

FILED
05-03-2019
Circuit Court
St. Croix County, WI
2019CX000002

STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY
BRANCH _____

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

Plaintiff,

v.

Case No. 19-CX-____
Complex Forfeiture: 30109

EMERALD SKY DAIRY,
LLC,
2670 D Road
Rising City, Nebraska 68658-3857

Defendant.

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 and Assistant Attorney General Emily M. Ertel, brings this action against the above-named defendant at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin.

2. Defendant Emerald Sky Dairy, LLC (Emerald Sky Dairy) is a domestic limited liability company with its principal office located at 2670 D Road, Rising City, Nebraska, 68658-3857. Its registered agent is C T Corporation System, whose office is located at 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703-3691.

3. At all times relevant to the allegations in this Complaint, Emerald Sky Dairy owned and operated a large concentrated animal feeding operation located at 2487 County Road G, Town of Emerald, St. Croix County, Wisconsin (the CAFO).

4. The State of Wisconsin enacted Wis. Stat. ch. 283 and DNR administers regulations to prevent and minimize water pollution in the State.

5. Wisconsin Stat. § 283.31(1) prohibits any person from discharging any pollutant into any waters of the State except in compliance with a permit issued by DNR.

6. Wisconsin Stat. § 283.01(20) defines “waters of the state” as “those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction[.]”

7. Wisconsin Admin. Code chs. NR 151 and 243 contain standards applicable to concentrated animal feeding operations.

8. Wisconsin Admin. Code § NR 243.11(3)(a) requires any person owning or operating a large concentrated animal feeding operation to have a Wisconsin Pollutant Discharge Elimination System permit.

9. At all times relevant to the allegations in this Complaint, Emerald Sky Dairy held Wisconsin Pollutant Discharge Elimination System permit no. WI-0059315-04-0 (WPDES permit) that authorized it to discharge to a wetland tributary to Dry Run Creek and to groundwater and to the Lower Willow River Watershed of the St. Croix River Basin in compliance with the terms of the permit.

10. The WPDES permit was issued on July 1, 2015 to Emerald Dairy LLC. On February 24, 2016, Emerald Sky Dairy filed a Stipulation of WPDES Permit Acceptance with DNR, effective March 1, 2016, to take over the WPDES permit from Emerald Dairy LLC.

11. The CAFO has a waste storage facility and separator building located on the northern part of the property. The “TMF barn” is southwest of the waste storage facility and located on the south-central portion of the property. The calf hutch area and a stormwater pond are located on the southern edge of the property, southeast of the TMF barn.

12. In 2016, Emerald Sky Dairy had a wetland delineation performed at the CAFO in anticipation of a proposed expansion of operations. Ecosystems, LLC issued a Wetland Delineation Report to Emerald Sky Dairy on August 21, 2016 (Wetland Delineation Report).

13. The Wetland Delineation Report identified nine wetlands, a stormwater pond, and ditches at the CAFO.

14. The Wetland Delineation Report identified wetlands 6, 7, 8, and 9 south of the waste storage facility and north of the TMF barn. Wetland 6 includes a shallow marsh and open water pond.

15. The Wetland Delineation Report identified wetland 1 immediately south of the stormwater pond. Wetland 1 is a large wetland complex with an unnamed, intermittent stream running east to west.

16. In 2016, a manure transfer pipe ran underground from the TMF barn northeasterly to the separator building.

17. Manure was pumped from the TMF barn up to the separator building through the manure transfer pipe. The manure pump was manually turned on and off.

18. The manure transfer pipe carried approximately 20,000 to 30,000 gallons of manure daily from the TMF barn to the separator building.

19. Around December 2016, a spiral crack developed in a cleanout riser on the manure transfer pipe close to, but south of, the separator building.

20. Around December 2016, manure escaped from the manure transfer pipe through the crack in the pipe and flowed downhill into previously delineated wetlands 6 and 7, including the open pond. Manure then flowed through a ditch south around the TMF barn to the stormwater pond. The stormwater pond overflowed manure and manure-laden water into wetland 1.

21. On December 19, 2016, former CAFO manager Mark D. Tuls discovered the manure discharge. He observed an outline of manure in the snow near the separator building.

22. On December 19, 2016, Mr. Mark Tuls notified Emerald Sky Dairy's former assistant farm manager Chance Speelman, Emerald Sky Dairy's Director of Safety Elizabeth Griffith, and Emerald Sky Dairy's owner Todd Tuls about the manure discharge.

23. On December 19, 2016, Emerald Sky Dairy hired Komro Sales and Service Inc. to repair the broken manure transfer pipe that day.

24. Emerald Sky Dairy took no action to clean up the manure discharged.

25. On March 28, 2017, DNR and St. Croix County received anonymous tips that a manure discharge had occurred at Emerald Sky Dairy.

26. On March 29, 2017, St. Croix County Land Conservation and Land Use Specialist Steve Olson inspected the CAFO. Ms. Griffith was present for the inspection.

