

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

KEWAUNEE COUNTY

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

Plaintiff,

v.

Case No. 2013-CX- 02

Complex Forfeiture: 30109

KEITH A. DUESCHER  
N6111 Hwy 42  
Algoma, Wisconsin 54201,

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 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 Kewaunee

County Circuit Court Clerk of Courts, 613 Dodge Street, Kewaunee, WI 54216, and to Cynthia Hirsch, plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 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 13<sup>th</sup> day of August, 2013.

J.B. VAN HOLLEN  
Attorney General



CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870  
Attorneys for Plaintiff

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3861  
(608) 266-2250 (Fax)  
hirschcr@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

KEWAUNEE COUNTY

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

Plaintiff,

v.

Case No. 2013-CX- 02

Complex Forfeiture: 30109

KEITH A. DUESCHER  
N6111 Hwy 42  
Algoma, Wisconsin 54201,

Defendant.

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



---

COMPLAINT

---

The plaintiff State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Cynthia R. Hirsch, brings this complaint against the defendant Keith A. Duescher at the request of the Wisconsin Department of Natural Resources pursuant to Wis. Stat. §§ 30.03(2), 281.98, 283.89, 285.87(1), 289.97 and 299.95, and alleges as follows:

ALLEGATIONS RELEVANT TO ALL CLAIMS

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. It has

enacted statutes: in Wis. Stat. chs. 30, 281 and 283, to prevent and minimize water pollution in the state, to protect public rights in navigable waters, and to protect, maintain and improve the quality and management of all waters of the state; in Wis. Stat. ch. 289, to protect the environment and public through the proper management of solid waste; and in Wis. Stat. ch. 285, governing sources of air contaminant emissions so as to prevent and reduce air pollution. Its Department of Natural Resources administers regulations and issues permits authorized by these statutes to enhance the quality, management and protection of the state's natural resources and to protect public health.

2. Defendant Keith A. Duescher is an adult resident of Wisconsin, residing at N6111 Hwy 42, Algoma, Wisconsin 54201.

3. At the times relevant to this complaint, defendant Keith A. Duescher owned and operated Duescher's Legendairy Farms, was the primary contact on all regulatory and permitting issues with the Department of Natural Resources, and directed or undertook all of the actions described in this complaint.

4. At the times relevant to this complaint, Duescher's Legendairy Farms was a confined animal feeding operation located at N6388 Longfellow Road, Algoma, Kewaunee County, Wisconsin. Duescher's Legendairy Farms owned 900 acres, rented 1100 acres and owned approximately 3641 animal units. By court order a receiver took over control from defendant Keith Duescher of Duescher's Legendairy Farms as of April 23, 2012.

5. At various times since 2005, defendant placed an inlet in a navigable water without a permit, discharged fill material into wetlands without a permit, burned plastic

and a barn outdoors, stored and disposed of solid waste without a license, failed to inspect for asbestos prior to demolishing and to provide written notice of intent to demolish a barn, discharged pollutants directly from a feed storage area and outdoor feedlots and a temporary outdoor manure storage area to a tributary to Lake Michigan, failed to complete the evaluation for and construction of a runoff control system for the outdoor animal feed lots and feed storage area so as to prevent discharges to the tributary, constructed a new 7-8 million gallon manure storage facility without submitting plans for approval, constructed a new permanent irrigation system for manure spreading without approval, and failed to comply with monitoring and reporting and landspreading requirements in Duescher's Legendairy Farms' wastewater discharge permit, all in violation of Wis. Stat. chs. 30, 281, 283, 285 and 289.

#### CHAPTERS 30 AND 299 VIOLATIONS

A. **Deposit of material into a navigable water without a permit (inlet structure).**

6. Under Wis. Stat. § 30.12(1)(a), no person may deposit material or place a structure on the bed of a navigable water where no bulkhead has been established without a permit or legislative authorization.

7. On or before November 8, 2005, defendant Keith Duescher placed an inlet structure comprising an orange plastic pipe and surrounding stone on the bed of a waterway along Alaska Lake Road and Hwy 42.

8. The waterway referred to in para. 6 above is shown on the original Wisconsin Public Land Survey Records conducted between 1832 and 1866, has a defined

bed and bank, has enough water in it on a recurring basis to float a small watercraft, and no bulkhead line has been established in this waterway.

9. The waterway referred to in para. 6 is a navigable waterway within the meaning of Wis. Stat. § 30.01(4m).

10. Defendant Keith Duescher did not apply for or obtain a permit from the Department of Natural Resources before placing the material on the bed of the waterway described in para. 6 above.

11. Defendant Keith Duescher deposited material on the bed of a navigable waterway without a permit from approximately November 8, 2005, to November 1, 2009, in violation for at least 1574 days of Wis. Stat. § 30.12(1).

