November 12, 2025

Ms. Brittiny Mueller
Agricultural Runoff Management Specialist – Bureau of Watershed Management
Wisconsin Department of Natural Resources
2220 CTY HWY V, Mishicot, WI 54228
Cell Phone: 608-228-9184
brittiny.mueller@wisconsin.gov

Re: Comments on Wisconsin Pollution Discharge Elimination System Permit for Gilbert Farms Ltd CAFO (WI-0067569-01-0).

Ms. Mueller,

Midwest Environmental Advocates (MEA) and Environmental Law & Policy Center (ELPC) jointly submit the following comments on the proposed WPDES permit issuance to Gilbert Farms Ltd (WI-0067569-01-0). MEA is a Wisconsin nonprofit environmental law center. We work to ensure clean air, water, land, and government for this generation and the next. ELPC is the Midwest's leading environmental advocacy organization. For more than 25 years, ELPC has been working to protect the environment and public health in the region, with a particular commitment to the Great Lakes.

We appreciate Wisconsin Department of Natural Resources' (DNR or the Department) decision to hold a public informational hearing on November 5, 2025 and use these written comments to supplement and add to the comments our organizations provided there.

If you have any questions or concerns, please do not hesitate to reach out.

Sincerely,

Adam Voskuil
Senior Staff Attorney
Midwest Environmental Advocates
avoskuil@midwestadvocates.org

Katie Garvey
Senior Attorney
Environmental Law & Policy Center
Kgarvey@elpc.org

I. Introduction

The comments we are submitting today are based on legal, hydrogeologic, and agronomic analyses of the permit-related materials made available to the public. Zooming out, though, there are far more basic reasons why this permit should not be granted as written. Gilbert Farms has exceeded the 1,000 animal unit threshold for operating without a WPDES permit at least twice, and has been cited for violating Door County land application prohibitions. But DNR has not taken any enforcement action against the CAFO and instead is allowing it to quadruple its waste production by granting this permit. Granting a WPDES permit to Gilbert Farms under these conditions sends a signal to all animal feeding operations in the state that there is no downside to expanding their herd without telling DNR because if they get caught, there will be no consequences.

A permit is a privilege, not a right. DNR can and must do better.

This permit gives Gilbert Farms legal authority to land apply over 21 million gallons of nutrient- and bacteria-laden untreated raw sewage onto the most sensitive soils in the state. Gilbert Farms's production area sits on less than 2 feet to bedrock, abuts an open sinkhole, and is bordered by a wetland. DNR's own inspector observed runoff flowing from Gilbert Farms's feed storage area to the wetland. Some of Gilbert Farm's landspreading fields are directly upgradient to a rare fen that provides habitat to remarkable biodiversity and an endangered species of dragonfly. Human health is at stake, too. There are hundreds of private and municipal wells near (and downgradient to) Gilbert Farms's operations, including its 1,400 acres of spreading fields; many of these wells already have documented histories of unsafe levels of bacteria and/or nitrate. This area cannot bear more risk.

University of Wisconsin hydrogeologist Maureen Muldoon, who has studied the region for decades, does not mince words: Door County is "a bad area for CAFOs."[1] DNR's own hydrogeologist concedes that Gilbert Farms's operations house "[s]everal potential contaminant sources," and that this region of the state is particularly "susceptible to contaminants." Yet DNR is not doing nearly enough to ensure that this permit protects Door County's water and citizens. Instead, DNR seems to be treating the expansion—and the likely damage it will cause—as inevitable.

DNR's hands are not tied, and the state is not forced to sanction preventable pollution. In fact, Wisconsin law requires the opposite: it empowers DNR to issue WPDES permit *only if* the permit contains all conditions "that are necessary to achieve compliance with surface and groundwater quality standards."[2] DNR is not

[1] Emily Small, *Gilberts respond to public concerns about CAFO expansion ahead of rare in-person DNR hearing* - DOOR COUNTY KNOCK (Sept. 29, 2025), https://doorcountyknock.org/2025/09/gilberts-respond-to-public-concerns-about-cafo-expansion-ahead-of-rare-in-person-dnr-hearing.

[2] Wis. Stat. §283.31(3) or (4)

authorized, let alone required, to grant a WPDES permit to anyone and everyone who asks for one. For the reasons described below, this permit falls short of legal requirements and cannot be issued as written.

II. Historic and Ongoing Noncompliance

Members of the public have repeatedly raised concerns that Gilbert Farms has operated above the 1,000 animal unit (AU) threshold for multiple years without a WPDES permit. Documents included in the publicly available permit materials back up this concern. Testimony at the November 5, 2025, public informational hearing consistently described how the operation expanded without approval, with at least one commenter noting that the expansion did not occur "the right way." Despite this acknowledged expansion and years of apparent noncompliance, the Department of Natural Resources (DNR) has not exercised its enforcement authority under Wis. Stat. ch. 283.

Under Wis. Stat. § 283.31(1), "the discharge of any pollutant into any waters of the state…by any person is unlawful unless such discharge or disposal is done under a permit issued by the department." DNR has further determined that all large CAFOs that landspread manure or store waste at or below grade are discharging to waters of the state and therefore require a permit.[3] Accordingly, any large CAFO that operates without a permit is, by definition, in violation of Chapter 283 of the Wisconsin Statutes. That is particularly true for Gilbert Farms which has waste storage facilities below grade in Silurian bedrock.

The Department's enforcement authority in such cases is unambiguous. Under Wis. Stat. § 283.89, when DNR finds that "any person is violating this chapter, any rule adopted thereunder or any term or condition of any permit," the Department shall refer the matter to the Department of Justice (DOJ) for enforcement under § 283.91. The statute imposes a mandatory duty—its use of "shall" does not grant discretion based on the violator's intent or willingness to seek future compliance.

While the Commenters acknowledge that DNR often employs a "stepped enforcement" approach to achieve prompt compliance, this approach presumes that violations are isolated or inadvertent. Here, Gilbert Farms operated for years above the regulatory threshold: the CAFO received a formal Notice of Noncompliance in February 2023 for operating at approximately 1,058 AU; the CAFO apparently informed DNR in March 2023 that it had "depopulated below the 1,000 animal unit threshold"; but then the CAFO expanded again, this time to 1,443 AU before applying

[3] *See* Wis. Admin. Code § NR 243.12, Note.

for a WPDES permit in 2024. Such actions represent a continued and knowing disregard of statutory requirements. The fact that permit coverage was sought only after enforcement action began underscores the need for referral to Department of Justice.

Failure to enforce long-term, unpermitted operations of this magnitude sends a damaging message to the regulated community—that violations of state water protection laws may go unpunished so long as operators eventually apply for coverage. This precedent undermines the credibility of the WPDES program, weakens deterrence, and erodes public confidence in the Department's commitment to protect Wisconsin's waters. The Department can and should avoid that outcome by exercising the clear authority granted under Wis. Stat. § 283.89 and referring this matter to the Department of Justice for appropriate enforcement.

Regardless of whether Gilbert Farms's prior noncompliance was intentional, ignorance of the law is not a defense. The sustained operation of a large CAFO without a permit constitutes a continuing violation of Wisconsin's water pollution control statute and warrants formal enforcement action to restore accountability and ensure equal treatment under the law.

III. Failure to Perform Statutorily Mandated Environmental Review

When DNR considers a new CAFO WPDES permit application, it is obligated to conduct a careful and detailed analysis of how the proposed permittee's operations might impact the human environment in Wisconsin. DNR did not fulfill those obligations here.

A decision to issue an initial WPDES permit to Gilbert Farms without more substantive environmental review fails to comply with state law. The Wisconsin Environmental Policy Act (WEPA) requires state agencies "to analyze, consider and publicly disclose the anticipated environmental and socioeconomic effects of certain agency actions."[5] According to Wisconsin Administrative Code chapter NR 150, certain actions do not typically require a separate environmental analysis, "includ[ing] the issuance, reissuance, or modification of individual WPDES permits for new source CAFOs."[4] DNR does not typically require separate analyses for "new source CAFOs" because the process of environmental review is incorporated or integrated into the agency action itself.[5] However, the interplay between NR 150 and the definition of new source CAFO in NR 243 have effectively created an exemption for Gilbert Farms that violates WEPA.

[4] Wis. Admin. Code § NR 150.20(2)(a)3w.
[5] Wis. Admin. Code § NR 150.20(2)(a).

For CAFO WPDES issuances, the "environmental review" process that is "integrated into the agency action itself" is comprised of asking the CAFO to complete an Environmental Analysis Questionnaire (EAQ).[6] Before answering responsive questions in the EAQ, a CAFO applicant fills out screening questions. Those screening questions state:

> 1. Will the operation be entirely new (i.e., constructed on a site where no other animal feeding operation is currently located)?
>
> 2. Is the operation a large CAFO (housing 1,000 or more Animal Units) that was constructed on or after April 14, 2003, on a site where no other animal feeding operation was located?
>
> 3. Is the operation an animal feeding operation housing less than 1,000 Animal Units that was constructed on or after April 14, 2003, on a site where no other animal feeding operation was located – and is now proposing to become a large CAFO?
>
> 4. Is the operation a large CAFO that was in existence prior to April 14, 2003, but that completely replaced (or is proposing to replace) all of its production or processing equipment on or after April 14, 2003?
>
> 5. Is the operation (as it exists or as it's proposed) an addition to an existing large CAFO that was added on or after April 14, 2003? And if so, is it essentially a new production area, completely independent of the production area that was in existence on the site before April 14, 2003?[7]

If an applicant answers "No" to those questions, no additional environmental analysis is required.

Here, despite being a "new" CAFO, seeking coverage under a WPDES permit for the first time, Gilbert Farms did not need to complete any additional environmental review because it answered "No" to the above questions. As a result, DNR has not performed any environmental review for the proposed action. Therefore, the record is devoid of any analysis into the environmental or socioeconomic impacts of the proposed issuance.

WEPA requires that an agency prepare a "detailed statement" for "major actions significantly affecting the quality of the human environment."[8] An agency's obligation exists regardless of exemptions listed in regulations.[9] This "detailed statement" must include consideration of certain factors like the environmental

---

[6] Commenters understand that the entire record may inform a WEPA compliance determination, but the EAQ is a form directly intended to identify and review potential environmental impacts of CAFO permit issuances.

[7] DNR EAQ, Screening Questions at 2.

