STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

NOTICE OF FINAL DETERMINATION TO ISSUE A WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM (WPDES) PERMIT No. WI-0067569-01-0

Permittee: Gilbert Farms Ltd., 5186 Country Road T, Sturgeon Bay, WI, 54235

Facility Where Discharge Occurs: Gilbert Farms Ltd., 5186 Country Road T, Sturgeon Bay

Receiving Water and Location: Unnamed tributaries within the Door Peninsula-Frontal Lake Michigan Watershed, Lake Michigan Drainage Basin, and groundwaters of the state.

Brief Facility Description: Gilbert Farms LTD is a new Concentrated Animal Feeding Operation in Door County, WI. Gilbert Farms LTD is owned and operated by Tim Gilbert & family. As of December of 2024, it had 688 milking and dry cows, 500 heifers, and 275 calves (1,443 animal units). There is a planned herd size of 1,150 milking & dry cows, 900 heifers, and 400 calves (2,430 animal units) by 2026. Gilbert Farms LTD will annually generate approximately 5,737,664 gallons of liquid manure and process wastewater and 838 tons of solid manure. As of December of 2024, Gilbert Farms LTD has approximately 94 days of storage. As of February 28, 2025, plans and specifications have been approved by the department for a new manure storage which will allow Gilbert Farms LTD to meet the required minimum of 180 days of storage. The new manure storage is required to be functional and in operation by December 31, 2026. Gilbert Farms LTD has 2,046 acres in its approved nutrient management plan, of which 860 acres are rented or in contract agreements and 1,187 acres are owned. Gilbert Farms LTD has 1,425 acres available for land application.

Permit Drafter's Name, Address and Phone: Brittiny Mueller, 2984 Shawano Ave, Green Bay, WI, 54313, (608) 228-9184

Date Permit Signed/Issued: June 30, 2026
Date of Effectiveness: July 1, 2026
Date of Expiration: June 30, 2031

Public Informational Hearing Held On: November 5, 2025

Following the public informational hearing the Department has made a final determination to issue the WPDES permit for the above-named permittee for this existing discharge. The permit application information from the WPDES permit file, comments received on the proposed permit and applicable Wis. Adm. Codes were used as a basis for this final determination.

The Department has the authority to issue, modify, suspend, revoke and reissue or terminate WPDES permits and to establish effluent limitations and permit conditions under ch. 283, Stats.

Following is a summary of significant comments and any significant changes which have been made in the terms and conditions set forth in the draft permit:

<u>Summary of Significant Changes:</u>
The department adjusted due dates in the "Schedules" section of the permit to reflect the new permit effective date for the following:

- Permit Effective Date - Changed from October 1, 2025 to July 1, 2026
- Emergency Response Plan - Changed from November 1, 2025 to August 1, 2026
- Monitoring & Inspection Program - Changed from December 1, 2025 to September 1, 2026
- Permit Expiration Date - Changed from September 30, 2030 to June 30, 2031

The department is requiring groundwater monitoring plans and specifications to be submitted by October 1, 2026. The previous requirement for groundwater monitoring plans and specifications was October 1, 2029. Per permit section 3.6, complete well installation is required within 90 days following approval by the department of the Final Groundwater Monitoring Plan.

An addition to the permit language was made in permit section 3.4 Nutrient Management starting in the 03/31/2028 annual nutrient management plan submittal. This addition is

- To include an analysis of the nutrient management plan demonstrating the farm's land application and field management practices are not resulting in excess loss of nitrogen to groundwater that contribute to exceedances of NR 140 groundwater standards. This analysis must model or measure nitrogen loss and may be done by either 1) a nitrogen mass balance, 2) off-site groundwater monitoring on land application fields, or 3) an equivalent, department approved approach. If appropriate, submit a proposal for additional practice(s) the farm will implement to reduce nitrogen losses to groundwater for department review and approval.

Changes were made to the permit language based on updates to standard WPDES CAFO permit language based on the U.S. Environmental Protection Agency review of Wisconsin's CAFO permit. These changes are

- The addition of permit section 1.1.1 Production Area Discharge Monitoring Requirements.
- In permit section 1.2 Runoff Control, the addition of "Clean water and uncontaminated".
- In permit section 1.5 Nutrient Management, the addition of ", or changes which are likely to increase the risk of nitrogen and phosphorus transport to waters of the state.".
- In permit section 1.6.1 Monitoring and Inspection Program, the addition of "Knowingly falsifying monitoring records or tampering with, or rendering inaccurate any monitoring device or method required to be maintained under this permit is a violation of the permit.".
- Permit section 1.7 Sampling Point(s) was edited to "If a new facility is approved in writing by the Department under s. NR 243.15(1)(b), Wis. Adm. Code, the permittee may commence construction. If the Department determines a sample point is required, the permittee may not operate any the new runoff control structures, feed and other raw materials storage, manure storage facilities, manure treatment systems or other structures or systems associated with the storage, containment, treatment or handling of manure or process wastewater until this permit has been modified or reissued to include a corresponding sampling point for the new facility".
- In permit section 4.1.1 Duty to Comply, the addition of "and ch. 283, Wis. Stats.".
- In permit section 4.1.9 Recording of Results-Sampling, the removal of "or lab".

<u>Comments Received from the Applicant, Individuals or Groups, and any Permit Changes as Applicable:</u>

Comment: The department received comments request the compliance schedule related to production site groundwater monitoring be moved up to require Gilbert Farms to install monitoring wells sooner including:

-In particular, any well monitoring isn't required until 2029, and this should be required NOW if a CAFO is permitted.

-Specifically, will DNR require submission of a groundwater monitoring plan before any herd expansion, and no later than 2026?

- 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-Will DNR expedite Gilbert Farm's compliance schedule for both submitting and implementing groundwater monitoring plans?

-I was also troubled that there would be no monitoring wells drilled until 2029, well after a new operation was permitted. Frankly, that smacks of DNR cover-up. By that date, *any* baseline well levels would have likely already been tainted by waste intrusion, providing cover for Gilbert Farms.

-The monitoring wells recommended by the permit hydrogeologist are not mandated until late 2029, allowing CAFO to operate for 4 years without proper monitoring.

-DNR requires, and enforces, aggressive well monitoring or ground water monitoring initiatives immediately. Waiting until 2029 is unacceptable.

-There are no monitoring wells, as of now, to determine if there is a contamination issue exceeding limits for nitrates, phosphorus, E-coli, and other pollutants with current practices. There should also be baseline monitoring before any changes or increase in Agriculture manure spreading and barnyard runoff.

-Require baseline groundwater monitoring and hydrogeologic monitoring to assess the connectivity between the proposed land application areas and the Fen's groundwater system.

Response: After further review, the department has advanced groundwater monitoring plans and specifications to be submitted by October 1, 2026.Per permit section 3.6, complete well installation is required within 90 days following approval by the department of the Final Groundwater Monitoring Plan.

Comment: "The court ruled 4-2 that the DNR can enforce the conditions. Writing for the majority, Justice Jill Karofsky noted that other sections of state law grant the Department "all authority necessary" to protect the state's waters and allow the Department to mandate conditions to achieve that goal. Nothing in state law requires the Department to draft individual rules to assure compliance, she added." According to AP news July 2021. This means herd caps and requirements for well monitoring are possible as well as an Environmental Impact Statement.

Response: Under a WPDES permit, the department regulates the volume of manure and how the manure is managed and this has the effect of limiting herd size to the capacity of the farm to manage the manure.

After further review, the department has advanced groundwater monitoring plans and specifications to be submitted by October 1, 2026. Per permit section 3.6, complete well installation is required within 90 days following approval by the department of the Final Groundwater Monitoring Plan.

Gilbert Farms Ltd is a defined as an existing source CAFO under s. NR 243.03(23), Wis. Adm. Code. The Department will be issuing a WPDES Permit to Gilbert farms under its authority provided in ch. 283, Wis. Stat. In accordance with s. 283.93, Wis. Stat., regulatory actions taken

by the Department under ch. 283, Wis. Stat. to control environmental pollution are exempt from provisions of s. 1.11, Stats., and the environmental analysis and review procedures in ch. NR 150, Wis. Adm. Code except for issuance of permits or approvals for new sources of environmental pollution.

Comment: The department received comments regarding the geology and the potential for contamination from the CAFO due to the karst features including:
-The geology in the proposed expansion consists of karst features, shallow bedrock, thin glacial soil - all of which will threaten the groundwater, making it highly susceptible to contamination.
-In 2023, two liquid manure containment malfunctions occurred elsewhere in Door County causing spillage. The sinkhole is a significant concern because of the two older liquid manure storage facilities containing 1 and 2 million gallons located near it on the Gilbert Farm.
-The shallow topsoil and karst geology offer a high risk that manure waste, in the concentrations spread by a CAFO, will contaminate the aquifer, affecting households and businesses in the area.
- This soil cannot handle more exploitation for personal gain with inadequate regard for the consequences to the environment.

Response: WPDES permit conditions are intended to protect private wells and groundwater from becoming impacted from land spreading activities. The operation's WPDES permit and associated nutrient management plan contains conditions designed to protect groundwater quality. Examples of these conditions include:

- Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater.
- Nutrients shall not be spread within 200 feet upslope of direct conduits to groundwater unless the nutrient is effectively incorporated within 48 hours
- No manure application within 100 feet of direct conduits to groundwater (sinkholes, private wells)
- No causing fecal contamination of water in a well.
- No application on fields with soils that are 60 inches thick or less over fractured bedrock when ground is frozen or where snow is present.
- No application when snow is actively melting.
- No application on areas of fields that have less than 24 inches of soil to bedrock.
- Field verification procedures include ground depth evaluations on fields with mapped shallow soils. A detailed protocol for determining bedrock depth on fields with such soils is outlined in the NMP. All fields must be evaluated before applying manure.
- The operation is required to have an emergency response plan to help avoid impacts associated with spills.

Well drillers must follow minimum design standards contained in Ch NR 812 and must notify the department when constructing wells. However, the department does not regulate private drinking water wells once they are constructed. Therefore, we recommend private well owners sample their well water on an annual basis for nitrate and bacteria. Information about well testing is available through the DNR website at https://dnr.wi.gov/topic/wells/privatewelltest.html. Additional information is available at https://dnr.wi.gov/topic/Wells/homeowners.html and https://dnr.wi.gov/topic/DrinkingWater/Manure.html.

Homeowners with levels of nitrate or other contaminants in exceedance of state drinking water standards should contact their local DNR private water supply specialist. If a homeowner suspects their well is contaminated with manure, they should immediately contact a regional DNR Private Water Supply specialist (see list at https://dnr.wi.gov/topic/Wells/PrivateWaterSupply.html) or CAFO specialist (see contact map at https://dnr.wisconsin.gov/topic/CAFO/contacts.html) to investigate the source of contamination. Where the source of the contamination can be identified, the Department will determine the appropriate enforcement response. In some cases, the Department can provide an emergency source of water, technical assistance for well treatment or replacement options and/or financial assistance for well replacement. for well replacement.

Concerns regarding the sensitive geological setting are answered on pages 11-16.

Comment: The department received comments regarding the ecosystem in Door County including:
-Gilbert Farms is near beloved and delicate nature preserves: Kellner Fen, Shivering Sands, Cave Point, Crossroads, and the Big Creek fishery. Even under the best circumstances and with the best intentions human error happens. Spills and leaks will occur and imperil these beautiful and unique ecological treasures.
-Will DNR conduct a formal endangered species review?
    a. If not, why not?
-Has DNR communicated with U.S. Fish and Wildlife about the proposed decision to issue a permit near a critical habitat (the Kellner Fen)?

Response: The Department reviewed the application materials provided by Gilbert Farms for a WPDES CAFO permit. At this time, no further reviews are required to proceed with permit issuance. This WPDES CAFO permit action is an integrated analysis action under s. NR 150.20(2), Wis. Adm. Code, and does not require a separate environmental analysis process in accordance with. s 283.93, Wis. Stat. The department has complied with ch. NR 150, Wis. Adm. Code, and s. 1.11, Stats.

Comment: The department received comments stating the department was not working towards its mission statement.