**B. Deposit of material into a navigable water without a permit (irrigation pipeline).**

12. Under Wis. Stat. § 30.12(1)(a), no person may deposit material or place a structure on the bed of a navigable water where no bulkhead has been established without a permit or legislative authorization.

13. In 2008, defendant placed an irrigation pipeline to distribute manure and wastewater in and across a navigable waterway, to the south of their confined animal feeding operation located at N6388 Longfellow Road in Algoma, and crossing the waterway through the woods to the west of the farm, halfway between Alaska Lake and Longfellow Roads.

14. The waterway referred to in paragraph 13 is a navigable waterway within the meaning of Wis. Stat. § 30.01(4m), and no bulkhead has been established in this waterway.

15. Defendant did not apply for or obtain a permit from the Department of Natural Resources before placing the pipeline on the bed of the waterway described in the previous paragraph.

16. Defendant deposited material on the bed of a navigable waterway without a permit since summer 2008 in violation for at least 1378 days (calculated from July 15, 2008) of Wis. Stat. § 30.12(1).

**C. Unauthorized discharge of material to wetlands (inlets and tiles).**

17. Wisconsin Stat. § 281.01(18) defines "Waters of the state" as:

all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

18. Under Wis. Stat. §§ 281.11-12 and 281.15 (2009-2011), the Department of Natural Resources has promulgated rules and standards that protect the public interest in the waters of the state.

19. The Department promulgated Wis. Admin. Code chs. NR 103 and 299, setting forth water quality standards and requirements of water quality certification, to protect Wisconsin's wetland and water resources pursuant to Wis. Stat. ch. 281.

20. Under Wis. Stat. § 281.36(2) (2009-2011), no person may place material in a non-federal wetland without a water quality certification from the Department of Natural Resources.

21. Under Wis. Admin. Code § NR 299.03, no person may conduct any activity that may result in a discharge into a water of the state without a certification from the Department of Natural Resources that the discharge will comply with state water quality standards set forth in Wis. Admin. Code § NR 299.04 and wetland project requirements set forth in Wis. Admin. Code § NR 103.08(3) and (4).

22. In 2006 or 2007, defendant Keith Duescher discharged material into wetlands in CW903 south of 9<sup>th</sup> Road on Duescher's Legendairy Farms property, in the course of placing a marker and gravel in the wetlands, without any water quality certification from the Department of Natural Resources, affecting 1.3 acres of wetlands.

23. In 2006, defendant Keith Duescher discharged fill material into wetlands in CW909 in the south side of 8<sup>th</sup> Road on Duescher's Legendairy Farms property, in the course of placing a surface inlet in the wetlands, without any water quality certification from the Department of Natural Resources, affecting .5 acres of wetlands.

24. In 2006 or 2007, defendant Keith Duescher discharged fill material into wetlands along East Alaska Lake Road across from 7<sup>th</sup> Road on Duescher's Legendairy Farms property, in the course of placing an inlet pipe in the wetlands, without any water quality certification from the Department of Natural Resources, affecting 2.8 acres of wetlands.



25. Some time before 2006, defendant Keith Duescher discharged fill material comprising 2 piles of brush in wetlands in area CW914 on Duescher's Legendairy Farms property, without any water quality certification from the Department of Natural Resources.

26. Some time before April 27, 2010, defendant Keith Duescher discharged fill material comprising brush, branches and stumps in a cedar vegetated wetland area in the vicinity of property owned by Keith Duescher at E4562 8<sup>th</sup> Road, Algoma.

27. Each of the wetlands referred to in paragraphs 22-26 above is classified as a "wetland" within the meaning of Wis. Stat. §§ 23.32(1) and 281.01(21), and is a non-federal wetland under Wis. Stat. § 281.36(1m).

28. Since June 6, 2007, Department of Natural Resources Specialist Carrie Webb has had multiple contacts with defendant about removing material that defendant had discharged into the wetlands referred to in paragraphs 22-26. above, and about restoring the wetland areas.

29. Defendant failed to remove all of the fill material from all of the five wetland areas identified in paragraphs 22-26 above, and failed to restore all of the wetland areas referred to in those paragraphs.

30. At various times between 2006 and the present, defendant discharged material into five wetlands without any water quality certification from the Department of Natural Resources, in violation of Wis. Stat. § 281.36(2)(a) for from 750 to over 2000 days for each wetland.

**D. Unauthorized discharge of material to wetlands (irrigation pipeline).**

31. Wisconsin Stat. § 281.01(18) defines "Waters of the state" as:

all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

32. Under Wis. Stat. §§ 281.11-12 and 281.15, the Department of Natural Resources has promulgated rules and standards that protect the public interest in the waters of the state.

33. The Department promulgated Wis. Admin. Code chs. NR 103 and 299, setting forth water quality standards and requirements of water quality certification, to protect Wisconsin's wetland and water resources pursuant to Wis. Stat. ch. 281.