27. On March 29, 2017, Mr. Olson told Ms. Griffith to report the manure discharge to DNR.

28. On March 29, 2017, Ms. Griffith reported the manure discharge to DNR.

29. On March 30, 2017, DNR Agricultural Runoff Specialist Leah Nicol and Mr. Olson inspected the CAFO.

30. On March 30, 2017, manure and manure-laden water was in wetlands 6 and 7, including the open pond; the ditch running south to the stormwater pond; the stormwater pond; and wetland 1.

31. On March 30, 2017, manure solids had settled out and filled wetlands and the ditch because the manure discharge had been left on the landscape since December 2016.

32. On March 31, 2017, Ms. Nicol, DNR NR Basin Supervisor Robert Baczynski, and DNR Hydrogeologist/Spills Coordinator Patrick Collins inspected the CAFO.

33. On March 31, 2017, DNR staff took water samples and depth measurements of manure solids using a yard stick.

34. On March 31, 2017, manure solids in the open pond in wetland 6 ranged from approximately 13 inches to over three feet deep. At one location on the southern end of the open pond, the yard stick was fully submerged in manure solids and did not reach the bottom of the solids.

35. On March 31, 2017, manure solids immediately south of the open pond in wetland 6 were approximately 15 inches deep.

36. On March 31, 2017, manure solids in the ditch immediately west of the TMF barn ranged from approximately 12 to 13 inches deep.

37. On March 31, 2017, DNR collected a water sample from the intermittent stream at the culvert on the east side of 250th Street (upstream sample). This location is upstream of the stormwater pond outfall into wetland 1. Water quality at this location was not affected by the manure discharge.

38. On March 31, 2017, DNR collected a water sample from the stormwater pond at the CAFO (stormwater pond sample). This location was affected by the manure discharge.

39. On March 31, 2017, DNR collected a water sample from wetland 1 downstream of the outfall from the stormwater pond (wetland sample). This location was affected by the manure discharge.

40. The upstream sample had *E. coli* of less than 1 CFU/100 mL, the stormwater pond sample had *E. coli* of 7,980 CFU/100 mL, and the wetland sample had *E. coli* of 10,580 CFU/100 mL. For purpose of comparison, DNR's Beach Monitoring Program requires closure of public beaches on lakes when water quality samples are above 1,000 CFU/100 mL for *E. coli*. The Beach Monitoring Program requires an advisory notice warning the public to swim at their own risk when water quality samples are above 235 CFU/100 mL for *E. coli*.

41. The upstream sample had total phosphorous of 0.644 mg/L, the stormwater pond had total phosphorus of 39.9 mg/L, and the wetland sample had total phosphorous of 39.7 mg/L.

42. The upstream sample had a biological oxygen demand of 13.6 mg/L, the stormwater pond sample had a biological oxygen demand of 547 mg/L, and the wetland sample had a biological oxygen demand of 497 mg/L. For purpose of comparison, untreated municipal wastewater generally has a biological oxygen demand between 100 and 300 mg/L.

43. The upstream sample had ammonia of 0.0842 mg/L, the stormwater pond had ammonia of 140 mg/L, and the wetland sample had ammonia of 138 mg/L. For purpose of comparison, pursuant to Wis. Admin. Code ch. NR 105, the ammonia chronic 4-day and 30-day water quality levels

for a limited aquatic life system were 112.68 mg/L and 45.07 mg/L, respectively.

44. On April 1, 2017, Emerald Sky Dairy began cleaning up the manure discharge.

45. In 2017, Emerald Sky Dairy dewatered the stormwater pond three times to remove manure liquids in the stormwater pond and manure liquids in the ditch and wetlands up gradient that washed down to the stormwater pond over time.

46. Emerald Sky Dairy used a wide-tracked excavator to scrape 3,455.54 tons of manure solids from wetland areas.

47. Emerald Sky Dairy submitted a report to DNR titled "December 2016 Manure Discharge Event at Emerald Sky Dairy, LLC" dated July 31, 2017 prepared by Williams Engineering Services, LLC (WES) (July WES Report).

48. In the July WES Report, Emerald Sky Dairy admitted that sometime between December 9, 2016 and December 19, 2016 the manure transfer pipe failed.

49. In the July WES Report, Emerald Sky Dairy estimated that a "worst-case volume" of no more than 275,000 gallons of liquid manure were discharged.

**VIOLATION ONE: UNAUTHORIZED DISCHARGE TO WATERS OF
THE STATE**

50. Wisconsin Admin. Code § NR 243.13(5)(a) states, “If a discharge of manure or process wastewater pollutants to waters of the state occurs . . . the discharge shall comply with groundwater and surface water quality standards.”

51. WPDES permit condition 1.1 states, “Production area discharges to waters of the state authorized under this permit shall comply with water quality standards, groundwater standards and may not impair wetland functional values.”

52. Wisconsin Admin. Code § NR 103.03 contains functional values and water quality standards for wetlands.

53. Wetlands 1, 6, and 7 are waters of the State as defined in Wis. Stat. § 283.01(20).

54. Wisconsin Admin. Code § NR 151.08(4) states, “A livestock operation shall have no direct runoff from a feedlot or stored manure into waters of the state.”

55. Emerald Sky Dairy is a livestock producer as defined by Wis. Admin. Code § NR 151.015(10).

56. From around December 9, 2016 until at least December 19, 2016, Emerald Sky Dairy discharged manure into wetlands 1, 6, and 7.