[8] Wis. Stat. § 1.11(2)(c).

[9] *See Wisconsin's Environmental Decade, Inc. v. PSC*, 79 Wis. 2d 161, 175, 255 N.W.2d 917 (1981) (finding that WEPA imposes "independent and affirmative obligations that must be fulfilled" by DNR).

impacts of the action, alternatives to the proposal, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. An agency may decide not to produce a "detailed statement," but that is allowed only if it develops a sufficient, reviewable, factual record that permits a reasonably informed judgment of the environmental consequences of the particular action proposed.[10] For actions that directly or indirectly affect the environment, DNR must either produce a "detailed statement" or create a reviewable record explaining its reasonable conclusion that an EIS is not required.[11] DNR did neither here.

a. The Environmental Analysis Questionnaire is Facially Inadequate.

In the present matter, the EAQ screening tool incorrectly informed the applicant that additional review was not necessary, even though it was. Gilbert Farms is seeking initial permit coverage. The operation is proposing to expand significantly beyond the 1,000 AU threshold, becoming a regulated entity and significant discharger of contaminants for the first time. Commenters do not dispute that the dairy existed in some form prior to 2003. However, it did not become a regulated point source subject to a WPDES permit until much later, well over 20 years later than the regulatory exemption period (pre-April 2003).

Moreover, the EAQ process here was insufficient because, among other things, the permit authorizes a change in practice, construction of new reviewable facilities, spreading in wellhead protection zones, and generally allows discharges to waters of the state in areas highly susceptible to water contamination. In sum, DNR needs to engage in additional environmental review, including at the very least requiring the CAFO complete the entire EAQ. From that point, the Department can reasonably determine whether additional review is necessary. On the current (blank) EAQ, however, such a determination is premature and unfounded.

b. DNR should require preparation of an Environmental Impact Statement (EIS).

Under Wis. Admin. Code § NR 150.20(4)(b), DNR has discretion to follow Environmental Impact Statement procedures in § NR 150.30 for "projects of such magnitude and complexity" that one or more of eight enumerated factors may apply. Those factors are:

1. The project involves multiple department actions.
2. The project may be in conflict with local, state or federal environmental policies.

[10] *Wisconsin's Environmental Decade, Inc. v. PSC*, 79 Wis. 2d 409, 256 N.W.2d 149 (1977).
[11] *Id.*

3. The project may set precedent for reducing or limiting environmental protection.
4. The project may result in deleterious effects over large geographic areas.
5. The project may result in long-term deleterious effects that are prohibitively difficult or expensive to reverse.
6. The project may result in deleterious effects on especially important, critical, or sensitive environmental resources.
7. The project involves broad public controversy.
8. The project may result in substantial risk to human life, health, or safety.

Commenters highlight a select number of the factors below, however this is not a holistic catalog of all the reasons that DNR should use its discretionary authority to require an EIS.

"4. The project may result in deleterious effects of large geographic areas."

Gilbert Farms operates in the Town of Sevastopol in Door County, just north of Sturgeon Bay—an area recognized by both the Wisconsin Geological and Natural History Survey and the Door County Soil and Water Conservation Department as having some of the state's shallowest depth to bedrock and the highest density of sinkholes.[12] This karstic landscape is characterized by fractured dolomitic bedrock, thin soils, and direct hydrologic connectivity between surface and groundwater. Contaminants introduced at the surface can bypass the natural filtering capacity of soil and migrate rapidly through fissures and conduits into groundwater aquifers and connected surface waters.[13]

As part of the proposed expansion, Gilbert Farms intends to apply liquid manure and process wastewater on approximately 1,400 acres of cropland throughout central Door County. Given that the operation is projected to generate more than 21 million gallons of liquid manure and process wastewater annually once its expansion is complete, the spatial extent of manure application poses a substantial risk of nutrient and pathogen transport across a broad area.[14] Many of these spreading fields are located within groundwater recharge zones and drainage basins that contribute to private drinking water wells, ephemeral streams, and surface waters that flow into both Green Bay and Lake Michigan.[15] Contaminants introduced at even a few field sites can therefore propagate through shared hydrologic systems, extending potential impacts far beyond the immediate footprint of the facility.[16]

Empirical studies in Door and Kewaunee Counties have documented widespread nitrate and microbial contamination in private wells attributable to

[12] *See Door County Groundwater*, DOOR COUNTY WISCONSIN, https://www.co.door.wi.gov/531/Groundwater (last visited Nov. 11, 2025) ("Due to the geology of the county, groundwater resources are readily impacted by land use and surface activities.").
[13] *Id.*
[14] DNR, Gilbert Farms Permit Fact Sheet
[15] *See* Attachment 1, Figure 1.
[16] *See* Attachment 1, Figures 1-3, 7.

manure land application in similar hydrogeologic settings.[17] Because of the region's karst topography, a single discharge or over-application event can result in rapid, far-reaching contamination, often within hours or days, rather than the weeks or months typical in non-karst regions. These risks are compounded by the cumulative effects of other nearby agricultural operations, which together contribute to nutrient loading and degradation of shared groundwater resources across the Door Peninsula.

Accordingly, the geographic scope and hydrologic connectivity of the affected area are such that the environmental consequences of the proposed CAFO cannot be considered localized or minor. The project's potential to degrade groundwater, surface waters, and sensitive ecosystems across multiple townships and watersheds qualifies as a deleterious effect over a large geographic area. A comprehensive EIS is therefore required to evaluate the cumulative and regional consequences of nutrient loading, pathogen transport, and hydrologic alteration associated with the proposed operation and its extensive land application network.

"6. The project may result in deleterious effects on especially important, critical, or sensitive environmental resources."

The proposed facility and associated waste spreading fields are located near the Kellner Fen, a unique and ecologically significant wetland complex that provides essential habitat for the federally endangered Hine's Emerald Dragonfly (Somatochlora hineana). *See* Attachment 1*,* Figure 3. This species depends on clean, calcareous groundwater-fed wetlands for its larval development and is highly sensitive to changes in hydrology, water quality, and nutrient loading. Any degradation of the Kellner Fen's water chemistry, flow regime, or substrate quality resulting from manure application, nutrient runoff, or pathogen transport could constitute a significant adverse impact under Wis. Admin. Code § NR 150.30(2) and WEPA.

The potential magnitude of impact is heightened by the karstic geology of Door County, which facilitates rapid transport of contaminants from landspreading areas into groundwater and connected wetlands. Nutrient enrichment or microbial contamination of the fen's hydrologic inputs would threaten not only the continued viability of the Hine's Emerald Dragonfly but also the integrity of a wetland ecosystem recognized by the Wisconsin Natural Heritage Inventory as a sensitive and high-value natural community. Because the Kellner Fen constitutes critical habitat for a federally listed species under the Endangered Species Act (16 U.S.C. §§ 1531–1544), the DNR has an affirmative duty to avoid or minimize any action that could jeopardize the species' existence or result in adverse modification of its habitat. A detailed EIS is therefore required to assess the hydrological connectivity between

[17] Borchardt et al., *Sources and Risk Factors for Nitrate and Microbial Contamination of Private Household Wells in the Fractured Dolomite Aquifer of Northeastern Wisconsin* (Jun. 23, 2021).

manure spreading sites and the fen, model nutrient and contaminant transport pathways, and evaluate cumulative impacts to groundwater-dependent ecosystems. Only through the EIS process can the Department ensure that this project complies with both state environmental policy and federal endangered species protections.

"7. The project involves broad public controversy."

In response to the notice of intent to issue the permit, the Door County community mobilized rapidly and forcefully. Hundreds of residents, local organizations, and water quality advocates requested that DNR hold a public hearing, emphasizing the need for an *in-person* format to ensure meaningful public participation and transparency in the permitting process.[18] This strong and coordinated community response underscores the high level of public concern regarding the project's potential impacts on water quality, groundwater contamination, and the region's fragile karst geology.

On November 5, 2025, DNR held a hybrid public hearing to receive testimony on the proposed permit. Members of the public provided comments both in-person and virtually, representing not only local residents but also individuals and organizations from across Wisconsin. The range of testimony reflected deep and widespread public engagement—from general opposition to the project to detailed technical analyses addressing nutrient management plan deficiencies, sinkhole location and groundwater susceptibility, and potential impacts on nearby impaired surface waters. Despite a strict three-minute limit on individual comments, the hearing extended for more than three hours, demonstrating the volume and intensity of public interest.

This controversy extends beyond the permitting process itself. Gilbert Farms has been operating above the 1,000 animal unit threshold requiring WPDES coverage for several years without a permit. In 2023, DNR issued a formal Notice of Noncompliance after determining that the facility was operating with approximately 1,058 animal units. [19] Yet by September 2024, the operator reported 1,443 animal units in its WPDES permit application—an increase of nearly 400 animal units following the notice of noncompliance and prior to securing permit coverage.[20] This documented pattern of noncompliance and continued expansion has further eroded

[18] Door County Knock, Gilberts respond to public concerns about CAFO expansion ahead of rare in-person DNR hearing (Sept. 29, 2025) (available at: https://doorcountyknock.org/2025/09/gilberts-respond-to-public-concerns-about-cafo-expansion-ahead-of-rare-in-person-dnr-hearing)
[19] Elanor Corbin, *DNR to Hold Public Hearing Nov. 5 on Gilbert Farms CAFO Permit*, DOOR COUNTY PULSE (Oct. 30, 2025), https://doorcountypulse.com/dnr-to-hold-public-hearing-nov-5-on-gilbert-farms-cafo-permit/.
[20] *Id.*

public trust and heightened concern over regulatory enforcement and environmental protection.

Given the documented record of strong public participation, statewide concern, and ongoing compliance issues, the Gilbert Farms project satisfies the criterion of "broad public controversy" as defined under NR 150.30. The level of public attention and the presence of substantial unresolved disputes regarding environmental effects reinforce the necessity for DNR to prepare (or order preparation of) a full Environmental Impact Statement. Only through such a process can the agency ensure that the concerns of the public and affected stakeholders are meaningfully evaluated, and that the decision-making process reflects a transparent, science-based assessment of potential impacts.