34. Under Wis. Stat. § 281.36(2), no person may place material in a non-federal wetland without a water quality certification from the Department of Natural Resources.

35. Under Wis. Admin. Code § NR 299.03, no person may conduct any activity that may result in a discharge into a water of the state without a certification from the Department of Natural Resources that the discharge will comply with state water quality standards set forth in Wis. Admin. Code § NR 299.04 and wetland project requirements set forth in Wis. Admin. Code § NR 103.08(3) and (4).

36. In summer 2008, defendant discharged material into two mapped wetlands in the woods on the west side of Longfellow Road in the course of installing an irrigation pipeline to distribute manure and wastewater, with one riser from the pipeline being placed in the middle of one of the wetland areas, without any water quality certification

from the Department of Natural Resources, in violation for at least 1378 days of Wis. Stat. § 281.36(2)(a).

**E. Operation of solid waste facility without a license.**

37. Wisconsin Stat. ch. 289 governs solid waste management and was enacted to prevent and minimize pollution in the state.

38. With exceptions not relevant here, Wis. Stat. § 289.01(33) defines "[s]olid waste" as "any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities."

39. With exceptions not relevant here, Wis. Stat. § 289.01(35) defines "[s]olid waste facility" as "a facility for solid waste treatment, solid waste storage or solid waste disposal, and includes commercial, industrial, municipal, state and federal establishments or operations such as, without limitation because of enumeration, sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities."

40. Under Wis. Stat. § 289.31(1), no person may operate a solid waste facility without an operating license.

41. The placement of solid waste on the land is solid waste disposal under Wis. Stat. § 298.01(34), the holding of solid waste for a temporary period before

treatment of disposal is solid waste storage under Wis. Stat. § 298.01(38), and the disposal and storage of solid waste constitute the operation of a solid waste facility under Wis. Stat. § 298.01(35).

42. Wisconsin Stat. § 289.01(39) defines "[s]olid waste treatment" as "any method, technique or process which is designed to change the physical, chemical or biological character or composition of solid waste." Treatment includes incineration or burning.

43. On or before October 26, 2008, defendant Keith Duescher or a Duescher's Legendairy Farms employee at his direction set afire a brush pile containing plastic silage bags in a field just south of Duescher's Legendairy Farms and then dumped the remains of the pile on a neighbor's property on 8<sup>th</sup> Road. Defendant removed the burnt plastic silage and properly disposed of it in mid-March 2009.

44. On or before November 12, 2008, defendant Keith Duescher or a Duescher's Legendairy Farms employee at his direction dumped material including plastic on property at E5363 8<sup>th</sup> Road. Defendant removed the dumped material and properly disposed of it in mid-March 2009.

45. On May 21, 2009, defendant burned down a barn at E5462 8<sup>th</sup> Road, Town of Pierce, and in the days after buried the ashes and remnants from the fire on site.

46. Defendant burned, dumped or buried solid waste without an operating license from October 26, 2008, to mid-March 2009 (140 days), November 12, 2008, to mid-March, 2009 (123 days) and May 21-22, 2009, in violation for at least 265 days of Wis. Stat. § 289.31(1).

**F. Unapproved Open Burning.**

47. Wisconsin Stat. ch. 285 governs sources of air contaminant emissions and was enacted to prevent and reduce air pollution.

48. Wisconsin Admin. Code ch. NR 429 was adopted under the authority of Wis. Stat. §§ 285.11, 285.13, and 285.17, in part to protect air quality by limiting the conditions under which open burning is permitted. Wis. Admin. Code § NR 429.01(2).

49. Wisconsin Stat. § 289.51(1)(b) defines "[o]pen burning" as:

the combustion, except in a properly operated air curtain destructor, of solid waste if that combustion lacks any of the following:

1. Control of combustion air to maintain adequate temperature for efficient combustion.

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion.

3. Control of the emission of the combustion products.

50. Wisconsin Admin. Code § NR 429.02(1) states: "'Open burning' means oxidation from which the products of combustion are emitted directly into the ambient air without passing through a stack or chimney."

51. Wisconsin Admin. Code § NR 429.04(1)(e) prohibits the open burning of "garbage, oily substances, asphalt, plastic or rubber products."

52. Wisconsin Admin. Code § NR 429.04(1) prohibits the open burning of demolition materials unless the burning process is approved by the DNR.

53. On or before October 26, 2008, defendant Keith Duescher or a Duescher's Legendairy Farms employee at his direction set afire a brush pile containing plastic silage bags in a field just south of Duescher's Legendairy Farms and then dumped the remains of the pile on a neighbor's property on 8<sup>th</sup> Road.

54. On May 21, 2009, defendant burned down a barn including the painted wood walls and asphalt roof shingles at E5462 8<sup>th</sup> Road, Town of Pierce, and in the days after buried the ashes and remnants from the fire on site.

