Exhibit F

STATE OF WISCONSIN
WISCONSIN DEPARTMENT OF NATURAL RESOURCES

In Re: Gordondale Farms, Inc.
WPDES Permit No. WI-0062359-03-1

VERIFIED PETITION FOR REVIEW OF THE REASONABLENESS OF OR NECESSITY FOR CERTAIN WPDES PERMIT CONDITIONS PURSUANT TO WIS. STAT. § 283.63

TO THE DEPARTMENT OF NATURAL RESOURCES:

Pursuant to Wis. Stat. § 283.63 and Sections 6 and 7 of the Settlement Agreement, as defined herein, the undersigned petitioner Gordondale Farms, Inc. ("Petitioner"), by and through its attorneys Michael Best and Friedrich LLP, hereby petitions for review by the Wisconsin Department of Natural Resources (the "Department" or "DNR") of the reasonableness of or necessity for the terms and conditions contained in Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of WPDES Permit No. WI-0062359-03-1 dated August 12, 2022 (the "Modified Permit"), attached hereto as Exhibit A.

I. INTEREST OF THE PETITIONER

1. Petitioner is a Wisconsin corporation with its principal office located at 2823 County Road Q, Nelsonville, WI 54458.

2. Petitioner is the permittee under the Modified Permit and will be negatively impacted by Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit. Under the Modified Permit, Petitioner will be required to expend significant sums of money to design and install an unnecessary, inappropriate, and impracticable groundwater monitoring system at one or more land application sites, upon terms and conditions which are unreasonable, arbitrary and

capricious, based upon an erroneous interpretation of law, and not supported by an adequate factual basis.

II. BACKGROUND

3. Petitioner applied for reissuance of, and was granted reissuance of, WPDES Permit No. WI-0062359-03-0 on July 31, 2020 (the "Original Permit").

4. Subsequently, Lisa Anderson, Marianne Walker, David Mangin, Robert Bailey, Katy Bailey, and Clean Wisconsin, Inc. ("Challengers") petitioned for review of the Original Permit, and DNR granted a contested case hearing (the "Contested Case") to address, inter alia, whether the Original Permit is unreasonable because it does not require groundwater monitoring of at land application sites proposed to be used by Gordondale Farms, Inc. Groundwater monitoring at land application sites is sometimes referred to as "off-site groundwater monitoring."

5. Petitioner, DNR, and the Challengers entered into a settlement agreement dated May 14, 2021 to resolve the Contested Case (the "Settlement Agreement"). In the Settlement Agreement, the parties agreed to resolve the Contested Case because certain issues concerning the legal authority of the Department were pending before the Wisconsin Supreme Court in *Clean Wisconsin, Inc. et al. v. Wisconsin Department of Natural Resources, et al.*, Case No. 2016-AP-1688 (the "Kinnard Case").

6. The Settlement Agreement contained the following provisions relevant to the off-site groundwater monitoring issue:

> 3. If the Court decides in the Kinnard Case that DNR is not precluded by law from including in a CAFO WPDES permit terms requiring groundwater monitoring at or near landspreading sites, then DNR shall determine whether it is appropriate and practicable to require monitoring at or near Gordondale Farms' proposed landspreading sites. In determining the appropriateness and practicability of groundwater monitoring at or near landspreading sites DNR will consider, unless precluded by the Court: (i) the site-specific conditions at the proposed Gordondale Farms landspreading

