

**BEFORE THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

**In the matter of Gordondale Farms Inc.
Permit No. WI-0062359-03-2 to Discharge Under
the Wisconsin Pollutant Discharge Elimination
System (“WPDES”) dated June 18, 2024.**

**VERIFIED PETITION FOR REVIEW UNDER
WIS. STAT. § 283.63**

TO THE DEPARTMENT OF NATURAL RESOURCES:

1. In accordance with Wis. Stat. § 283.63 and Wis. Admin. Code § NR 203.17, the undersigned individuals hereby petition for a review of the Wisconsin Department of Natural Resources’ (DNR) decision to issue the modified Wisconsin Pollutant Discharge Elimination System (WPDES) Permit No. WI-0062359-03-2 to Gordondale Farms Inc. (Gordondale Farms). Hereinafter “Permit” attached as Exhibit A.
2. Gordondale Farms is a large concentrated animal feeding operation (CAFO) for dairy cows that has been issued previous WPDES permits in Portage County, Wisconsin. Gordondale Farms operates three facilities: Deere Ridge Dairy in Amherst, Wisconsin; the Home Farm in Nelsonville, Wisconsin; and the Hog Farm in Amherst Junction, Wisconsin. The three facilities exist within 1.5 miles of each other along Highway 161 surrounding the Village of Nelsonville, Wisconsin (Nelsonville).
3. In 2017, when Gordondale Farms applied for a WPDES permit reissuance, No. WI-0062359-03-0 (hereinafter the “Original Permit”), the operation housed 2,160 animal units with the intent to expand to approximately 2,505 animal units. According to a DNR Fact Sheet

produced for the Original Permit, the 2,160 animals produced approximately 12.5 million gallons of liquid manure and process wastewater and approximately 4,000 tons of solid manure per year which is spread on approximately 5,000 acres.

4. Under the Original Permit, Gordondale Farms was authorized to discharge to both the Tomorrow River and to groundwater.

5. Gordondale Farms operates and spreads manure in the area that serves as the groundwater recharge zone for drinking water wells in Nelsonville.

6. DNR issued a public notice on March 28, 2018 of its intent to issue the Original Permit for Gordondale Farms' expanded operation. In addition to accepting written comment, DNR held a public meeting on June 19, 2018 where members of the public commented on the proposed WPDES permit.

7. DNR issued the Original Permit to Gordondale Farms on July 31, 2020.

8. Five Village of Nelsonville residents (hereinafter "Original Petitioners") and Clean Wisconsin petitioned for review of the Original Permit, and DNR granted a contested case hearing to address whether the Original Permit was unreasonable because, *inter alia*, it lacked groundwater monitoring at landspreading fields and thus failed to ensure compliance with groundwater quality standards.

9. The Original Petitioners, Clean Wisconsin, DNR, and Gordondale Farms entered into a settlement dated May 14, 2021, to resolve the contested case (hereinafter the "Initial Settlement Agreement"). In the Initial Settlement Agreement, the parties agreed to resolve the contested case pending a ruling by the Wisconsin Supreme Court in *Clean Wisconsin v. DNR*, Case No. 2016-AP-1688 (the "Kinnard Case") on the authority of the DNR to include certain terms in CAFO WPDES permits.

10. 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, 398 Wis. 2d 386, 961 N.W.2d 346.
11. Between November 2021 and February 2022, Original Petitioners and Gordondale provided "input" to DNR pursuant to Paragraph 3 of the Initial Settlement Agreement.
12. On April 12, 2022, DNR issued a draft permit modification pursuant to the terms of the Initial Settlement Agreement (hereinafter the "Draft Monitoring Permit"). The Draft Monitoring Permit included necessary groundwater monitoring conditions at landspreading fields.
13. Section 3.7 of the Draft Monitoring Permit outlined a multi-phase schedule for implementing landspreading field groundwater monitoring. Specifically, Section 3.7 required Gordondale to submit a plan for monitoring on at least one land application site where "tillage, cropping, and nutrient application practices" are typical for the CAFO.
14. The modified terms of the Draft Monitoring Permit were open to public comment. Nothing in the Initial Settlement Agreement limited DNR's ability to consider and act on public comment.
15. Paragraph 12 of the Initial Settlement Agreement affirmatively required DNR to consider and act as appropriate on public comments.
16. On August 12, 2022, DNR noticed a final determination on the Draft Monitoring Permit, issuing the WPDES Permit No. WI-0062359-03-1 to the CAFO (hereinafter "Monitoring Permit").

