

JOHN W. MARKSON  
CIRCUIT COURT, BR 1

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

2011 JUL 22 PM 1:55

FAMILY FARM DEFENDERS, INC.  
1019 Williamson Street  
Madison, WI 53701, and

CIRCUIT COURT  
DANE COUNTY, WI

JOHN ROBERT CLARKE  
N235 4<sup>th</sup> Ave  
Coloma, WI 54930

Petitioners,

Case Code: 30607 **11CV3375**  
Administrative Agency Review

vs.

WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES  
101 South Webster Street  
Madison, Wisconsin 53707,

THIS IS AN AUTHENTICATED COPY OF THE  
ORIGINAL DOCUMENT FILED WITH THE DANE  
COUNTY CLERK OF CIRCUIT COURT.

Respondent.

CARLO ESQUEDA  
CLERK OF CIRCUIT COURT

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**PETITION FOR JUDICIAL REVIEW**

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Now come the Petitioners, Family Farm Defenders and John Robert Clarke, by their attorneys McGillivray Westerberg & Bender LLC, to petition the Court pursuant to Wis. Stat. § 227.52 and .53, for judicial review of a decision of the Respondent, Wisconsin Department of Natural Resources ("DNR") approving plans and specifications for a concentrated animal feeding operation ("CAFO") in Adams County, Wisconsin, pursuant to, *inter alia*, Wis. Stat. § 281.41 and Wis. Admin. Code. § NR 243.15.

The decision of the DNR to approve the plans and specifications is an administrative decision reviewable under Wis. Stat. § 227.52, *et seq.*; a copy is attached hereto as **Exhibit 1**.

## PARTIES

1. Petitioner Family Farm Defenders ("FFD") is a non-profit corporation with its office address at 1019 Williamson Street, Madison, Wisconsin. Its mission is to create a farmer-controlled and consumer-oriented food and fiber system, based upon democratically controlled institutions that empower farmers to speak for and respect themselves in their quest for social and economic justice. To this end, FFD supports sustainable agriculture, farm worker rights, animal welfare, consumer safety, fair trade, and food sovereignty. It generally is opposed to industrial farm operations such as CAFOs.

2. Petitioner John Robert Clarke is a seasonal resident of Wisconsin, whose address is N235 4<sup>th</sup> Ave, Coloma, Wisconsin. This property is located on the shore of Pleasant Lake, a navigable water, in Waushara County. Mr. Clarke and his family own and use a pier on their riparian property and utilize their rights through boating, fishing, swimming, and enjoying the natural beauty the property affords. Mr. Clarke and his family also live adjacent to a marsh located at the headwaters of Chaffee Creek, a Class 1 trout stream, and own land adjoining state land through which Chaffee Creek flows.

3. Respondent DNR is an independent agency of the State of

Wisconsin, created under Wis. Stat. § 15.34, whose principal office is located at 101 South Webster Street, Madison, Dane County, Wisconsin, and which has responsibility for the regulation of CAFOs and their impacts on water pursuant to, *inter alia*, Wis. Stat. chs. 281 and 283 and Wis. Admin. Code ch. NR 243.

#### FACTS

4. Richfield Dairy is a proposed new dairy in Adams County, Wisconsin, to be owned and operated by Milk Source Holdings, Inc. and its subsidiary, Richfield Dairy LLC (collectively, "Richfield Dairy"). The proposed Richfield Dairy facility would house 4,300 milking/dry cows and 250 steers for a total of 6,270 "animal units" as that term is used in Wis. Admin. Code § NR 243.03(5).

5. Structures proposed for the dairy include a freestall barn, an 80 stall milking parlor, livestock holding area, concrete feed storage pad, vegetated treatment area for precipitation runoff, sweet corn silage bunker, HDPE lined sweet corn silage attenuation basin, manure processing building, manure solids storage area, animal mortality storage facility, two high capacity wells, four stormwater management ponds, and other structures. The facility would also include two large manure storage ponds with a combined design capacity of 33.2 million gallons.

6. Richfield Dairy is estimated to produce 55.3 million gallons of manure and process wastewater annually.

7. On or about February 23, 2011, Richfield Dairy applied for plans

and specifications approval from the DNR pursuant to Wis. Stat. § 281.41 and Wis. Admin. Code § NR 243.15.