55. Defendant burned demolition waste, plastics, and other non-exempt substances on October 26, 2008, and May 21, 2009, without proper licenses or approvals, in violation for 2 days of Wis. Admin. Code § NR 429.04(1).

**G. Failure to notify and to inspect for asbestos prior to demolition of barn.**

56. Defendant demolished a barn at E5462 8<sup>th</sup> Road, Town of Pierce, prior to burning it on May 21, 2009. The barn had a field stone base, red painted barn board walls and a double layer of asphalt shingles.

57. Wisconsin Admin. Code ch. NR 447 was adopted pursuant to Wis. Stat. §§ 285.11, 285.13, 285.17, and 285.27 to regulate actions that cause the emission of asbestos to the ambient air.

58. Prior to demolishing or burning non-exempt residential structures, a person or facility owner is required by Wis. Admin. Code § NR 447.06 to inspect for asbestos.

59. A person or facility owner is required by Wis. Admin. Code § NR 447.07 to provide notification to the DNR at least 10 days prior to demolishing or burning non-exempt residential structures, of their intent to demolish.

60. Defendant failed to conduct an asbestos inspection on the barn that he burned and demolished on May 21, 2009, in violation of Wis. Admin. Code § NR 447.06.

61. Defendant failed to provide proper notification to the DNR prior to demolishing or causing the demolition of the barn on May 21, 2009, in violation of Wis. Admin. Code § NR 447.07.

**H. Failure to follow runoff control system requirements.**

62. Paragraphs 61-70 apply to the allegations in sections H-P of this complaint.

63. Under Wis. Stat. § 283.31, no person may discharge a pollutant into a water of the state without a permit.

64. Animal manure is a pollutant under Wis. Stat. § 283.01(13), a deleterious substance under Wis. Stat. § 29.601(3), and a hazardous substance under Wis. Stat. § 292.01(5).

65. Wisconsin Stat. § 283.31(1) prohibits the discharge of any pollutant into any waters of the state except in compliance with a WPDES permit.

66. Wisconsin Stat. § 283.35(1) authorizes the Department of Natural Resources to issue general permits to facilities allowing the discharges from specified categories or classes of point sources located within a designated area.

67. Under Wis. Admin. Code § NR 243.12(1), all concentrated animal feeding operations are required to be covered by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit.

68. Under Wis. Admin. Code § NR 243.03(12)(a), a concentrated animal feeding operation is an animal feeding operation that feeds, confines, maintains or stables 1,000 animal units or more.

69. Defendant Keith Duescher on behalf of Duescher's Legendairy Farms applied for and received a Wisconsin Pollutant Discharge Elimination System (WPDES) wastewater permit from the Department of Natural Resources because it is a concentrated animal feeding operation as defined in Wis. Admin. Code § NR 243.03(12)(a), with over 1,000 animal units as defined in Wis. Admin. Code § NR 243.03(5).

70. Management of the manure produced at Duescher's Legendairy Farms was subject to Duescher's Legendairy's WPDES Permit No. WI-0059005-02-0, effective January 6, 2004, issued by the Department of Natural Resources under Wis. Stat. § 283.31(1).

71. Duescher's Legendairy Farms' WPDES Permit No. WI-0059005-02-0, which was in effect at the times relevant to this complaint, is referred to as the Permit in this complaint.

72. Department staff conducted a file review on July 27, 2009, and compliance inspection of the Duescher's Legendairy Farms facility on July 28, 2009, in response to defendant's application to renew the Permit.



73. Sections H-N of this complaint concern issues related to defendant's compliance or non-compliance with the Permit and related regulations, discovered as a result of the Department's 2009 review of defendant's Duescher's Legendairy Farms facility.

74. On July 28, 2009, the date of the Department's inspection, there were no feed storage area runoff control systems in place for the feed storage area, the easternmost feed lot had no runoff controls, and the westernmost feed lot had runoff controls that were not adequately controlling runoff.

75. Section 2.3 of the Permit required that defendant:

- a) Complete an Engineering Evaluation by April 30, 2004. "Retain a qualified expert to complete an engineering evaluation for the outdoor animal lots and feed storage area runoff control system and report the name of the expert to the Department."
- b) Submit by August 31, 2004, "a written description of the existing runoff control system and its adequacy to permanently meet the conditions found in the General Discharge Limitations and Performance Standards subsection."
- c) Submit by November 30, 2004, "plans and specifications for Department review and approval to permanently correct any adverse runoff control conditions."
- d) Complete by November 30, 2005, "construction of runoff controls that permanently correct any adverse runoff control conditions in concurrence with and approval by the Department [and] [s]ubmit post construction documentation within 60 days of completion of the project."

76. Defendant never submitted a written description of the existing runoff control system and its adequacy to meet Permit conditions.