17. In September 2022, Gordondale filed a contested case hearing petition with DNR pursuant to Wis. Stat. § 283.63 and a petition for judicial review in Portage County Circuit Court (Case No. 2022-CV-0268) challenging the issuance of the Monitoring Permit.

18. Between September 2022 and September 2023, DNR and Gordondale had private settlement negotiations that were focused on the groundwater monitoring terms of the Monitoring Permit.

19. On September 11, 2023, the settlement between DNR and Gordondale became effective (hereinafter the “DNR/CAFO Agreement”). **A true and correct copy of the DNR/CAFO Agreement is attached as Exhibit B.**

20. Section 4 of the DNR/CAFO Agreement identifies sections of the Monitoring Permit that “shall be modified” by directly inserting specific provisions from the DNR/CAFO Agreement into the Permit.

21. Pursuant to the DNR/CAFO Agreement, DNR committed to never transmitting Gordondale Farms’ Contested Case Hearing Petition unless Gordondale Farms requests transmission or there is a material breach of the DNR/CAFO Agreement. Exh. B, § 7.1.

22. The DNR/CAFO Agreement established preset permit terms to be included in the Permit. Those new, re-modified terms weakened the groundwater monitoring provisions that had been established in the Monitoring Permit.

23. DNR issued the notice of intent to issue the Permit on September 28, 2023. The notice states: “The department and permittee reached a settlement agreement and is proposing to modify the [Permit] to reflect the terms and conditions of the agreement.”

24. The notice did not indicate that the terms of the DNR/CAFO Agreement left no discretion for DNR to amend the Permit pending consideration of public comments.

25. On November 6, 2023, DNR issued a notice that a public informational hearing on the Permit would be held virtually on December 7, 2023.

26. DNR held the hearing on December 7, 2023 at 10 AM. At the hearing, DNR received numerous comments from concerned Nelsonville residents, hydrogeologists, and citizens from around the state.

27. The period to submit public comments to DNR ended one week later, on December 14, 2023.

28. Five and a half months later, DNR sent the notice of final determination to Gordondale Farms on May 24, 2024.

29. Pursuant to Wis. Admin. Code § NR 203.13(3), DNR noticed the final determination to issue the Permit to the public on May 30, 2024 by e-mailing the Public Notice, Issued Permit, and Notice of Final Determination to all persons who appeared at the public informational hearing or submitted comments with respect to the issuance of the Permit.

30. Sections 283.63(1) of the Wisconsin Statutes and NR 203.15 and 203.16 of the Wisconsin Administrative Code allow five or more persons to secure a review by DNR of the of any issued, reissued, or modified permit as well as the reasonableness or necessity of any term or condition by filing a verified petition setting forth the issues sought to be reviewed and the interest of the petitioners with the DNR Secretary within 60 days after DNR provides notice of permit reissuance.

I. INTERESTS OF THE PETITIONERS AND THE NATURE OF THEIR INJURY

In support of their petition, Petitioners show as follows:

31. All Petitioners attended the December 7, 2023, public informational hearing on the proposed modification to Permit that flowed from the DNR/CAFO Agreement. Petitioners submitted comments to DNR on the proposed modification. Because of the nature of the

settlement, Petitioner's interests were impaired because DNR could not consider their comments or change the monitoring terms before issuing a final permit.