57. The manure discharge compromised wetland functional values in wetlands 1, 6, and 7.

58. The manure discharge did not comply with the wetland water quality standards for wetlands 1, 6, and 7.

59. From around December 9, 2016 until at least December 19, 2016, Emerald Sky Dairy violated Wis. Admin. Code § NR 151.08(4) and WPDES permit condition 1.1 when it had direct runoff of stored manure into waters of the State.

60. From around December 9, 2016 until at least December 19, 2016, Emerald Sky Dairy violated Wis. Admin. Code §§ NR 243.13(5)(a) and WPDES permit condition 1.1 when it discharged manure to waters of the State not in compliance with wetland functional values and wetland water quality standards.

VIOLATION TWO: FAILURE TO REPORT UNAUTHORIZED DISCHARGE

61. WPDES permit condition 4.1.15 states:

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. This includes any upset which exceeds any effluent limitation in the permit, or violations of the discharge limitations listed in the permit.

62. The manure discharge was a violation of the discharge limitations in the WPDES permit.

63. Emerald Sky Dairy discovered the manure discharge on December 19, 2016.

64. Emerald Sky Dairy did not report the manure discharge to DNR until March 29, 2017.

65. Emerald Sky Dairy did not report the manure discharge to DNR until after it was specifically instructed to do so by Mr. Olson and after DNR and St. Croix County had received anonymous tips notifying them of the manure discharge.

66. Emerald Sky Dairy violated WPDES permit condition 4.1.15 when it failed to orally report the manure discharge to DNR within 24 hours and failed to file a written submission within 5 days after it discovered the manure discharge.

VIOLATION THREE: FAILURE TO MITIGATE ADVERSE IMPACTS TO WATERS OF THE STATE RESULTING FROM UNAUTHORIZED DISCHARGE

67. WPDES permit condition 4.1.7 states, "The permittee shall take all reasonable steps to minimize or prevent any adverse impact on the waters of the state resulting from noncompliance with the permit."

68. The manure discharge was a violation of the discharge limitations in the WPDES permit.

69. On December 19, 2016, Emerald Sky Dairy discovered the manure discharge.

70. From December 19, 2016 until March 31, 2017, the manure discharge was adversely affecting wetlands 1, 6, and 7.

71. From December 19, 2016 until March 31, 2017, Emerald Sky Dairy took no reasonable steps to minimize or prevent adverse impacts to the wetlands impacted by the manure discharge.

72. Emerald Sky Dairy violated WPDES permit condition 4.1.7 when it failed to take any reasonable steps to minimize or prevent any adverse impact on waters of the State resulting from the manure discharge.

**VIOLATION FOUR: FAILURE TO OPERATE, MAINTAIN, AND
INSPECT FACILITIES TO PREVENT DISCHARGES TO WATERS OF
THE STATE**

73. WPDES permit condition 1.3.2. states, “A permittee shall operate and maintain storage and containment facilities to prevent overflows and discharges to waters of the state.”

74. WPDES permit condition 1.6.1 states “[v]isual inspections shall be conducted by the permittee” in accordance with specified frequencies. WPDES permit condition 1.6.1. requires “[w]eekly inspections of liquid storage and containment structures.”

75. Emerald Sky Dairy did not conduct weekly inspections of the liquid storage and containment structures at the CAFO from March 1, 2016 until March 15, 2017.

76. If Emerald Sky Dairy had been inspecting its liquid storage and containment structures as required by the WPDES permit, Emerald Sky Dairy would have noticed hundreds of thousands of gallons of manure were missing. Upon making this discovery, a reasonable operator would have investigated and likely discovered the leaking manure transfer pipe earlier, mitigating the magnitude of the manure discharge.

77. Emerald Sky Dairy violated WPDES permit conditions 1.3.2 and 1.6.1 when it failed to operate, maintain, and inspect its liquid storage and containment structures to prevent discharges to waters of the State.

PENALTIES AUTHORIZED

78. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. ch. 283 and all rules promulgated and permits issued under Wis. Stat. ch. 283, subject to exceptions not applicable in this case, “by injunctive and other relief appropriate for enforcement.”

79. Wisconsin Stat. § 283.89 requires DNR to refer any person who violates Wis. Stat. ch. 283 and rules or permits issued pursuant to Wis. Stat. ch. 283 to the Department of Justice for prosecution.

80. Under Wis. Stat. §§ 283.89(4) and 299.95, the circuit court for the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 283.

81. Wisconsin Stat. § 283.91(1) states the Department of Justice may “initiate a civil action for a temporary or permanent injunction” for any violation of ch. 283, a rule promulgated under it, or a term or condition of any permit issued under Wis. Stat. ch. 283.

82. Wisconsin Stat. § 283.91(2) states:

Any person who violates this chapter, any rule promulgated under this chapter, any term or condition of a permit issued under this chapter . . . shall forfeit not less than \$10 nor more than \$10,000 for each day of violation, except that the minimum forfeiture does not apply if the point source at which the violation occurred is an animal feeding operation.

83. Wisconsin Stat. § 283.91(5) states the court may assess the costs of the investigation, including monitoring, and the reasonable and necessary expenses of the prosecution, including attorney fees, as an additional penalty.