77. Defendant never obtained approval of plans and specifications for correcting runoff controls.

78. Defendant submitted plans and specifications for new runoff controls at the Duescher's Legendairy Farms facility on September 4, 2009, and the Department of Natural Resources issued a conditional approval of the plans on December 7, 2009.

79. Defendant failed to follow runoff control requirements from April 30, 2004, in violation for over 2,000 days of the Permit and Wis. Stat. § 283.31.

I. **Failure to submit plans and specifications for new storage facility.**

80. Wisconsin Admin. Code § NR 243.03(63) defines storage facility as "an excavated or diked pond, walled structure or platform designed for containment of manure."

81. Section 3.2.13 of the Permit requires that "[p]lans and specifications for new or upgraded storage facilities . . . be submitted for approval in accordance with ch. 281.41, Stats., and ch. NR 108, Wis. Adm. Code. Post construction documentation for these projects shall be submitted within 60 days of completion of the project." Section 1.3.1 of the Permit also requires that, "Plans and specifications for permanent facilities must be submitted to the Department for review and approval in accordance with Chapter 281.41, Wis. Statutes, and Chapter NR 108, Wis. Adm. Code."

82. At the July 28, 2009, inspection, there was a second earthen storage facility that is not listed in the Permit, which defendant constructed in 2006 or 2007 and which holds approximately 7-8 million gallons of manure.

83. Defendant never submitted plans and specifications for the storage facility and never obtained Department approval of the storage facility.

84. Defendant submitted as-built documentation for the storage facility on September 4, 2009, and the Department has since determined that the information submitted is not complete, fails to demonstrate compliance with certain technical standard criteria, and does not include an assessment or certification.

85. Defendant failed to submit plans and specifications for the new storage facility from some time in 2006 or 2007 until September 4, 2009, in violation for at least 977 days of the Permit and Wis. Stat. § 283.31, failed to submit complete documentation required by the Permit and Wis. Stat. § 283.31, and did not obtain approval of the new storage facility.

J. **Failure to submit plans to and obtain approval from the Department for permanent irrigation system for manure spreading prior to construction.**

86. Section 3.2.2 of the Permit requires that the permittee make operational changes consistent with Wis. Admin. Code ch. NR 243.

87. Wisconsin Admin. Code § NR 243.15(1)(a)1. prohibits the commencement of construction of a proposed reviewable facility or system until plans and specifications have been approved by the department in writing.

88. Wisconsin Admin. Code § NR 243.03(56) defines a reviewable facility or system as "manure treatment or transfer systems, or other structures or systems associated with the storage, containment, treatment or handling of manure or process wastewater."

89. Wisconsin Admin. Code § NR 243.15(6) states that permanent spray irrigation systems must meet minimum regulatory requirements and are a reviewable

system or facility for which plans and specifications are required to be submitted to the department.

90. Under the three provisions of Wis. Admin. Code ch. NR 243 cited in the previous three paragraphs, an owner or operator may not commence construction of permanent irrigation systems for manure spreading until plans and specifications have been submitted to and approved by the Department.

91. At the July 28, 2009, inspection, there was a new permanent irrigation system for manure spreading that had been installed in 2008, and which was comprised of pipes, risers, and tees, which go from the manure storage facilities to various fields.

92. Defendant submitted post-construction plans for the permanent irrigation system for manure spreading on September 4, 2009, and the Department has since determined that the plans are incomplete and insufficient to demonstrate compliance.

93. Defendant was using the permanent irrigation system without final Department approval.

94. Defendant failed to submit plans and specifications for the permanent irrigation system before constructing it from some time in 2008 until September 4, 2009, in violation for 460 days of the Permit and Wis. Stat. § 283.31, failed to submit complete documentation required by the Permit and Wis. Stat. § 283.31, and failed to obtain approval of the new irrigation system.

**K. Failure to submit proposed monitoring program.**

95. Section 2.1 of the Permit requires that the permittee submit a proposed monitoring program within 90 days of the effective date of the Permit to determine compliance with the permit's effluent limitation and groundwater standards.

96. The Permit was effective on January 6, 2004, and defendant was required to submit the proposed monitoring program by April 7, 2004.

97. Defendant never submitted the proposed monitoring program.

98. Defendant failed to submit the proposed monitoring program from April 7, 2004, in violation for over 2,000 days of the Permit and Wis. Stat. § 283.31.

**L. Failure to submit timely annual reports.**

99. Section 3.2.20 of the Permit requires that the permittee submit annual reports each year "by the date specified in the Schedules section of this permit," which is January 31, "for all manure, compost, compost leachate and other process wastewater that is landspread," along with "a Monitoring and Inspection Program Report for the animal production area of the operation and land application equipment inspections," which identifies "permit violations and dates of occurrence . . . corrective actions taken, [and] recorded levels of materials in liquid storage and containment structures."