Response: The department implements the CAFO WPDES permit program in accordance with the authority provided by the state legislature under ch. 283, Stats., and with oversight by US EPA. Conditions in CAFO WPDES permits are consistent with this authority and the requirements outlined in ch. NR 243, Wis. Adm. Code.

Comment: If this Concentrated Animal Feeding Operation (CAFO) is approved, there will be 21,452,275 gallons of liquid manure and 1,570 tons of solid manure applied each year to the same land that is used now. That is 3.7 times the amount that is currently applied, nearly 4 x as much. Nobody knows what this means to our ground water. Maybe you do? I compare it to my basement when it rains. If we have one inch of rain, there are no leaks. If we have 3 or 4 inches, then I get water in our basement. If this same analogy applies to our wells, then they're contaminated, maybe never to be used again.

Response: Permitted CAFOs are required to have sufficient acreage within their nutrient management plan ("NMP") to accommodate spreading of all manure generated by the number of animal units on-site. In cases where a farm is increasing the number of animal units on-site, the farm would need to have sufficient acreage in their approved nutrient management plan NMP or would need to update the plan to add acreage. Crops have the same nutrient requirements regardless of the source (manure or commercial fertilizer), and those nutrient recommendations cannot be exceeded in order to stay compliant with an NMP. Any added acreage that previously received other nutrient applications would have those nutrient sources replaced by the permitted CAFO's manure. In practice, this could mean a field being added to a CAFO's NMP stops applying chemical fertilizer and instead applies manure of the same nutrient value to meet crop needs. Therefore, there is not a total net increase in the volume of nutrients being applied, rather, a change in the source of where the nutrients come from, and the manure generated from the increased number of animal units will replace other sources of nutrients on existing cropped acreage.

Comment: Per the NMP the volume of liquid manure and processed wastewater will increase from 5,737,664 gallons per year to 21,452,275 gallons per year following the expansion to 2,430 animal units. This is a nearly four (4) times increase in liquid manure volume and no accompanying increase in the 1,379.5 spreadable acres. This volume will exceed the recommended application rate specified in the "Silurian Bedrock Standards" adopted by Door County effective 9/27/2018 and included in Chapter 23 of the Door County Agricultural Performance Standards and Animal Waste Storage Ordinance.

Response: With installation of approved runoff controls for the feed storage area, Gilbert Farms will be collecting approximately 4,551,997 gallons of leachate and process wastewater from the feed storage area. Gilbert Farms will also be collecting 2,822,570 gallons of precipitation that falls on the surface of the waste storage facilities. Process wastewater that is collected and stored in the onsite waste storage facilities will be land applied in accordance with the approved 5- year nutrient management plan and requirements of the WPDES permit.

Comment: Why does the public notice state that Gilbert Farms Ltd. will "annually generate approximately 5,737,664 gallons of liquid manure…", when the DNR's findings of fact in the letter dated December 4, 2024, states that the herd will eventually generate "approximately 21,452,275 gallons of manure" per year?

Response: With the current herd size and farm infrastructure, Gilbert Farms is generating approximately 5,737,664 gallons of liquid manure at the time of permit issuance. After the installation of approved plans and specifications for feed storage runoff controls and planned animal unit expansion, Gilbert Farms will generate 21,452,275 gallons of manure and process wastewater annually. That volume includes collecting 100% of the runoff generated from the feed storage area.

Comment: The department received many comments regarding the permitting process including:
-We are also requesting an understanding of the permitting process. What agency (agencies) conducted the due diligence? What were the issues studied and what was the methodology of the due diligence process?
-Identify what agency (agencies) conducted the due diligence, and describe what issues were studied and what methodology was applied to the due diligence process.

Response: The department has delegated authority from U.S. EPA to issue NPDES permits under the Clean Water Act. The department has authority under ch. 283.31, Wis. Stat. to issue a WPDES permit to point source discharges, which includes concentrated animal feeding operations (CAFOs). Section NR 243.12, Wis. Adm. Code includes the requirements to submit an application for a WPDES permit, including the contents required to be submitted with final permit application, which include site maps, a complete 5-year nutrient management plan, description of the existing facilities, days of storage calculations, and any additional information the department requests. The department reviews all materials submitted in the permit application, works with the applicant and its consultants to address any missing information and non-compliant aspects of submittals, and conducts an on-site inspection before a permit can be issued.

Comment: Explanation of the apparent discrepancy between the Public Notice and the Permit Application regarding the projected 2026 manure application amounts: Liquid: 5,737,664 vs. 21,452,275 gallons annually. Solids: 838 vs. 1,570 tons annually.

Response: Manure generation and spreading records indicate the herd will annually generate approximately 5,737,664 gallons of manure and process wastewater and 838 tons of solid manure in the FIRST YEAR of the permit term. After the planned expansion and additional leachate collection, the planned herd will annually generate approximately 21,452,275 gallons of manure and process wastewater and 1,570 tons of solid manure.

Comment: CAFO waste spreading from the proposed Gilbert expansion should not be allowed on fields within Sturgeon Bay's source water protection area, in accordance with the Safe Drinking Water Act, Section 1428, which requires states to implement wellhead protection programs to prevent contamination of public water supplies. Door County's shallow soils and fractured bedrock make its groundwater especially vulnerable, and landspreading CAFO waste in these sensitive zones poses a substantial threat to drinking water safety for Sturgeon Bay residents. The DNR should remove these fields from spreading plans to protect public health and comply with SDWA Section 1428. See Appendix A-3, A-6 for maps of the Source Water Protection Zone and a list of the spreading fields.

Response: Per s. NR 243.14(2)(b)9, Wis. Adm. Code, manure applications are prohibited within 1,000 feet of a community water system (as defined in s. NR 812.07), regardless of soil depth or conditions on the landscape. Also, NR 243.14(2)(b)3, Wis. Adm. Code prohibits fecal contamination of water in a well. The Wellhead Protection program in Door County is administered locally by the Sturgeon Bay Utilities and is not regulated by the Department of

Natural Resources. Under a WPDES permit, the department does not regulate source water protection areas. For additional information on source water protection areas, please see the links provided. Source water protection | | Wisconsin DNRGroundwater System Source Water Protection Areas | | Wisconsin DNR The permit does include restrictions designed to protect wells from contamination such as prohibiting manure applications within 1000 feet of a community water system and prohibiting fecal contamination of any well.

Comment: The department received comments regarding an animal unit cap. Including:
-In 2021, the Wisconsin Supreme Court ruled that DNR has clear statutory authority to impose animal unit limits where necessary to protect water, including at facilities like Gilbert that have high-capacity wells. See Clean Wisconsin, Inc. et al. v. WDNR, 2021 WI 71 (2021) (the "Kinnard Farms" case) and Clean Wisconsin, Inc. et al. v. WDNR, 2021 WI 72 (2021) (the "high capacity well" case). The Gilbert permit should include a strict animal unit cap, not exceeding the proven safe land base post-verification.
- Gilbert has a demonstrated inconsistency in under-reporting its animal unit numbers, we ask WDNR to require additional reporting to ensure Gilbert maintains the animal unit cap established.
- 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.

Response: Technical reviews of the WDPES permit application materials determined that Gilbert Farms Ltd. has sufficient land base to accommodate the manure and process wastewater that is proposed to be generated at Gilbert Farms at the current herd size and after the planned increase in animal units. Additionally, Gilbert Farms must maintain sufficient liquid manure storage capacity to have greater than 180 days of storage at all times. This means that the farm may not expand its herd over a certain number in advance of constructing additional storage in the form of WSF 3. For these reasons an AU cap is not necessary in this instance because the herd size is limited at all times by the available storage and the land based available for land spreading.

Comment: The purpose of the Clean Water Act, EPA regulations, and the Wisconsin Pollutant Discharge Elimination System (WPDES) program is to protect waters of the state. The CWA's antidegradation policy also requires states to protect existing water quality and prevent its degradation.

Response: Antidegradation procedures contained in ch. NR 207 are applicable to new or increased point source discharges. For a CAFO production area, discharges are only allowed in extreme and rare rainfall conditions. The rare and episodic nature of the allowed discharges is

such that antidegradation analysis cannot be applied to them. The prohibition on discharges at other times means that antidegradation analysis is not triggered.
For landspreading fields, runoff from fields where manure has been applied by a CAFO in accordance with a WPDES permit and a nutrient management plan is, by definition, agricultural stormwater discharge (nonpoint source discharge) and is not a point source discharge. Therefore, stormwater runoff from CAFO landspreading fields are not subject to the ch. NR 207 antidegradation policy.

Comment: The department received comments requesting waste collection and wastewater treatment for manure and process wastewater including:
-All of the farms should be required to have a sewage tank to get rid of the animal waste.
-sewage generated by people must, by law, be treated but sewage cows produce doesn't need to be.
-All CAFOs should have waste treatment/water treatment plants on site. In reality they are producing waste equivalent to small cities.

Response: Storage of manure and process wastewater and the subsequent land application of these stored materials are considered the best technology for CAFOs under federal NPDES requirements. Pursuant to Chapter 283, Stats., the department cannot require more stringent technology-based limitations, such as requiring other methods of manure treatment. Operations can voluntarily choose to install more advanced manure treatment technologies.

Comment: The department received comments on the use of antibiotics at CAFOs and potential for the antibiotics into the environment. Including:
-medical professionals pointed out that the heavy use of antibiotics in a CAFO risks the development of antibiotic-resistant bacteria, which would then spread into our environment. Antibiotic resistant E. coli in our lake or well water would be a public health disaster.
-Antibiotic Resistance: The routine use of antibiotics in animal feed promotes antibiotic-resistant bacteria, which can transfer to humans and surface waters.

Response: The department does not regulate pharmaceuticals (e.g., hormones, antibiotics) under the CAFO WPDES permit program through ch. NR 243 Wis. Admin. Code. EPA has established compliance with production area discharge limitations and development and implementation of an NMP as best technology for addressing discharges of pathogens to navigable waters from CAFOs under federal NPDES requirements.

Comment: The department received comments regarding tourism including:
-This is very troubling and should not be allowed to happen again, anywhere, let alone an area that depends heavily on tourism dollars.
-The value of the tourism economy and real estate far outweighs the value of the farming economy.
-Tourism is a major economic driver in Door County, heavily reliant on clean water and natural beauty. Water contamination, along with issues like the smell of concentrated manure, could severely damage the hospitality and tourism industries and property values. There is no positive spin that marketing can put on strings of waste hauling tanker trucks clogging traffic on Highway 42.

-Door County is very heavily dependent on tourism & water & air pollution would be extremely detrimental to it.

Response: No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore, no changes were made to the permit. Technical staff that review and approve associated permit application and compliance items do verify that all requirements of the law are met.

Comment: Comments expressed concern about impacts to water quality (surface waters, groundwater and wetlands) and recreational opportunities due to the current operation and proposed expansion. Some comments referenced impacts associated with livestock operations in other parts of state (e.g., Kewaunee County)

Response: The WPDES permit program includes review processes and permit conditions to help protect water quality and avoid spills. The WPDES permit contains permit conditions that protect surface waters, groundwater and wetlands that are consistent with ch. NR 243, Wis. Adm. Code, the code that establishes permit requirements for CAFOs throughout the state.
For the production area, the department reviews design plans and evaluates existing structures to help ensure proper design of manure/process wastewater storage and handling structures/systems. In addition, WPDES permits:

- Prohibit production area discharges to navigable waters, except under very limited circumstances (i.e., the discharge is the result of an overflow from a properly designed facility, and the permittee has complied with the inspection, maintenance and record-keeping requirements). In the unlikely event an authorized discharge was to occur, the permit still requires that the discharge complies with surface water quality standards.
- Require compliance with water quality standards, groundwater standards and prohibit impairments of wetland functional values
- Require 180 days of storage for liquid manure
- Require periodic self-inspections
- Include proper operation and maintenance actions
- Require development of an emergency response plan for both production and land application areas

For land application areas, permittees must develop a 5-year nutrient management plan (NMP) that complies with ch. NR 243 and the permittee's WPDES permit and outlines how, when, where and in what amounts manure and process wastewater from the operation will be land applied on area cropland. CAFO WPDES permits require that operations have adequate land base to land apply their manure and process wastewater. NMP requirements include:

- Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater
- Nutrient shall not be spread within 200 feet upslope of direct conduits to groundwater unless the nutrient is effectively incorporated within 72 hours (NRCS 590)
- No manure application within 100 feet of direct conduits to groundwater (sinkholes, private wells)
- Prohibiting the fecal contamination of water in a well
- No application on fields with soils that are 60 inches thick or less over fractured bedrock when ground is frozen or where snow is present

- No application when snow is actively melting
- No application on areas of fields that have less than 24 inches of soil to bedrock. Field verification procedures include ground depth evaluations on fields with mapped shallow soils. A detailed protocol for determining bedrock depth on fields with such soils is outlined in the NMP. All fields must be evaluated before applying manure
- All applications of manure and other nutrient sources must be consistent with UW crop recommendations (A2809), applicable sections of NRCS 590 and NR 243 land application requirements. The UW recommendations are written to avoid over-application of nutrients (Nitrogen and Phosphorus) above crop demand.
- Phosphorus-based nutrient management planning

Taken together, NMP requirements help:

- Maximize use of available nutrients for crop production;
- Prevent delivery of manure and process wastewater to waters of the state;
- Minimize loss of nutrients to waters of the state to prevent exceedances of surface and ground water quality standard;
- Prevent impairment of wetland functional values;
- Retain land applied manure on the soil where they are applied with minimal movement.

