b.(2) of Construction Permits 1 and 2 and Operation Permit P01 provide, in relevant part, that for Stack 14, Control 14, Processes P22, P23, and P101 (Product Storage (Silos) and Transfer), the Facility shall install, calibrate, operate and maintain instrumentation, to monitor the pressure drop across the product storage and transfer baghouse (C14).

184. Condition II.C.2.q. of Didion's Permits provides, in relevant part, that all instruments used for measuring source or air pollution control equipment operational variables shall be calibrated at least yearly.

185. DNR reviewed Defendants' baghouse inspection records during the May 15, 2019, inspection.

186. During the June 14, 2019, FCE, Defendants admitted to not properly calibrating the pressure drop monitoring device installed on the product storage and transfer baghouse.

187. Defendants had no calibration records for the pressure drop gauges installed on the product storage and transfer baghouse (C14) from May 2017 through June 2019, to ensure compliance with PM emission limits of the permit.

188. Defendants violated Condition I.O.1.b.(2) of their Construction Permits and Operation Permit P01 for at least the years of 2017, 2018, and 2019, by failing to calibrate the pressure drop monitoring device installed on the product storage and transfer baghouse (C14).

VIOLATION 23 - FAILURE TO MAINTAIN REQUIRED FLOW RATES OF SCRUBBER WATER

189. Condition I.A.1.b.(4)(a) of Operation Permits P01 and P03 provide, in relevant part, that for the ethanol recovery system (P205), the aggregate water flow rate may not be less than 150 gpm (gallons per minute) to the knockout scrubber of recirculated fresh/Reverse Osmosis water from the CO2 scrubber plus mixed/cooled recycle/process water.

190. During the May 28, 2021 virtual FCE, and the in-person June 15 and June 16, 2021 FCE, Defendants' records for P205 showed at least nine instances from September 12, 2019, through July 28, 2020, when water flow rates were outside of the permitted range.

191. Defendants violated Condition I.A.1.b.(4)(a) of Operation Permits P01 and P03 on at least nine occasions in 2019 and 2020 by failing to maintain the required flow rates of the scrubber water in the three scrubbers.

NEXT DAY REPORTING VIOLATION

VIOLATION 24 – FAILURE TO NOTIFY DNR BY NEXT BUSINESS DAY OF DEVIATION FROM PERMIT CONDITIONS

192. Condition II.D.1.c. of Didion's Permits provides, in relevant part, that the permittee provide reports to DNR of deviation from any conditions specified in a

permit other than hazardous substance air spills or events that cause any emission limitation to be exceeded. The notification must be made by the next business day following the deviation and include the cause, duration and steps taken to prevent a recurrence of the deviation.

193. Defendants' records for the final CO₂ scrubber, C-30-PD-Final Scrubber, revealed deviations from the permitted range for the pressure drop readings across the final scrubber pursuant to Condition I.A.1.b.(3) of the Permits in effect from approximately February 14, 2019, through August 5, 2020.

194. Defendants failed to report deviations in 2019 and 2020 from the final CO₂ scrubber pressure drop permitted range identified in Condition I.A.1.b.(3) of the effective Permits to DNR within the next business day.

195. Defendants' records for the milling section baghouses (C57–C66) revealed deviations from the permitted pressure drop readings pursuant to Condition I.L.1.b(2)(b) of the Permits in effect in 2019.

196. Defendants failed to report deviations in 2019 from the milling section baghouse pressure drop range identified in Condition I.L.1.b.(2)(b) of Construction Permit 2 and Operation Permit P01 and P03 to DNR, within the next business day.

197. Defendants' records for the hammermill baghouses (C35 and C36) pressure drop readings revealed deviations from the permitted range identified in Condition I.N.1.b.(2)(b) of Construction Permit 2 and Operation Permits P01 and P03 for the pressure drop readings for baghouses C35 and C36, in 2017, 2018, and 2019.