32. Individual Petitioners, most of whom are property owners in Nelsonville and all of whom are outdoor enthusiasts, also have a substantial interest in the preservation and quality of the Tomorrow River, including but not limited to its water quality, its fish and other aquatic life, its use for recreation, and its other ecological resources. Portions of the Tomorrow River downstream of Nelsonville are considered Outstanding Resource Waters, and Petitioners have a particular interest in protecting those waters against incremental losses to water quality through excessive nutrients or contaminants that may flow into the River from surface water or groundwater.

33. Substantial interests of the Petitioners are injured or threatened with injury because of DNR's decision to approve the Permit with terms that threaten water resources in Portage County. Specifically, Petitioners are injured or threatened with injury because of the Permit's impacts on groundwater and surface water quality in the areas downstream or down-gradient of Gordondale Farms, and DNR's failure to comply with the requirements of state law to protect groundwater and surface water quality, including DNR's failure to require protective groundwater monitoring terms that will take representative samples and generate useful data. They are also injured based on DNR's decision to remove subsequent stages of groundwater monitoring from the Permit.

34. The injury to individual Petitioners is different in kind and degree from the injury to the general public caused by the challenged Permit. The anticipated impacts from the modified Permit will uniquely and substantially burden the Petitioners who rely on potable groundwater and clean surface water that is within and down-gradient of those areas affected by activities

authorized under the Permit. Most Petitioners live within three-quarter miles or less of the areas subject to the Permit and have seen a consistent decline in private well water quality in recent years, and they anticipate further contamination as a result of the Permit issuance. Additionally, Petitioners have a unique and substantial interest in preserving the recreational, aesthetic, and property interests associated with healthy land practices and high water quality in and around Nelsonville. Many of the Petitioners enjoy outdoor activities such as kayaking or trail-running. Many Petitioners also intend to sell their properties in the future and groundwater contamination has been shown to substantially lower values, making it difficult or impossible for those with contaminated wells to sell their properties. Lastly, three Petitioners participated in the settlement negotiations that led to the necessary groundwater monitoring terms included in the Monitoring Permit; their interests are impaired as a result of the modification of terms they advocated for. DNR's failure to adequately monitor, regulate, and control the continued wastewater and manure disposal and landspreading activities under the Permit will impair these interests.

35. There is no evidence of legislative intent that Petitioners' interests are not to be protected. Wis. Stat. chs 160 and 283 and Wisconsin's Public Trust doctrine, Wis. Const. art. IX, § 1, all indicate that the interests of Petitioners are protected.

II. PETITIONERS' RIGHT TO ADMINISTRATIVE REVIEW

36. Sections 227.42 and 283.63 of the Wisconsin Statutes accord Petitioners a right to administrative review.

37. In addition to review of the reasonableness or necessity of permit terms, Section 283.63 of the Wisconsin Statutes also accords Petitioners with the right to review "any permit denial, modification, termination, or revocation and reissuance." (emphasis added).

38. Wis. Admin. Code § NR 203.15(1)(a) specifically accords Petitioners the right to review a modification, which includes the public participation requirements that accompany a permit modification.

III. SPECIFIC ISSUES REQUESTED TO BE REVIEWED

39. Petitioners seek review of the following issues related to the reasonableness of the terms and conditions in Gordondale Farms' Permit:

A. Issue One: The Permit modification is invalid because the DNR/CAFO Agreement and subsequent process employed by DNR fails to comply with state law.

40. The modification to the Permit is invalid because DNR failed to comply with public participation requirements, specifically, the right for the public to be heard and have its comments considered by DNR when deciding whether to issue the Permit and/or change any terms in response to public comment, which is required under Wis. Stats. §§ 283.39 and 283.49 and Wis. Admin. Code §§ NR 203.04, 203.08, 203.12, and 203.135.

41. Wis. Stat. § 283.39 covers public notice and written comment requirements for WPDES permits and requires DNR to promulgate rules to fulfill those requirements.