IV. Endangered Species Act

The DNR has specific obligations when an action potentially impacts critical habitat for state and federally listed endangered species. Initially, DNR must determine whether a habitat is critical to the continued existence of an endangered or threatened species by considering the species' global and state element ranking. Once a species is established as endangered, no person may "take" an endangered animal without receiving a permit from DNR. An incidental take permit should address the activity causing the taking and expressly authorize the taking.[21] Put differently, simply issuing a CAFO WPDES permit does not, on its own, authorize a taking of an endangered species.

Protection of endangered species also extends to the protection of critical habitats that are essential for those endangered species. If a habitat is critical to an endangered species, DNR may permit an activity only if "the activity is not likely to **jeopardize the continued existence and recovery of the endangered species**."[22] When a proposed action occurs within, adjacent to, or will impact known habitat of an endangered species, DNR has the authority—indeed, the duty—to impose conditions, restrictions, or additional review to prevent harm. Here, DNR has not fulfilled its duty. In fact, DNR has not even examined the likely or potential impact to endangered species or critical habitat that flow from this action.

The Hine's Emerald Dragonfly is a federally endangered species of dragonfly and is also listed as endangered in Wisconsin.[23] The species was listed as endangered in January 1995 primarily due to habitat loss and modification.[24] Its life cycle is

[21] *See* Wis. Stat. § 29.604(6)(a) ("The department shall issue a permit...authorizing the taking, exportation, transportation or possession of any wild animal or wild plant on the list of endangered and threatened species...")
[22] Wis. Stat. § 29.604(6r)(a)2 (emphasis added).
[23] 95-1983 (60 FR 5267) & Wis. Admin. Code § NR 27.03(2)(f)9m.
[24] *Id.*

characterized by: eggs laid in aquatic habitats, larvae that live for two to four years in specialized groundwater-fed wetlands and streamlets, and adults that emerge and fly from June through late summer.[25] Importantly for this case, the larvae are especially sensitive to changes in groundwater chemistry, hydrology, and habitat structure. They rely on clean, groundwater-fed fen, wetland or streamlet habitats and changes such as nutrient enrichment, contamination, or altered flow regimes pose significant threats.

The state of Wisconsin, especially the Door Peninsula region, is of critical importance: According to some sources, Door County hosts the greatest abundance of this species in the world.[26] Kellner Fen is a distinctive wetland complex located near Sturgeon Bay on the Door Peninsula in Wisconsin. Kellner Fen supports unusual plants such as pitcher plants, rare orchids, and is explicitly cited as critical habitat for the Hines Emerald Dragonfly. The wetland's groundwater-fed nature, its isolation and specialized environment make it a high-value conservation area.

The Hine's Emerald Dragonfly and Kellner Fen are directly connected in the sense that the fen provides exactly the type of habitat the dragonfly needs: a groundwater-fed wetland, stable hydrology, minimal contamination, and intact natural vegetation. Any alteration in water chemistry, contamination of groundwater feeding the fen, or modification of hydrologic inputs could adversely impact the fen's ecosystem, the dragonfly's habitat, and ultimately, the dragonfly's ability to survive.

As repeatedly outlined in these comments, DNR intends to issue a permit to allow for expansion and spreading of millions of gallons of manure and process wastewater in Door County, an area highly susceptible to groundwater contamination. The proposed expansion will pose a clear threat to this sensitive ecosystem and the species that rely on it. Door County's karst geology, marked by thin soils, fractures, and sinkholes, provides direct conduits between surface activity (manure application) and the aquifer systems that feed Kellner Fen. Any nutrient enrichment, microbial contamination, or alteration of groundwater flow could jeopardize the Fen's ecological function and, by extension, the survival of the Hines Emerald Dragonfly population.

Given these facts, DNR must recognize that this project presents a substantial risk of "take" and habitat degradation. DNR cannot satisfy its legal obligations by

---

[25] U.S. Fish & Wildlife Service, Hine's Emerald, https://www.fws.gov/species/hines-emerald-somatochlora-hineana (last visited Nov. 11, 2025).

[26] Emily Mills, *Rare Dragonfly Gets a Helping Hand: Research and technology help reveal the mysteries of the Hine's emerald*, THE NATURE CONSERVANCY (Aug. 31, 2022), https://www.nature.org/en-us/about-us/where-we-work/united-states/wisconsin/stories-in-wisconsin/protecting-hines-emerald-dragonfly/.

issuing a WPDES permit to Gilbert Farms without first evaluating and addressing these risks. Specifically, DNR should:

1. **Conduct a formal endangered species review** in consultation with the U.S. Fish and Wildlife Service to evaluate the potential impacts to the Hines Emerald Dragonfly and its critical habitat at the Kellner Fen.
2. **Prepare a full Environmental Impact Statement** as discussed above.
3. **Require baseline groundwater monitoring and hydrogeologic monitoring** to assess the connectivity between the proposed land application areas and the Fen's groundwater system
4. **Deny or condition the permit** based on terms that ensure the action will not jeopardize the existence of the Hines Emerald Dragonfly or degrade its critical habitat.

V. Surface Waters

Much of these comments focus on the threat that Gilbert Farms poses to groundwater, but the Door Peninsula's surface waters are also at risk. The DNR developed the Northeast Lakeshore Total Maximum Daily Load ("TMDL"), a plan (sometimes referred to as a "pollution diet") to address the excess phosphorus and other pollutants that are feeding harmful algal blooms and choking Green Bay. The TMDL area stretches from Ozaukee County all the way up into the southeast portion of Door County – just across Sturgeon Bay from Gilbert Farms's production site. The fact that Gilbert Farms sits just outside of the TMDL area (for now), does not mean that the surface waters near it are in the clear. Indeed, DNR's 2024 Water Condition List[27] includes 12 other surface waters in Door County that are impaired, meaning that they could be next in line for a TMDL.

All water is connected, especially on a highly karstic, narrow peninsula with a shipping channel running through it. The proposed expansion of Gilbert Farms threatens to negate the work DNR is doing to combat phosphorus pollution throughout the Green Bay region and in Door County. The state's surface waters need less nutrient pollution, not more; and this permit as currently drafted is almost certain to lead to worse outcomes for the peninsula's surface waters as well.

VI. Groundwater Monitoring.

DNR must impose a far more robust network of groundwater monitoring wells than is currently reflected in the permit. DNR is well aware of the longstanding evidence of high groundwater susceptibility and exceedances of groundwater standards in Door County. Just this month, Wisconsin Geological and Natural

[27] *Water Condition Lists*, WISCONSIN DEPARTMENT OF NATURAL RESOURCES, https://dnr.wisconsin.gov/topic/SurfaceWater/ConditionLists.html (last visited Nov. 11, 2025).

History Survey (WGNHS) hydrogeologist Maureen Muldoon, who has been studying karst for decades, was quoted as saying that Door County is "a bad area for CAFOs," and that existing county-level monitoring programs "are not going to capture the variability of water quality in the area because water moves swiftly and changes rapidly."[28] Though DNR included a groundwater monitoring requirement in Gilbert Farm's permit, the limited nature of the monitoring (3 wells at the production site and no landspreading monitoring) and the significant delay in implementation (over four years after anticipated effective date of the permit) fail to fulfill the requirements of Chapter 283 of the Wisconsin Statutes. There are already two private wells in the immediate vicinity of the Gilbert Farms production facility that have tested unsafe for drinking water (the wells are at residences to the south and southwest of the production facility). *See* Attachment 1, Figure 2.

a. Gilbert Farms's operations are located in one of the most susceptible areas of the state.

The WGNHS published a Groundwater Contamination Susceptibility (GWCS) Map for the entire state in 1989 (see **Figure A** pasted below; also available on DNR's website[29]). The map is useful as a starting point, and highlights areas sensitive to contamination and shows them in a generalized way. It does not consider the individual characteristics of specific contaminants or the subsurface release of contaminants; that is, it considers the ability of water to move from the land surface to the water table. The areas with highest susceptibility are shown in red, high susceptibility in orange, moderate susceptibility in orange, low susceptibility in light green and lowest susceptibility in dark green. As you can see in **Figure B** below,[30] the northern part of Door County, where Gilbert Farms is located, is almost exclusively comprised of red, orange and yellow areas.

The GWCS Map was developed using several different layers of geological information. These were: type of bedrock, depth to bedrock, depth to groundwater, soil characteristics, and surficial deposits, which affect the recharge to groundwater. The shallower the water table, the shorter the path to groundwater in the bedrock aquifer and less time for natural processes to occur within the unsaturated zone to reduce contamination.

---

[28] Small, *supra* note 1. (Gilberts respond to public concerns about CAFO expansion ahead of rare in-person DNR hearing - Door County Knock)

[29] *Groundwater Contamination Susceptibility in Wisconsin*, DNR.WISCONSIN.GOV, https://dnr.wisconsin.gov/sites/default/files/topic/Nonpoint/GWSusceptibilityMap.pdf (last visited Nov. 11, 2025).

[30] R.R. Schmidt, Groundwater Contamination Susceptibility Map and Evaluation, available at https://wi.water.usgs.gov/gwcomp/find/door/susceptibility.htmlhttps://wi.water.usgs.gov/gwcomp/find/door/susceptibility.html. (last visited Nov. 11, 2025).