198. Defendants failed to report deviations in 2017, 2018, and 2019 from the hammermill baghouse pressure drop range identified in Condition I.N.1.b.(2)(b) of Construction Permit 2 and Operation Permit P01 to DNR within the next business day.

199. Defendants' records for the grain receiving baghouse (C54) pressure drop readings revealed deviations from the permitted range identified in Condition I.P.1.b.(4) of Construction Permits 1 and 2, and Operation Permit P01 for the pressure drop readings for baghouse C54 in 2017, 2018, and 2019.

200. Defendants failed to report deviations in 2017, 2018, and 2019 from the grain receiving baghouse pressure drop range identified in Condition I.P.1.b.(4) of Construction Permits 1 and 2, and Operation Permit P01 to DNR, within the next business day.

201. Defendants' records for the temperature readings of RTO#1 and RTO #3 revealed deviations from the permitted temperature ranges and set points identified in Condition I.A.1.b.(5)(a) and I.B.1.b.(3)(a) of Operation Permit P03 on multiple occasions between 2017 and 2021.

202. Defendants failed to report deviations in 2017, 2018, 2019, and 2020 from the permitted temperature ranges and set points of RTO #1 and RTO #3 identified in Conditions I.A.1.b.(5)(a) and I.B.1.b.(3)(a) of Operation Permit P03 to DNR within the next business days.

203. Defendants violated Condition II.D.1.c. of the Permits on multiple days in 2017, 2018, 2019, and 2020, when they failed to report deviations from the

applicable permit conditions in effect at that time to DNR, within the next business day; thereby failing to comply with the reporting requirements of the Permits.

EMISSIONS INVENTORY VIOLATIONS

VIOLATION 25 - FAILURE TO PROVIDE EMISSION INFORMATION FOR VOL STORAGE TANKS

204. Condition II.O of Didion's Permits provides that the permittee shall annually submit to DNR an emission inventory report of annual, actual emissions or throughput information in accordance with Wis. Admin. Code § NR 438.03.

205. Wis. Admin. Code § NR 438.03 provides, in relevant part, that "any person owning or operating a facility that emits an air contaminant in quantities above applicable reporting levels, except indirect sources of air pollution, shall annually submit to [DNR] an emission inventory report of annual, actual emissions, or for PM, PM₁₀, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds, throughput information sufficient for [DNR] to calculate its annual, actual emissions."

206. Condition II.M.3. of Didion's Permits provides, in relevant part, that owners and operators of facilities that are required to file emission inventory reports, shall keep accurate and reliable records sufficient to enable verification of the reports by DNR.

207. As part of the FCE held in May and June of 2019, Defendants submitted to DNR air emissions inventory summary reports from 2017 and 2018 for the Facility. The records revealed Defendants were not reporting emissions from denatured ethanol storage tank T03.

208. Defendants submitted a revised annual emission inventory for the 2018 operating period which was certified on October 24, 2019.

209. Defendants violated Wis. Admin. Code § NR 438.03 and Conditions II.M.3. and II.O of their Permits in effect from May 2017 through June 2019, by failing to submit annual emission inventory reports for denatured ethanol storage tank T03 in 2017, 2018, and 2019.

**VIOLATION 26 – FAILURE TO REPORT EMISSIONS FROM
FERMENTATION TANKS 6 & 7**

210. Condition II.O. of Didion’s Permits provides, in relevant part, that the Permittee shall submit to DNR each year an emission inventory report of annual, actual emissions, or throughput information in accordance with Wis. Admin. Code § NR 438.03.

211. Wis. Admin. Code § NR 438.03 provides, in relevant part, that “any person owning or operating a facility that emits an air contaminant in quantities above applicable reporting levels, except indirect sources of air pollution, shall submit annually submit to [DNR] an emission inventory report of annual, actual emissions, or for PM, PM₁₀, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds, throughput information sufficient for [DNR] to calculate its annual, actual emissions.