100. Defendant failed to submit the annual monitoring and inspection program report for the animal production area of the Duescher's Legendairy Farms operation for 2004, 2005, 2006, 2007 and 2008.

101. Defendant failed to submit the annual report of land application equipment inspections for 2004, 2005, 2006, 2007 and 2008.

102. Defendant failed to submit an annual report of identified permit violations including dates of occurrence, corrective actions taken, recorded levels of materials in liquid storage and containment structures for 2004, 2005, 2006, 2007 and 2008.

103. Defendant failed to submit the required annual reports for 2004, 2005, 2006, 2007 and 2008, in violation of the Permit and Wis. Stat. § 283.31.

**M. Land spreading of manure within 25-foot setback resulting in runoff to a navigable water.**

104. Under Wis. Admin. Code § NR 243.14(2)(b) manure that has been land spread may not run off the application site to a navigable water, and under Wis. Admin. Code § NR 243.14(4)(a) manure may not be land spread within 25 feet of a navigable water.

105. On April 19, 2012, defendant applied, or caused to be applied, manure from Duescher's Legendairy Farms within 25 feet of a grassed waterway flowing into an unnamed tributary to Lake Michigan along the eastern and southern perimeter of field "Home-North," and the manure that had been land applied ran off into that grassed waterway and the unnamed tributary to Lake Michigan, in violation of Wis. Admin. Code §§ NR 243.14(2)(b) and (4)(a).

## SIGNIFICANCE OF VIOLATIONS

106. Defendant's discharges of manure-laden water into the tributary to Lake Michigan threatens deterioration of the water quality and aquatic habitat in Lake Michigan.

107. Defendant's failure to submit required reports and plans prevent the Department from ensuring that he is properly controlling the discharge of pollutants so as to protect public health and the environment.

108. Defendant's unauthorized activities in wetlands degraded and threatened water quality, fish and wildlife habitat, and harmed public interests in the preservation of and protection of quality water resources.

109. Defendant's unauthorized activities in wetlands have compromised or eliminated the wetlands' wildlife habitat values, storm and flood water attenuation capacity, hydraulic and hydrologic functions, ability to store nutrients and sediments for the benefit of area water quality, and natural scenic value.

110. Wisconsin is losing approximately 300 acres of wetlands a year. Defendants' activities have added to the cumulative loss of wetlands in the state, and defendants have delayed restoration to stem the loss.

111. Defendant's open burning of plastics caused the emission of dioxin, which is one of the most toxic chemicals known to man.

112. Defendant's open burning of an old barn without determining the presence of asbestos posed a potential hazard to human health.

113. Defendant's second open-burning incident in eight months after being cautioned against open burning after the first incident undermines the Department's administration and enforcement of open burning prohibitions.

#### PENALTY PROVISIONS

114. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce chapters 281, 283, 285 and 289 and all rules promulgated and permits issued under those chapters by seeking forfeitures and injunctive relief, and authorize the circuit court for the county where the violations occurred to enforce those chapters and all rules promulgated and permits issued under those chapters.

115. Wisconsin Stat. § 299.95 provides that any violation of a provision of chapters 281, 283, 285 and 289 that prohibits pollution is a public nuisance.

#### **Wetland Violations**

116. Wisconsin Stat. § 281.98(1) provides that any person who violates chapter 281 or any rule promulgated or water quality certification issued under that chapter, shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

117. Wisconsin Stat. § 281.98(2) and (3) provide that the court may, in addition to imposing penalties, order a defendant to pay the state's reasonable and necessary investigation and prosecution expenses including attorney fees, and to restore a natural resource.



### **Water Pollution Violations**

118. Wisconsin Stat. § 283.91(2), provides that any person who violates chapter 283 or any rule promulgated or any permit issued under that chapter, shall forfeit not less than \$10 nor more than \$10,000 for each day of violation.

119. Wisconsin Stat. § 283.91(5) provides that the Court may, in addition to imposing penalties, order the defendants to pay to the Department of Natural Resources its reasonable costs of investigation of the defendants' violation of the chapter, and to pay to the Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees, of the defendants' violation of the chapter.

### **Open Burning and Asbestos Violations**

120. Wisconsin Stat. § 285.87(1) provides that any person who violates Wis. Stat. ch. 285 or any rule promulgated under that chapter shall forfeit not less than \$10 nor more than \$25,000 for each violation, and further provides that each day of continued violation is a separate offense.

### **Solid Waste Violations**

121. Wisconsin Stat. § 289.96(3)(a) provides that any person who violates chapter 289 or any rule promulgated under that chapter shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

122. Wisconsin Stat. § 289.96(3)(b) provides that the Court may, in addition to imposing penalties, order the defendants to pay to the Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees, of the defendants' violation of the chapter.