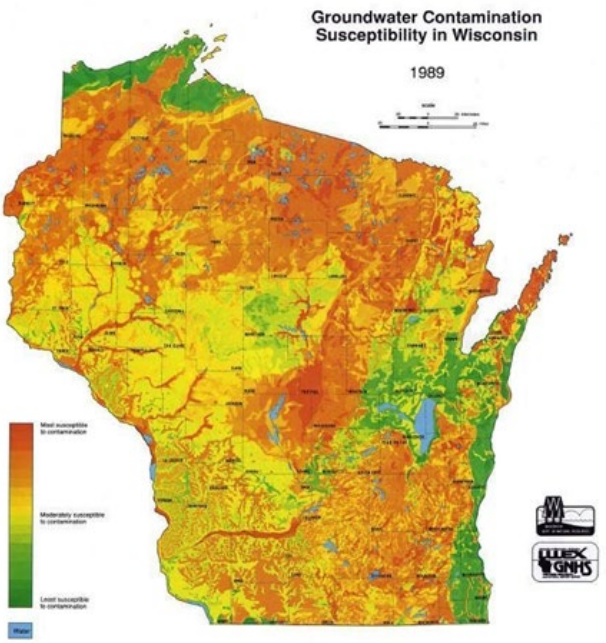

Figure A: GWCS Map of 1989

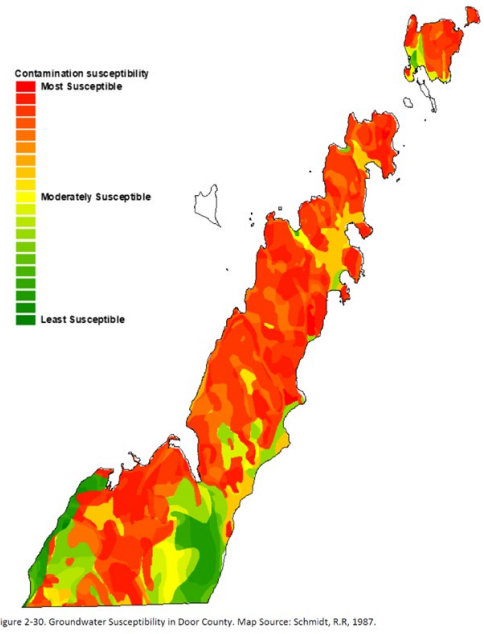

Figure B: Door County, GWCS map

The GWCS Map served as a starting point for our more holistic Door County susceptibility map, which is attached to these comments as Figure 7 of Attachment 1. Using publicly available sources, we created a map intended to better show the potential impact of Gilbert Farms's operations on water resources. In addition to the GWCS Map, we mapped additional features:

- *General features:* The general features, such as PLSS (section lines), county boundaries, are sourced from DNR's Open Data Website.
- *Source Water Protection Area*. Door County contains a large wellhead protection area; the boundaries are sourced from DNR's Open Data Website.
    - *See* Attachment 1, Figure 1
- *Sinkholes*: The part of Door County that includes the Gilbert Farms has hundreds of mapped sinkholes, which are sourced from the Wisconsin Geological and Natural History Survey, University of Wisconsin.
    - *See* Attachment 1, Figures 2-12
- *Nitrogen/Bacteria*: Numerous unsafe wells for nitrogen and/or bacteria are present on and/or near the Gilbert Farms Production Facility and spreading fields; these are sourced from the DNR's Groundwater Retrieval Network.

    - *See* Attachment 1, Figures 3, 6-11
- *Depth to Silurian Bedrock*: This data is sourced from DNR's Open Data Website.
    - *See* Attachment 1, Figures 2, 5, 6, 11 & 12
- *Water Wells*: Well locations are sourced from DNR's Open Data Website.
    - *See* Attachment 1, Figures 1-2, 5-12
- *DEM (Digital Elevation Model)*: DEM contours are sourced from DNR's Open Data Website and generated via ArcGIS Pro using Spatial Analyst Surface Contour Tools.
    - *See* Attachment 1, Figure 3

As discussed in further detail below, implementing a comprehensive and effective network of groundwater monitoring at the Gilbert Farms production site and spreading fields is not just prudent; it is required by Wisconsin law.

b. Production site monitoring should be expedited, not delayed for over four years.

Wis. Admin. Code § NR 243.15(7) codifies DNR's authority to require groundwater monitoring at CAFO production sites. Specifically, NR 243.15(7) authorizes DNR to include production site monitoring when "necessary to evaluate the impacts to groundwater and [when] geological or construction conditions warrant monitoring." The record demonstrates that such conditions exist at Gilbert Farms. As noted above, the two closest private wells adjacent to the production facility have tested unsafe for drinking water. *See* Attachment 1, Figure 2.

Indeed, DNR determined that groundwater monitoring at the production site was necessary. In a document titled *Groundwater Monitoring Review* that was included with the permit documents, DNR's CAFO Hydrogeologist determined that the depth to bedrock near the Gilbert Farms production area is less than four feet—an indicator of extreme hydrogeologic vulnerability.[31] The Hydrogeologist further noted:

> Several potential contaminant sources can be found at the Gilbert Farm production area, including raw material storage facilities, runoff control systems, waste storage and transfer systems, and animal housing areas. Manure and process wastewater from dairy operations are known to contain significant levels of potential nitrogen groundwater contaminants, including nitrate and ammonia.[32]

Based on this assessment, DNR's Hydrogeologist appropriately recommended that groundwater monitoring be required at the production site. Commenters

[31] DNR, Gilbert Farms Permit Fact Sheet at 50-51.
[32] *Id.*

strongly support this recommendation. However, there are key distinctions between DNR's recommendation, the plan outlined by the CAFO's own engineering experts, and the threat to groundwater contamination that all need bearing out.

Both DNR and Gilbert Farms's retained engineering firm, Outland Design, acknowledged the hydrogeologic vulnerability of the production site, confirming that groundwater monitoring was warranted.[33] In October 2024, 6 months before DNR's hydrogeologist issued his recommendations, Outland Design proposed installing four (4) groundwater monitoring wells around the perimeter of the feed storage area alone, and anticipated submitting a site groundwater monitoring plan **by Spring 2026**.[34]

Despite these technical recommendations and the applicant's apparent acknowledgment of the site's susceptibility to contamination, DNR's Hydrogeologist inexplicably reduced the recommended number of monitoring wells from four (4) to three (3) and extended the deadline for submitting a monitoring plan until 2029. This decision is inconsistent with the record and undermines the DNR's duty to issue permits that assure compliance with water quality standards. *See* Wis. Stat. §§ 283.31(3), (4). The decision undermines the protective intent of Wis. Admin. Code § NR 243.15(7), which authorizes groundwater monitoring when "geologic or construction conditions warrant monitoring." The shallow depth to bedrock combined with the presence of multiple contaminant sources at the production area (and DNR-documented uncontrolled runoff to wetlands from these sources indisputably) meet that standard.

Commenters concerns are heightened by the specific environmental features surrounding the production area, which further underscore the need for immediate monitoring. A wetland lies at the north end of the production site, near the existing manure lagoons.[35] Members of the public and nearby residents have also noted the presence of a sinkhole in the area, and a sinkhole is mapped immediately north of the production facility (Attachment 1, Figure 2). If accurate, these features would present clear hydrogeologic connections between the surface and the underlying aquifer, substantially elevating the risk of groundwater pollution. Given these site-specific conditions, DNR cannot lawfully or reasonably delay the implementation of groundwater monitoring requirements. The Department must act with urgency to ensure that monitoring infrastructure is in place.

The compliance schedule proposed in the draft permit, which delays submission of a groundwater monitoring plan until 2029, is inconsistent with the

---

[33] *See* DNR, Gilbert Farms Permit Fact Sheet; Outland Design, Design Report: Facility Expansion Plan of Gilbert Farms at 8 (Oct. 2024) (DNR Doc. Narrative_90923)

[34] *Id*; *see also* Outland Design, WPDES Permit Application Narrative: Gilbert Farms at 2 (Sept. 2024) (DNR Doc. Narrative_90923_01).

[35] Attachment 1, Figure 2.

stated purpose of groundwater monitoring and undermines the protective intent of NR 243.15(7). Groundwater monitoring is designed to *proactively* detect and prevent exceedances of groundwater quality standards during operation, not years after potential contamination may have occurred. [36]

The administrative record provides no technical or legal justification for deferring the monitoring plan's submission for four years, as far as we can tell. According to the Permit Fact Sheet, Gilbert Farms has been operating with over 1,000 animal units for two years already, and it intends to complete construction and abandonment of manure storage lagoons and expand to approximately 2,430 animal units by 2026. Given the susceptibility of the region,[37] the presence of multiple contaminant sources at the production site, documented uncontrolled runoff at the production site, and Door County's high reliance on private wells for drinking,[38] postponing monitoring until 2029 creates unnecessary and unacceptable risk to groundwater quality and public health.

Accordingly, DNR should revise the permit to require submission of an expanded and comprehensive groundwater monitoring plan *before* completion of the proposed expansion—no later than mid-2026—and require that installation and baseline sampling of a monitoring well network occur before the facility begins operating at expanded capacity. In other words, the permit should not allow any expansion beyond current animal unit levels until after baseline data about Gilbert Farms's current operations has been collected. Additionally, DNR should increase the number of wells that Gilbert Farms must install. Gilbert Farms should install four (4) groundwater monitoring wells at the feed storage area, as its engineering plan recommended, and three other wells elsewhere on the production site. These adjustments would align with both the precautionary intent of Wis. Admin. Code ch. NR 243 and DNR's statutory obligation under Wis. Stat. § 283.31(3) to ensure that permitted discharges will not cause or contribute to a violation of groundwater quality standards. It would also more closely align with DNR's prior actions in the Kinnard case, where the CAFO's groundwater monitoring plan called for construction of six (6) monitoring wells at the production area. *See* Attachment 2.

c. <u>DNR must require groundwater monitoring of Gilbert Farms's most vulnerable landspreading fields.</u>

The geological characteristics of Door County make its groundwater supply uniquely vulnerable to contamination – not just at the production facility, but

[36] *See* Wis. Admin. Code § 283.31(3)(f).
[37] Attachment 1, Figure 7; *see also* Figure B
[38] Door County Soil & Water Conservation Dept., Door County Land & Water Resource Management Plan 2021-2030, 72 (Aug. 13, 2020) ("There are approximately 8,000 private wells in Door County, with potentially more that are not in use or without records due to their age.").

everywhere it operates, including its 49 landspreading fields across the county. Gilbert Farms currently generates over 5 million gallons of liquid waste per year, which it will spread on about 1,400 of Door County's most vulnerable acres. By 2026, it will produce over 21 million gallons per year, which Gilbert Farms will apparently spread on the *same* 1,400 acres, most of which have one or more CAFO-restricted areas. Some of these fields have one or many sinkholes and many of the fields have restrictions over their entire acreage. *See* Attachment 1, Figures 11-13.

Door County has 8,000 private wells.[39] DNR already has ample evidence that Door County's groundwater is contaminated by nitrates, phosphorus, and coliform bacteria from CAFOs. Indeed, DNR's own hydrogeologist noted that potential sources of groundwater contamination for the County "include the Gilbert Farms production area **and manure landspreading sites.**"[40]

Yet this permit does not require even one groundwater monitoring well at a single landspreading field. Without groundwater monitoring, DNR cannot analyze whether Gilbert Farms's expansion is having an increased impact on groundwater. And without that information, DNR has no mechanism by which to understand whether the permit has sufficient protections to "assure compliance" with groundwater protection standards. And without that information, DNR cannot demonstrate that the Department is complying with its legal obligations under Wis. Stat. § 283.31(4), which provides that DNR "shall" (not "should" or "may") include any and all permit terms that are necessary to "assure compliance" with groundwater protections standards. As discussed in further detail below, DNR's obligation to monitor whether a WPDES permittee is causing or contributing to a violation of groundwater standards is not optional. Gilbert Farms's obligation to "[e]stablish and maintain records of the volume of effluent discharged and the amount of each pollutant discharged" is similarly mandatory.[41]

i. DNR has a legal obligation to include permit terms that will assure compliance with groundwater protection standards.