Comment: For the people that live near the Gilbert Farm and live near the fields where they spread their liquid manure, have their wells been tested? Results?

Response: The department has reviewed available well testing information in the general area of Gilbert Farms. The department, however, does not require private well testing as part of the WPDES permit. In addition, the department does not regulate private drinking water wells. It is recommended that private well owners sample their wells on an annual basis for nitrate and bacteria. Information about well testing is available through the DNR website at https://dnr.wi.gov/topic/wells/privatewelltest.html. Additional information is available at https://dnr.wi.gov/topic/Wells/homeowners.html and https://dnr.wi.gov/topic/DrinkingWater/Manure.html.

Comment: The Department identified deficiencies in separation from bedrock and groundwater, incomplete runoff controls, and the need to abandon an existing solid stacking area, all of which must be corrected and documented to comply with NR 243 standards and permit conditions. Now, 8 months later, we still have no confirmation that the issues WDNR raised have been acknowledged, addressed, or mitigated by Gilberts. Without expeditiously addressing these problems, Gilberts is in no position to seek permit coverage for an expansion.

Response: Once Gilbert Farm's WPDES permit is issued and in effect, the permit will address the identified deficiencies. This is Gilbert Farm's first WDPES permit therefore, until the permit is issued and in effect, the farm is not required to implement any permit actions. Gilbert Farms is operating without a permit and is subject to enforcement for operating without authorization.

Comment: WPDES permits for CAFOs require a "zero-discharge" standard for runoff from animal production areas to navigable waters, meaning no legal discharge of manure or process-wastewater pollutants is allowed directly from confinement, storage, or feed areas except in very limited, precipitation-related circumstances. However, it appears that Gilbert's feed storage area

is currently discharging pollutants to Wetland 5, and the proposed expansion will only continue these discharges. The Outland Design report dated October 2024 and revised February 2025 states, "1,550 feet of drain tile proposed to surround the existing feed storage area will collect leachate and runoff via perforated pipe and connect to the collection manholes." See Outland Design Report at p. 18. If the feed storage area does not meet the required thickness or separation distance from bedrock in NRCS Standard 561 and has no runoff controls now, and the feed storage area does not have a runoff control system that meets the requirements of NR 243.13, means Gilbert is currently discharging.

Response: The drain tiles surrounding the feed storage area discharge into the collection manhole and transfer to the runoff collection facility. No drain tiles that collect leachate are designed to discharge to wetlands and no evidence that indicates a discharge to waters of the state has been observed by the department.

Comment: 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. 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. 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. 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.

Response: This will be Gilbert Farms first WPDES permit; therefore, permit requirements were not required to be followed prior to the issuance of this permit. The permit contains a schedule to have the solid stacking pad abandoned.

Comment: How can there be wells, streams, wetlands/marsh (100ft from WSF 1) and lake Michigan in close proximity to the farm's operations?

Response: There are no setback requirements in ch. NR 243, Wis. Adm. Code for facilities on the production area to surface waters of the state. Additionally, Ch. NR 243, Wis. Adm. Code and NRCS Conservation Standard 313 do not have setback requirements for waste storage facilities to wetlands, streams, or lakes. S. NR 243.15(1)2 Wis, Adm. Code does require that private wells are located greater than 250 feet from a reviewable facility (s. NR 243.03(56), Wis. Adm. Code) for a CAFO. Separation distance to private wells were verified during the evaluation review.

Comment: Will DNR require Gilbert Farms to retrofit and install leak detection for existing manure storage facilities? If not, why not?

Response: Gilbert Farms is required to install a groundwater monitoring system around the production area. This is a method of leakage monitoring.

Comment: Is the historic 24-hour, 25-year rainfall an appropriate yardstick for liquid manure containment facilities? Predictions are for wilder and wetter weather in the coming years. Consider the consequences of falling short on manure storage volume with a sinkhole so close nearby.

Response: NRCS 313 requires that structures include an emergency volume of the 25yr – 24hr precipitation and runoff from the facilities drainage area when calculating the MOL volume. NR 243.13(2) requires that containment or storage structures are designed to include the runoff and direct precipitation from a 25-year, 24-hour applicable rainfall event. The 25-yr, 24-hour rainfall depths used are from NOAA Atlas 14, which was adopted by USDA NRCS in 2015. It is expected that new rainfall depths will be developed with more recent rainfall data in the next several years.

Comment: Warmer winters and the increased frequency and intensity of rain make a 25- year rain event over 24- hours for operational and emergency storage needs seem inadequate and should be adjusted to a 100- year event or more.

Response: s. NR 243.15(3)(k) Wis. Admin. Code requires that a waste storage design volume includes the anticipated direct precipitation on the storage from a 25-year, 24-hour storm event. The effluent discharge limitations in NR 243.13 requires that containment or storage structures are designed to include the runoff and direct precipitation from a 25-year, 24-hour applicable rainfall event. NRCS 313 Conservation Practice Standard design criteria for a waste storage's design volume includes an emergency volume of the 25yr – 24hr precipitation and runoff from the facilities drainage area.

Comment: The operation currently has inadequate storage capacity and is relying on future expansion to meet the state-required 180 days of storage. Until the new system is proven functional, the risk of emergency spreading or runoff events remains high.

Response: A compliance schedule is included in Section 3.11 of the permit for Gilbert Farms to construct 180 days of liquid manure storage capacity. Management of the storage facility and land application practices will be required to limit the need for emergency surface applications during the high-risk runoff period, February and March.

Comment: Any Door County CAFO expansion should come with extraordinary safeguard of lined pits.

Response: The new storage facilities are designed with an additional level of protection for Sensitive Environmental Settings (SES) according to the requirements for Environmental Concrete Structures, American Concrete Institute (ACI) 350 in accordance with NRCS Conservation Practice Standard 522.

Comment: Does the current Code allow the DNR to consider or require a berm around the liquid storage tank for safety reasons?

Response: s. NR 243.15(3) Wis. Admin. Code does have provisions to assess whether secondary containment is necessary to prevent discharges of manure to groundwater or surface water.

Comment: Outland Design report dated October 2024 and revised February 2025 states, "WSF 3 is proposed to contain animal waste pumped from the proposed and existing barns via pipeline and transfer systems proposed within this design report for long-term storage. On an as-needed basis, manure will be transferred between the existing waste storage facilities and WSF 3 via a tanker truck." See Outland Design Report at p. 13. There doesn't appear to be an engineered access road near WSF 1 and WSF 2 and there is a 4-inch perforated drain tile around the lagoon; and WS 3 does not appear to have any road access on engineer drawings. See 8539-10000 Expansion Plan. These characteristics would make accessing the lagoon difficult because the soil is too soft, and any tanker trucks would not be driving on a properly engineered road. Roads must be constructed for stabilization, erosion control, and with proper compaction and grading. Constructed properly they can appropriately address water flow across a site. When sites are improperly used for such purposes, water flows incorrectly and can pick up debris, sediment, and pollutants, and cause erosion. The proposal here could affect the integrity of the Gilbert lagoons and the production area and cause unpermitted discharges.

Response: Access roads are not under the aspect of the department's CAFO Program's engineering review.

Comment: WDNR CAFO Engineer Supervisor Bernie Michaud's March 5, 2025 Evaluation Review of the Gilbert WPDES permit application found that multiple manure and feed storage facilities, along with waste handling systems, require further actions to meet state environmental regulations, including additional construction, soil testing, installation of runoff controls, and groundwater monitoring plans.

Response: Gilbert Farms Ltd WPDES Permit section 2 Groundwater Requirements and section 3 Schedules addresses groundwater monitoring requirements, and all further engineering actions required.

Comment: Gilbert's WSF1 was constructed in 1989, before there were design standards or engineering reviews per NR 243, and is at risk of structural failure, leakage, and environmental disaster, given its proximity to a mapped wetland and a mapped sinkhole. Additionally, WSF1 does not meet setback requirements. DNR should require immediate replacement or closure of this unit. DNR also must require Gilberts provide a plan to manage CAFO waste that would otherwise be stored in WSF1, and for that proposal to be detailed in Gilbert's application. We note that WDNR's March 5, 2025, Evaluation Review letter addressed, in part, some concerns with both WSF1 and WSF2, but it is unclear whether Gilberts has met the compliance schedule proposed by WDNR.

Response: The department's evaluation of WSF1 included a review of its conformance with production area requirements, including surface water and groundwater quality standards. The department is requiring leakage monitoring system in the form of groundwater monitoring wells for the WSFs due to proximity to sinkholes and other sensitive environmental settings. Results from the monitoring wells at the site will confirm separations from subsurface saturation and if the WSFs are compliant with groundwater quality standards. If the structures are found to be

causing exceedances of groundwater quality standards, the department may require the structures to be modified to current design standards or other additional actions or practices in order to ensure compliance with groundwater quality standards.

Comment: Why would WDNR allow 1,550 feet of perforated pipe to drain leachate and contaminated runoff? Also, why would WDNR allow a 5" solid pipe connected to the 4" perforated pipe to discharge to Wetland 5? All of the proposed design elements for this perforated drain tile screams of discharges of pollutants to waters of the state, that WDNR is not acting on and is not attending to in its review of Gilbert's expansion application.

Response: The feed storage area drain tiles are intended to capture leachate that may leak through the construction joints. A leachate drainage layer is required in the feed storage area design to capture this leachate and transfer it to permanent storage. The drain tiles transfer the leachate to the collection manhole and ultimately the runoff collection facility. No drain tiles that collect leachate will discharge to wetlands. The 4-inch perforated pipe that discharges to Wetland 5 is located around the perimeter of the WSF3 and runoff collection facility to intercept perched sub-surface water from the adjoining areas for the purpose of protecting the WSF liner, not for collecting leakage from the WSF. The leachate drainage layer transfers leachate to a collection manhole where it transitions to an 18-inch diameter solid pipeline to the runoff collection facility. There is no 5-inch solid pipeline in the design.

Comment: Gilbert Farms should be required to retrofit and install leak detection for existing manure storage facilities. 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 designed to meet the "Sensitive Environmental Settings" standard outlines in NRCS Technical Standard 313. No such guarantee exists for the other two facilities. 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."

Response: The department is requiring leakage monitoring system in the form of groundwater monitoring wells for the WSFs due to proximity to sinkholes and other sensitive environmental settings.

Comment: 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. These systems provide early warning of liner breaches or structural defects and are a cost-effective safeguard for groundwater quality.

Response: The department is requiring leakage monitoring system in the form of groundwater monitoring wells for the WSFs due to proximity to sinkholes and other sensitive environmental settings.

Comment: The department received comments regarding the 25-year, 24-hour rainfall event amounts including:
-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. 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.
-Will DNR change the rainfall event standard it uses in WPDES permits to reflect more recent precipitation data?
    a. If not, why not?

Response: s. NR 243.04 Wis. Admin. Code allows the department to use more recent rainfall probability data that is approved by the department. The 25-year, 24-hour storm used in Gilbert Farm's days of storage calculations were taken from the most recent NOAA Atlas 14 rainfall data for Door County, which was adopted by USDA NRCS in 2015. It is expected that new rainfall depths will be developed with more recent rainfall data in the next several years.

