

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is made effective this 11th day of September, 2023, (the “**Effective Date**”) by and between Gordondale Farms, Inc., a Wisconsin corporation (“**Gordondale**”), and the Wisconsin Department of Natural Resources, an agency of the State of Wisconsin (“**Department**”). Gordondale and the Department are each a “**Party**” and collectively, the “**Parties**”.

This Agreement sets forth the terms and conditions for resolving a contested case granted by the Department by letter dated September 15, 2022 and captioned “Petition for Contested Case Hearing in the matter of WPDES Permit No. WI-0062359-03-1 for Gordondale Farms Inc., located at 9845 Hwy 161 Amherst, WI 54406, 2823 County Rd Q, Nelsonville, WI 54458, and 9488 Hwy 161, Amherst Junction, WI 54407” (the “**Contested Case**”).

### RECITALS

WHEREAS, Gordondale operates a Concentrated Animal Feeding Operation (“**CAFO**”) in Portage County, Wisconsin;

WHEREAS, the Department modified Gordondale’s Wisconsin Pollutant Discharge Elimination System Permit (“**WPDES**”) Permit on August 12, 2022, with the modified permit designated as WPDES Permit No. WI-0062359-03-1 (the “**Current Permit**”);

WHEREAS, Gordondale timely petitioned for review of Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Current Permit (collectively, the “**Challenged Permit Terms**”) pursuant to Wis. Stat. § 283.63;

WHEREAS, on September 15, 2022, the Department granted a contested case hearing to address two issues:

1. Whether the requirement to conduct and report on groundwater monitoring at land application sites provided for in Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Permit is reasonable or necessary (“**Petition Issue A**”); and
2. Whether the requirement to conduct monthly groundwater monitoring unless a different frequency is agreed upon in the Phase 2 Groundwater Monitoring Plan as provided for in Section 2.1.1 of the Permit is reasonable or necessary (“**Petition Issue B**”).

WHEREAS, as a result of Gordondale’s timely petition for review, the Challenged Permit Terms are not currently in effect pursuant to Wis. Stat. § 283.63(1)(am);

WHEREAS, the Department anticipates that it will reissue Gordondale’s WPDES permit in 2025 (“**Permit No. 4**”) and in 2030 (“**Permit No. 5**”), each with a five-year permit term;

WHEREAS, Gordondale has included in the Nutrient Management Plan (“NMP”) for the Current Permit the field designated as GORD-068 and anticipates including GORD-068 in the NMP for Permit No. 4 and Permit No. 5;

WHEREAS, Gordondale anticipates using the following crop rotation in field GORD-068, through to 2030 (the “**Crop Rotation**”):

2021: Early corn harvested, fall winter wheat planted  
2022: Winter wheat harvested and seeded to alfalfa (manure applied)  
2023: Alfalfa  
2024: Alfalfa  
2025: Alfalfa  
2026: Corn  
2027: Corn (with manure application)  
2028: Soybeans  
2029: Early Corn to winter wheat (with manure application)  
2030: Winter wheat, seed to alfalfa (with manure application); and

WHEREAS, the Parties wish to fully and finally resolve the Contested Case upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. Recitals. The recitals and definitions set forth above are incorporated into this Agreement as if set forth fully herein.

2. Technical Terms. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the definition provided in ch. NR 243, Wis. Admin. Code, as it existed on the Effective Date.

3. The Parties’ Intent.

3.1 The Parties intend that Gordondale will conduct Phase I groundwater monitoring at field GORD-068 for the duration of the Crop Rotation through to 2030 that will include, at a minimum, two applications of manure at application rates typical for the crop needs.

3.2 The Parties recognize that circumstances beyond their control, such as climate, commodity market prices, and crop survival, may require Gordondale to change the Crop Rotation. It is not the intent of the Parties for this Agreement to cause Gordondale to maintain the Crop Rotation if it is not economically beneficial to the farm.

3.3 Gordondale will submit to the Department at the time of its application for Permit No. 5 an evaluation of Phase 1 monitoring results and recommendations for Phase 2 groundwater monitoring, if any.