## Waterway Violations

123. Pursuant to Wis. Stat. §§ 30.03(2) and 30.294, the Wisconsin Attorney General is authorized to enforce violations of Wis. Stat. ch. 30 and any permits issued under that chapter, and to seek temporary and permanent injunctions.

124. Wisconsin Stat. §§ 30.03(2), 30.294 and 30.298 authorize the Wisconsin Attorney General to enforce violations of Wis. Stat. ch. 30 and any permits issued under that chapter, by the imposition of forfeitures and injunctive relief.

125. Wisconsin Stat. §§ 30.292 and 30.99 provide that any person who is concerned in the commission of a violation of chapter 30 is a principal and may be charged with and convicted of the violation. A person "concerned in" the commission of a violation means a person who "[d]irectly commits the violation" under Wis. Stat. § 30.292(2)(a) and a person who "[a]ids and abets the commission of the violation" or "advises, hires, counsels or otherwise procures any person to commit" the violation under Wis. Stat. § 30.292(2)(b)-(c).

126. Wisconsin Stat. § 30.15(1)(d) and (3) provides that "[a]ny person who . . . [c]onstructs or places any structure or deposits any material in navigable waters in violation of s. 30.12 or 30.13" shall "forfeit not less than \$10 nor more than \$500 for each offense," and "[e]ach day during which an obstruction, deposit or structure exists in violation of sub. (1) is a separate offense."

WHEREFORE, plaintiff asks for judgment as follows:

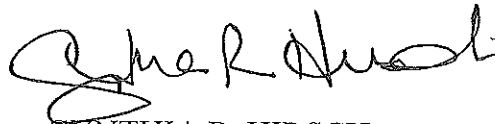
1. The forfeitures provided for in Wis. Stat. §§ 281.98(1), 283.91(2), 285.87(1) 289.96(3)(a) and 30.15, the 26 percent penalty surcharge provided for in Wis. Stat. § 814.75(18), the 10 percent environmental surcharge provided for in Wis. Stat. § 814.75(12), the \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$13 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15).

2. The reasonable and necessary expenses of the prosecution, including attorney fees, and the costs of investigation provided for in Wis. Stat. §§ 281.98(2) and (3), 283.91(5) and 289.96(3)(b).

3. Such other relief as the Court deems appropriate.

Dated this 13<sup>th</sup> day of August, 2013.

J.B. VAN HOLLEN  
Attorney General



CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3861  
(608) 266-2250(FAX)  
hirschc@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

KEWAUNEE COUNTY

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

Plaintiff,

v.

Case No. 2013-CX- 02

Complex Forfeiture: 30109

KEITH A. DUESCHER  
N6111 Hwy 42  
Algoma, Wisconsin 54201,

Defendant.



---

STIPULATION AND ORDER FOR JUDGMENT

---

Plaintiff State of Wisconsin brought this civil action against defendant Keith A. Duescher regarding his operation of Duescher's Legendairy Farms, a confined animal feeding operation located at N6388 Longfellow Road, Algoma, Kewaunee County, Wisconsin. The complaint alleges violations of Wisconsin environmental protection laws.

The parties now wish to resolve the litigation and as such enter into this Stipulation and Order for Judgment setting forth the terms and conditions as such settlement. It is hereby stipulated and agreed that:

1. Judgment shall be entered in favor of the plaintiff State of Wisconsin and against the defendant Keith A. Duescher, in the amount of \$100,000. This sum is

comprised of forfeitures, statutory surcharges and costs as follows: forfeitures of \$67,790.15 under Wis. Stat. §§ 281.98(1), 283.91(2), 285.87(1) 289.96(3)(a) and 30.15, a 26% penalty surcharge of \$17,625.44 under Wis. Stat. § 814.75(18), a 10% environmental surcharge of \$6,779.01 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$677.90 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15) and 7,000.00 in attorney fees and costs.

2. The defendant will pay the \$93,000.00 by check payable to the Kewaunee County Circuit Court Clerk of Courts, 613 Dodge Street, Kewaunee, WI 54216 along with a cover letter to the Court identifying the case by name and number. A copy of the check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857.

3. The defendant will also, within 30 days from the date of entry of judgment, pay \$7,000.00 in attorneys fees by check made payable to the Wisconsin Department of Justice and sent to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857.

4. Except as between the parties to this action, nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability by the defendant in any proceeding now pending or hereafter commenced.

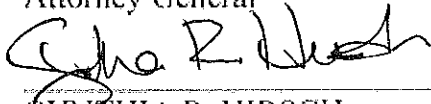
5. The parties acknowledge that this stipulation and order for judgment sets forth the entire understanding of the parties with the respect to the subject matter hereto.

6. Entry and satisfaction of the judgment based on this stipulation shall constitute full compromise, settlement, and satisfaction of defendants' and their officers, directors, employees and agents liability for the violations described in or arising out of the facts alleged in the complaint.