RELIEF REQUESTED

WHEREFORE, the State asks for judgment as follows:

1. An injunction requiring restoration of the wetlands impacted by the manure discharge as provided for in Wis. Stat. §§ 283.91(1) and 299.95;
2. Forfeitures as provided for in Wis. Stat. §§ 283.91(2);
3. The reasonable and necessary costs of the investigation and prosecution, including attorney fees, as provided for in Wis. Stat. § 283.91(5);

4. The 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20% environmental surcharge pursuant to Wis. Stat. § 814.75(12), the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratory and drug surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);

5. The costs and disbursements of this action; and

6. Such other relief as the court may deem appropriate.

Dated this 3rd day of May, 2019.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
Assistant Attorney General
State Bar #1094232

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0432
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ertelem@doj.state.wi.us

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STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY
BRANCH ____

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

Plaintiff,

v.

Case No. 19-CX-____
Complex Forfeiture: 30109

EMERALD SKY DAIRY,
LLC,
2670 D Road
Rising City, Nebraska 68658-3857

Defendant.

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

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (715) 386-4630 AND ASK FOR THE ST. CROIX COUNTY CIRCUIT COURT ADA COORDINATOR.

Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Government Center, 1101 Carmichael Road, Hudson, Wisconsin 54016, and to Assistant Attorney General Emily M. Ertel, Plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 3rd day of May, 2019.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
Assistant Attorney General
State Bar #1094232

Attorneys for Plaintiff
State of Wisconsin

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Post Office Box 7857
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STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY
BRANCH 3

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

Plaintiff,

v.

Case No. 19-CX-000002
Complex Forfeiture: 30109

EMERALD SKY DAIRY,
LLC,
2670 D Road
Rising City, Nebraska 68658-
3857

Defendant.

JUDGMENT

Based on the Stipulation for Judgment between the plaintiff State of Wisconsin and defendant Emerald Sky Dairy, LLC, and on the Court's Order for Judgment, the terms of which are incorporated into this Judgment in their entirety, judgment is granted in favor of the State of Wisconsin and

against Emerald Sky Dairy, LLC in the amount of \$80,000.00. This sum is comprised of forfeitures, statutory charges, and costs as follows: forfeitures of \$54,335.03 under Wis. Stat. § 283.91(2), a 26% penalty surcharge of \$14,127.11 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$10,867.01 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$543.35 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

Emerald Sky Dairy, LLC will pay \$80,000.00 in total by checks payable to the St. Croix County Circuit Court and delivered to the St. Croix County Clerk of Circuit Court, Government Center, 1101 Carmichael Road, Hudson, Wisconsin 54016, along with cover letters to the Court identifying this case by name and number. A copy of the cover letters shall be simultaneously mailed as proof of payment to Assistant Attorney General Emily M. Ertel at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payments shall be made in accordance with the following schedule:

- a. \$16,000.00 due on or before September 1, 2019;
- b. \$16,000.00 due on or before September 1, 2020;

- c. \$16,000.00 due on or before September 1, 2021;
- d. \$16,000.00 due on or before September 1, 2022; and
- e. \$16,000.00 due on or before September 1, 2023.

In addition to paying the judgment as described above, Emerald Sky Dairy, LLC shall comply with the injunctive relief specified in the Stipulation and Order for Judgment.

This Judgment is final for purposes of appeal. The Judgment shall be docketed pursuant to Wis. Sta. § 806.10(1).

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STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY
BRANCH 3

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 19-CX-000002
Complex Forfeiture: 30109

EMERALD SKY DAIRY,
LLC,

Defendant.

STIPULATION FOR JUDGMENT

Plaintiff State of Wisconsin brought this civil action against defendant Emerald Sky Dairy, LLC regarding alleged violations of the State's water pollution laws. The State of Wisconsin and Emerald Sky Dairy, LLC wish to settle this matter by agreement and avoid further litigation, and therefore, enter into this Stipulation.

IT IS STIPULATED AND AGREED by the State of Wisconsin and Emerald Sky Dairy, LLC that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. The parties to this Stipulation are the plaintiff State of Wisconsin and the defendant Emerald Sky Dairy, LLC.

2. The Circuit Court for St. Croix County, Wisconsin (the Court) has jurisdiction over the parties and the subject matter of this action.

3. This Stipulation and the Order for Judgment as approved by the Court shall apply to and be binding on the parties and on the successors and assignees of the parties. No change in ownership, corporate, or partnership status shall in any way alter the responsibilities of Emerald Sky Dairy, LLC under this Stipulation and the Order for Judgment.