42. Wis. Stat. § 283.39(2) requires DNR to provide a period of not less than 30 days following the date of public notice of the draft permit during which time interested persons may submit comments on the terms of draft WPDES permits.

43. Wis. Stat. § 283.39(2) requires that “all written comments during the comment period shall be retained by the department and considered in the formulation of the final determinations for the permit application.”

44. In addition to written comment periods, DNR may also hold public hearings where interested members of the public can provide oral testimony on draft WPDES permits. See Wis. Stat. § 283.49.

45. Wis. Admin. Code ch. NR 203 contains DNR's WPDES permit public participation procedures.

46. Pursuant to Wis. Admin. Code § NR 203.135(5)(a), DNR "shall follow the public notice, comment and hearing procedures in ch. NR 203" for WPDES permit modifications.

47. Wis. Admin. Code § NR 203.04 explains: "[a] public informational hearing...give[s] all interested persons an additional opportunity to make a statement with respect to a proposed permit or permit application and to have such statements considered in the final determination." (Emphasis added.)

48. Wis. Admin. Code § NR 203.08 explains that "any interested members of the public . . . may participate in a public informational hearing with respect to the issuance of the proposed permit."

49. Following the public comment period, Wis. Admin. Code § NR 203.12 explains that when issuing a final determination on a discharge permit, DNR may modify any terms and conditions of a draft permit based on "statements by the public or . . . any other pertinent information."

50. Therefore, any and all interested members of the public have a right to meaningful WPDES permit public comment periods, where their statements and comments can be given to DNR, weighed and considered by DNR, and have an opportunity to impact the final determination by DNR.

51. The DNR/CAFO Agreement identified specific sections of the Permit that "shall be modified," directly inserting provisions from a settlement into the proposed Permit and removing any autonomy from DNR to incorporate comments into a final determination. As such, the modification was unreasonable.

B. Issue Two: The modification to the Permit is invalid because there is a pending, facially valid challenge to the previously issued permit that was not forwarded to the Division of Hearings and Appeals

52. The modification to the Permit is invalid because there is a pending, valid challenge to the previous issuance (the Monitoring Permit) and DNR did not fulfill its obligation to forward that petition to the Division of Hearings and Appeals, initiating a contested case hearing proceeding. This decision precluded interested members of the public, like Petitioners, from participating in that process.

53. DNR has the authority to modify a permit, but only in specific instances. *See* Wis. Admin. Code § NR 203.136(1). Most reasons for modification relate to technical/technological changes or needs. *See e.g.*, Wis. Admin. Code §§ NR 203.136(1)(c), (f)-(j), (L), (n). However, DNR also has the authority to modify a permit in response to a “judicial decision” which includes modification following a signed stipulation to “resolve a s. 283.63, Stats., contested case hearing.” Wis. Admin. Code § NR 203.136(1)(d).

54. “Any permit applicant, permittee, affected state or 5 or more persons may seek review of a WPDES permit denial, modification, termination, or revocation and reissuance, the reasonableness of or necessity for any term or condition of any issued, reissued or modified permit....” Wis. Stat. § 283.63(1). Such review is called a contested case hearing. CAFO WPDES permit contested case hearings are overseen by hearing examiners who are assigned by the administrator of the Division of Hearings and Appeals in the Department of Administration. *See* Wis. Stat. § 227.43; Wis. Admin. Code § NR 2.07.

55. After receiving a petition for a contested case hearing, DNR determines whether the petition meets the jurisdictional requirements of the statutes and rules under which the petition is filed. Wis. Admin. Code § NR 2.055. If the petition meets jurisdictional requirements, DNR

“shall transmit to the division of hearings and appeals under s. 227.43, Stats., only petitions or portions thereof which the department determines meet the applicable jurisdictional requirements.” *Id.* (emphasis added).