The provisions of Wis. Stat. §283.31(3) state that DNR "may issue a permit under this section for the discharge of any pollutant, or combination of pollutants . . . upon condition that such discharges will meet all the following . . ." and lists "groundwater protection standards established under ch. 160."[42] To properly ensure compliance, DNR "shall prescribe conditions for permits issued,"[43] including CAFOs.

---

[39] *Id.; see also* Attachment 1, Figures 8-10 for the location of private wells, at least 15 of which are located immediately adjacent to a Gilbert Farms spreading field, and have tested unsafe for bacteria, nitrogen (as nitrate and nitrite), and both bacteria and/or nitrogen, respectively.
[40] *See* DNR, Gilbert Farms Permit Fact Sheet at 50-51.
[41] Wis. Stat. § 283.55(1)(a).
[42] Wis. Stat. § 283.31(3)(f)
[43] Wis. Stat. § 283.31(4)

See Wis. Stat. § 283.31(4); s*ee also* Wis. Stat. § 283.55(1)(a) (every WPDES permittee shall "[e]stablish and maintain records of the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control.")

A 2021 decision by the Wisconsin Supreme Court affirmed the authority of DNR to prescribe off-site groundwater monitoring conditions to assure "compliance with effluent limitations and groundwater protection standards, as enumerated in § 283.31(3)(a) and (f)."[44] In *Clean Wisconsin*, the court addressed the WPDES permit for Kinnard Farms, a CAFO in neighboring Kewaunee County and found that DNR had the "explicit authority to prescribe…off-site groundwater monitoring…pursuant to Wis. Stat. § 283.31(4)" to ensure Kinnard's compliance with the limitations and standards related to groundwater protection in § 283.31(3).[45] Specifically, the court referenced the conditions in Kewaunee County that warranted groundwater monitoring by the DNR, noting that the "particular features of the land underlying Kinnard's CAFO . . . made that land extremely susceptible to groundwater contamination."[46] The court further explained that the groundwater beneath Kinnard's CAFO is in a karst bedrock aquifer, and noted that "[k]arst bedrock is characterized as bedrock that is close to the land's surface and contains a vast network of underground drainage systems that have direct connections to the land's surface," and stated that "'[o]nce in the ground, this water that was once on the surface becomes part of the groundwater supply."[47] Additionally, the court highlighted evidence that "as many as 50 percent of private wells in the Town of Lincoln [where Kinnard Farms is located] were contaminated [and] 30 percent of wells had tested positive for *E.coli* bacteria" due to manure contamination.[48]

Bottom line, there is no question that DNR has the legal authority to impose off-site groundwater monitoring at Gilbert Farms's landspreading fields, which sit atop some of the most sensitive and vulnerable land in the state. The only unanswered question is why DNR failed to do so in this case.

ii. Gilbert Farms will be spreading on some of Door County's most susceptible areas.

Like the fields at issue in *Clean Wisconsin*, the land on which Gilbert Farms is planning to spread its waste is also "extremely susceptible to groundwater contamination."[49] DNR's own hydrogeologist acknowledges as much, writing in his

[44] *Clean Wisconsin v. DNR*, 2021 WI 71, ¶39, 398 Wis. 2d 386, 961 N.W.2d 346.
[45] *Id.*
[46] *Id.* at ¶6.
[47] *Id.* at fn. 7.
[48] *Id.* at ¶39.
[49] *Id.* at ¶6

June 30, 2025 Groundwater Monitoring Review: "The fractured karst Silurian dolomite has high secondary porosity, meaning that contaminants can quickly flow into and through the aquifer where there is shallow bedrock." He continued: " Manure and process wastewater from dairy operations are known to contain significant levels of potential nitrogen groundwater contaminants, including nitrate and ammonia."

To the extent DNR needs further demonstration of the susceptibility of Gilbert Farms's landspreading fields, the Wisconsin Geological and Natural History Survey (WGNHS) has been studying Door County's susceptibility for decades. In 1989, the Survey prepared its Groundwater Contamination Susceptibility (GWCS) Map[50] which, as discussed above, reflects the highest levels of vulnerability for the northern portion of Door County, where all of Gilbert Farms's fields are located.

In addition, as noted above, we have prepared a more detailed susceptibility map that is attached as Figure 7 in Attachment 1 which further highlights the vulnerabilities at Gilbert Farms's spreading sites:

- *Sinkholes and other karst features:* Of Gilbert Farms's 49 available spreading fields, 16 (33%) have one or more sinkholes, which allow for the rapid infiltration of water and contamination into the subsurface and bedrock aquifer. Many fields have multiple sinkholes, and a few have more than 10 sinkholes (*see* "EG2" and "Schumacher" fields, in particular). Even for those fields without a sinkhole directly on it, most of the other Gilbert Farms spreading fields have sinkholes adjacent to or in close proximity the fields.[51]
- *Depth to bedrock <2 ft*. Of Gilbert Farms's 49 spreading fields, 26 (53%) have areas where the bedrock is less than 2 feet from the surface.[52]
- *Depth to water table <2 ft*. Many of Gilbert Farms's fields also have areas where the water table is less than 2 feet from the surface.[53]
- *Depth to bedrock <5 ft*. Of Gilbert Farms's 49 spreading fields, 34 (69%) have areas where the bedrock is less than 5 feet from the surface.[54]
- *Contaminated private wells.* Groundwater contamination is already impacting private wells downgradient of Gilbert Farms's fields. Numerous unsafe wells for nitrogen and/or bacteria are present on and/or near the Gilbert Farms spreading fields, as depicted at Attachment 1, Figures 8-10.[55]

[50] Available at: Groundwater Contamination Susceptibility in Wisconsin
[51] *See* Attachment 1, Figures 3-12, black "X"s mark sinkhole locations.
[52] *See* "Overlaps_90923_01 (version 1).xlsx" included in the permit materials.
[53] *See* Attachment 1, Figures 12, 13.
[54] *See* "Overlaps_90923_01 (version 1).xlsx" included in the permit materials.
[55] *See* Attachment 1, Figures 1, 3-13, red dots reflect unsafe well tests.

    - The nature and extent of unsafe groundwater is likely to be greater than what has been mapped as many of the wells in the area of Gilbert Farms operations do not have recent bacteria or nitrogen water quality data.
- *Source Water Protection Area.* Several of the Gilbert Farms spreading fields are situated over Source Water Protection Areas, which include the contribution zones of at least three City of Sturgeon Bay municipal water wells. See Attachment 1, Figure 1.
- *Wetlands, fens, and sensitive habitat*. Many Gilbert Farms spreading fields are located topographically higher and thus upgradient of wetlands and sensitive habitat, including the Kellner Fen, as depicted at Attachment 1, Figures 1, 3.[56]
    - The Kellner Fen is located less than 1 mile immediately downgradient of Gilbert Farms fields.

* * * * *

In conclusion, DNR has an obligation to ensure that all permitted CAFOs' discharges comply with the groundwater protection standards. Given the uniquely vulnerable qualities of the fields that Gilbert Farms has chosen to include in its NMP, DNR cannot fulfill that obligation without requiring offsite groundwater monitoring.

In order to ensure that groundwater protection standards are not being exceeded, as part the Gilbert Farms WPDES permit, DNR must require groundwater monitoring wells at Gilbert Farms's most vulnerable manure spreading fields, including:

(1) those upgradient of the Source Water Protection Area;

(2) those upgradient of any wetlands or fens;

(3) those upgradient of one or more drinking water wells;

(4) those near existing wells that have tested unsafe for bacteria and nitrogen; and

(5) a selection of fields that have very high susceptibility based on our maps at (Attachment 1, Figures 7, 11-13) or the GWCS susceptibility map.

At the very least, DNR must prepare a hydrogeology memo explaining how, in the absence of groundwater monitoring, DNR will ensure that Gilbert Farms landspreading activities comply with mandatory state groundwater standards.

[56] *See* Attachment 1, Figure 3, showing groundwater flow from Gilbert Farms fields to Kellner Fen and wetlands.

VII. Animal Unit Maximum

Given Gilbert Farms's documented history of noncompliance, the exceptional environmental sensitivity of the project area, and the unresolved risks to groundwater, surface waters, and endangered species, DNR must include an animal unit (AU) cap in Gilbert Farms's permit.

First, Gilbert Farms has demonstrated an ongoing pattern of operating above the regulatory threshold without permit coverage. Despite being issued a Notice of Noncompliance in 2023 for operating above the 1,000 AU threshold (which is equivalent to 700 dairy cows), Gilbert Farms informed DNR that they had depopulated the dairy to below 1,000 AUs but then expanded over 1,000 AUs again. That expansion was made obvious a year later, when the operation applied for this WPDES permit. This multi-year pattern of unpermitted operation undermines public trust and demonstrates a lack of adherence to regulatory requirements. And as described above, Gilbert Farms has been found to be in violation of Silurian bedrock spreading restrictions on at least one occasion as well.

Second, the location of the facility in Door County's karst landscape presents a uniquely high risk of groundwater contamination. The region's thin soils, fractured dolomite bedrock, and sinkhole features allow surface contaminants—including nitrates, ammonia, and pathogens—to rapidly reach the aquifer. It is well documented that land in the shallow-depth-to-bedrock areas of the Door Peninsula already cannot bear nutrient burden it is experiencing. Further application from landspreading manure will only exacerbate groundwater issues in nearby and downgradient community. Attached maps show the clear susceptibility of landspreading acres. *See* Attachment 1, Figure 7.