Comment: 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?

Response: Per permit Section 1.5.1 General Spreading Restrictions. The permittee shall land apply manure and process wastewater in compliance with the following: *Manure or process wastewater may not run off the application site nor discharge to waters of the state through subsurface drains due to precipitation or snowmelt except if the permittee has complied with all land application restrictions in NR 243 and this permit, and the runoff or discharge occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event.*
NOAA Atlas 14 rainfall data for Door County which was adopted by USDA NRCS in 2015 is used to determine the amount of rainfall for a 25-year, 24-hour rainfall event.

Comment: There is a sinkhole identified far to the north on a neighboring property in the center of the wetland but nothing along the southern edge of this wetland near exposed escarpment, just west of PASTURE (see Figure 4). When I spoke with Bill Schuster on 10/29, I asked if he could confirm that the sinkhole is indeed within the rough blue circle on Figure 1. He said that it is but is located more toward the bottom of the circle at the base of the exposed rock wall. How can the project engineers design effective secondary containment measures into the storage facilities (old & new) to protect the public from a potential ecological disaster if they don't even know the sinkhole's location or of its existence? In the Design Report - Facility Expansion Plan - Gilbert Farms Ltd. – Revised February 2025 (attached hereto) (the "Revised Design Report") in Section 1.5.10, Bedrock Profiles in Karst Areas (p. 7), the engineers describe several sinkholes on the property but not the one in question. Also, on pp. 13 & 15-16 of this same report, under "Sinkholes & Karst Features" and "Sensitive Environmental Settings", respectively, the sinkhole of concern is not identified.

Response: The department is requiring leakage monitoring system in the form of groundwater monitoring wells for the WSFs due to proximity to sinkholes and other sensitive environmental settings. The new WSFs are designed according to the requirements for Environmental Concrete Structures, American Concrete Institute (ACI) 350 in accordance with NRCS Conservation Practice Standard 522.

Comment: Just how old is WSF1? The description of the "Waste Storage Facilities" from the December 2023 onsite inspection describes WSF1 as being "constructed in 1987" (see Figure 5, 2nd paragraph). The Outland Design report "Evaluation of Previously Constructed Facilities / Systems – Waste Storage Facilities – Gilbert Farms Ltd.; Revised November 2024" (the "Existing WSF Report") indicates on p. 2, under 1.1.2 Site Walkthrough, that the WSF1 "was originally installed in 1989". SWCD's 6/13/2023 letter to Gilbert Farms says, "installed in 1990" (see Figure 6). Finally, on Tim Gilbert's initial permit application to expand to CAFO status, dated 3/4/2023, he discloses on page 2 that WSF1 was built in 1996 (see Figure 7). However old this liquid manure storage lagoon is, "after 20 years of operation, the risk of mechanical failure or malfunction in these systems greatly increases, sometimes resulting in harmful manure spills" according to SWCD in their 2023 letter to Gilbert Farms (see Figure 6). The age of these existing storage lagoons is a concern as they continue to function as a critical component in Gilbert Farms' expanded configuration.

Response: WSF1 was designed in 1988 and is believed to be installed in 1989. This would put the storage at 36 years old. Aerial documentation verifies that the storage was constructed at minimum before 1992. The age of the storage is taken into consideration when the storage is evaluated and when the department may require an evaluation.

Comment: How close is WSF1 to the ignored sinkhole that is adjacent to the production area? My estimate, based on examining existing maps, is that the sinkhole is approximately 230 feet northeast of the NE corner of WSF1 and approximately 15 to 20 feet below the top edge of the lagoon. Would necessary setbacks or a need to construct redundant containment or diversion berms become relevant considerations? For example, a sinkhole on or near a spreading field has a 100 . setback prohibiting liquid manure application. This prohibition buffer increases to 300 feet during the winter months. Is there a similar prohibition or guideline in State law for safely locating a liquid waste storage facility in the vicinity of a sinkhole?

Response: WSFs located near a sinkhole would be considered a structure located on or near areas that are susceptible to groundwater contamination in s. NR 243.15(3)2, Wis. Admin. Code. The department is requiring leakage monitoring system in the form of groundwater monitoring wells for the WSFs due to proximity to sinkholes and other sensitive environmental settings.

Comment: The engineers make a point of disclosing how close private wells are to the storage facilities (Existing WSF Report, Appendix D, pp. 57 & 75 of 102). Is there a state standard for a safe distance from a 1.9M gallon, 35-year-old concrete lagoon to a down-gradient sinkhole?

Response: NR 243 does not have a setback criterion for sinkholes, unlike that for wells. The NRCS 313 Conservation Practice Standard in place at the time of design and construction of WSF 1 and 2 (02/1986) does not have a setback to sinkhole criteria.

Comment: Should WSF1 & 2 be rebuilt to the same standards as the proposed WSF3 (see attached Revised Design Report, top of p. 16, under "Sensitive Environmental Settings") due to being "within 400' of a karst feature" and considering the highly vulnerable surrounding karst environment? Similarly, can the DNR compel a CAFO to incorporate secondary containment features in its design when a sinkhole is this close and all downhill from the storage facilities?

Response: The department's evaluation of WSF1 included a review of its conformance with production area requirements, including surface water and groundwater quality standards. The department is requiring leakage monitoring system in the form of groundwater monitoring wells for the WSFs due to proximity to sinkholes and other sensitive environmental settings. Results from the monitoring wells at the site will confirm separations from subsurface saturation and if the WSFs are compliant with groundwater quality standards. The Department may require additional actions based on results from the monitoring.

Comment: Although there's technically 180 days of combined storage, the increased volume at the existing facilities cannot directly access the excess capacity at the new storage facilities, thereby stressing the older facilities. To remedy this, the Gilberts propose to transfer liquid manure "via a tanker truck", as needed, from the existing storage facilities over to WSF3 (see attached Revised Design Report, p. 13 under Facility Narrative). This plan exposes the production site to a spill every ﬁme such transfers are made. This spillage risk is exacerbated by the presence of the sinkhole, which is not accounted for in the engineering design. If Gilbert Farms had adequate buildable land to locate the expanded waste storage facilities at the same location, then no internal tanker truck transfers would be needed.

Response: CAFO permittees are required to have an Emergency Response Plan according to NR 243.13(6) to address spills.

Comment: The 180-day calculation referenced in Appendix B of the attached Revised Design Report (on p. 29 of 273) uses 1,773,421 gallons as the MOL of WSF1. The Gilbert Farms LLC 2025-2029 Nutrient Management Plan Narrative on page 2 shows the MOL of WSF1 at only 1,549,586. If this lower MOL for WSF1 is applied to the days of storage formula, the projected days of storage for the Gilbert Farms CAFO at full expansion is only 176 days (175.89). If the lower MOL for WSF1 is accurate, then the 180-day minimum threshold for projected days of storage has not been met.

Response: The 1,773,421 gallons volume for WSF1 was developed from additional survey results for the dimension and depth of WSF1 included in an approved engineering plan submittal. The department review of 180-day available liquid manure calculations used this more recent survey data in the days of available liquid storage calculations.

Comment: The department received numerous comments regarding the sinkhole near the production area of Gilbert Farms including:

-It's clear that this large "bedding plane" sinkhole was missed by the project engineers and not incorporated into design considerations.
- I am very concerned about the sinkhole on the property and the risk of runoff.
-Sinkhole near the production facilities needs to be addressed, as any manure containment breach will flow by gravity into the sinkhole and into the groundwater aquifer.

Response: The department is aware of the sink hole at the production site and has inspected the production area. In the approval for the new WSF, the permittee is required to meet the highest level of concrete (sensitive environmental settings or SES) for a waste storage facility designed for sites with poor soils, proximity to sinkholes, other karst features.
The department confirmed with Door County Soil and Water, who is very familiar with the site and landscape, that there is one sinkhole.

Comment: The department received comments related to public notice procedures including:
-The article in the Peninsula Pulse alluded to the fact that the "*The DNR has tentatively decided the WPDES permit should be issued but is currently taking public comments for 30 days after the July 23 issuance of the public notice*." This raises serious concerns. I'm interested in knowing on what basis the DNR would tentatively approve a WPDES permit prior to receiving public input? What weight do public comments actually carry in the decision-making process if a tentative approval has already been granted?
-It appears this permit is being rushed through as there was a small article in two publications recently and today is the last day to submit requests for a public hearing.
-It seems that insufficient public notice and short allowable time to communicate concerns regarding an expansion of an operation as environmentally significant as this should require a public hearing.
-I am also interested in learning about the details of the permitting process for this CAFO. How was the public made aware of the permit request? I am concerned that most are not aware and that this action would come as a concerning surprise to them.
-DNR should change their publication for notices to the Pulse like all/most other governments in the county. They appear out of touch.
-I was disappointed to see that the notice was published in the Door County Advocate, which is no longer the designated newspaper of record for the City of Sturgeon Bay. As of May 1, 2022, the Peninsula Pulse was officially designated as the newspaper of record by the Sturgeon Bay Common Council. Because the Wisconsin DNR requires public notices to be published in the designated newspaper of record to ensure proper public awareness and legal compliance, I believe this notice may not meet the statutory requirements. This raises concerns about whether the public has been properly informed and given the opportunity to comment or request a hearing.
-I would appreciate clarification on how the DNR plans to address this issue. Specifically:

- Will the notice need to be republished in the Peninsula Pulse?
- Will the public comment period be extended or restarted to ensure proper notice?
- What steps can I take to ensure my concerns are formally recognized in this process?
- Will the DNR host a public information session to alleviate fears that this permit was issued without proper public notice?

Response: Gilbert Farms LTD's WPDES permit was published in the Door County Advocate and the department's website on July 23, 2025, and October 4, 2025, for 30 days each. At this time, the department does not use the Door County Pulse for public notices.
According to s. NR 203.02(1) public notices are used to inform interested members of the public of a completed application, the tentative determination to issue or deny the permit as required in s. 283.39, Stats., and the public's right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a draft permit. The department followed the requirements for notification that are outlined in s. NR 203.02(4) for notification for public notices on draft permits. The department reviews all comments received during the public notice period, makes any needed changes to the permit, and makes a final decision on the permit which is documented in the final notice of determination.

Comment: To what degree has the underlying topsoil and karst geology been considered in determining the contamination risk to groundwater?

Response: Soil type and bedrock type are two factors that contribute to an analysis of groundwater contaminant susceptibility, along with depth to bedrock, depth to groundwater, and characteristics of surficial deposits. A discussion of these factors is included in the Groundwater Monitoring Review memo dated June 30, 2025, and they are included as reasoning for the recommendation to require groundwater monitoring at this facility.

Comment: The department received comments regarding groundwater
including:
-The Ian Anderson report to you stated …" the geological setting at Gilbert Farms makes this area of Sevastopol susceptible to contaminants". Meaning: contamination will most likely happen.
-Above that is rain. It seems apparent that the groundwater peak under the property is a result of rainwater passing downwards through animal waste and flowing down to the groundwater table, thus demonstrating its vulnerability to surface contamination from the farm above it. It also appears that any contaminated groundwater would then flow downhill to contaminate the groundwater in the surrounding area.

-Does the model used to protect against well contamination include aspects beyond surface movement of contaminated water, e.g., traveling through rock fissures, or contaminate travel in bolus form, as well as surface movement?
-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. 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.
-I have been testing phosphates & nitrates with Water Rangers & WAV for several years. The levels of these pollutants are increasing to dangerous levels.
-According to the DNR 90% of nitrate contamination can be traced back to agriculture. Many wells in these areas have already exceeded the Federal drinking water standards for nitrates.
- Given the location of the farm, the rock tilts toward Lake Michigan, so the groundwater, as it moves along through watersheds, not only threatens wells and eventually threatens the quality of

Lake Michigan water, but with bedrock fractures, it's possible it may also impact the Bay of Green Bay water and wells within that area.
-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.
-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?

-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?

-As the DNR report states: *The site-specific geologic setting at Gilbert Farms with only a few feet of soil depth to fractured bedrock, makes this area of the town of Sevastopol susceptible to contaminants. Groundwater monitoring is necessary to ensure that Gilbert Farms is meeting groundwater quality standards*. I am wondering if there should be additional monitoring of wells and watersheds in the area given the close proximity of the farm to environmentally sensitive areas, protected areas, lakes and parks.