56. Though there is no statutory or regulatory deadline governing when DNR must transmit a petition, the Department has a nondiscretionary duty to notify the Division of Hearings and Appeals of every pending hearing to which the administrator of the division is required to assign a hearing examiner. *See* Wis. Stat. § 227.43(2)(a).

57. The transmission of a contested case hearing petition to the Division of Hearings and Appeals is what starts a contested case hearing. *See* Wis. Admin. Code § NR 2.06 (explaining that notices of contested case hearings shall contain, *inter alia*, a docket number and “other information as the department or the administrative law judge may deem appropriate.”).

58. On September 15, 2022 DNR granted Gordondale Farms’ Contested Case Hearing Petition, but never transmitted the petition to the Division of Hearings and Appeals. Gordondale Farms has not withdrawn its Contested Case Hearing Petition. Instead, pursuant to the DNR/CAFO Agreement, DNR committed to never transmitting Gordondale Farms’ Contested Case Hearing Petition unless Gordondale Farms either requests transmission or there is a material breach of the DNR/CAFO Agreement. Exh. B § 7.1

59. None of the prerequisite conditions of Wis. Admin. Code § NR 203.136(1) were met. There remains a valid, contested case hearing petition before the DNR. As such, the permit modification was improper.

60. Because Wis. Stat. § 283.63 and Wis. Admin. Code § NR 203.15 grant members of the public the right to review permit modifications through contested case hearings and DNR failed to comply with applicable permit modification and contested case hearing procedures, the

present contested case hearing is an appropriate venue to challenge the decision not to transmit Gordondale Farms' Contested Case Hearing Petition to the Division of Hearings and Appeals. DNR's failure to fulfill its requirements was contrary to state law and deprived Petitioners of their rights to participate in a contested case hearing focused on issues they advocated for over the span of four years.

C. Issue Three: The modification is invalid because DNR limited its authority to establish future monitoring requirements in Gordondale Farms' Permit, in violation of Wisconsin Groundwater Protection laws.

61. The primary water pollutants associated with CAFOs are bacteria and nitrate contaminants. DNR may issue a WPDES permit that authorizes discharges to waters of the state only if the discharges allowed under the permit meet groundwater protection standards established under Chapter 160 of the Wisconsin Statutes. Wis. Stat. § 283.31(3)(f). DNR is required to include conditions in WPDES permits "to assure compliance with" groundwater protection standards. Wis. Stat. § 283.31(4); *see also* Wis. Stat. § 283.31(3); Wis. Admin. Code § NR 243.13(1). At a minimum, DNR must include conditions that ensure "the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit." Wis. Stat. § 283.31(4)(a). Further, DNR is required to include a monitoring and inspection program in the WPDES permit that will determine compliance with permit conditions. Wis. Admin. Code § NR 243.19(1).

62. DNR's obligation to include conditions in WPDES permits "to assure compliance with" groundwater protection standards pursuant to Chapter 160 of the Wisconsin Statutes as well as Wis. Stat. § 283.31(3) & (4), and Wis. Admin. Code § NR 243.13(1) is not negotiable.

63. Despite the clear duty to protect groundwater and ensure compliance with groundwater quality standards, DNR agreed in the DNR/CAFO Agreement to limit its authority to set future groundwater monitoring terms. Specifically, the DNR/CAFO Agreement states:

“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 I 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.”

Exh. B, §3.4 (emphasis added).

64. The limitation dictating if or when a second phase of monitoring can occur does not fulfill the requirements of Chapters 160 and 283 of the Wisconsin Statutes as well as Chapters NR 140 and 243 of the Wisconsin Administrative Code.

65. The Wisconsin Supreme Court has held that groundwater monitoring requirements in CAFO permits are “reasonable” and sometimes “necessary” to assure compliance with the requirements listed in § 283.31. *See Clean Wisconsin v. DNR*, 2021 WI 71, ¶¶37-39, 398 Wis. 2d 386, 961 N.W.2d 346.