4. Judgment shall be entered in favor of the State of Wisconsin and against Emerald Sky Dairy, LLC in the amount of \$80,000.00. The sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$54,335.03 under Wis. Stat. § 283.91(2), a 26% penalty surcharge of \$14,127.11 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$10,867.01 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$543.35 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

5. Emerald Sky Dairy, LLC will pay \$80,000.00 in total by checks payable to the St. Croix County Circuit Court and delivered to the St. Croix County Clerk of Circuit Court, Government Center, 1101 Carmichael Road,

Hudson, Wisconsin 54016, along with cover letters to the Court identifying this case by name and number. A copy of the cover letters shall be simultaneously mailed as proof of payment to Assistant Attorney General Emily M. Ertel at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payments shall be made in accordance with the following schedule:

- a. \$16,000.00 due on or before September 1, 2019;
 - b. \$16,000.00 due on or before September 1, 2020;
 - c. \$16,000.00 due on or before September 1, 2021;
 - d. \$16,000.00 due on or before September 1, 2022; and
 - e. \$16,000.00 due on or before September 1, 2023.
6. Emerald Sky Dairy, LLC must complete the work described in the paragraph titled "Recommendation" for Wetland 7 from the report titled "Emerald Sky Dairy Wetland Cleanup Study – 2019 Supplement." This report is dated February 28, 2019 and was prepared by Tim King with Ecosystems, LLC. A copy of this report (without its attachments) is attached to this Stipulation as Exhibit A. Emerald Sky Dairy, LLC must complete this work by November 30, 2019.
7. The parties acknowledge that this Stipulation and the Order for Judgment set forth the entire understanding of the parties with respect to resolution of the violations alleged in the Complaint.

8. Emerald Sky Dairy, LLC waives the requirement for formal service of an authenticated Summons and Complaint.

9. Nothing contained in this Stipulation shall be construed as an admission of liability by Emerald Sky Dairy, LLC, or as a concession by the State regarding the veracity of the State's allegations.

10. Compliance by Emerald Sky Dairy, LLC with its obligations under this Stipulation and the Order for Judgment shall constitute full release of its civil liability, and the civil liability of its officers, directors, members, and employees, for the violations alleged in the Complaint and the Notice of Violation that the Wisconsin Department of Natural Resources issued to Emerald Sky Dairy, LLC on June 1, 2017.

11. The Order for Judgment in this matter will be a final and appealable order. However, the parties hereby waive their right to appeal the order.

12. The Order for Judgment and Judgment in this matter may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed pursuant to Wis. Stat. § 806.10(1).

Dated this 3rd day of May, 2019.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
Assistant Attorney General
State Bar #1094232

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
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ertelem@doj.state.wi.us

Dated this 3rd day of May, 2019.

MICHAEL BEST & FRIEDRICH LLP

Electronically signed by
Leah Hurtgen Ziemba

LEAH HURTGEN ZIEMBA
State Bar # 1089372

Attorneys for Defendant Emerald Sky
Dairy, LLC

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P.O. Box 481 | Rice Lake, WI 54868

Transmittal

To: Todd Tuls

Company: Emerald Sky Dairy LLC

Address: 2670 D Road

Rising City, NE 68658

Email: todd@tulsdairies.com

Phone: 402-526-2385

From: Tim King

Date: February 28, 2019

Delivery: Email

File: 16004

Cc: Leah Ziemba, Michael Best

Reference: Emerald Sky Dairy Wetland Cleanup Study – 2019 Supplement**Attachments:**

Copies	Document Date	Description	Pages
1 (pdf)	2/28/2019	Emerald Sky Dairy Wetland Cleanup Study - 2019 Supplement	57

Todd,

Attached is the 2019 supplement to the wetland cleanup study associated with the Emerald Sky Dairy manure discharge event that occurred in 2016. This document is supplemental to the preliminary wetland cleanup study prepared by Ecosystems LLC dated August 30, 2017. It contains an updated assessment of the wetland cleanup activities performed in 2017 and addresses subsequent recommendations for additional restoration work.

Please contact us if you have questions, need additional information, or require further assistance.

Thank you,

ecosystems, llc

A handwritten signature in black ink, appearing to read "Tim King", is written over a faint circular watermark or background.

Tim King, PWS

Owner & Principal

715.205.4624

tim@ecosystemscorp.com

Introduction & Background

Ecosystems LLC conducted a preliminary study in August of 2017, to evaluate initial wetland cleanup activities performed by Emerald Sky Dairy associated with a manure discharge event that occurred in December of 2016. The manure discharge event reportedly affected specific wetlands, adjacent drainage ditches, and a stormwater pond. Initial cleanup actions were performed by Emerald Sky Dairy in the spring/summer of 2017, including physical removal of manure liquids and solids from affected wetlands, ditches, and stormwater pond by excavation and pumping. Prior to the manure discharge event, Ecosystems completed a wetland delineation of the Emerald Sky Dairy site in the spring of 2016, and therefore has direct knowledge of pre-discharge (i.e., baseline) site conditions including documented characteristics of the affected wetlands and other site features. For more information about baseline site conditions, refer to the Wetland Delineation Report prepared by Ecosystems dated August 21, 2016. For more information about the manure discharge event, refer to the December 2016 Manure Discharge Event at Emerald Sky Dairy report prepared by Williams Engineering Services (WES) dated July 31, 2017, and other related documents prepared by Emerald Sky Dairy or WES.