8. The DNR granted the plans and specification approval on June 24, 2011, by operation of Wis. Stat. § 281.41(1)(a). The approval included a 30-day notice of appeal rights.

9. The plans and specifications application was submitted as part of Richfield Dairy's Wisconsin Pollutant Discharge Elimination System ("WPDES") permit application. The DNR held a public hearing on the WPDES permit on July 18, 2011. Petitioner Family Farm Defenders, by its executive director, John Peck, attended and spoke at the hearing, as did Petitioner Clarke. The dairy has not yet received its WPDES permit.

#### **ADVERSE EFFECTS ON PETITIONERS' INTERESTS**

10. Petitioner Family Farm Defenders and its members are aggrieved by the proposed Richfield Dairy and plans and specifications approval. Approval of the plans and specifications for the dairy is contrary to Family Farm Defenders' mission of promoting sustainable agriculture, farm worker rights, animal welfare, and consumer safety. Its members live, work, and recreate in the area of the proposed Richfield Dairy and fields on which Richfield Dairy will landspread manure and wastewater. Family Farm Defenders and its members will be adversely affected by the dairy's odor, truck traffic, landspreading practices, and projected impact on water quality and quantity.

11. Petitioner Robert Clarke is aggrieved by the proposed Richfield

Dairy and the plans and specifications approval. He seasonally resides in the area, and recreates on Pleasant Lake and other natural areas in the vicinity of the Richfield Dairy and lands on which the dairy will spread manure and wastewater. Mr. Clarke will be adversely affected by the dairy's odor, truck traffic, landspreading practices, and projected impact on water quality and quantity.

### GROUNDS FOR REVIEW

9. The DNR's decision to issue the plans and specifications approval was impaired by a material error in procedure, relies on errors of law, is not supported by facts, and is outside of and constitutes abuse of discretion. Wis. Stat. § 227.57(4), (5), (6), and (8). Additionally, the plans and specifications, as approved, do not comply with the applicable regulations, including provisions of Wis. Admin. Code ch. NR 243 and standards referenced therein.

10. For example, the application and approval underestimate solid and liquid waste volume, contain design flaws, do not include sufficient measures to prevent waste water runoff and spills from the dairy site, do not adequately establish the correct depth to groundwater on-site, do not properly account for current site characteristics such as an existing irrigation well and gas line that could, *inter alia*, discharge pollution off-site or into groundwater, do not contain sufficient monitoring, and otherwise do not contain adequate measures to prevent ground and surface water pollution from site operations, as required by statute and administrative code. Also, the agency did not provide for sufficient

public input on the plans and specifications or follow applicable public participation procedures.

**PRAYER FOR RELIEF**

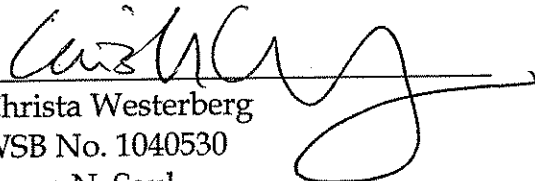
WHEREFORE, Petitioners request judgment in their favor as follows:

1. Declaring that the plans and specifications approval is reversed, set aside, and vacated or, in the alternative, is remanded to the DNR for further action;
  2. Ordering such interlocutory or final relief as is necessary to preserve the interests of Petitioners and other members of the public;
  3. Awarding costs and attorneys fees pursuant to Wis. Stat. § 814.245;
- and
4. Such other relief as the Court may deem just and equitable.

Dated this 22<sup>nd</sup> day of July, 2011.

**MCGILLIVRAY WESTERBERG & BENDER  
LLC**

COUNSEL FOR PETITIONERS

  
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State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
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Scott Walker, Governor  
Cathy Stepp, Secretary  
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June 24, 2011

FILE REF: R-2011-0029  
WPDES Permit #: 0064815

Jim Ostrom  
Richfield Dairy, LLC  
N3569 Vanden Bosch Rd.  
Kaukauna, WI 54130

Subject: Statutory Approval of Plans & Specifications for a New Farmstead at, Sec 25, T18N, R7E, Adams County

Dear Mr. Ostrom:

The Water Division of the Wisconsin Department of Natural Resources (WDNR) statutorily approves the above referenced plans and specifications, submitted under the seal of Todd Boehne, P.E., Conestoga Rovers & Associates and received on February 23, 2011. Although the plans and specifications are statutorily approved, they were reviewed in accordance with s. chs NR 281.41, NR 151 and NR 243, Wis. Adm. Code, and applicable NRCS standards. The proposed construction is approved to commence for a period of two years from the approval date. If construction will commence after that time, a new written approval must be obtained. Questions may be directed to the regional office or Jeff C. Kreider, WDNR Central Office (contact information is at the end of this document).