66. DNR’s prospective, self-imposed limitation to limit imposing future groundwater monitoring conditions is unreasonable. DNR could not agree to focus solely on the results of a single field when determining whether any additional monitoring would be necessary to include in future permits or phases.

D. Issue Four: Sections 2 and 3.7 are unreasonable because they fail to ensure compliance with groundwater quality standards by selecting a monitoring field that will not generate useful data.

67. Sections 2 and 3.7 are unreasonable because DNR and Gordondale Farms privately agreed on weakened off-site groundwater monitoring requirements. These weakened requirements are insufficient to monitor and regulate discharges or assure compliance with water

quality standards, particularly underneath and down-gradient of landspreading fields pursuant to Wis. Stat. § 283.31(3)-(4), Wis. Admin. Code §§ NR 243.13(1), 243.13(5), 243.14(2), 243.14(2)(b)(3), 243.15(7), and 243.19(1).

68. In Nelsonville, a 2020 report identified 36 of 58 private residential wells tested in recent years had nitrate-N exceeding the 10 mg/L limit. Sandy loam soil, which is associated with an increased risk of groundwater contamination from surface activities, is present throughout the area. Petitioners and the retained experts identified the most likely geographic sources of contamination and DNR's hydrogeologist confirmed some of those expert findings in a 2022 hydrogeologic memo.

69. Notice for the 2022 Draft Monitoring Permit included a memorandum that recommended a monitoring plan for "landspreading activities at fields adjacent to impacted wells." **A True and Correct Copy of DNR's 2022 Gordondale Farms Hydrogeology Memo attached as Exhibit C.** Specifically, the Hydrogeology Memo recommended DNR require "Gordondale Farms to install monitoring system(s) in landspreading fields directly upgradient from nitrate impacted wells identified in the 2019 Arntsen Tech Memo."

70. Groundwater flow models and nutrient management plans indicate that Gordondale Farms spreads manure on hundreds of acres within the likely recharge zone of Nelsonville. Expanding the monitoring area would have more closely aligned with the recommendations of Sand County Environmental Consultants and DNR's hydrogeologist.

71. Despite the findings in the record, including DNR's own Hydrogeology Memo, the Settlement Agreement establishes that groundwater monitoring "shall" occur at GORD-068, a 6.1 acre field on the northern tip of Nelsonville. This field is too small of a land application site to generate meaningful data and extrapolate representative conclusions about compliance. 6.1

acres, in comparison to the hundreds of acres within Nelsonville's recharge zone that Gordondale spreads on, is insufficient to determine whether the CAFO's practices are complying with groundwater quality standards.

72. Rather than evaluate the risk posed by Gordondale Farms' spreading on the identified regions from the 2019 and 2022 Arntsen Tech Memos, DNR unreasonably weakened the groundwater monitoring terms of Sections 2 and 3.7, requiring groundwater monitoring at sub-optimal fields that are too small to aggregate meaningful data.

73. The Permit includes a standard condition noting that the Permit does not authorize "any injury or damage to private property or any invasion of personal rights, or any infringement of federal, state or local laws or regulations." Permit § 4.1.3. This condition, without adequate groundwater monitoring requirements, cannot be realized because DNR is unable to evaluate whether Gordondale Farms is currently contributing to groundwater contamination above the state regulatory level, nor which fields are causing the exceedances.

74. Given the identified groundwater contamination, DNR has failed to include necessary conditions in the Permit to fulfill DNR's authority and duty to require remedial action contemplated in Chapter 160 of the Wisconsin Statutes and Wisconsin Admin. Code NR Section 140.

E. Issue Five: Sections 2 and 3.7 are unreasonable because they eliminated the multi-phased monitoring requirements of the pre-modified Permit.

75. Sections 2 and 3.7 are unreasonable because the modification removed necessary provisions related to subsequent monitoring requirements. The Monitoring Permit required a second phase of monitoring ("Phase 2"), that phase was eliminated in the Permit pursuant to the DNR/CAFO Agreement.