-DNR's own hydrogeologist noted that potential sources of groundwater contamination for the County "include the Gilbert Farms production area and manure landspreading sites." Yet this permit does not require even one groundwater monitoring well at a single landspreading field.
-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. 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)." 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. 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.

Response: The department has conducted a detailed review of Gilbert Farm's 5-year nutrient management plan and confirmed the plan meets the nutrient management requirements of NR 243.14 and NRCS 590. This includes the Silurian bedrock performance standards in NR 243.143 which were developed to address pathogen losses to groundwater resources from agricultural land application sites. In addition, the department recognizes land application sites in Gilbert Farm's nutrient management plan are in high or medium-high groundwater susceptible areas and, as a result, is requiring the farm to more closely monitor their land application practices and field management practices to ensure excess loss of nitrogen does not result in groundwater quality exceedances. One option to meet this requirement could be groundwater monitoring at these land application site(s).

Comment: Outland Design, acknowledged the hydrogeologic vulnerability of the production site, confirming that groundwater monitoring was warranted. 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. 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?

Response: The permit includes a schedule to submit a groundwater monitoring plan by October 1, 2026. This plan will outline the location and number of groundwater wells Gilbert Farms is proposing to install.

Comment: The department received comments regarding responsibility of a contaminated well including:
-How long will it take to clean up the inevitable spill? Who will pay for the clean-up? Who pays for the damage done to near private property?
-Who pays for people who lose their wells to contamination? What happens? Process?
-If there is a spill that contaminates our wells, will we be able to file a class action against the Gilbert Farms and take ownership of their land and facilities to pay for the cleanup?

Response: In accordance with Wisconsin's spills law, the farm is responsible for all contamination that arises as a result of a spill. Under s. NR 243.14(2)(b)3 Wis. Admin. Code *manure or process wastewater may not cause the fecal contamination of water in a well.*

The department does not regulate private drinking water wells. Therefore, we recommend private well owners sample their well water on an annual basis for nitrate and bacteria. Information about well testing is available through the DNR website at https://dnr.wi.gov/topic/wells/privatewelltest.html. Additional information is available at https://dnr.wi.gov/topic/Wells/homeowners.html and https://dnr.wi.gov/topic/DrinkingWater/Manure.html.

Homeowners with levels of nitrates or other contaminants in exceedance of state drinking water standards should contact their local DNR private water supply specialist. If a homeowner suspects their well is contaminated with manure, they should immediately contact a regional DNR Private Water Supply specialist (see list at https://dnr.wi.gov/topic/Wells/PrivateWaterSupply.html) or CAFO specialist (see contact map at https://dnr.wisconsin.gov/topic/CAFO/contacts.html to investigate the source of contamination. Where the source of the contamination can be identified, the department will determine the appropriate enforcement response. In some cases, the department can provide an emergency source of water, technical assistance for well treatment or replacement options and/or financial assistance for well replacement.

Comment: The department received many comments stating Gilbert Farms has insufficient acreage to spread the generated manure and process wastewater including:
-There is insufficient acreage at Gilbert Farms to safely spread all the solid manure that the CAFO will produce.
-Has it been established that Gilbert Farms has secured enough land to spread the estimated increase in manure without fouling the groundwater in eastern Sevastopol?
-Insufficient acreage at Gilbert Farms to safely spread all the solid manure that the CAFO will produce.
-Land application plans are insufficient to guarantee safe dispersal of nutrients. The acreage available, much of it rented, may not provide long-term assurance of sustainable nutrient absorption.
-Will DNR require Gilbert Farms to provide documentary evidence that it has the spreading acreage it claims to have?
-Does the applicant intend to change the acreage for application from 1,425 acres?
-Gilbert has approximately 0.6 acres per animal unit available for landspreading of CAFO waste this is far below the Department of Agriculture, Trade, and Consumer Protection recommendation of 1.5 acres per animal unit. Gilbert should have at least 3,645 usable, spreadable acres available.

Response: Per Gilbert Farm's conditional 5- year nutrient management plan approval letter on December 4, 2025, after completing a review of Gilbert Farms Ltd 2025-2029 Nutrient Management Plan (NMP) the Wisconsin Department of Natural Resources (department) is providing conditional approval that it is consistent with Nutrient Management Requirements in s. NR 243, Wis. Adm. Code.
The department confirms that:
-That Gilbert Farms Ltd currently has 2,046.1 acres (859.5 owned and 1,186.6 controlled through contracts, rental agreements or leases, or under manure agreements) of which 1,425.3 are spreadable acres.
-That no fields are directly adjacent to or have high potential to deliver nutrients and sediment to a 303(d) impaired water.
-That no fields are directly adjacent to or have high potential to deliver nutrients and sediment to outstanding/exceptional waters.
-That fields included in the NMP are located within the well head protection area for the City of Sturgeon Bay.
-That no fields are tiled.

-That all fields will be checked for the following features prior to/during manure or process wastewater applications: soil areas with possible shallow groundwater (i.e., within 24 inches of surface) at the time of manure application; required setbacks associated with wells, navigable waters, conduits to navigable waters, grassed waterways, wetlands, possible soil erosion/flow channels.

Comment: The inadequacy of NMP acreage is a legal reason for the WI DNR to deny the permit. Alternatively, if a verifiable acreage can be established, does the DNR have the authority to set the AU at a level that can be comfortably supported by the verifiable acreage?

Response: The department does not believe there was limited acreage available for land application within the farms NMP. The department's authority to require verification of land spreading acres arises when the department makes a determination that there is limited acreage available for land application (NR 243.14(1)(b)). For this reason, verification is not necessary. The farm had adequate acres and at least 180-days of storage, there an AU cap limit in this permit is also not necessary.

Comment: It's estimated that approximately 587 acres of Gilbert's CAFO waste fields are already impermissibly located within wellhead protection areas. We recommend that these wellhead areas, and wellhead areas in any fields added to Gilbert's spreading plan by an expansion, be protected by buffers of at least 1,000 feet.

Response: The department does not have authority to prohibit manure and process wastewater within wellhead protection areas for CAFOs. CAFOs are, however, prohibited from applying manure and process wastewater within 1,000ft of any community or municipal wells.

Comment: Accounting for the alfalfa acreage, 21,452,275 gallons of liquid manure and processed wastewater would have to be applied to approximately 617.5 acres annually (1,379.5 spreadable acres - 762 alfalfa acres = 617.5 spreadable acres). This would be two and a half (2.5) to five (5.1) times the recommended application rate specified in the "Silurian Bedrock Standards". The application of 34,741 gallons of liquid manure per acre annually on door county highly karst geology and very shallow soils, aside from violating the "Silurian Bedrock Standards", would have serious negative consequences for Door County well water and Door County water quality.

Response: CAFOs are allowed to apply manure and process wastewater on Alfalfa acres. This facility shows multiple applications each year on alfalfa acres, which is a common strategy used by farms in Wisconsin. The NMP approved by the department showed planned manure and process wastewater applications to the volume of 21,452,275 with no compliance issues such as overapplications on restricted fields. All SNAP plus reports, including the Compliance Check report, can be viewed within the NMP document set.

Comment: Much of the cropland owned or rented by the operation, including the farm site itself, has minimal soil depth above bedrock. Combined with the presence of numerous karst features in the area, this creates a significant risk of groundwater contamination.

Response: Fields with less than 20ft depth to bedrock have been identified within the NMP. These fields were reviewed and approved for application rates laid out in the Silurian Bedrock Targeted Performance standard. Field restrictions, including Karst Features, are required to be identified on the farms Restriction Maps and required setbacks to those features are required during land application of manure and process wastewater.

Comment: SOIL DEPTHS SUSCEPTIBLE TO CONTAMINATION - depths under 20 feet were considered *highly sensitive*, 21 to 50 feet *sensitive*. (source Wisconsin DNR Workgroup meeting 11/23/15, DNR.WISCONSIN.GOV)

Response: The Silurian Bedrock Targeted Performance in c. NR 151 Wis. Admin. Code standard lays out additional restrictions to fields with less than 20ft to Silurian bedrock.

Comment: What are the current amounts of liquid and solid manure application (not disclosed in the Public Notice)?

Response: Please see the approved NMP reports for these values. The link to the 5-year NMP is found here: AG-NMP-NE-2024-15-X09-05T12-04-38

Comment: 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.

Response: The NMP approved by the department showed planned manure and process wastewater applications to the volume of 21,452,275 with no compliance issues such as overapplications on restricted fields. All SNAP plus reports, including the Compliance Check report, can be viewed within the NMP document set.

Comment: *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.

Response: All fields in the approved NMP that have soil test P levels greater than 100ppm P were shown to meet the required P drawdown over the next 4 years. This can be viewed on the 590 Assessment report in the columns labeled "P2O5 Target lb/ac and Rot P2O5 Bal lb/av". The balance column must be less than the Target.

Comment: *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 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).

Response: The UW recommended rates in Table NM5 of the NMP (the "sorted by crop report") are the middle of the range of recommended rates. SNAP plus uses the high end of the nutrient recommendation range when determining compliance. For example, if the UW recommendation is shown at 190 lbs, the high-end of the range is 210 lbs. This is the value that SNAP Plus uses to determine overapplications of nutrients, not the number presented on the "sorted by crop report". Also, the Nitrogen UW recommendations on legumes (alfalfa and soybeans) is 0. However, there is an allowance to apply Nitrogen on these crops since they will use applied available Nitrogen before they fix their own Nitrogen from the atmosphere. All fields in the approved NMP were shown to have no future overapplications of nutrients.

Comment: *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. o Despite these inadequate soil samples, DNR still approved the WPDES permit.

Response: The fields pointed out regarding not having enough soil samples are due to rounding errors in SNAP Plus. SNAP Plus uses a 1 sample per 5-acre requirement of fields. So, when field acreage is between the 5 acres requirement, it may show 1 additional sample needed, which is not the case. The fields pointed out with having too old of samples; the age of the samples is based off of when the NMP was submitted. At the time of submittal, all these fields (besides field Weber) had up to date samples. The farm is required to take samples once every 4 years, 1 sample per 5 acres.

Comment: Does DNR acknowledge that CAFOs are point sources under the Clean Water Act?
a. If not, on what basis?

Response: Yes, the state regulates waste storage structures and manure application at large farms as CAFOs (Concentrated Animal Feeding Operations) under the U.S. EPA Clean Water Act's pollutant discharge permit program (known in Wisconsin as WPDES). Under this law, a large CAFO is defined as a point source.

Comment: The fact that the amount of manure that is being proposed to be spread in the small field along Alabama Street right in the City of Sturgeon Bay itself. This field affects the wells of the city and its roughly 10,000 residents. The field is also right near Little Creek that runs right near the, Sunrise Elementary School, Sturgeon Bay High School, and Door County Medical, where some of the youngest and most vulnerable people in our community spend significant amounts of time.

Response: All fields in the approved NMP are required to follow all restrictions laid out in NR 243.14 and NRCS 590. Specific setbacks and nutrient restrictions are required in order to mitigate the potential for nutrient loss to surface and groundwater.

Comment: It would also be reasonable to limit the application of manure on soils with shallow soils to have soil phosphorus levels below 50 ppm. This would reduce the risk of excess phosphorus moving into nearby surface waters. I understand that the use of the Phosphorous Index can be calculated to allow for limited manure applications on these high phosphorous soils. Considering the already compromised surface and groundwater conditions of this area, this cautious approach would be beneficial.

Response:
NR 243.14 has multiple phosphorus restrictions based on soil test phosphorus levels. The first requires fields with over 50ppm to not apply more phosphorus than what is removed by the crops over a crop rotation. Second, fields with over 100ppm are required to drawdown phosphorus over the course of the rotation by limiting applications of phosphorus to 50% of the removal rate. Third, fields with over 200ppm are prohibited from manure and process wastewater applications. Additionally, fields with over 50ppm are prohibited from applying commercial phosphorus except for 20lbs/ac in the form of starter fertilizer. This is all required on top of the Phosphorus Index requirements of 6.