3.4 The Parties agree that the recommendations for Phase 2 monitoring, if any, will be based on reasonable scientific interpretations of the Phase 1 monitoring results and may include a recommendation to discontinue monitoring field GORD-068. The Department will not seek to continue groundwater monitoring at Gordondale's land application sites if the results of Phase 1 monitoring demonstrate to the satisfaction of the Department an assurance that landspreading of manure and process wastewater at field GORD-068 has not and will not cause or significantly contribute to an exceedance of groundwater quality standards.

4. Current Permit Modification.

4.1 Within 120 days of the Effective Date, the Department shall make all of the following modifications to the Current Permit ("**Permit Modification**"), pursuant to its authority in Wis. Stat. § 283.53:

4.1.1 Section 2.1.1 shall be modified to state that Preventive Action Limits (PALs) for Indicator parameters may be calculated based on background groundwater quality data after eight (8) consecutive samples have been collected from designated well(s).

4.1.2 In Section 2.1.1, the paragraph under the subheading "Required Monitoring" shall be modified to read as follows:

Samples shall be collected from each well to be monitored. Wells shall be sampled for the parameters in table below at the specified frequency.

4.1.3 In Section 2.1.1, the required sampling frequencies shall be modified as follows:

- (a) For parameters "Depth to Groundwater" and "Groundwater Elevation," the frequency shall be monthly for the first twelve (12) months and then semi-annually thereafter; and
- (b) For all other parameters, the frequency shall be quarterly for the first eight (8) quarters and then semi-annually thereafter.

4.1.4 In Section 3.7, the table text for the first required action (subheading "Phase 1 - Groundwater Monitoring Plan") shall be modified to read as follows:

**Phase 1 - Groundwater Monitoring Plan:** Phase 1 - Groundwater Monitoring Plan: Submit a groundwater monitoring plan consistent with the Groundwater Requirements section of the permit for the initial monitoring wells for Department review and approval. The plan shall outline the permittee's design for monitoring at the field designated as GORD-068 in Gordondale's Department-approved Nutrient Management Plan. The Phase 1 plan shall propose installation of three (3)

groundwater monitoring wells. The Phase 1 plan shall require Gordondale to fill and seal any monitoring well in accordance with the requirements of Chapter NR 141, Wis. Admin. Code, upon abandonment. The Phase 1 groundwater monitoring plan shall include procedures for scheduling quarterly or semi-annual sampling within four (4) weeks of the application of manure or process wastewater to the subject land application site when applicable.

4.1.5 In Section 3.7, the deadline for the first required action (subheading “Phase 1 - Groundwater Monitoring Plan”) shall be modified to be the date that is thirty (30) days after the effective date of the Permit Modification.

4.1.6 In Section 3.7, reference to a Phase 2 Groundwater Monitoring Plan in the table will be removed.

4.2 Upon modification of the Current Permit, Gordondale shall not seek judicial review under Wis. Stat. §§ 227.52 and 227.53 or contested case review under Wis. Stat. §§ 283.63 or 227.42 of the Permit Modification, provided such terms and conditions are fully consistent with Section 4.1 hereof. Nothing herein prevents Gordondale from intervening in a proceeding for judicial review or contested case review of the Permit Modification brought by a third party.

5. Permits No 4 and No. 5.

5.1 Permit No. 4 shall not require any new, additional, or more frequent groundwater monitoring of any of Gordondale’s land application sites beyond what is required under the Phase 1 groundwater monitoring plan required by the Current Permit as modified pursuant to Section 4.1 hereof.

5.2 Permit No. 4 shall include terms and conditions requiring submission of a Phase 2 Groundwater Monitoring Plan which are the same, in form and substance, to those requirements included in the Current Permit (WPDES Permit No. WI-0062359-03-1). The deadline to submit a Phase 2 Groundwater Monitoring Plan shall be the due date for submitting an application for reissuance of the Permit No. 5.