Third, at a compliance inspection in December 2023, DNR staff determined that Gilbert Farms's manure storage lagoons lacked permanent markers, a violation of Natural Resources Conservation Service (NRCS) Technical Standard 313 for waste storage facilities. These markers are essential for ensuring that operators maintain required freeboard and prevent overflows or structural failures. Despite recognizing this deficiency in 2023, DNR's draft permit does not require installation of permanent markers until 2026, a three-year delay that leaves the facility without a fundamental safeguard against overtopping and discharge. Notably, the absence of permanent markers was a key issue in the Kinnard Farms contested case, where an Administrative Law Judge found that such deficiencies justified the imposition of an animal unit limit to protect water quality. See *In the Matter of Kinnard Farms, Inc.*, DNR Case No. IH-12-02 ¶65 (Final Decision and Order, Sept. 3, 2014) (attached as

Attachment 3). The same reasoning applies here: Where basic monitoring and compliance infrastructure is lacking, DNR must set an animal unit cap.

Fourth, the facility's manure management footprint—proposing to landspread millions of gallons of manure and process wastewater annually —presents serious regional implications for both water quality and ecological integrity. The spreading fields lie within groundwater recharge zones that contribute to private drinking water wells, wellhead protection zones for the city of Sturgeon Bay, and hydrologically connected surface waters. Any further increase in herd size or waste volume would proportionally increase the pollutant loading risk to these systems.

Given these factors, DNR should establish an enforceable animal unit cap consistent with the capacity analyzed in the current application. The cap should:

1. **Limit animal units to the operation's current size (1,443 AU)** until DNR determines, through at least three consecutive years of groundwater and surface water monitoring data, that operation at that level does not cause or contribute to water quality exceedances or adverse ecological impacts; and
2. **Condition the cap** upon demonstrated compliance with all WPDES permit terms, including construction deadlines, groundwater monitoring, and manure storage requirements, and groundwater monitoring results demonstrating that the CAFO is not causing or contributing to water quality exceedances or adverse ecological impacts.

VIII. Nutrient Management Plan (NMP)

As the DNR recognizes, "if the manure or process wastewater from a CAFO is land applied to sites in Wisconsin, pollutants from the manure or process wastewater **will reach waters of the state** either via leaching to groundwater or surface runoff."[57] Nutrient Management Plans (NMPs) are the primary regulatory tool for controlling pollution from CAFOs — they are where the rules actually meet the ground. The permit sets general standards, but the NMP is what translates those into site-specific limits on how, when, and where manure and wastewater can be applied to land.

Unlike traditional point sources, which must monitor and report every pollutant discharge precisely, CAFOs are diffuse, leaky operations that discharge wastewater from multiple locations, including landspreading fields. For example, a wastewater treatment plant WPDES permit will require regular, detailed reporting of all discharges so DNR can independently verify compliance. CAFOs, by contrast, submit only annual reports and are not required to monitor whether discharges occur

[57] Wis. Admin. Code §NR 243.12(1)(d)3, Note.

at all, and DNR relies on self-reporting or complaints from neighbors to know whether discharges have occurred. As a result, DNR relies on a CAFO's NMP as one of the only tools available to ensure these facilities are not polluting state waters.

But an NMP does not eliminate pollution—it merely aims to "minimize the loss of nutrients and other contaminants to waters of the state."[58] That makes it all the more critical that the NMP be as effective as possible. Gilbert Farms's NMP, however, is riddled with gaps and best-case-scenario assumptions that do not reflect the karstic, high-risk conditions of Door County. Combined with Gilbert Farms's history of noncompliance, DNR has both the authority and the obligation to require a far stronger, more protective NMP to assure compliance with state and federal law, including groundwater standards.[59]

a. Errors in the NMP

Based on our review of the publicly available materials, there appear to be a number of conflicts between Gilbert Farms's proposed NMP and applicable legal standards, including:

- *Not enough acres.* Gilbert Farms's NMP has just barely enough acres to accommodate the waste they will be generating. Indeed, the Updated Nutrient Mass Balance Report shows that by 2026, Gilbert Farms will be spreading on almost every single acre available in its NMP.
    - This makes the NMP highly vulnerable to failure – the loss of even a field or two could jeopardize the CAFO's ability to apply waste in a compliant manner.
- *Phosphorus applications*. There are 6 fields in the NMP with over 100 ppm P soil tests. Of the 6 fields, there are 4 fields (totaling 246.7 acres) receiving more than 50% of phosphorus needs over the next 4 years.
    - This appears to be a violation of NR 243.14(5)(b)(1)
    - Bottom line: Of the roughly 1,400 available acres in the NMP, 246.7 acres appear to be out of compliance based on soil phosphorus levels.
- *Nitrogen applications*. There are several instances of nitrogen applications over UW recommended rates in the years going forward. In 2026 there are 209.8 acres with overages, in 2027 695.2 acres, in 2028 406.7 acres, and in 2029 385.1 acres.
    - Under certain circumstances, applications over the UW recommendations are allowed, but in order to qualify for that variance, the field must be evaluated for an actively growing crop

[58] Wis. Admin. Code § NR 2431.14(2)(b)6.

[59] *See* Wis. Stat. § 283.31(3)(f) and (4) ("The department **shall** prescribe conditions for permits issued under this section **to assure compliance** with . . . [g]roundwater protection standards established under ch. 160") (emphasis added)

that is experiencing nitrogen stress. The materials we reviewed do not appear to reflect that such an evaluation has taken place.
    - This appears to be a violation of Wis. Admin. Code § NR 243.14(1)(a), and/or NR 151.075(10)(b)(3).
- *Inadequate soil samples*. According to the Soil Test Report dated 12/3/2024, four fields do not appear to have enough soil samples (Fred's, Institute, Phlieger 1 and Proposon), and 13 fields have samples that are too old (Behind School, Buzzy Tong, EG1, Freds, Harmann, Leers, Maynards, Moore, Peterson, Propson, RZK19, Schumacher, and Weiss 1) do not have enough soil samples.
    - Despite these inadequate soil samples, DNR still approved the WPDES permit.

Bottom line, the NMP calculations appear to contain numerous errors, the net effect of which is that DNR has approved an NMP that does not meet the mandatory minimal legal requirements. At minimum, these errors need to be corrected before any WPDES permit can be granted to Gilbert Farms.

b. Unfounded assumptions in the NMP

On top of the outright errors listed above, Gilbert Farms's NMP is inadequate because it is built on unfounded assumptions, which, if incorrect, could have serious consequences for Door County's citizens and water resources.

i. Assumption 1: That Gilbert Farms will comply with each and every spreading restriction without the aid of GPS.

As noted above, and as shown in Attachment 1, Figures 11-13, *all* of Gilbert Farms's NMP fields have one or more spreading restriction including (among others):

- *Sinkholes and other karstic features.* "Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater," including a sinkhole.
    - *See* Wis. Admin. Code § NR 243.14(2)(b)8.
- *<2 feet to bedrock.* CAFO waste cannot be mechanically applied on land that has a depth of less than 2 feet to bedrock.
    - *See* Wis. Admin. Code § NR NR 243.14(2)(b)7.
- *<2 feet to water table.* CAFO waste cannot be mechanically applied on land that has a depth of less than 2 feet to the water table.
    - *Id.*
- *<5 feet to bedrock.* CAFO waste can only be applied on fields with 3-5 feet of bedrock if very specific limitations are met, including incorporation within 72 hours, limited application rates, among other restrictions.

    - *See* Wis. Admin. Code § NR 243.143 and 243.14(2)(b)10.
- *Private wells*. Private wells can be considered direct conduits to groundwater and are subject to setbacks.
    - *See* Wis. Admin. Code § NR 243.03(20).
- *Source Water Protection Area*. At least 13 of Gilbert Farms's proposed spreading fields are within the Door County Source Water Protection Area. *See* Attachment 1, Figure 1.
    - *See* Wis. Admin. Code § NR 243.14(10)(f).
- *Proximity to evidence of soil erosion/flow channels*. Road ditches or other manmade channels (including erosion flow paths) can be considered flow paths and/or conduits to navigable water subject to setbacks and/or application rate restrictions
    - *See* DNR Conditional Approval Letter, dated December 4, 2024.
- *Wetlands, fens, and sensitive habitat*. Many Gilbert Farms spreading fields are located topographically higher and thus upgradient of wetlands and sensitive habitat, including the Kellner Fen, as depicted at Attachment 1, Figure 3.[60]
    - *See* Wis. Admin. Code § NR 243.14(2)(b)6.

As a practical matter, this means that land application will not be straightforward for Gilbert Farms or its manure applicators. Using the 0-2 feet to bedrock restriction as an example. Under the terms of the permit and NR 151.075(9), Gilbert Farms cannot apply manure or process wastewater on those areas at all.[61] But as reflected Attachment 1, Figure 12, these 0-2 ft sections often appear in the middle of a field and are usually not associated with a visual marker of any kind. For example, the "Jakes" and "Rons" fields northeast of the production site, are part of Gilbert Farms's NMP, and they each contain irregular, curved swaths of land with 0-2 feet of bedrock. There do not appear to be any fences, trees, or other visual indicators of where the exclusion areas end and the spreadable acres begin. *See* Attachment 1, Figures 12, 13.

Indeed, Door County manure inspection documents show that Gilbert Farms has been caught violating these 0-2 foot restrictions as recently as 2024 *on these exact fields*. *See* Attachment 4. The Door County inspector noted that on the Jakes & Rons field, "0-2 foot no-manure restricted areas distinguished on spreading maps **have received manure**. Application verified at multiple points. No depth to bedrock verification." *Id.* (emphasis added).

[60] *See* Attachment 1, Figure 3, showing groundwater flow from Gilbert Farms fields to Kellner Fen and wetlands.
[61] Wis. Admin. Code § NR 151.075(9).

This is just one example where Gilbert Farms got caught—after a neighbor complained—failing to comply with one of the many field restrictions in the NMP. The map prepared at Attachment 1, Figure 11 zooms out and provides a high-level view of just how common CAFO-related exclusion and restriction areas are in Gilbert Farms's NMP, and therefore how many opportunities there are for error. Attachment 1, Figure 12 shows how virtually 100% of the "Schumacher" field is subject to an outright spreading prohibition (<2 ft to bedrock or <2 feet to water table). Given that many of these prohibitions are based on purely subterranean characteristics, there is no practical way to know exactly where they are if all you have is a 2-D map.