Comment: The process of using water to move manure is foundational to the operation of CAFOs. Science has proven that this makes the nutrients in the manure far more mobile than solid manure. Just because this is the way that CAFO's handle manure is not adequate reason to justify this practice. With these shallow soils above bedrock, liquid manure should not be applied to these soils at the rates needed for this CAFO.

Response: Fields with less than 20ft to bedrock have been identified within the NMP. These fields were reviewed and approved for application rates laid out in the Silurian Bedrock Targeted Performance standard. Field restrictions, including Karst Features, are required to be identified on the farms Restriction Maps and required setbacks to those features are required during land application of manure and process wastewater.

Comment: The 32-acre field named "PASTURE" is located on the same parcel as the Gilbert Farms production area. The NMP's non-winter restriction map shows that only 18 of the 32 acres are eligible for spreading due to numerous topographical restrictions. During 2026, much of this remaining spreadable acreage will be used for the expansion of the production facility, specifically for the Waste Storage Facility 3 (WSF3), the Food Storage Area Runoff Control Facility (RCF4), the Solids Stacking Pad (WSF5), and the new barn. Accordingly, the lion's share of PASTURE will not be available for spreading for the remainder of the NMP term and what minimal spreadable acreage remains may not be accessible in 2026 due to the construction. The NMP calls for 248,400 gallons of manure to be spread on PASTURE during 2026 that will not be realized (see p. 5 of 8 of the 2026 Spreading Plan).

Response: Currently, the field is available for land application of manure and process wastewater. If part of the field is removed from agricultural use, the farm is required to update

the maps and the spreadable acres in their NMP update due on March 31st of each year. This update must show that the farm maintains adequate land base for manure and process wastewater applications.

Comment: According to the 12/4/24 letter of conditional approval for the NMP (p. 2), the field identified as "Weber" is not eligible for spreading until "compliance with NR 243 and other applicable codes" is demonstrated. Presumably, this would include "default soil tests." Please confirm if such compliance has been demonstrated to date and, if yes, what are the results of the soil tests? In the spring of 2026, "WEBER 1-ES" is scheduled to receive 824,400 gallons of liquid manure (see p. 6 of 8 of the 2026 Spreading Plan). If such approval has not been established, then this spreading total should be removed from the NMP calculations.

Response: This will be the first WPDES issuance for Gilbert Farms, the farm is not required to submit an NMP update. Once the farm has a WPDES permit, they will be required to submit an NMP update annually on March 31st showing updates to the NMP including soil tests. Fields that do not have compliant soil testing are prohibited from being land applied on until up to date tests are taken.

Comment: According to the non-winter restriction maps for the Gilbert Farm NMP, both "PETERSON" & "SCHUMAKER" appear to be completely prohibited from spreading. Why are these two fields included in the NMP when there is no liquid manure either planned or allowed to be spread on these fields during the NMP term?

Response: Although fields may be prohibited from manure and process wastewater, they may still receive commercial fertilizer. The department recommends all fields used by the CAFO be included in the NMP. If the fields are listed as prohibited, they should be removed from the total spreadable acres. No manure or process wastewater application are planned on these fields in Gilbert Farms' NMP.

Comment: The field named as "SMITH" in the NMP was previously identified as an "S & S Jerseyland Dairy LLC" spreading field and the field named "SCHMIDT" in the NMP is owned by Randy J. Schmidt who is also the owner of S & S Jerseyland Dairy LLC. Can you confirm that neither of these spreading fields are currently included in the operational NMP of S & S Jerseyland CAFO?

Response: The department verified field "SMITH" and "SCHMIDT" are operated by Gilbert Farms. Field "SMITH" is an approved CAFO field for Gilbert Farms Ltd. not S&S Jerseyland LLC. Field "SCHMIDT" is owned by Randy Schmidt; however, Gilbert Farm's Ltd. Has received approval from both the landowner and the department to have this field in their NMP.

Comment: The "BUZZY TONG" 32-acre field is identified NMP (on p. 7 of 23) as one of three fields available for emergency winter spreading. The winter restriction map shows a concentrated flow channel through the middle of this field and a large area directly west of this field where the water table is within 24 in. of the surface, presumably in the Litle Creek watershed. This does not appear to be a conducive location for minimizing "pollutant delivery to the waters of the state". BUZZY TONG is located within the corporate limits of the City of Sturgeon Bay and well within

the “zone of contribution” for its municipal wells. Winter spreading would be primarily limited to the green area in the southern 1/3rd of the field, which is adjacent to a residential neighborhood. Given these factors, should BUZZY TONG be designated for emergency winter spreading.

Response: This field is designated as an ‘Emergency Application of Liquid Manure’ and ‘Solid Manure’. This means that only in the case of an emergency would it be approved to receive liquid manure when the ground is frozen or snow covered and would need additional department approval prior to it occurring. Emergency applications of liquid manure are only approved by the department in true emergencies in order to mitigate greater impact to water quality. For example, if a manure storage is about to over top, and the only option is land spreading.

Comment: BUZZY TONG has one of the higher phosphorus levels of Gilbert Farms’ 50 spreading fields testing at 104 ppm on 9/23/2020 (see FM6 Soil Test Report, p. 1 of 6). Given that the Permit requires soil testing “at least once every four years” (see Draft Permit Section 1.6.2 on p. 9), isn’t a soil test currently overdue and required before any spreading (winter or non-winter) occurs on BUZZY TONG?

Response: The field pointed out with having too old of samples; the age of the samples is based off when the NMP was submitted. At the time of submittal, this field had up to date samples. The farm is required to take samples of the requirement of once every 4 years, 1 sample per 5 acres. Fields that do not have up to date sample are prohibited from manure and process wastewater application until samples are taken.

Comment: The NMP calls for 414,450 gallons of liquid manure to be spread on BUZZY TONG next fall (see p. 2 of 8 of the 2026 Spreading Plan). If this test doesn’t occur, or it comes in at over 200 ppm, this spreading will be prohibited. Shouldn’t the status of BUZZY TONG as a spreadable field be resolved prior to permit issuance? Given the infrequency of required soil testing (at least once every four years), could the DNR require a soil test for all fields prior to permit issuance in order to establish a “baseline” to uniformly gauge the impact of future spreading on each field?

Response: The age of the samples is based off when the NMP was submitted. At the time of submittal, this field had up to date samples. The farm is required to take samples of the requirement of once every 4 years, 1 sample per 5 acres. Fields that do not have up to date sample are prohibited from manure and process wastewater application until samples are taken. If samples would come back over 200ppm P, the field would be prohibited from manure and process wastewater and would be required to be updated in the NMP update.

Comment: In the Spreading Plan Report (see p. 2 of 6), under Nutrient Source Summary for 2025, 5,737,664 gallons of liquid waste is shown as “Volume” generated from “Pit West”, while 10,272,750 gallons is shown as “Amount Applied” on spreading fields. How is this possible when the combined MOL of the liquid waste storage facilities of “Pit West” (WSF1 & WSF2) is only 2,400,120 gallons?

Response: The MOL for WSF 1 is 1,773,420 gallons and WSF 2 is 850,534 gallons totaling to 2,623,954 gallons. Gilbert Farms is expected to generate 5,737,664 gallons of manure and processed wastewater annually. The spreading plan report from the nutrient management plan may over-plan manure application to afford Gilbert Farms flexibility with manure applications during the crop year, resulting in more gallons shown as "Amount Applied" compared to "Volume Generated".

Comment: In 2026, on p. 2 of 8, under Nutrient Source Summary for 2026, 5,382,284 gallons of Feed Storage Area (FSA) Leachate is shown as "Volume" generated and the "Amount Remaining", though it does appear to be part of the 21,586,800 gallons "Amount Applied" to the spreading fields. How is this possible when the storage associated with the Runoff Control Facility (RCF4) is not scheduled to be completed until December 2027 (see Draft Permit, p. 30)? Even if "Interim Runoff Controls" are installed by 5/1/2026 (see Draft Permit, p. 30), I assume there would still be some leachate volume runoff into the wetland behind the production area prior to May 1st.

Response: Once the WPDES permit is issued and effective, Gilbert Farms will be required to comply with production area discharge limitations. Production area discharges to waters of the state authorized under this permit shall comply with water quality standards, groundwater standards and may not impair wetland functional values. Interim runoff controls will be required to prevent unpermitted discharges from occurring from the feed storage area until permanent runoff controls can be completed. Any process wastewater collected through the interim runoff control system will be land applied in accordance with the nutrient management plan. Depending on the interim runoff control system that is installed, any volume collected will be land applied in accordance with the nutrient management plan and permit requirements.

Comment: Is the "Spreading Plan" intended to reflect an actual plan for the CAFO or is it more of an exercise of balancing total volume generated with total volume applied?

Response: The NMP should reflect the actual plan for the CAFO. Often, planners over plan manure and process wastewater in order to give the farm options of where to go with the manure and process wastewater. So, if the farm decides to spread on a different field than anticipated, they still have a recommended rate for that field. The NMP update submitted each year is required to show actual applications of specific fields as well as showing the farm is still in compliance with their NMP.

Comment: Does the current Code allow the DNR to share maps and soil depths of land receiving liquid distribution with the general public?

Response: Here are links to all the information available on the ePermitting system.
Nutrient management plan– 5-year nutrient management plan materials submitted by the farm:
https://permits.dnr.wi.gov/water/SitePages/DocSetViewArchive.aspx?DocSet=AG-NMP-NE-2024-15-X09-05T12-04-38&Loc=cafo2&Lib=Archive
Application materials submitted by the farm:
https://permits.dnr.wi.gov/water/SitePages/DocSetViewDet.aspx?DocSet=AG-APP-NE-2024-15-X09-05T12-04-38

Comment: At the 11/23/15 Wisconsin DNR Workgroup meeting it was recommended that no more than 6,000 gallons of liquid manure be spread per acre per year (attached). Gilbert proposal is 21,452,275 annually. Their acres available for land application are 1,425. That would amount to 15,054 gallons per acres, which is 2 1/2 times the recommendation.

Response: The Silurian bedrock standard did not include a limit of 6,000 gallons per acre. The Silurian bedrock standard did include restrictions based on soil type, depth to bedrock and other restrictions to limit impacts to groundwater. Manure application rates are determined by the CAFO and their crop consultant and must comply with all nutrient management restrictions. Rates are based on nutrient needs of the crop and cannot go over the UW publication A2809 recommendations. Rates may also be restricted based on site specific areas or performance standards (examples being the Silurian Targeted Performance Standard). The NMP was reviewed to ensure that the nutrient application rates met the requirements of NR 243, NRCS 590, and NR 151.

Comment: What is the current vs. projected application densities per acre?

Response: Please refer to reports in the NMP where the application rates are listed, located here: https://permits.dnr.wi.gov/water/SitePages/DocSetViewArchive.aspx?DocSet=AG-NMP-NE-2024-15-X09-05T12-04-38&Loc=cafo2&Lib=Archive

Comment: What are the acceptable limits for manure application in this situation and how does this project compare?

Response: Planned manure rates for the full permit term can be found in the NMP documentation that was public noticed. Rates are based on crop nutrient needs and specific rate restrictions in s. NR 151.075 Wis. Admin. Code, ch. NR 243 Wis. Admin. Code, and NRCS 590.

Comment: The department received comments regarding GPS technology including:
-Can the DNR mandate GPS-guided vehicles for safer and accurate spreading on all NMP fields?
-Will DNR require Gilbert Farms to use GPS technology, like the free SMART app developed by UW, when land applying its waste?

Response: Under ch. NR 243 Wis. Admin. Code and NRCS technical standard 590, the department does not have the authority to require use of GPS technology by permittees. Per s. NR 243.19(2)(b) Wis. Admin. Code the permittee shall create and retain land application records, including information on the manure and process wastewater land applied.

Comment: Until WSF3 is completed in December 2026 and RCF4 in December 2027 (see p. 30 of the Draft Permit), there will be extreme pressure on Gilbert Farms to spread frequently given the limited 2,400,120 gallon combined maximum operating level (MOL) capacity of WSF1 & WSF2 (see p. 2 of the NMP Narrative). Is it safe for a CAFO to operate with such limited storage capacity relative to its herd size? There appears to be an increased risk when a CAFO prematurely expands its animal units (AU) prior to constructing its supporting storage facilities.