The purpose of this supplemental information is to provide an update to the Preliminary Wetland Cleanup Study document dated August 30, 2017 (i.e., 2017 Study), and to address recommendations for additional restoration work recently proposed by the Wisconsin Department of Justice (DOJ) and Wisconsin Department of Natural Resources (WDNR). The purpose of the 2017 Study was to compare pre-discharge (2016) and post-cleanup (2017) conditions of the subject wetlands to evaluate overall effectiveness of the initial manure cleanup activities and determine if additional cleanup or restoration actions were needed. The 2017 Study consisted of qualitative observations of site conditions and did not include biological or chemical sampling, testing, monitoring or surveying. Ecosystems conducted a site visit on August 28, 2017, to generally observe post-cleanup site conditions and those observations were summarized in the 2017 Study. Subsequently, Ecosystems conducted a follow-up site visit on November 15, 2018, to again generally observe conditions of the subject wetlands and adjacent drainage ditches previously affected by the manure discharge event. The purpose of the November 2018 follow-up site visit was to determine if there were any changes to site conditions previously observed in 2017 and described in the 2017 Study, and reevaluate the recommendations made by Ecosystems in the 2017 Study considering recent DOJ and WDNR recommendations for additional restoration work.

As described in the 2017 Study, the subject wetlands, adjacent drainage ditches, and stormwater pond were significantly disturbed, physically altered and degraded years before Emerald Sky Dairy acquired the existing farm and property in 2015. Based on review of aerial photography and consultations with WES, the most substantial historic land disturbances or impacts occurred in the late 1990's when the farm was originally constructed and subsequently between 2005 to 2006 during preparations for a major farm expansion project that ultimately was not implemented. Therefore, the 2017 Study was focused on the manure discharge event's effect on these historically disturbed, altered, and degraded wetland areas (and to a lesser extent the effect on artificial features such as ditches and the stormwater pond) and comparing the post-discharge site conditions to the pre-discharge baseline site conditions observed by Ecosystems in spring of 2016. Consequently, no evaluation, impact assessment or recommendations for restoration are made relating to any historic disturbances, physical alterations or degradation to the subject wetlands and drainage ditches that occurred 10 to 20 years before and are unrelated to the 2016 manure discharge event. Information is also provided to help distinguish between recent and historic land disturbances and impacts.

Supplemental Wetland Observations & Recommendations

Wetlands, adjacent drainage ditches, and the stormwater pond impacted by the 2016 manure discharge event were previously described in the 2017 Study, including a summary and comparison of pre-discharge and post-cleanup conditions of specific wetlands and other features, known or potential impacts, and recommendations for additional cleanup or restoration. The specific wetlands and adjacent drainage ditches reevaluated and observed during the November 2018 site visit are listed in Table 1 and shown on the attached wetland delineation map. Supplemental or updated wetland conditions and recommendations are provided below.

Table 1. Wetlands and Ditches Observed in November of 2018

WETLAND ID	WETLAND TYPE	WDNR WWI MAPPED	ACREAGE IN STUDY AREA	ADJACENT DRAINAGEWAYS
W6	Degraded Wet Meadow, Shallow Marsh, Open Water Pond & Farmed Wetland (Partly Excavated & Filled)	E1Ka	2.0	Ditch D2 & D3
W7	Degraded Wet Meadow & Farmed Wetland (Partly Excavated & Filled)	Wet Symbol	1.0	Ditch D3 & D4
Ditch D3 & D4	Drainage Ditches	Adjacent E1Ka, E1K, Wet Symbol	Not Estimated	

Wetland 6 (W6)

Wetland W6 is a degraded wet meadow, shallow marsh, open water (excavated) pond, and partly farmed wetland complex. This wetland was historically disturbed, altered, fragmented, and degraded by excavation/dredging, filling (e.g., dredged spoils disposal), conversion, farming, alteration to drainage patterns, and non-point source pollutants from agricultural runoff. The most substantial historic land disturbances or impacts to the wetland and adjacent areas (e.g., farm construction, vegetation removal, grading, excavation/dredging, filling, ditching, etc.) occurred approximately 10 to 20 years before the manure discharge event based on studies and research including review of aerial photography (attached).

This wetland was previously characterized and delineated in 2016 as three wetland subparts fragmented by historic fill/dredged spoil piles located through the center of the wetland. The wetland is also located on the edge of cut/fill areas to the south and north. The historically excavated open water pond in the central part of the wetland was reportedly impacted by the manure discharge. Emerald Sky Dairy's initial cleanup of this pond occurred in 2017, including physical removal of surface water which may have contained suspended liquid and floating solid manure and, after the pond was dewatered, excavation of manure solids which may have settled on the bottom of the pond. A small area of floating solids was observed in the southeast corner of the pond in August 2017, which may have been floating manure solids or other non-point source pollutant. After the August 2017 Study, Emerald Sky Dairy removed the remaining floating solids in October 2017 when the farm performed the final pond pumping effort. Surface water in the pond was frozen during the November 2018 site visit; therefore, the absence of floating solids could not be confirmed at that time.

Based on Ecosystem's observations conducted on August 28, 2017 and November 15, 2018, there is no apparent change in the general characteristics of this previously excavated pond and degraded wet meadow and shallow marsh wetland complex in comparison to 2016 baseline wetland delineation data. Specifically, the open water pond has similar size, shape, hydrology, and shoreline/banks. The steeply sloped spoil piles forming the north bank of the pond were likely placed during the pond dredging and adjacent ditch improvements in 2006 or 2007. A large disposal (fill) area composed of salvaged topsoil and debris piles from the original farm construction is also located on the north side of W6. The adjacent degraded wet meadow and shallow marsh (south part of the wetland) and northern fragments of W6 (two separate areas north of the central spoil piles) also appear to be unchanged based on observations of vegetation, soils, hydrology and topography characteristics in 2017 and 2018.