Fortunately, there's an app for that. UW has developed a tool called "SMART SnapPlus Manure Application Realtime Tracker," which "[d]isplays Manure prohibited and Winter manure prohibited areas on your mobile devise to help you see and avoid spreading in them."[62] It also "[k]eeps track of manure applications while you are out in the field by mapping your manure spreader's path."[63] In other words, DNR does not need to rely on Gilbert Farms's best efforts; SMART will ensure that the CAFO's manure applicators are complying with the various limitations scattered throughout Gilbert Farms's spreading fields. SMART has an added option to "[s]end[] application records to SnapMaps for import to SnapPlus," which creates a precise record that can be stored and submitted—with the click of a few buttons—to DNR.

But SMART is not the only available technology. Other companies provide GPS technologies for nutrient application, including Trimble,[64] AGLeader,[65] GPS Technologies,[66] and Smajayu.[67] SMART has the added benefits of being free (available for download on any mobile device, tablet, or computer), and being developed by UW based on Wisconsin-specific data.

From our perspective, DNR should require *all* permitted CAFOs to use SMART to track and report manure applications. DNR unquestionably has the authority to

---

[62] *Snapplus Manure Application Real Time Tracker* ("SMART"), UW MADISON SOIL SCIENCE DEPARTMENT, https://snapmaps19.snapplus.wisc.edu/smart.aspx#:~:text=The%20app%20can%20also:%20*%20Display%20No,you%20have%20trouble%2C%20you%20can%20contact%20support@snapplus.wisc.edu (last visited Nov. 11, 2025).

[63] *Id.*

[64] PTX TRIMBLE, *GFX-750 Display*, https://ww2.agriculture.trimble.com/product/gfx-750-display/ (last visited Nov. 11, 2025).

[65] AG Leader, https://www.agleader.com/ (last visited Nov. 11, 2025).

[66] *Agricultural Equipment Tracking Through GPS*, GPS TECHNOLOGIES, https://gpstechnologies.com/agricultural-equipment-tracking-with-gps-technologies/#:~:text=GPS%20tracking%20technology%20can%20help%20farmers%20protect,to%20an%20app%20or%20asset%20tracking%20system (last visited Nov. 11, 2025).

[67] SMAJAYU, *JY100 Tractor GNSS Guidance System*, https://www.smajayu.com/jy100-tractor-gps-guidance-system/?srsltid=AfmBOoqn2Vo6uVw1d_yTvsD5dNxdaaYSK3GqvlZIavuhm-a6OtkRzSF7 (last visited Nov. 11, 2025).

do so under Wis. Admin. Code § NR 243.14(10).[68] In the case of Gilbert Farms, it is essential. SMART (or another GPS-enabled tracking technology) will help ensure that Gilbert Farms and its haulers accurately avoid restricted areas based on separation to Silurian bedrock, and the many other restrictions. Manual identification and marking would be far more burdensome and far less accurate, and likely to result in accidental applications on land that should not be receiving any waste (or waste at a reduced rate). Door County's karstic geology and already-burdened groundwater cannot afford any more errors.

ii. Assumption 2: Gilbert Farms has access to (and will retain access to) the number of spreadable acres currently reflected in its NMP.

As noted above, Gilbert Farms has just barely enough acreage to apply all of its waste. DNR apparently assumes, however, that every acre will remain available for spreading now and through 2029. This mistaken assumption is based on three additional unverified (and unjustified) assumptions: (1) that all of the handshake landspreading agreements will be honored; (2) that Gilbert Farms's book value-based nutrient estimates are accurate; and (3) that Gilbert Farms has verified (or will verify) all fields with less than 2 feet of distance to the water table before landspreading.

Unfortunately, it is highly likely that at least one (and maybe all three) of those assumptions will turn out to be misplaced, seriously undermining the legal sufficiency of the NMP. Each is discussed below.

1. Assumption 3: Gilbert Farms's "verbal" landspreading and year-to-year contracts will not fall through.

As reflected in the Updated NMP Narrative, more than 72% of Gilbert Farms's landspreading agreements on rented land (23 out of 32 rented fields) are "verbal," or expire by the end of 2025. In other words, there is no legal mechanism in place to ensure that more than 72% of the cropland on which Gilbert Farms plans to spread will actually be available to spread past the end of next month. Given that Gilbert Farms is already short on acres, the potential loss of further acres only raises more

[68] Wis. Admin. Code § NR 243.14(10) provides: " The department may require the permittee to implement practices in addition to or that are more stringent than the requirements specified in this section when necessary to prevent exceedances of groundwater quality standards, prevent impairments of wetland functional values, prevent runoff of manure or process wastewater during dry weather conditions or to address previous manure or process wastewater runoff events or discharges from a site to waters of the state that occurred despite compliance with this section and the conditions of a WPDES permit."

doubts about whether Gilbert Farms will have enough land on which to spread its waste.

As a result, DNR should require Gilbert Farms to submit written evidence that it has access to all of the acreage it claims to have access to in the NMP for the duration of the NMP. Specifically, Gilbert Farms should be required to submit any and/all written landspreading agreements to DNR for review and verification. Further, Gilbert Farms should be required to submit an affidavit or declaration, under penalty of perjury, that it has permission to spread waste on all acreage listed in the NMP.

2. Assumption 4: Gilbert Farms' manure concentration estimates are accurate.

According to Gilbert Farms's owner, the Gilbert family has been farming in Door County for 150 years.[69] Despite running an industrial, high-tech dairy for years, Gilbert Farms has apparently never thought to take a single sample of the millions of gallons of manure and wastewater it has produced. As a result, Gilbert Farms's nutrient rates are based on guesses, not facts. And if that guess turns out to be wrong, then all of their calculations fall apart, and Gilbert Farms could find itself even more lacking in acreage. There is no reason why Gilbert Farms should not be required to start taking manure samples and reporting them to DNR now. Gilbert Farms is already operating as a CAFO, as DNR admits (even if they are doing so in apparent violation of Wisconsin law). Given that Gilbert Farms's NMP is already teetering on the edge, there is no room for error.

Therefore, DNR should require Gilbert Farms to base its NMP on actual manure samples, rather than book values. For each year of the permit, Gilbert Farms should be required to take: at least five samples from the manure pit (after agitation and during loading), and at least two samples from any other manure or wastewater source, and report the results to DNR.

3. Assumption 5: Gilbert Farms will refrain from applying on land with less than 2 feet of separation from the water table.

According to NR 151.075(3), CAFO waste may not be mechanically applied on land that has less than 2 feet of separation to the water table. *See* Wis. Admin. Code § NR 151.075(3) (Note that this is different from, and in addition to, the restriction discussed above, based on NR 151.075(9) which prohibits mechanical application on

[69] Joe Schulz, *Door County CAFO Faces Backlash at DNR Hearing*, WISCONSIN PUBLIC RADIO (Nov. 7, 2025, 8:04AM), https://www.wpr.org/agriculture/door-county-cafo-hearing-gilbert-farms-sevastopol-dnr.

land that has less than 2 feet of separation **from Silurian bedrock**); *see also* Wis. Admin. Code § NR 243.14(2)(b). Based on Wisconsin maps, many of the fields in Gilbert Farms's NMP have less than 2 feet of separation from the water table. *See* Attachment 1, Figures 12, 13. While the <2 feet to bedrock fields have been removed from the available acres in the NMP, the fields with <2 feet to the water table are still in there.

This is because SnapPlus allows CAFOs to include fields with less than 2 feet to the water table in their NMPs, so long as they formally "acknowledge" in SnapPlus that they have verified (or will verify) that there is more than 2 feet of separation to the water table before spreading. However, nothing in the permit materials we reviewed suggested that Gilbert Farms will be required to submit any documentation to support that these verifications have actually taken place. In its Conditional NMP Approval letter dated December 4, 2024, DNR clarified that Gilbert Farms must check for "soil areas with possible shallow groundwater (i.e., within 24 inches of surface) at the time of application," but makes no mention of Gilbert Farms submitting any documentation. Allowing a CAFO to make these critical "verifications" on the honor system in an area as sensitive as Door County is risky, at best. In the case of a permittee that has already demonstrated a willingness to hide the truth from DNR and violate spreading restrictions, it is downright illogical.

Accordingly, DNR should require Gilbert Farms to prepare and submit documentary evidence listing (at least) the name of the person who took each soil sample, the date each soil sample was taken, the depth to water table reflected in each sample. DNR should require Gilbert Farms to submit this documentation within a month after each test (or on a monthly basis, if more convenient), regardless of whether the results show more or less than 24 inches of separation, and regardless of whether the CAFO ends up spreading on the field. That way, DNR can begin to develop a data set around whether these fields should be taken out of the NMP because they are regularly within the prohibition level of <2 feet of separation.

IX. Waste Storage Facilities

The current permit contains serious deficiencies with respect to Gilbert Farms's waste storage facilities. As DNR acknowledges, "storage facilities constructed at or below grade will have some pollutant discharges to groundwater."[70] Gilbert Farms's sits on extremely shallow, karstic ground and its waste storage facilities are unquestionably "below grade." As a result, DNR must ensure that Gilbert Farms's storage facilities are as safe and protective as possible.

[70] Wis. Admin. Code §NR 243.12(1)(d)3.Note.

a. DNR should require immediate abandonment of the satellite stacking pad.

At the December 2023 compliance inspection, DNR Agricultural Runoff Specialist James Salscheider documented that Gilbert Farms's solid manure stacking pad was noncompliant, lacking necessary runoff control requirements.[71] According to the inspection record, the pad lacked runoff containment, and runoff from the pad flowed toward the driveway and into an adjacent agricultural field.[72] Mr. Salscheider also observed that a "significant amount of solid manure was present around the outside of the concrete walls of the storage facility, spilled over when manure was either loaded or removed from the pad."[73]

These findings confirm that an uncontrolled discharge of pollutants to waters of the state occurred in 2023 and that the existing structure fails to meet the basic containment and runoff standards. Despite this clear evidence of noncompliance, the draft permit would allow Gilbert Farms to continue operating the deficient stacking pad until December 31, 2026, when it must finally be abandoned.

That three-year delay is unjustifiable and inconsistent with the purpose of the WPDES program, which is to prevent, not tolerate, discharges of manure and process wastewater to waters of the state.[74] Once DNR identified a structure as noncompliant and actively discharging, immediate corrective action should have been required. Allowing use of a known defective structure for an additional three years invites continued runoff and unnecessary risk to groundwater and surface water.

DNR should therefore revise the compliance schedule to require immediate ending of use and prompt abandonment or reconstruction of the noncompliant stacking pad.

b. Gilbert Farms should be required to retrofit and install leak detection for existing manure storage facilities.