212. As part of the FCE held in May and June of 2019, Defendants submitted to DNR air emissions inventory summary reports from 2017 and 2018 for the Facility. The records revealed Defendants failed to keep records of actual emissions, or throughput information, for ethanol fermentation storage tanks #6 and #7.

213. Defendants have failed to report emissions from tanks #6 and #7 since they were installed in 2010.

214. Defendants violated Condition II.O of their Permits in effect from May 2017 through June 2019, by failing to submit emission inventory reports for ethanol fermentation storage tanks numbers 6 and 7, in 2017, 2018 and 2019.

**VIOLATION 27 – FAILURE TO FOLLOW REQUIREMENTS OF
MALFUNCTION PREVENTION AND ABATEMENT PLAN**

215. Condition I.ZZZ.3.a.(1) of Construction Permit 2 and Operations Permit P01 require that Didion prepare and follow a Malfunction Prevention and Abatement Plan (MPAP) for the Facility to prevent, detect and correct malfunctions or equipment failures, in accordance with Wis. Admin. Code § NR 439.11(1).

216. Wis. Admin. Code § NR 439.11(1) provides, in relevant part that “the owner or operator of any direct or portable source which may emit hazardous substances or emits more than 15 pounds in any day or 3 pounds in any hour of any air contaminant for which emission limits have been adopted shall prepare a malfunction prevention and abatement plan to prevent, detect and correct malfunctions or equipment failures which may cause any applicable emission limitation to be violated or which may cause air pollution. The plan shall be in writing and updated at least every 5 years.”

217. Defendants’ MPAP dated November 7, 2017, describes malfunction as “any disorder, operation change, or abnormal condition, mechanical or operation, that could raise pollutant emissions above permitted levels.” The MPAP identifies scenarios that have the potential to emit pollutants beyond permit limits, including

differential pressure readings above or below permitted levels and water flow rates to the scrubbers that cannot be reached or maintained.

218. Defendants' MPAP has no preventive plans for malfunctions or equipment failure that may lead to exceeding emission limits other than to monitor the operation status of pressure drop and flow gauges using a distributed control system (DCS).

219. The MPAP requires Defendants to perform an annual inspection of RTO #1 with the assistance of the RTO vendor.

220. Records provided by Defendants show that the required annual inspection of RTO #1 was not performed in 2019.

221. The MPAP also requires Defendants to calibrate, at least annually, the pressure drop gauges and transmitters to provide readings of pressure drop to the DCS.

222. During the June 14, 2019, FCE, Defendants admitted to not annually calibrating the manual pressure drop gauges of the DCS.

223. Defendants violated Condition I.ZZZ.3.a.(1) of Construction Permit 1 and 2 and Operation Permit P01 at least once per year in 2017, 2018 and 2019, by failing to follow the Facility's MPAP.

**VIOLATION 28 -FAILURE TO CONSTRUCT STACKS ACCORDING TO THE
APPROVED PLANS AND SPECIFICATIONS**

224. Condition I.Z.1.b.(2) of Construction Permit 2 provides, in relevant part, that the permittee shall update the permit application if any changes occur which are

not specified or described in the plans and specifications approved under Construction Permit 2.

225. Wis. Admin. Code § NR 406.10 provides in relevant part that “[a]n owner or operator who fails to construct a stationary source in accordance with the application as approved by [DNR] . . . shall be considered in violation of s. 285.60, Stats.”

226. Wis. Admin. Code § NR 407.05(9) provides in relevant part that “[a]n applicant who has failed to submit relevant facts or has submitted incorrect information in a permit application shall, after becoming aware of this fact, promptly submit the supplemental or corrected information.”

227. Construction Permit 2 authorized Defendants to construct processes P104 through P113, as described in the plans and specifications approved by DNR on February 15, 2018. The authority to modify any process expires 18 months from the date the Construction Permit was issued.