76. As noted above, DNR is required to include conditions in WPDES permits “to assure compliance with” groundwater protection standards. Wis. Stat. § 283.31(4); *see also* Wis. Stat. § 283.31(3); Wis. Admin. Code § NR 243.13(1). At a minimum, DNR must include conditions that ensure “the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.” Wis. Stat. § 283.31(4)(a). Further, DNR is required to include a monitoring and inspection program in the WPDES permit that will determine compliance with permit conditions. Wis. Admin. Code § NR 243.19(1).

77. The removal of Phase 2 unnecessarily prolongs DNR’s response time to known groundwater exceedances, and as such, fails to fulfill DNR’s obligations under Chapter 283 of the Wisconsin Statutes.

78. The decision to eliminate Phase 2 is unreasonable by failing to ensure compliance with groundwater quality standards. Petitioners are harmed by potential continued exceedances of groundwater quality standards and the human health effects that flow from those exceedances.

F. Issue Six: Sections 2 and 3.7 are unreasonable because they allow Gordondale Farms to manipulate field practices, particularly nutrient application, in a way that limits the usefulness of generated data.

79. Sections 2 and 3.7 are unreasonable because the modifications removed necessary provisions ensuring that the proposed monitoring locations were subject to typical “tillage, cropping, and nutrient application practices” for Gordondale Farms. The removal of such requirements, along with the DNR/CAFO Agreement establishing a non-binding 5-year crop rotation that will not see manure application for multiple years is unreasonable.

80. Section 6.3 of the DNR/CAFO Agreement notes that Phase 1 will continue “until such time as two manure applications are completed.” Based on the proposed, but non-binding, crop rotation, “two manure applications” will finally occur in 2029.

81. Under the proposed crop rotation, GORD-068 will have alfalfa in 2023, 2024, and 2025. GORD-068 will then have corn in 2026, with no expected manure application. In 2027, Gordondale Farms is finally anticipating growing corn and spreading manure on GORD-068. Gordondale Farms will then spread manure again in 2029. Therefore, pursuant to the proposed crop rotation and nutrient application, although the monitoring wells will be constructed in 2024, the predominant nutrient applications at issue (manure) will not be applied for another three years.

82. Further, the DNR/CAFO Agreement allows Gordondale Farms to change its proposed crop rotation at any time.

83. This delay in initial monitoring results is unreasonable, further delaying future monitoring requirements and setting back remedial actions for years, despite known exceedances and DNR’s admission that “landspreading of [Gordondale Farms’] manure is a likely cause of, or contributor to, the exceedances of groundwater standards (NR 140) in the wells in Nelsonville.” DNR – Ian Anderson, Gordondale Hydrogeologic Memo (Feb. 23, 2022).

G. Issue Seven: Sections 2 and 3.7 are unreasonable because the sampling frequency is too sparse to generate useful data, failing to ensure compliance with groundwater quality standards.

84. Section 2.1 specifies a quarterly sampling frequency for almost all groundwater parameters in Phase 1. The only parameters that will be sampled monthly are Depth to Bedrock and Groundwater Elevation.

85. Section 3.7 specifies that the “Phase 1 groundwater monitoring plan shall include procedures for scheduling quarterly or semi-annual sampling within four (4) weeks of application of manure or process wastewater to the subject land application site when applicable.”

86. Sections 2 and 3.7 were unnecessarily modified to reduce the frequency of monitoring for almost all parameters from monthly to quarterly, then eventually semi-annually.

87. Gordondale Farms challenged the sampling frequency, alleging that monthly sampling should not continue into Phase 2. Despite the modification in the Permit being beyond the scope of Gordondale Farms’ 2022 challenge, DNR and Gordondale Farms agreed to reduce the frequency of sampling in Phase 1.

88. The reduced sampling frequency is unreasonable because it is insufficient to detect variability in water quality based on the hydrogeology of the region. Further, it limits the usefulness of generated data and may prevent subsequent phases of monitoring because of the aforementioned limitations in the DNR/CAFO Agreement that limit DNR’s autonomy to order additional monitoring at land application fields.