Response: Per permit schedule 3.09 Manure Storage Facility – Installation & 180 Days of Storage, the permittee is required to complete construction of WSF3 and submit post construction documents by December 31, 2026, which is prior to their proposed expansion. Completion of this compliance schedule will provide sufficient manure storage capacity. Once the farm constructs 180 days of storage capacity, Gilbert Farms is required to maintain 180 days of storage capacity, meaning the farm cannot expand their animal herd and increase waste generation beyond their available capacity. Proper manure application planning is necessary to ensure that discharges of manure from land application sites do not occur. The permittee is required to comply with nutrient management and permit requirements related to storage and land application of manure and process wastewater to minimize the risk of pollutant discharges to waters of the state.

Comment: Each field should have SITE-SPECIFIC TESTING before being allowed into the NMP...depth to water and soil depths...NEW MAPS. Establishing a baseline for the protection of Door citizens.

Response: All restriction maps were reviewed and found to meet the requirements of NR 243, NRCS 590, and NR 151. The department has no reason to believe that the restriction maps submitted are inaccurate or that additional site-specific testing is required.

Comment: Silurian Bedrock Mapping and Timing: Require field-verified depth-to-bedrock mapping for all spreading fields *prior to any final permit approval*. Reliance on NRCS desktop mapping is inadequate given the shallow, fractured nature of Door County's bedrock.

Response: NR 151.075(4)(d) allows for the use of NRCS soil survey information to be used to identify areas with less than 20ft to Silurian bedrock. The restriction maps were found to be in compliance with this section. If the department received additional information regarding field specific issues that were not addressed on the restriction maps, additional in field verification may be required.

Comment: Drain Tile Verification: Mandate field-by-field certification that no subsurface tile exists, with mapping and immediate containment protocols required if any tile is found. Hidden drainage networks can rapidly transmit contaminants into groundwater and waterways.

Response: The department has no reason to believe that the information provided on the restriction maps regarding tile features are inaccurate. If the department would receive information regarding a field specific issue with tile information not identified on the restriction maps, additional in field verification and updates to the maps may be required.

Comment: 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?

Response: If the farm field verifies depth to groundwater of shallow to groundwater soils ('w') in order to apply manure and process wastewater on them, that verification is required to be submitted with the farms NMP update each year.

Comment: Can the DNR require field verification of soil depth in these known vulnerable areas before issuing a permit?

Response: CAFOs are prohibited from applying manure and process wastewater on shallow to groundwater soils (less than 24 inches to groundwater) and shallow to bedrock soils (less than 24 inches to bedrock). If the CAFO verifies these soils in order to apply manure and process wastewater on them, that verification is required to be submitted with the farms NMP update each year.

Comment: According to NR 151.075(6), manure spreading cannot occur on fields with depth to Silurian bedrock of 5 ft. or less "until such fields are evaluated and ranked for risk of pathogen delivery to groundwater". Such "high risk" areas "must be avoided or must be lowest priority for manure application". The NMP restriction maps reveal that 45 of the 50 fields in the NMP have some soil depth to bedrock of 5 ft. or less, or some depth to water table of less than 24 in. Given the higher risk profile of northern Door County's karst geology, can the DNR insist on field verifications prior to permit issuance rather than prior to spreading?

Response: This section of ch. NR 151 Wis. Admin. Code required the farm to rank those fields based on risk of pathogen delivery to groundwater. It does not lay out criteria for ranking, nor does it prohibit any of those fields from receiving manure and process wastewater beyond the requirements in the rest of the Silurian Bedrock Target Performance standard. The approved NMP was found to be compliant with the NR 151.075 Silurian Bedrock Targeted Performance Standards.

Comment: The NMP uses NRCS maps and SnapPlus restriction layers but no field-verified depth logs for spreading fields. Verification is planned to occur later, prior to manure application. The amount of land base available for spreading is predicated on actual field conditions. WI DNR must require Gilbert Farms to complete and submit field-verified depth-to-bedrock mapping for all proposed spreading fields prior to permit approval. The WI DNR must publish the Silurian verification results and reopen the NMP review before approving any field for land application.

Response: 151.075(4)(d) allows for the use of NRCS soil survey information to be used to identify areas with less than 20ft to Silurian bedrock. The restriction maps were found to be in compliance with this section. If the department received additional information regarding field specific issues that were not addressed on the restriction maps, additional in field verification may be required.

Comment: The department received many comments regarding written land agreements including:
-Of the 50 fields, only 20 are owned by the Gilbert family. Of the remaining 30 fields, 19 have verbal or handshake agreements with 3rd parties to spread on their acreage. With over 60% of the agreements undocumented, how reliable are these fields to remain in the NMP for another four years? Can they be counted upon given the pushback we've already witnessed from a relatively small sample? Moreover, among these 30 fields are 42 separate landowners who could

pull their parcels from the NMP or sell them to someone who wants no part of spreading. Can the DNR require written agreements with 3rd party landowners, or signed affidavits, to assure a known availability of spreading acreage prior to Permit approval?

-Require signed spreading/export agreements for all non-owned fields before permit approval, with terms covering the 5-year permit window.
-Verbal agreements are NOT acceptable legal documents for manure spreading on other farms. There is no accountability if a farm decides to decline. How can this farm possibly quadruple its liquid manure and not increase the acreage where it will be spread? What is the owners' default if the available acreage decreases due to unenforceable verbal agreements?
-Require Signed Landowner Agreements: Require signed spreading/export agreements for all nonowner fields before permit approval, with terms covering the 5-year permit window.
-The 2025-2029 NMP Narrative lists several fields as having "verbal" agreements, and several agreements being 3-4 years in length. It is a basic premise of contract law that contracts for more than one year, violate the statute of frauds, and are not enforceable unless executed in writing. Similarly, contracts transferring an interest in real estate, such as leases and easement agreements, violate the statute of frauds and are not enforceable unless executed in writing. In a response dated December 16, 2016, Joe Baeten, Nutrient Management Plan Coordinator, sent a letter to Badgerwood CAFO with the following request: "Pursuant to NR 243.14(1)(b), Wis. Adm. Code the Wisconsin Department of Natural Resources is requesting Badgerwood LLC submit with the revised nutrient management plan copies of all rental contracts and manure agreements. At a minimum, these contracts/agreements must clearly state:

1. Landowner's Name,
2. Field names(s) by landowner,
3. Length of contract/agreement, and
4. Badgerwood LLC has permission to land apply manure."

NR 243.14(1)(b) provides additional guidance re: DNR's authority: "In cases where there is limited acreage available for application, the Department may require that the permittee submit additional or more specific information, including verification that the permittee has permission to land apply manure on fields not owned by the permittee.

Response: CAFO WPDES permits require that operations have adequate land base to land apply their manure and process wastewater. Failure to do so will result in permit noncompliance. The permittee has shown it has adequate acreage for the animal units for the first year of the permit term. The department may request land agreements if it determines the farm has limited acreage available for application. This can be the case if it is brought to the department's attention that lands within the NMP do not have permission for the farm to land apply manure. The department does not have sufficient evidence to question the availability of land in the approved NMP to receive manure and process wastewater; therefore, written agreements were not requested by the department.
The department has reviewed the operation's nutrient management plan and has determined that there is no land base overlap with other CAFO NMPs.
When a permitted operation proposes to expand during the permit term, they must confirm adequate land base and manure storage to support the addition of animal units. If the facility needs to build additional storage or land base to support the expansion those items are available

for public review and comment. Addition of a sample point for manure storage requires a permit modification; addition of any new land necessary is public noticed online.
The NMP is part of the permit and conditions of the approved NMP are legally enforceable.

Comment: The department received comments regarding an emergency response plan including:
-The Emergency Response Plan is also key, and the WDNR should carefully review and comment on that Plan.
- The current ERP is a generic template referencing the wrong county and missing site-specific contacts and spill-routing maps. A complete Door County–specific ERP with GPS routes, 24/7 contacts, and distribution to local responders must be submitted before permit issuance.

Response: Permit section 3.1 Emergency Response Plan requires the permittee to develop and submit an emergency response plan within 30 days from effective date of the permit. The emergency response plan shall be developed in accordance with s. NR 243.13(6) Wis. Admin. Code.

Comment: Will DNR require Gilbert Farms to start taking manure samples immediately and reporting those to DNR?
If not, why not?

Response: Consistent with Permit Section 1.6.2 and s. NR 243.19(1)(c), Gilbert Farms Ltd. is required to collect and analyze representative samples of land applied manure and process wastewater for the parameters outlined in the monitoring requirements for each sample point. Gilbert Farms Ltd. is required to collect and analyze two representative samples from each waste storage facility per month that manure is land applied from each waste storage facility. Gilbert Farms Ltd. is required to collect two representative solid manure samples from each solid manure source per quarter that solid manure is land applied from each source.

Comment: The department received many comments regarding noncompliance including:
-Will DNR condition any future expansion on Gilbert Farms's demonstrated compliance with all WPDES permit terms?
-I do not think it is in the legal purview for the DNR to issue a CAFO permit when the applicant is in non-compliance with its current operating permit — this alone is a reason to deny the permit simply because the DNR does not retain jurisdiction to consider the application due to the applicant's non-compliance with current operating requirements. This is a legal issue which the DNR needs to address before considering all other reasons for denial (or approval) of the subject permit.
-permit expansion would even be considered given Gilbert Farms is not in compliance with their current permit, as they have somewhere over 400 cows onsite in excess of their current permit.
-Has Gilbert Farms experienced any consequence for such illegal, reckless behavior?
-The Gilbert Farms' owners have repeatedly and willfully disregarded their number of animal units and run their business at CAFO size without a CAFO permit. Why would the DNR reward this behavior? Instead, the owners should be held to correct herd size and repeatedly monitored. Only when they have been compliant should they be even considered for a CAFO permit.

-The Gilbert farm has been in noncompliance with the state for more than two years concerning the number of cows on site. The state has done nothing to make them in compliance as to the number of cows allowed as to their permit to operate.
-Gilbert Farms has operated above the 1,000-animal unit (AU) threshold for multiple years without a WPDES permit. 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. § 283.89, 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.
-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.
-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?

-Fines and Legal Action: Operating without a required permit can result in significant fines and legal action. In one instance, a farm was fined over $200,000 for operating for eight years without a permit.

Response: Gilbert Farms Ltd. does not hold a WPDES permit therefore is not subject to WPDES permit requirements. The department has initiated enforcement actions for operating above 1,000 animal units without a permit.

Comment: The department received comments regarding DNR oversight and self-reporting including:
-How can the DNR rely on them to self-monitor given that twice they were over the limit for animals!
-Schedule inspections quarterly or at least semiannually, twice a year, starting immediately.
-Any Door County CAFO expansion should come with extraordinary safeguard of real-time monitoring.
-There are several reporting forms enclosed in the proposal with spaces requiring the measurement of several parameters. I see that this all depends on self-reporting. Neither the County nor your DNR office has the personnel to make other than rare visits. The owners have not had a history of compete honesty. The numbers of animal units have crept well above the 1000 animal limit to be termed a CAFO. Will we trust them to honestly report data and to promptly report spills.

-There are still many costly conditions in the submitted plan that need corrections to comply with permit. What's to say they are done correctly maintained and followed properly without onsite inspection during and after completion? Some are only required to send photo of work or updates.

Response: Self-reporting is key component of the federal NPDES permit program that serves as a basis for Wisconsin's WPDES permit program. The permit requires the operation complete ongoing self-monitoring and reporting of its production area and nutrient management activities. The permittee is required to report certain types of non-compliance within 24 hours to the department. In addition to self-monitoring/reporting by the permittee, the department (1) reviews annual reports summarizing self-monitoring activities and Nutrient Management Plan updates, (2) responds to citizen complaints, (3) may conduct a manure hauling audit on an operation's land application practices, (4) conducts a compliance inspection at least once every five-year permit term, typically during the last year of the permit term, (5) conducts more frequent inspections where warranted based on compliance issues or constructions activities and (6) responds to spills should they occur. Documented noncompliance is subject to DNR compliance and/or enforcement measures. The department is continually working to find ways to increase the amount of time staff can spend out in the field on compliance and enforcement activities.