228. During the May 13, 2019, inspection, Defendants admitted that the as-built height of four stacks was shorter than the height approved by the Construction Permit. Defendants stated that they would provide to DNR for review a permit revision and updated modeling using the as-built heights for the four non-complying stacks.

229. Defendants violated Wis. Stat. § 285.60, Wis. Admin. Code § NR 407.05(9), and Condition I.Z.1.b.(2) of Construction Permit 2 prior to May 13, 2019,

by failing to construct processes P104 through P113 according to the approved plans and specifications.

VIOLATION 29- FAILURE TO CONDUCT STACK TEST

230. Condition I.L.1.b.(4) of Construction Permit 2, and Condition I.L.1.b.(5) of Operation Permit P01 and P03, provide that the permittee shall conduct the performance test for S58 that is required by 40 C.F.R. § 60.8 no later than 180 days after the initial startup of P112.

231. The corn cleaning process (P112) commenced operation on January 21, 2019. The required compliance emission test for stack S58 was due by July 20, 2019.

232. Defendants did not conduct the required compliance emission test for S58 until July 7, 2020.

233. Defendants violated Condition I.L.b.(5) of Construction Permit 2 and Condition I.L.1.b.(5) of Operation Permit P01 and P03 for 353 days, from July 20, 2019 to July 7, 2020, by failing to conduct the required compliance emission test for S58 within 180 days after the initial startup of P112.

VIOLATION 30 – EMISSIONS EXCEEDANCES OF PM FROM S46

234. Condition I.W.3.a.(2)(a) of Operation Permit P03 provides that whenever emissions from the ethanol recovery system (P205) and emissions from the DDGS dryer (P49) or the DDGS cooling collection system and control device (P50, C39 and C40) are routed to RTO#3 (C53/S46) alone, that emissions from S46 may not exceed 9.0 pounds per hour when off-line bakeout or other operation/testing of RTO#1 is not occurring.

235. Defendants conducted stack testing of S46 on September 30-October 1, 2020, when off-line bakeout or other operation/testing of RTO#1 was not occurring. Testing results indicated for PM levels of 14.0 pounds per hour, in excess of the Permit limit of 9.0 pounds per hour.

236. Defendants conducted stack testing of S46 again on November 18 through 20, 2020, when off-line bakeout or other operation/testing of RTO#1 was not occurring. Testing results indicated PM levels of 11.9 pounds per hour, in excess of the Permit limit of 9.0 pounds per hour.

237. Condition I.W.3.a.(1)(a) of Operation Permit P08 modified the PM emissions limit for S46 to 13.5 pounds per hour.

238. Defendants violated Condition I.W.3.a.(2)(a) of Operation Permit P03 on at least five days, from September 30 through October 1, 2020, and November 18 through November 20, 2020, when emissions from S46 exceeded the permit limit for PM of 9.0 pounds per hour.

RELIEF AUTHORIZED

239. Wisconsin Statute § 299.95 provides the Attorney General with authority to enforce Wis. Stat. ch. 285 and all rules promulgated and permits issued under that chapter, 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 has occurred has jurisdiction to enforce Wis. Stat. ch. 285 and all the rules promulgated and permits issued under the at chapter “by injunctional and other relief appropriate for enforcement.”

240. Wisconsin Stat. § 285.87(1) states that “any person who violates this chapter or any rule promulgated, any permit issued or any special order issued under this chapter shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense.”

RELIEF REQUESTED

WHEREFORE, the plaintiff asks the Court to enter judgment as follows:

1. An injunction that requires Defendants to operate the Facility in compliance with all its permits and with all Wisconsin laws regulating air pollution;
2. Forfeitures as provided in Wis. Stat. § 285.87(1);
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 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge under to Wis. Stat. § 814.75(2), and a \$21.50 justice information surcharge under Wis. Stat. § 814.75(15); and
4. Any other relief the Court deems just and appropriate.

Dated this 21st day of November, 2022.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Tressie K. Kamp

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