In accordance with s. 281.41(1)(b), Stats., the plans and specifications are approved by statute because 90 days plus a 30 day extension have lapsed since submittal of complete plans and specifications. Under statutory approval the project is subject to all statutes, administrative codes and standards that normally apply. Statutory approval is given because the environmental review process (required by ch. NR 150, Wis. Adm. Code) was not completed within the maximum time allowed for the WDNR to issue a decision on the plans and specifications.

**Proposed Project:**

- Waste storage pond (400ft x 480ft x 28ft deep) is compliant with NRCS 313 Table 5, NRCS 367 and s. NR 243.15(3) and will provide a total of 205 days of on site storage. The floor elevation is 1059.5 and the MOL elevation is 1085.52. The interior side slopes will be 2.5:1 with an embankment width of 20 ft. The reinforced concrete floor will be 6 inch thick and the reinforced concrete walls will be 5 inch thick. Below the concrete floor will be an 8 inch thick compacted clay liner will function as a secondary liner per Wisconsin Construction Specification (WCS) 300. An 80 mil HDPE will cover the proposed pond with the gases being transported to a bio-filtration system. Bedrock and saturation were not found. The total manure storage capacity will provide approximately 205 days of storage.
- Waste storage (250ft x 480ft x 15ft deep) is compliant with NRCS 313 Table 5 and s. NR 243.15(3). The floor elevation is 1072.5 and the MOL elevation is 1085.52. The ramp slope will be 8:1 and the interior side slopes will be 2.5:1 with an embankment width of 20 ft. The reinforced concrete floor and ramp will be 8 inch thick and the reinforced concrete walls will be 5 inch thick. Below the concrete floor will be an 8 inch thick compacted clay liner will function as a secondary liner per WCS 300. This proposed pond will not be covered. Bedrock and saturation were not found.
- There are several different transfer pipe types and channels associated with this project that are for gravity and pressure flows. The transfer pipes listed in the submittal meet NRCS 634 and ch. NR 243.15(4). The flush flume pipes use recycled non-potable water from the separation facility.
- Feed storage pad (680ft x 785ft x 8inch thick) is compliant with NRCS 629 and s. NR 243.15(9). Beneath the concrete floor will be an 8 inch thick compacted clay sub-base. The floor will slope towards the center and to the south. At the south end of the proposed pad, a 14 ft - 4 inch wide x 3 - 8 ft high leachate transfer trench will transfer the leachate to the leachate reception tank. The first 0.15 inches of first flush will be transferred to the waste storage pond #1. The remaining flow will be transferred to storm water management pond #1





and then onto the vegetated treatment area.

- Storm water management pond #1 is an irregular shape that is 344 ft long x 90-210ft wide x 10-12 ft deep. The reinforced concrete basin will have a 6 inch thick ramp and floor and 5 inch thick walls. The walls have a slope of 4:1 and the ramp has a slope of 8:1. Storm water management pond #1 meets NRCS 313 Table 5 and s. NR 243.15(3).
- The proposed sweet corn feed bunkers will be 221ft x 658ft with an 8 inch thick reinforced concrete floor and an 8 inch thick granular base followed by a 24 inch thick compact clay liner sub-base. The proposed bunkers will use pre-cast 12ft high walls. The floor will slope to the west where 100% of the runoff will flow into a collection trench and pumped into waste storage facility #1. The proposed bunkers meet NRCS 629, s. NR 213, and s. NR 243.15(9).
- Vegetated treatment area (VTA) (348ft x 932ft) has a total area of 320,848 with a 0.5% slope is compliant with NRCS 635 and s. NR 243.15(3). The minimum required area is 296,127ft<sup>2</sup>. Soils with a minimum P200 of 20% will be imported due to the soils on site being sandy.
- Runoff controls are compliant with NRCS 635 and s. NR 243.15(2).
- Solids and sand will be separated via mechanical separation within the manure processing building. Additionally, sand settling lanes will be used to capture fine sand that was not captured during the mechanical process. The solid manure will be stacked on the manure stacking pad and sand will be moved to the sand stacking bay. The remaining liquids will be transferred to the flush water tank where the liquid will be used for flushing or will be transferred to waste storage pond #2. The sand settling lanes and reception tanks meet NRCS 313 and s. NR 243.15(3) and (4).
- Manure stacking pad (202ft x 384ft x 8inch thick) is compliant with NRCS 313 and s. NR 243.15(8). The reinforced concrete poured in placed walls will be 12ft high x 12 inch thick. The floor will slope to the west towards the manure processing building.