> locations regarding soil make up, nutrient uptake, groundwater quality, and potential for groundwater contamination; (ii) the extent of Gordondale Farms land ownership or control in relation to potential receptors; (iii) any input provided by Gordondale Farms or Petitioners; and (iv) any other factors DNR is authorized to consider by statute, rule or the Court's decision in the Kinnard Case. If DNR determines groundwater monitoring is appropriate and practicable at or near one or more landspreading sites, DNR will modify the Permit to include terms necessary to require such groundwater monitoring. Nothing herein waives or affects any party's right to challenge or seek administrative review of such modification of the Permit, all such rights being fully reserved.
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> . . .
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> 6. DNR shall not modify the Permit other than to implement Sections 2-5 of this Agreement, as may be allowed by this Agreement. Although DNR retains the authority to modify the Permit or any reissuance thereof for cause as provided in §§ NR 203.135(1) & 203.136 Wis. Admin. Code, DNR does not intend to modify the Permit other than as provided herein. If, however, DNR modifies the Permit other than as provided in Sections 2-5, any Party may challenge such modification to the extent permitted by law.
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> 7. Any Party may seek a contested case hearing on a modification of the Permit undertaken pursuant to this Agreement, provided however, that in accordance with § NR 203.135(5)(b) Wis. Admin. Code a challenging Party may seek a hearing only on whether (i) DNR complied with the requirements of Sections 2-5 of this Agreement in modifying the Permit, or deciding not to modify the Permit and; (ii) DNR's determinations underlying modification of the Permit, or a decision not to modify the Permit, to implement Sections 2-5 of this Agreement, are reasonable and sufficiently grounded in fact, and not arbitrary and capricious.

Settlement Agreement, §§ 3, 6-7.

7. In July 2021, the Wisconsin Supreme Court issued an opinion in the Kinnard Case, holding that DNR "had the explicit authority to impose . . . off-site groundwater monitoring conditions" in the WPDES permits. *See Clean Wisconsin v. DNR*, 2021 WI 71, ¶ 2.

8. In November 2021 and January 2022, Petitioner provided "input" to the DNR pursuant to Section 3 of the Settlement Agreement.

9. On April 12, 2022, DNR issued a draft permit modification pursuant to the terms of the Settlement Agreement (the "Draft Modified Permit").

10. On May 19, 2022, Petitioner filed comments on the Draft Modified Permit.

11. On August 12, 2022, DNR issued the Modified Permit. A copy of the Department's Notice of Final Determination ("NOFD") is attached hereto as Exhibit B.

III. PETITIONER REQUESTS REVIEW OF THE FOLLOWING SPECIFIC ISSUES:

A. Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit are unreasonable, unnecessary, arbitrary and capricious, based on an erroneous interpretation of law, and not supported by an adequate factual basis.

12. Construed together, Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit require Petitioner to propose a groundwater monitoring plan and, upon Department approval of the same, implement groundwater monitoring at one or more land application sites.

13. Section 3 of the Settlement Agreement requires DNR to "determine whether it is appropriate and practicable to require monitoring at or near Gordondale Farms' proposed landspreading sites" if the Court in the Kinnard Case concludes that DNR has the legal authority to require such monitoring.

14. As noted above, the Wisconsin Supreme Court held in the Kinnard Case that DNR has legal authority to require groundwater monitoring at land application sites in WPDES permits, thereby requiring DNR to determine whether such monitoring is appropriate and practicable pursuant to the Settlement Agreement.

15. Groundwater monitoring at one or more of Petitioner's land application sites is inappropriate, impracticable, unnecessary, and unreasonable because, among other reasons:

a. Petitioner has more than adequate acres available for land application of its manure and process wastewater in its Department-approved Nutrient Management

Plan ("NMP"), thereby assuring compliance with applicable effluent limitations and Chapter NR 140 groundwater standards.

b. Petitioner is aware of no evidence establishing that land application of manure and process wastewater by Petitioner, consistent with a Department-approved NMP, does not or will not comply with applicable effluent limitations or Chapter NR 140 groundwater standards.

c. Groundwater monitoring is unlikely to produce reliable, probative, or actionable data that will assure Petitioner's land application activities comply with applicable effluent limitations and Chapter NR 140 groundwater standards.

d. The costs of compliance with groundwater monitoring requirements are excessive and unreasonable, particularly in light of the uncertain value of data that would be produced.

e. DNR evaluated the need for groundwater monitoring at Gordondale Farms just over two years ago, in 2020, and concluded that groundwater monitoring should not be required; DNR and has not adequately justified its change in position.

f. DNR's decision to require groundwater monitoring is based upon an erroneous interpretation of Chapter NR 140, Wis. Admin. Code.

g. Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit are otherwise unreasonable, arbitrary and capricious, or are not supported by an adequate factual basis.