5.3 Upon issuance of Permit No. 4, Gordondale shall not seek judicial review under Wis. Stat. §§ 227.52 and 227.53 or contested case review under Wis. Stat. §§ 283.63 or 227.42 of the Department’s inclusion of terms and conditions relating to groundwater monitoring of one land application site, provided such terms and conditions are consistent with Section 5.1 hereof. Nothing herein prevents Gordondale from (i) intervening in a proceeding for judicial review or contested case review of the Permit Modification brought by a third party or (ii) seeking judicial review or contested case review of any other term or condition of Permit No. 4.

6. Gordondale’s Obligations.

6.1 Except as provided in Section 6.2, Gordondale shall make all reasonable efforts to maintain the Crop Rotation, including a minimum of two manure applications at application rates typical for crop needs, as anticipated throughout the period of the Current Permit and Permit No. 4.

6.2 In the event Gordondale modifies the Crop Rotation for field GORD-068, then Gordondale shall notify the Department of such modification to the Crop Rotation and will provide the Department with the modified Crop Rotation within thirty (30) days of its decision.

6.3 Phase 1 monitoring shall continue until, at a minimum, two manure applications at application rates typical for crop needs have been completed on field GORD-068. In the event two manure applications have not been completed before the end of the period for Permit No. 4, Gordondale shall continue Phase 1 monitoring on the same schedule until such time as two manure applications are completed.

6.4 In the event Gordondale ceases farming field GORD-068 before completion of Phase 1 monitoring, Gordondale shall propose an alternative field for Phase 1 monitoring and shall resubmit the Phase 1 monitoring plan for Department approval.

7. Resolution of Contested Case.

7.1 From and after the Effective Date, the Department shall not transmit the Contested Case to the Wisconsin Department of Administration, Division of Hearings and Appeals (“DHA”) for adjudication, except upon request of Gordondale pursuant to Section 7.2.2 or Gordondale’s material breach of this Agreement.

7.2 Within fourteen (14) days of the date which is sixty (60) days after the effective date of the Permit Modification, the Department shall notify Gordondale whether any party has sought judicial review under Wis. Stat. §§ 227.52 and 227.53 or contested case review under Wis. Stat. §§ 283.63 or 227.42 of the Permit Modification.

7.2.1 If no party seeks administrative or judicial review of the Permit Modification, Gordondale shall submit a letter withdrawing, with prejudice, the Contested Case within seven (7) days of the later of: (i) the date on which the Department provides notification pursuant to Section 7.2 or (ii) the date on which the Department approves Gordondale’s Phase 1 Groundwater Monitoring Plan. Notwithstanding the foregoing, Gordondale shall have no obligation to withdraw the Contested Case until such time as the Permit Modification is (a) a final action of the Department for which no proceeding for administrative or judicial review is pending or unresolved and (b) the Department has approved Gordondale’s Phase 1 Groundwater Monitoring Plan.

7.2.2 Notwithstanding anything herein to the contrary, if any third party seeks administrative or judicial review of the Permit Modification, Gordondale may, at its option (a) intervene in any such proceeding, (b) request that its Contested Case be forwarded to DHA for adjudication, or (c) both.

7.2.3 If Gordondale requests that its Contested Case be forwarded to DHA for adjudication pursuant to Section 7.2.2, the Department shall forward the Contested Case to DHA for adjudication, and this Agreement shall be void and of no further force or effect.

8. General.

8.1 The Parties acknowledge and agree that the terms of this Agreement bind only the Parties and are not intended to limit any rights of any other person with respect to the Current Permit or a future modification or reissuance thereof.

8.2 Each Party represents and warrants that the person executing this Agreement on behalf of the Party has been duly authorized to do so and that no further approvals of any kind are needed.

8.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

SIGNATURE PAGE FOLLOWS

WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES

By: \_\_\_\_\_

Name: Steven Little

Title: Deputy Secretary

GORDONDALE FARMS, INC.

By: \_\_\_\_\_

Name: Kyle Gordon

Title: President

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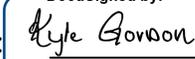
WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES

By: \_\_\_\_\_

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Title: \_\_\_\_\_

GORDONDALE FARMS, INC.

By:  \_\_\_\_\_  
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Name: Kyle Gordon

Title: President

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