Bender | Westerberg
LLC

May 26, 2016

Via Email

Tyler Dix
Wisconsin DNR
3911 Fish Hatchery Road
Fitchburg, WI 53711
Tyler.Dix@wisconsin.gov

Adam Freihoefer
Wisconsin DNR
101 S. Webster Street
Madison, WI 53703
Adam.Freihoefer@Wisconsin.gov

Re: Central Sands Dairy / Golden Sands Dairy manure and well issues

Dear Mr. Dix and Mr. Freihoefer:

This letter is to follow up on citizen contacts you have received regarding potential violations of Wis. Stat. chs. 281 and 283, related to operations of Central Sands Dairy and the proposed Golden Sands Dairy, and alert you to recent spreading and weather events. We urge you to immediately investigate these matters and send staff to investigate the sites identified below.

First, we understand Central Sands Dairy (CSD) received approval for a substantial nutrient management plan modification on May 13, 2016, to add two manure spreading fields in Portage County—quite a distance from its operations in Juneau County. While the application materials available on the DNR's website are incomplete,[1] it appears CSD documented that it would only apply *solid* manure to these fields. The dairy supplied manure analysis for "post digestor solids," not liquid manure, and the DNR CAFO Spreading Report only identified "post digestor solids" as the Manure/Process Wastewater Source. *See* Wis. Admin. Code §§ NR 243.14(1)(a) (requiring applicants to identify manure application amounts, methods, and other aspects of manure application); (2)(f) (requiring applicants to use results of manure testing to determine application rates).

In the last week, CSD has been applying manure to the two new fields in massive amounts, unprecedented for the experienced citizens who have witnessed these and other

[1] Pages are missing, as indicated by documents with footers that say "Page 1 of 2" or "Page 1 of 5," when not all pages in the range are included. Further, the application did not include a revised NMP narrative, but instead a single page that stated "Please see Nutrient Management Plan for the full narrative"; the plan was not linked or supplied. In the future, we'd ask that the DNR not notice substantial NMP changes without complete and comprehensible application materials available on the DNR website. It would also be helpful if the public notice document on the website is dated so citizens understand exactly how much time they have to comment.

While the rules for noticing substantial nutrient management plans are different for formal permit amendments, we would have appreciated a heads' up about this requested NMP modification when citizens and DNR were gathered for the hearing in Necedah on May 9 concerning the permit amendment for groundwater monitoring at CSD.

operations. Applications have been both in solid and liquid form; solids were hauled and applied to the fields on at least May 18 and 19, and liquids were hauled and applied on May 24 and 25:

Solid loading at CSD and applications at Field CF01

Liquid hauling from CSD and applications at Field CF02

Both solids and liquids were applied at significant rates, with truckload after truckload delivering manure and wastewater from Central Sands Dairy. Witnesses estimate that 20 trucks were used in hauling operations on May 24 alone, from 5:30 AM to 6:00 PM, with trucks arriving within minutes of one another. We are highly concerned that applications on these fields have occurred above permissible rates, and that the liquid manure applications were unauthorized to begin with.

Further, liquid manure applications occurred during rainy conditions that were not only capable of producing runoff—the storms did produce runoff. The forecast called for rain and storms at 60-80% throughout the day yesterday, and a Hazardous Weather Outlook was issued

for the area due to the predicted storms and heavy rains. Statewide manure advisories advised against applying.

Ponded liquids on May 24; liquid applications continuing through the rain on May 25.

CSD continued to apply through downpours that started at about 3:15 PM on May 25 and have continued intermittently since. These applications resulted in more ponding and runoff.

Ponding and runoff between 90th Street and the west side of field CF02; runoff flowed north toward Tower Road.

While applications were incorporated earlier in the day, it is unclear whether incorporation continued through the rain, or if CSD was able to achieve 80% soil coverage given the amount of manure that had already been applied. Applications under these conditions, and with these results, appear to violate multiple provisions of Wis. Admin. Code § NR 243.14(2)(b), including 1. (ponding), 4. (runoff), .5. (saturated soils), 6. (minimal movement of applications to

protect surface and groundwater), 13. (prohibiting surface applications when rain is forecast or incorporated applications that lack 80% soil coverage).

With CSD's parent company proposing yet another large CAFO just across the border in Wood County, we are concerned about these applications and the precedent they set. Strict adherence to manure application rules is necessary on the area's porous, sandy soils, to protect public health and surface and groundwater resources. The DNR should immediately investigate, and should CSD's conduct reveal violations, the DNR should enforce its rules and assure the public that such violations will not be tolerated.

Second, a new well has been installed immediately south of Field CF02, possibly in place of an older well on the same property. The property is owned by Ellis Industries Saratoga, and piping from the new well leads to Field CF02, where a new irrigation rig has gone up.

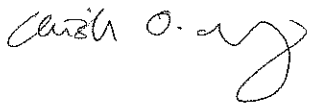
We are not aware of any application or approval for the new/reconstructed well per Wis. Stat. § 281.34(2) and NR 812.09(4). Such approval is needed to protect groundwater aquifers from contamination through adequate construction and for public health purposes. We also understood that DNR would not approve any wells in this area until DNR had finished its review and any approvals for Golden Sands Dairy, in light of the large amount of withdrawals for that project and the water resources nearby. As it is, this well is near wetlands, streams, and Ten Mile Creek, a Class II and III trout stream in Wood and Portage County.

Constructing or reconstructing this well without DNR approval violates state statutes and administrative rules, and disrespects the process, public health, and the DNR itself. Regardless of who is responsible—and the paperwork makes this unclear—we urge the DNR to promptly investigate and enforce its rules prohibiting construction of high-capacity wells without prior DNR approval.

Thank you for your attention to these matters. Please do not hesitate to contact me if you need any further information.

Sincerely,

BENDER WESTERBERG LLC



Christa O. Westerberg

cc: Portage County Land Conservation