Gilbert Farms currently operates two liquid manure storage facilities (WSF 1 and WSF 2) and proposes to construct a third (WSF 3). According to the permit materials, WSF 1, a concrete-lined structure constructed in 1987, has a usable capacity of 1,944,800 gallons. WSF 2, also concrete-lined and constructed in 2009, has a usable capacity of 1,132,248 gallons. The proposed WSF 3 will have a total capacity of approximately 8.1 million gallons and, according to the engineering report, will be

[71] DNR, Gilbert Farms Permit Fact Sheet at 19.
[72] *Id.*
[73] *Id.*
[74] *See* Wis. Stat. § 283.001 & Wis. Admin. Code §§ NR 151.07(3)(a) &151.08(4)

designed to meet the "Sensitive Environmental Settings" standards outlined in NRCS Technical Standard 313.[75] No such guarantee exists for the other two facilities.

Given the sensitive hydrogeologic setting of the Gilbert Farms production site (including shallow depth to bedrock, karst features, and nearby wetlands), DNR must ensure that all manure storage facilities provide an equivalent level of environmental protection. It is not sufficient that only the proposed new lagoon meets "Sensitive Environmental Settings" criteria. The two existing storage structures were constructed long before the current NRCS 313 design standards were adopted and therefore may not meet current containment or liner integrity requirements. Without retrofitting, these older structures pose an ongoing risk of seepage or failure in a vulnerable region.[76]

Accordingly, DNR should require Gilbert Farms to retrofit WSF 1 and WSF 2 to meet the same "Sensitive Environmental Settings" design and construction standards applied to WSF 3, including improved liner specifications. This is necessary to ensure that all storage facilities on-site provide consistent protection against groundwater contamination and comply with Wis. Admin. Code § NR 243.15, which mandates that waste storage facilities "be designed, constructed, and maintained to minimize the risk of structural failure, maintain structural integrity, and prevent discharges to waters of the state."

To the extent that the existing or proposed lagoons lack leak detection systems, DNR should also require the installation of leak detection monitoring for each of the three storage structures. Leak detection systems are an established best management practice for facilities in karst or otherwise sensitive environments, as recognized by NRCS 313.[77] These systems provide early warning of liner breaches or structural defects and are a cost-effective safeguard for groundwater quality.

In short, all three structures must be held to the same "Sensitive Environmental Settings" standards, with leak detection required as a condition of permit issuance. This is a reasonable, science-based approach to protect groundwater, prevent unpermitted discharges, and ensure the integrity of waste storage in one of Wisconsin's most sensitive areas.

---

[75] Outland Design, Design Report: Facility Expansion Plan of Gilbert Farms at 7-8 (Oct. 2024) (DNR Doc. Narrative_90923)

[76] A visual inspection of the lagoons from Dec. 2023 is insufficient to identify any and all potential leaking from these older structures.

[77] *See* NRCS Technical Standard 313 at 313-CPS-10 (available at: https://www.nrcs.usda.gov/sites/default/files/2022-12/313-NHCP-CPS-Waste-Storage-Facility-2022.pdf)

X. Climate Change

Climate change will increase the likelihood, severity, and intensity of precipitation events in Wisconsin, which will increase the number of 25-year, 24-hour rainfall events. Importantly, the table provided in NR 243 which defines the applicable 25-year, 24-hour rainfall event was created using USGS Soil Conservation Service Technical Paper 40 ("TP40") rainfall depths. TP40 was published in 1961 and used rainfall data through 1958. Given that age of that information, the data and limits set by TP 40 are grossly out-of-date. As such, the current rainfall event standard is likely to lead to an increased number of "permitted" discharges and does not adequately restore and maintain the chemical, physical, and biological integrity of Wisconsin's waters.[78]

Under Wis. Admin. Code NR § 243.04, DNR has the authority to regulate and consider rainfall events based on "more recent rainfall probability data verified by a government agency." As such, DNR should examine more recent rainfall probability data and account for the most up-to-date, peer-reviewed scientific research on the impacts that climate change will have on the likelihood and intensity of extreme precipitation events in Wisconsin and establish permit terms or engineering design standards that better account for climate change induced precipitation changes.[79] Specifically, DNR should incorporate more accurate and forward-looking rainfall data into current regulations using findings from the Wisconsin Initiative on Climate Change Impacts (WICCI).[80] The WICCI Rainfall Project updated NOAA Atlas 14 intensity-duration-frequency (IDF) rainfall statistics to current conditions using rainfall data through 2020 and created future IDF statistics using downscaled climate models and stochastic storm transposition methods.[81] This multi-faceted approach illustrated how current Atlas 14 levels are out-of-date and will only become less reflective of climate realities in the future.[82]

* * * * *

XI. Questions

We appreciate that DNR will likely be responding to hundreds of comments related to the Gilbert Farms WPDES permit. In order to help streamline DNR's efforts, we have pulled out the specific recommendations and questions we hope the

---

[78] Memorandum from Adam Voskuil to Division Administrator Dave Siebert, Bureau Directors Brian Weigel and Mike Thompson, Section Chiefs Shannon Dobbins Haydin, Tanya Lourigan, and Thomas Nedland, Re: Rainfall Data Updates (July 1, 2021) (on file with author).
[79] Wis. Admin. Code § NR 243.04
[80] *Wisconsin Initiative on Climate Change Impacts: Wisconsin Rainfall Project*, UNIVERSITY OF WISCONSIN-MADISON, https://wicci.wisc.edu/infrastructure-working-group/initiatives/ (last visited May 31, 2024).
[81] *Id.*
[82] *Id.*

DNR will respond to. We, of course, welcome DNR's response to anything else included in the above comments and thank DNR for its work in keeping the public informed with respect to this and other WPDES permits.

Non-Compliance

1. How many cows (including heifers and calves) are currently confined at Gilbert Farms?
2. Will DNR use its enforcement authority to address Gilbert Farms's historic and ongoing noncompliance?
    a. If not, why not?
    b. If not, what message does that send to other AFOs who may be operating at or near the current animal unit limit requiring WPDES permit coverage?

Environmental Review

3. Will DNR revise the Environmental Analysis Questionnaire so that new CAFOs – CAFOs that have not ever had WPDES coverage – stop being exempt from statutory environmental review requirements?
    a. If not, why not?
4. Will DNR require preparation of an Environmental Impact Statement?
    a. If not, why not?
5. Will DNR conduct a formal endangered species review?
    a. If not, why not?
6. Has DNR communicated with U.S. Fish and Wildlife about the proposed decision to issue a permit near a critical habitat (the Kellner Fen)?

Groundwater Monitoring

7. Does DNR disagree with Maureen Muldoon that Door County is "a bad area for CAFOs"?
    a. If so, on what basis?
8. Does DNR acknowledge that many wells in Door County are already unsafe, and that the spreading of an additional 15-16 million gallons of liquid waste every year (on top of Gilbert Farms's current 5 million gallons) is likely to lead to more groundwater contamination?
    a. If not, on what basis?
9. Will DNR expedite Gilbert Farm's compliance schedule for both submitting and implementing groundwater monitoring plans?
    a. If not, why not?
10. Specifically, will DNR require submission of a groundwater monitoring plan *before* any herd expansion, and no later than 2026?
    a. If not, why not?

11. Will DNR require Gilbert Farms to continue operating at no more than its current AU levels until after DNR has gathered at least 1 year of baseline groundwater monitoring data?
    a. If not, why not?
12. Will DNR require Gilbert Farms to install more groundwater monitoring wells, in line with what the CAFO's own engineers recommended?
    a. If not, why not?
13. Will DNR require offsite groundwater monitoring on at least some of Gilbert Farms's spreading fields, pursuant to its established authority under the *Clean Wisconsin* case?
    a. If not, why not?
14. Specifically, will DNR require groundwater monitoring on at least some fields that are:
    a. Upgradient of the Source Water Protection Area?
    b. Upgradient of any wetlands or fens?
    c. In the "very high" susceptibility category based on Figure 7 (Attachment 1) or the GWCS map?
    d. If not, why not?

Animal Unit Maximum

15. Will DNR limit Gilbert Farms to the operation's current number of animal units until DNR determines, through at least three consecutive years of monitoring data, that the operation at its current level is not contributing to water quality exceedances or adverse ecological impacts?
    a. If not, why not?
16. Will DNR condition any future expansion on Gilbert Farms's demonstrated compliance with all WPDES permit terms?
    a. If not, why not?

Nutrient Management

17. Does DNR agree that Gilbert Farms's NMP contains the errors listed in Section VIII(a) above?
    a. If not, why not?
18. Does DNR acknowledge that CAFOs are point sources under the Clean Water Act?
    a. If not, on what basis?
19. Will DNR require Gilbert Farms to use GPS technology, like the free SMART app developed by UW, when land applying its waste?
    a. If not, why not?
20. Will DNR require other CAFOs to use GPS technology, like the free SMART app developed by UW, when land applying its waste?

a. If not, why not?

21. Will DNR require Gilbert Farms to provide documentary evidence that it has the spreading acreage it claims to have?
    a. If not, why not?
22. Will DNR require Gilbert Farms to start taking manure samples immediately and reporting those to DNR?
    a. If not, why not?
23. Will DNR require Gilbert Farms to submit documentation of soil verification results for all fields with less than 2 feet to the water table?
    a. If not, why not?
24. Will DNR require Gilbert Farms to immediately abandon the satellite stacking pad?
    a. If not, why not?
25. Will DNR require Gilbert Farms to retrofit and install leak detection for existing manure storage facilities?
    a. If not, why not?

<u>Rainfall Event Standard</u>

26. Will DNR change the rainfall event standard it uses in WPDES permits to reflect more recent precipitation data?
    a. If not, why not?
27. What happens if a CAFO discharges as a result of a rainfall event that meets the criteria of the NOAA Atlas 14 standard, but not the 1961 Technical Standard?

* * * * *

Again, we thank you, Ms. Mueller, and your DNR colleagues for reviewing and considering our comments.

Submitted on November 12, 2025,

/s/ Adam Voskuil
Adam Voskuil
Senior Staff Attorney
Midwest Environmental Advocates
avoskuil@midwestadvocates.org

/s/ Katie Garvey
Katie Garvey
Senior Attorney
Environmental Law & Policy Center
Kgarvey@elpc.org