7. The order for judgment accompanying this stipulation will be a final and appealable order. The order for judgment and judgment 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 8/13/2013.

J.B. VAN HOLLEN  
Attorney General

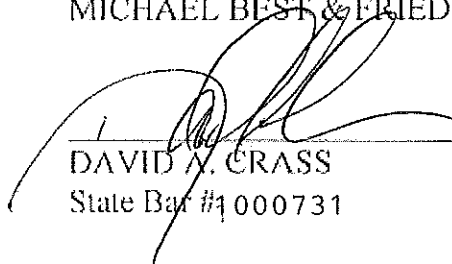


CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

Attorney for Plaintiff  
Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3861  
(608) 266-2250(FAX)  
hirschcr@doj.state.wi.us

Dated 8/2/13.

MICHAEL BEST & FRIEDRICH LLP



DAVID A. CRASS  
State Bar #1000731

Attorney for Defendant  
Post Office Box 1806  
One South Pinckney Street, Suite 700  
Madison, WI 53701-1806  
(608) 283-2267  
(608) 283-2275 (FAX)  
dacrass@michaelbest.com

Dated August 1, 2013.



KEITH A. DUESCHER, Defendant

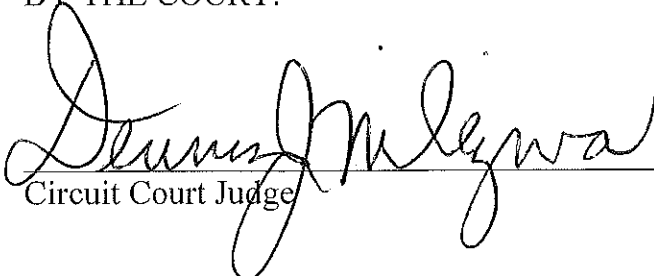
ORDER FOR JUDGMENT

The terms of the above stipulation in *State v. Keith A. Duescher*, Case No. 13-CX-\_\_\_\_ are approved by the Court. Under those terms, Keith A. Duescher must pay \$100,000 in forfeitures, surcharges, attorney fees and costs. The clerk is directed 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 Keith A. Duescher and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

Dated this 12<sup>th</sup> day of September, 2013

BY THE COURT:

  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_

KEWAUNEE COUNTY

---

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

Plaintiff,

v.

Case No. 2013-CX-02

Complex Forfeiture: 30109

KEITH A. DUESCHER  
N6111 Hwy 42  
Algoma, Wisconsin 54201,

Defendant.

---

JUDGMENT

---

The 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.

The defendant, Keith A. Duescher, operated Duescher's Legendairy Farms, a confined animal feeding operation located at N6388 Longfellow Road, Algoma, Kewaunee County, Wisconsin.

Based on the Stipulation between the plaintiff and the defendants, and upon the Court's order, the terms of which are to be incorporated into this judgment in their entirety, judgment is hereby granted in favor of the plaintiff, State of Wisconsin, and against the defendant, Keith A. Duescher, in the amount of \$100,000. This sum is comprised of





forfeitures, statutory surcharges and costs as follows: forfeitures of \$67,790.15 under Wis. Stat. §§ 281.98(1), 283.91(2), 285.87(1) 289.96(3)(a) and 30.15, a 26% penalty surcharge of \$17,625.44 under Wis. Stat. § 814.75(18), a 10% environmental surcharge of \$6,779.01 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$677.90 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15) and 7,000.00 in attorney fees and costs.

The defendant will pay the \$93,000.00 by check payable to the Kewaunee County Circuit Court Clerk of Courts, 613 Dodge Street, Kewaunee, WI 54216 along with a cover letter to the Court identifying the case by name and number. A copy of the check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857.

The defendant will also, within 30 days from the date of entry of judgment, pay \$7,000.00 in attorneys fees by check made payable to the Wisconsin Department of Justice and sent to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857.

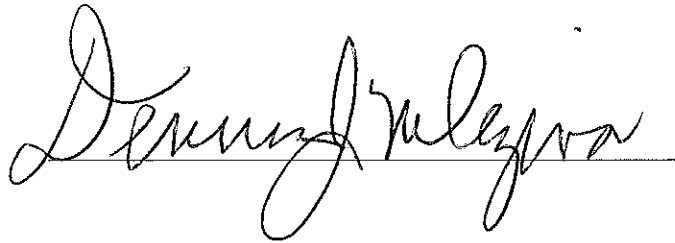
This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Keith A. Duescher, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

The terms of the Stipulation and Order for Judgment are incorporated in their entirety.

This judgment is final for purposes of appeal.

Dated this 12<sup>th</sup> day of September, 2013.

BY THE COURT:

A handwritten signature in cursive script, reading "Dennis J. Mulgrew", written over a horizontal line.