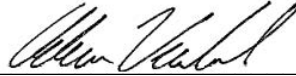
IV. REASONS WHY A HEARING IS WARRANTED.

For the foregoing reasons, a hearing is warranted to resolve the above material disputes of fact, to determine the reasonableness of the above-mentioned sections of Gordondale Farms’ Permit, and to address DNR’s failure to include necessary conditions to fulfill its duty to restore and maintain the chemical, physical, and biological integrity of the waters of the state.

Dated this 18th day of June, 2024.

Respectfully submitted,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



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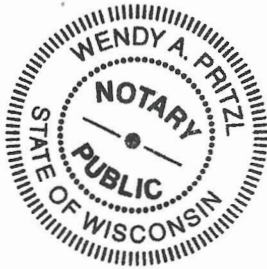
VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF PORTAGE)

I verify that I am a petitioner in this matter. I have read the foregoing Petition and know its contents, and I attest that the facts alleged above are true and correct, to the best of my knowledge.

Lisa Anderson
Lisa Anderson

Subscribed, sworn to, and signed before
me this 14 day of June, 2024



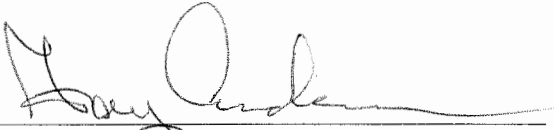
Wendy A. Pritzl
Notary Public, State of Wisconsin

My commission expires on 10-15-2025

VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF PORTAGE)

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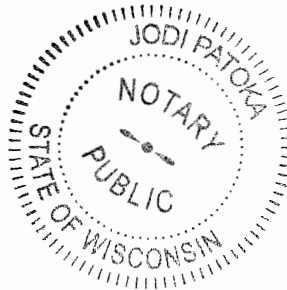


Gary Anderson

Subscribed, sworn to, and signed before
me this 17 day of June, 2024



Notary Public, State of Wisconsin



My commission expires on 10/31/26

VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF WOOD)

I verify that I am a petitioner in this matter. I have read the foregoing Petition and know its contents, and I attest that the facts alleged above are true and correct, to the best of my knowledge.

Katy M Bailey
Katy Bailey

Subscribed, sworn to, and signed before
me this 17th day of June, 2024

Marcia M. Winkler
Notary Public, State of Wisconsin


My commission expires on 2-4-26



VERIFICATION


STATE OF WISCONSIN)
) ss.
COUNTY OF PORTAGE)

I verify that I am a petitioner in this matter. I have read the foregoing Petition and know its contents, and I attest that the facts alleged above are true and correct, to the best of my knowledge.



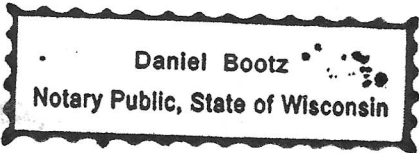
Stacy O'Carroll

Subscribed, sworn to, and signed before
me this 14th day of June, 2024



Notary Public, State of Wisconsin

My commission expires on 10/23/27



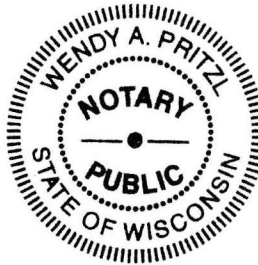
VERIFICATION

STATE OF WISCONSIN)
) ss.
COUNTY OF PORTAGE)

I verify that I am a petitioner in this matter. I have read the foregoing Petition and know its contents, and I attest that the facts alleged above are true and correct, to the best of my knowledge.

Marianne Walker
Marianne Walker

Subscribed, sworn to, and signed before
me this 14 day of June, 2024



Wendy A. Pritzl
Notary Public, State of Wisconsin

My commission expires on 10-15-2025