Ecosystems' evaluation has determined that this wetland's general characteristics and topography remain mostly unchanged between 2016 (pre-discharge) and 2017 and 2018 (post-discharge). Based on Ecosystems' research and review of historic site conditions combined with direct onsite observations and studies conducted in 2016, 2017 and 2018, it appears that the regrading recently recommended by the DOJ and WDNR (north side and southeast portion of the wetland) may be related to historic land disturbances or impacts to W6 and not directly related to impacts associated with the 2016 manure discharge event. Based on our assessment, the cleanup activities conducted by Emerald Sky Dairy in 2017 have been adequate to address impacts to W6 which were directly related to the manure discharge event. Photographs of pre-discharge (2016) and post-cleanup (2017 & 2018) conditions of W6 are attached for comparison. Aerial photography is also attached showing historic disturbances and more recent imagery for comparison of pre-discharge and post-discharge site conditions.

Recommendation: None, except confirm absence of floating solids in the pond in the spring of 2019, which is consistent with previous recommendations made by Ecosystems in the 2017 Study and subsequent to the final pond pumping effort performed by Emerald Sky Dairy in October of 2017.

Wetland 7 (W7)

Wetland W7 is a degraded wet meadow and partly farmed wetland. The wetland is located on the edge of a cut and fill area and contains adjacent spoil piles from historic excavation or dredging activities. The most substantial historic land disturbances or impacts to the wetland and adjacent area (e.g., grading, filling, dredging, ditching, etc.) occurred approximately 10 years before the manure discharge event based on studies and research including review of aerial photography (attached).

Emerald Sky Dairy's initial cleanup of this wetland included physical removal (i.e., excavation) of manure solids deposited on the ground surface, mainly within the central part of the wetland. It appears that most of the manure was removed from the ground surface, but the soils may have been slightly over excavated within the central part of the wetland based on examination of soil profile and topography. The over excavation may have incidentally uncovered or enhanced a shallow ditch channel in the central part of the wetland that was less evident or obscured by dense vegetation, sedimentation, and/or detritus in 2016. Based on Ecosystems' site observations conducted on August 28, 2017 and November 15, 2018, there has been a change in plant species composition within the recently graded central part of the wetland. Dominant plant species previously identified in the wetland in 2016, included sandbar willow (*Salix interior*), reed canary grass (*Phalaris arundinacea*), stinging nettle (*Urtica dioica*), and curly dock (*Rumex crispus*). The wetland is currently dominated by pinkweed (*Persicaria pensylvanica*), lamb's quarters (*Chenopodium*

album), and giant ragweed (*Ambrosia trifida*), which are annual forbs that colonized the disturbed ground, and reed canary grass. The northern and southern portions of the wetland (degraded wet meadow to the north and farmed wetland to the south) appear to be mostly unchanged based on observations of vegetation, soils and hydrology characteristics.

Ecosystems also reviewed pre-discharge baseline topographic data for this wetland to help evaluate the DOJ and WDNR's recommendation to regrade slopes mainly around the perimeter of the wetland. This included reviewing WES's 2016 baseline topographic data (i.e., 1 ft. contour mapping attached) and comparing it to site conditions observed in 2017 and 2018. Except for possibly the drainage ditch uncovered and/or enhanced through the central part of the wetland as noted above, Ecosystems' evaluation has determined that topography within and around the perimeter of this wetland appears to be mostly unchanged between 2016 (pre-discharge) and 2017 and 2018 (post-discharge). It appears that the regrading recently recommended by the DOJ and WDNR may be related to historic land disturbances or impacts to W7 and not directly related to impacts associated with the 2016 manure discharge event. Based on our assessment, the initial cleanup activities conducted by Emerald Sky Dairy in 2017 have been adequate to address most of the impacts to W7 which were directly related to the manure discharge event, except for additional regrading and restoration associated with the central ditch as recommended below. Photographs of pre-discharge (2016) and post-cleanup (2017 & 2018) conditions of W7 are attached for comparison. Aerial photography is also attached showing historic disturbances and more recent imagery for comparison of pre-discharge and post-discharge site conditions.

Recommendation: Reestablish pre-discharge elevation (approx. elevation 1189) in the central part of the wetland by regrading or filling the central ditch channel that may have been uncovered or enhanced incidental to the initial manure removal and cleanup activities. This would involve placing approximately one foot of salvaged marsh topsoil in the ditch channel within the central part of the wetland and using the adjacent spoil piles as the salvaged marsh topsoil material. The disturbed (regraded) wetland area would be seeded with a wetland seed mix consistent with Natural Resources Conservation Service (NRCS), Conservation Practice Standard 327 (Conservation Cover) and Wisconsin Agronomy Technical Note 5 (see attached). Elevation data is based on WES's topographic mapping of pre-discharge baseline conditions in 2016 and should be used as a guide. Final elevation of the restored ditch grade should coincide with actual field conditions present. These recommendations are consistent with previous recommendations made by Ecosystems in the 2017 Study and subsequent follow-up site observations in 2018.