**Requirements:** The plans and specifications for project number R-2011-0029 are subject to compliance with s. 281.41, Stats., and applicable portions of chs. 108, NR 151 and 243, Wis. Adm. Code, and NRCS Standards. WDNR notes the following specific requirements that apply:

1. **Vegetated Treatment Area (VTA):** A portion of the pasture area shall be designated as a VTA in accordance with all of the following:
  - a. Spreaders shall be installed where necessary, if channelized flow occurs within the VTAs.
  - b. The VTA shall be managed consistent with the purpose of runoff control, unless an alternate runoff control method is approved in writing by the WDNR, or the corresponding animal lot is abandoned. (For example, a VTA shall not be channelized, excavated or built upon.)
2. **Notification:** Prior to construction and when construction is complete, notify the DNR regional contact and county contact provided a copy of the approval. (For contact information, see end of the approval.)
3. **Inspection:** A competent resident inspector, provided by the owner or its consultant, shall be present during all construction of critical components.
4. **Post-Construction Documentation:** Within 60 days of completing construction, submit to the WDNR Madison Office two copies of the documentation required by a.-d., and notify the WDNR regional contact that construction documentation has been submitted:
  - a. A statement certifying that construction conforms with the following:
    - i. s. NR 243.15, Wis. Adm. Code; and
    - ii. NRCS Standards (specify each).
  - b. A statement from the competent resident inspector certifying construction inspection conformed with the approved inspection plan.
  - c. Inspection dates and associated construction events inspected on each date. (Copy of a proper inspection log will normally be sufficient.)
  - d. Documentation required in either i. or ii. below:
    - i. If no changes were made from approved plans, in addition to the documentation required in a.-c. above, the certification required by a. above shall include a statement that construction fully conforms with the approved plans and specifications.

- ii. If changes were made from the approved plans, in addition to the documentation required in a.-c. above, also submit all of the following:
- (1) Summary of changes.
  - (2) The certification statement required in a. above shall include a statement that construction substantially conforms with the approved plans and specifications.
  - (3) Revised drawing sheets or text pages to reflect changes as constructed.


**Limitation of Approval:** The WDNR reserves the right to order changes or additions should conditions arise making this necessary. This approval is not to be construed as a WDNR determination on the issuance of a Wisconsin Pollutant Discharge Elimination System Permit or opinion as to the ability of the proposed system to comply with effluent limitations in such a permit, approval of an Environmental Assessment that may be prepared, or approval for any activities requiring a permit under ch. 30 or 31, Stats. Where necessary, plans and specifications should be submitted to the Department of Commerce or other state or local agencies to ensure conformance with applicable codes or regulations of such agencies.

**Tax Treatment:** Tangible personal property, that becomes part of a waste treatment of pollution abatement plant or equipment, may be exempt from sales tax under s. 77.45(26), Stats. Similarly, property purchased or constructed as a waste treatment facility and used for industrial waste treatment may be exempt from general property taxes under s. 70.11(21), Stats. A prerequisite to exemption is filing a statement on forms prescribed by the Wisconsin Department of Revenue. To obtain the forms, and information on whether or not your property qualifies for these exemptions, please contact the Department of Revenue, P.O. Box 8933, Madison, WI 53708.

**Appeal Notice:** If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary



Thomas J. Mugan, P.E.  
Chief, Wastewater Section  
Bureau of Watershed Management



Jeff C. Kreider  
Water Resources Engineer  
Bureau of Watershed Management

c: Todd Boehne, P.E.  
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