16. Based on the foregoing, the Department's determination to require groundwater monitoring of land application sites, and the resulting terms and conditions of Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit, are unreasonable, unnecessary, arbitrary and capricious, based upon an erroneous interpretation of law, and not supported by an adequate factual basis.

B. If groundwater monitoring of land application sites is required, a default monthly sampling frequency in Phase 2 is unreasonable, unnecessary, arbitrary and capricious, and not supported by an adequate factual basis.

17. Section 2.1.1 specifies a monthly sampling frequency for all groundwater parameters in Phase 1. That section further specifies that "[m]onthly samples shall be collected for all wells, unless a different frequency is agreed upon in the Phase 2 Groundwater Monitoring Plan."

18. Accordingly, the Modified Permit presumes that monthly monitoring will continue to be necessary in Phase 2, with the burden placed on the permittee to demonstrate to the Department's satisfaction that this heightened frequency of monitoring is no longer necessary in Phase 2. Such a presumption is premature in the absence of Phase 1 data.

19. Section 2.1.1 of the Modified Permit (and specifically, the presumption in favor of monthly monitoring during Phase 2 contained in that section) is unreasonable, unnecessary, arbitrary and capricious, and not supported by an adequate factual basis.

IV. A HEARING IS WARRANTED ON THE SPECIFIC ISSUES RAISED IN THIS PETITION FOR REVIEW

A. Petitioner commented on all issues prior to the Department's issuance of the Modified Permit.

20. Petitioner commented on both of the issues raised herein prior to the Department's issuance of the Modified Permit. Specifically:

a. Petitioner submitted "input" pursuant to Section 3 of the Settlement Agreement and comments during the public comment period opposing groundwater monitoring at land application sites, as now required in Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit.

b. Petitioner submitted comments during the public comment period arguing that a presumption of monthly sampling in Phase 2 was inappropriate, and that only quarterly sampling should be required in Phase 2.

21. Accordingly, Petitioner adequately raised its concerns to DNR regarding the specific issues presented herein.

22. The Department's response to public comments included in the NOFD either did not address the Petitioner's specific comments (in some cases providing only a conclusory response) and/or did not adequately address Petitioner's concerns.

23. A hearing is warranted to review the terms and conditions upon which Petitioner commented but did not receive an adequate response.

B. The Department included terms and conditions which are unreasonable, unnecessary, arbitrary and capricious, or not supported by an adequate factual basis in the Modified Permit.

24. As set forth in greater detail in Sections III.A. and III.B., the Department included terms and conditions in the Modified Permit which are unreasonable, unnecessary, arbitrary and capricious, based on an erroneous interpretation of law, and/or not supported by an adequate factual basis.

25. In accordance with Section 6 and 7 of the Settlement Agreement and Wis. Stat. § 283.63, a hearing is warranted to review whether the provisions of Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit are reasonable, necessary, not arbitrary and capricious, and supported by an adequate factual basis.

III. RELIEF REQUESTED

WHEREFORE, on the basis of the foregoing, Petitioner respectfully requests, pursuant to Wis. Stat. § 283.63 and Sections 6 and 7 of the Settlement Agreement, *de novo* review of the Permit conditions contained in Sections 2, 2.1.1, 3.7, 3.8, and 4.3 of the Modified Permit.

Dated this 9th day of September, 2022.

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

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Attorneys for Petitioner

VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF Portage)

I, Kyle Gordon, being first duly sworn on oath, state that I am the president of Gordondale Farms, Inc., that I have read the above Verified Petition and that the statements therein are true and correct to the best of my knowledge and belief.

Kyle Gordon

Signed and sworn to before me this
9 day of September, 2022 by Kyle Gordon.

Sandra M Retzki

SANDRA M RETZKI
NOTARY PUBLIC
STATE OF WISCONSIN

Notary Public, State of Wisconsin
My Commission: 5-28-2023