Drainage Ditches (D3 & D4)

Emerald Sky Dairy's initial cleanup of drainage ditches D3 and D4 in 2017 included physical removal (i.e., excavation) of solid manure. Based on Ecosystem's site observations conducted on August 28, 2017 and November 15, 2018, there is no change to ditch D4 compared to baseline observations in 2016, and the plant species composition in ditch D3 is now similar to observations of the central part of W7 noted above. Photographs of pre-discharge (2016) and post-cleanup (2017 & 2018) conditions of the ditches are attached for comparison.

Recommendation: None, except maintain ditches as needed and according to existing facility permits and/or NRCS standard practices if applicable. These recommendations are consistent with previous recommendations made by Ecosystems in the 2017 Study.

Emerald Sky Dairy LLC
Wetland Cleanup Study - 2019 Supplement
Prepared By: Ecosystems LLC

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February 28, 2019
Town of Emerald, St. Croix County, WI

Attachments

1. Wetland Delineation Map (Ecosystems, 2016)
2. Topographic Map (WES, 2017)
3. Site Photographs (Ecosystems, 2016 – 2018)
4. Historic & Recent Aerial Photography (1996, 2004, 2005, 2006, 2008, 2015, 2016, 2017 & 2018)
5. NRCS Conservation Practice Standard 327
6. Wisconsin Agronomy Technical Note 5

FILED
05-10-2019
Circuit Court
St. Croix County, WI
2019CX000002

DATE SIGNED: May 7, 2019

Electronically signed by Hon. Scott R Needham, Circuit Court Branch III
Circuit Court Judge

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY
BRANCH 3

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 19-CX-000002
Complex Forfeiture: 30109

EMERALD SKY DAIRY,
LLC,

Defendant.

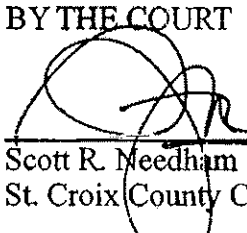
ORDER FOR JUDGMENT

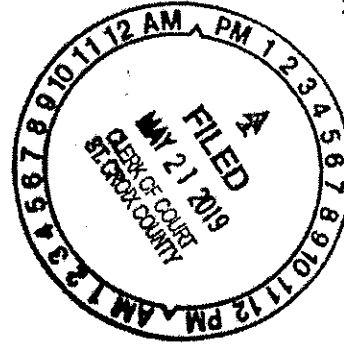
The Court approves of the terms of the foregoing Stipulation for Judgment in *State of Wisconsin v. Emerald Sky Dairy, LLC*, St. Croix County Case No. 19-CX-000002, pursuant to which defendant Emerald Sky Dairy, LLC, will pay \$80,000.00 in forfeitures, surcharges, and costs and conduct restoration work. The Court therefore directs the clerk to enter and docket the Judgment accordingly.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Emerald Sky Dairy, LLC, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

The Court will retain jurisdiction over this matter to ensure compliance with the terms and conditions of the Stipulation for Judgment and this Order for Judgment.

FILED
05-06-2019
Circuit Court
St. Croix County, WI
2019CX000002

BY THE COURT

Scott R. Needham Date
St. Croix County Circuit Court Judge



STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY
BRANCH 3

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

Plaintiff,

v.

Case No. 19-CX-000002
Complex Forfeiture: 30109

EMERALD SKY DAIRY,
LLC,
2670 D Road
Rising City, Nebraska 68658-
3857

Defendant.

JUDGMENT

Based on the Stipulation for Judgment between the plaintiff State of Wisconsin and defendant Emerald Sky Dairy, LLC, and on the Court's Order for Judgment, the terms of which are incorporated into this Judgment in their entirety, judgment is granted in favor of the State of Wisconsin and

against Emerald Sky Dairy, LLC in the amount of \$80,000.00. This sum is comprised of forfeitures, statutory charges, and costs as follows: forfeitures of \$54,335.03 under Wis. Stat. § 283.91(2), a 26% penalty surcharge of \$14,127.11 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$10,867.01 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$543.35 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

Emerald Sky Dairy, LLC will pay \$80,000.00 in total by checks payable to the St. Croix County Circuit Court and delivered to the St. Croix County Clerk of Circuit Court, Government Center, 1101 Carmichael Road, Hudson, Wisconsin 54016, along with cover letters to the Court identifying this case by name and number. A copy of the cover letters shall be simultaneously mailed as proof of payment to Assistant Attorney General Emily M. Ertel at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payments shall be made in accordance with the following schedule:

- a. \$16,000.00 due on or before September 1, 2019;
- b. \$16,000.00 due on or before September 1, 2020;

- c. \$16,000.00 due on or before September 1, 2021;
- d. \$16,000.00 due on or before September 1, 2022; and
- e. \$16,000.00 due on or before September 1, 2023.

In addition to paying the judgment as described above, Emerald Sky Dairy, LLC shall comply with the injunctive relief specified in the Stipulation and Order for Judgment.

This Judgment is final for purposes of appeal. The Judgment shall be docketed pursuant to Wis. Sta. § 806.10(1).