Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Wisconsin Pollutant Discharge Elimination System Permit No. WI-0062235-03-0 (WPDES Permit) Issued to Ebert Dairy Enterprises, LLC	Case No. DNR-14-010

NOTICE OF TELEPHONE PREHEARING CONFERENCE

On January 14, 2014, the Department of Natural Resources issued WPDES Permit No. WI-0062235-03-0 to Ebert Dairy Enterprises, LLC to manage and utilize manure from livestock to cropland within the Abnapee River Watershed, Lake Michigan Drainage Basin and Groundwaters of the State of Wisconsin. The facilities are located at:

N6939 CTH D, SE ¼ SE ¼ S6 T24N R25E, Town of Pierce, Kewaunee County
5083 CTH K, NW ¼ NE ¼ S6 T24N R25E, Town of Pierce, Kewaunee County
N6388 Longfellow Road, NW ¼ NW ¼ S16 T24N R25E, Town of Pierce, Kewaunee County

The Permit was issued with effluent limitations, monitoring requirements and other conditions.

On March 7, 2014, Attorneys James N. Saul, Tarah Heinzen and Valerie Baron, on behalf of petitioners Lynn and Nancy Utesch, Lee T. and Suzanne P. Luft, Debbie and Scott Kliment, William E. and Andrea B. Iwen, Susan Jean Connor and Robyn Mulhaney, filed a Verified Petition for Review with the Department of Natural Resources to review the reasonableness of and necessity for certain terms in the permit.

By letter dated April 4, 2014, the Department of Natural Resources granted the request for hearing pursuant to Wis. Stat. §§ 283.63 and limited the hearing to the following issues:

1. Sections 1.6.1 and 1.6.9 of the Permit are unreasonable because they fail to include applicable depth-to-groundwater and/or depth-to-bedrock limitations on the use of permanent spray irrigation systems.

2. Section 1.6.9 of the Permit is unreasonable because it fails to include groundwater monitoring requirements for fields authorized for spray irrigation of manure.

3. Section 1.6.9 of the Permit is unreasonable in establishing a limit of not more than 10,000 gallons per acre of manure or process wastewater for irrigation application. Those portions of section 5 of the Nutrient Management Plan that allow up to 10,000 gallons per acre of manure or process wastewater for irrigation application are also unreasonable.

4. Sections 1.1 and 1.3 of the Permit are unreasonable for not including a cap on animal units.

5. Sections 1.7 and 1.8 of the Permit are unreasonable for failing to require groundwater monitoring at the production area.

6. Sections 1.6, 1.7, and 1.8 of the Permit are unreasonable for failing to include groundwater monitoring requirements at any land application sites.

On April 9, 2014, the Division of Hearings and Appeals received a Request for Hearing from the Department of Natural Resources.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will initiate a telephone prehearing conference on the above matter pursuant to Wis. Stat. §§ 227.42 and 283.63 on **May 29, 2014, at 10:00 a.m.** Any person, organization or governmental unit wishing to become a party to this proceeding must appear at the conference in person or by an authorized representative. **To so participate, said persons must write to the Division of Hearings and Appeals, at least three days prior to the May 29th telephone prehearing conference, in care of the undersigned and indicate a phone number where they can be reached at the above mentioned time.** If necessary, the purpose of the prehearing conference will be to identify parties to the proceeding, to simplify the issues which may be contested at the hearing, establish a discovery schedule and set a date for hearing. No testimony will be heard at the prehearing conference; however, a date may be set for the hearing on the merits at the conference.

When the hearing is held it will be a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a) and the fair play provisions of Wis. Stat. ch. 227 will apply. The procedures relating to contested cases set forth in Wis. Admin. Code ch. NR. 2 will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at a court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request prior to the date of the scheduled prehearing or hearing.

Dated at Madison, Wisconsin on April 15, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By _____
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

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