Comment: The department has received comments regarding an Environmental Impact Statement including:
-Please require this farm to complete a community impact statement/study and an environmental impact statement/study. A proposed facility such as this, in this very populated area, in this very sensitive environmental area, is sure to have quite a few impacts to the community and environment. Under NR 150 I am fairly certain that the DNR has the authority to require these studies.
-DNR must do an environmental review for major actions and share it publicly.
-An environmental impact study is a necessity for several reasons, each one sufficient in itself: 1. the sink hole issue; 2. the sensitive protected lands nearby (e.g. Kellner Fen, Crossroads at Big Creek); 3. the documented fact that more Door County streams are impaired than the previous number; 4. the obvious need for better and more frequent sampling *prior to* activity that is known to cause problems, particularly a given field's capacity to absorb the spreading assigned to it.
-The applicant did not complete the Environmental Analysis Questionnaire (EAQ) because they answered 'no' to the screening questions on page 2; thus, electing no further environmental review. However, the Wisconsin Environmental Policy Act (WEPA) requires that an agency shall prepare a "detailed statement" for every "major action[s] significantly affecting the quality of the human environment." Wis. Stat. § 1.11(2)(c). 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. In spite of DNR's acknowledgement that this is a 'new source CAFO' on page 2 of the Permit Fact Sheet with the following statement: "Gilbert Farms LTD is a new Concentrated Animal Feeding Operation in Door County, WI", it appears this important environmental analysis has not been completed.
-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?
-Will DNR require preparation of an Environmental Impact Statement?
a. If not, why not?

Response: Gilbert Farms Ltd is a defined as an existing source CAFO under s. NR 243.03(23), Wis. Adm. Code. The Department will be issuing a WPDES Permit to Gilbert farms under its authority provided in ch. 283, Wis. Stat. In accordance with s. 283.93, Wis. Stat., regulatory actions taken by the Department under ch. 283, Wis. Stat. to control environmental pollution are exempt from provisions of s. 1.11, Stats., and the environmental analysis and review procedures in ch. NR 150, Wis. Adm. Code except for issuance of permits or approvals for new sources of environmental pollution.

Comment: The Department received comments regarding animal welfare including:
-The milk cows don't ever go outside in the sun and do not ever eat grass or hay. They only eat pellets and as a consumer I would like to know what is in the pellets--antibiotics, growth hormone, Vitamin D. The cows are milked by machine three times a day and the amount of milk a cow gives are measured, and they get pellets according to their stage of lactation. Less milk, they get less pellets. When they need to be refreshed, the bull comes in. The cow several months later drops a calf, and the calf is immediately taken away from her. Shame on us for passing white liquid and pellets off to our children.
-I object to how animals are treated in CAFOs.
-At a glance, a mother cow will be forced (through artificial insemination) to continuously give birth to babies (that will be immediately ripped away from her upon birth - male cows are sent to slaughter at just 12 months old), she is then used as a milking machine - despite any infections or injuries that may occur - until her milk production declines and she is no longer viewed as profitable, then she will be sent be sent to slaughter, usually at around 4-7 years old. The only relief she will receive throughout this terrible process is death.

Response: The WPDES permit is a water quality protection permit. In the event that the Department or citizen observes poor animal husbandry, they may contact a DATCP humane officer to investigate animal abuse and neglect. More information about the DATCP Humane Officer Program can be found here: DATCP Home Humane Officers Program.

Comment: The Department has received comments regarding air and odor including:
-Wind velocity exposes these people to air unsafe to breathe.
-I would not want to see Door County degraded by the expansion of Gilbert Farm, which would bring more stench.
-Hydrogen sulfide and methane are toxic emissions that will be released into the community's breathing space. The Children's Health Study documents how airborne particulate matter harms children's lungs for life.
-I am extremely concerned about any odors that an increase in magnitude will present. As it stands, there are days when the manure odor is noticeable in the city, specifically downtown. An increase in manure will only exasperate the problem.

-Even if kids don't go into the water HAB the spores cause breathing problems and asthma.

-The waste and operations release harmful gases like ammonia and hydrogen sulfide, leading to foul odors, respiratory issues, and reduced air quality for nearby communities.
-Greenhouse Gas Emissions: CAFOs produce methane, which is worse than CO2, accelerating climate change and its disastrous effects.
-Odor Management: Require a site-specific Odor Management Plan that includes storage agitation timing, low trajectory application, injection/incorporation, and community notification before major spreading events.

Response: The WPDES permit program is based on water quality protection and does not address air emissions or odor issues from CAFOs. The Department has limited authority to regulate air emissions and odor from livestock operations. Information on the Department's Air Program's efforts to address air emissions from livestock operations is located on the Departments' website at https://dnr.wi.gov/topic/airquality/toxics.html.

Comment: The Department has received comments regarding traffic and roads including:
-Constant large truck traffic, bright lights all night long, and smell.
-The negative effect to our roadways does to the number of their farm machinery, tractors, manure spreaders, tractor trailers, and other assorted farm machinery. This use of the road system by all this equipment puts an undue burden on the local taxpayers, that have to license our vehicles to pay for road infrastructure and repairs, that this farm does not!!
-A farmer that whose farm is near the Door/Kewaunee County border said that he watches liquid manure trucks one after another come up from Kewaunee to spread manure on Door farmland.
-Up until 3 years ago we saw occasional milk trucks on the roads. Now, daily, day & night, hundreds of heavy trucks loaded with liquid manure, are traveling on our once peaceful roads. Right thru towns. This takes away from our once peaceful rural areas, plus the smell, wear & tear on our roads & noise is unacceptable. Indeed, a stream of manure trucks were traveling thru Hwy 42 where signs clearly state, "Local Traffic ONLY".

Response: The Department does not have authority under ch. NR 243 Wis. Admin. Code and § 283, Wis. Stat. to regulate truck traffic and impacts associated from truck traffic. No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore, no changes were made to the permit.

Comment: The Department received comments regarding beaches and algae including:
-The last couple of years, the shore has been covered in muck and cut seaweed. There have been e-coli warnings up and down the shore. We and our family went from beach to beach only to see e-coli warnings, muck, and cut seaweed.
-On two days this past summer, August 18th and 19th, Door County had a total of 11 beach advisories and beach closures from elevated levels of E. coli. Sources of E. coli in beach water include wildlife, livestock, pets, septic systems, stormwater runoff, and swimmers and boaters, among others.
-Runoff by the CAFO for water into Lake Michigan and Green Bay. Green Bay already has a hazardous algae bloom that is one of the worst in the nation. Blooms occur because of excess nutrients from fertilizer and manure. Blooms kill small children, pets and fish. The blooms close beaches in every state in America.

Response: The WPDES permit program includes review processes and permit conditions to help protect water quality and avoid spills. The WPDES permit contains permit conditions that protect surface waters, groundwater and wetlands that are consistent with ch. NR 243, Wis. Adm. Code, the code that establishes permit requirements for CAFOs throughout the state.
For the production area, the Department reviews design plans and evaluates existing structures to help ensure proper design of manure/process wastewater storage and handling structures/systems. In addition, WPDES permits:

- Prohibit production area discharges to navigable waters, except under very limited circumstances (i.e., the discharge is the result of an overflow from a properly designed facility, and the permittee has complied with the inspection, maintenance and record-keeping requirements). In the unlikely event an authorized discharge was to occur, the permit still requires that the discharge complies with surface water quality standards.
- Require compliance with water quality standards, groundwater standards and prohibit impairments of wetland functional values
- Require 180 days of storage for liquid manure
- Require periodic self-inspections
- Include proper operation and maintenance actions
- Require development of an emergency response plan for both production and land application areas

For land application areas, permittees must develop a 5-year nutrient management plan (NMP) that complies with ch. NR 243 and the permittee's WPDES permit and outlines how, when, where and in what amounts manure and process wastewater from the operation will be land applied on area cropland. CAFO WPDES permits require that operations have adequate land base to land apply their manure and process wastewater. NMP requirements include:

- Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater
- Nutrient shall not be spread within 200 feet upslope of direct conduits to groundwater unless the nutrient is effectively incorporated within 72 hours (NRCS 590)
- No manure application within 100 feet of direct conduits to groundwater (sinkholes, private wells)
- Prohibiting the fecal contamination of water in a well
- No application on fields with soils that are 60 inches thick or less over fractured bedrock when ground is frozen or where snow is present
- No application when snow is actively melting
- No application on areas of fields that have less than 24 inches of soil to bedrock. Field verification procedures include ground depth evaluations on fields with mapped shallow soils. A detailed protocol for determining bedrock depth on fields with such soils is outlined in the NMP. All fields must be evaluated before applying manure
- All applications of manure and other nutrient sources must be consistent with UW crop recommendations (A2809), applicable sections of NRCS 590 and NR 243 land application requirements. The UW recommendations are written to avoid over-application of nutrients (Nitrogen and Phosphorus) above crop demand.
- Phosphorus-based nutrient management planning

Taken together, NMP requirements help:

- Maximize use of available nutrients for crop production;

- Prevent delivery of manure and process wastewater to waters of the state;
- Minimize loss of nutrients to waters of the state to prevent exceedances of surface and ground water quality standard;
- Prevent impairment of wetland functional values;
- Retain land applied manure on the soil where they are applied with minimal movement.

Comment: The Department received comments regarding the decline of small farms including:
-Between 2000 and 2024, Wisconsin lost over 70% of its dairy farms. Small and mid-size farms are disappearing. What is the impact on rural areas from that?
-Certainly, do not need to multiply the problem with huge increase in cattle-factory. We fell in love with cattle grazing in the fields, and small towns.
-CAFO farms do not allow smaller farms to compete.

Response: No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore, no changes were made to the permit.

Comment: The Department received comments regarding property values including:
-We fear this permitting will have persistent negative impact on property values.
-We consider the possible expansion of Gilbert Farms, with the spread of millions of additional gallons of liquid manure on this fragile peninsula, to be a very real and direct threat to the value of our property.

Response: No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore, no changes were made to the permit.

Comment: The Department received comments regarding in person hearing and NR 203.07 including:
- Code NR 203.07 states that, "Whenever possible all informational hearings on permit applications shall be held in the area affected by the proposed discharge."
-It has also been conveyed to me that the DNR proposes to conduct this meeting via Zoom. This appears to contravene Wis. Admin. Code § NR 203.07 (2001) which states: NR 203.07 Location of public informational hearing. Whenever possible all public informational hearings on permit applications shall be held in the area affected by the proposed discharge. If more than one permit application from a particular region is scheduled for hearing at the same proceeding, the hearings may be held in a location reasonably accessible to all areas affected by the proposed discharges.

Response: Current Department policy allows for public hearings to be conducted via Zoom. The Department believes that Zoom hearings allow anyone in the affected area to provide an oral comment and attend the hearing. Zoom also allows anyone interested in attending the hearing to join from outside of the affected area. The Department also hosted the hearing in-person, allowing those that were interested in attending in-person to do so. The Department believes it met the requirements found in ch. NR 203, Wis. Adm. Code.

Comment: If current relevant data is not available (e.g., current depth to bedrock across the applicants owned and leased fields) it should be the responsibility of the permit applicant to develop those necessary and relevant data layers for the purposes of the permit application. The

WDNR, i.e., the public, should not have to be burdened with funding the studies necessary to supply the data needed for these permit applications.

Response: The permittee is responsible for submitting correct and accurate landspreading restriction maps and if there is evidence that a map may be inaccurate, they are responsible for updating it. For example, s. NR 151.075(4)(d) requires that nutrient management plans use NRCS soil survey maps or other methods to identify Silurian bedrock within cropland.

Comment: The Department received comments regarding economics of farming including:
-It seems to me that when the federal government has programs to purchase surplus milk and cheese that we don't need to permit increased production which harms our water resources when there is no corresponding free market demand for the product.

Response: Milk production is not regulated by the WPDES permit program, nor are permittees required to report milk production to the Department. When reviewing permit application materials, the economics of the dairy industry are not taken into consideration. No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore, no changes were made to the permit.

Comment: Are there examples, through the permitting process used in the State of Wisconsin, where the cow CAFOs, community stakeholders, local government agencies, and residents living within the affected environment would consider the DNR permitting process a success? If so, where? What metrics were used for assessment? Lastly, whose opinions is it or was it that these permitting processes were a success?

Response: The issuance of WPDES permits to previously active farms increase overall regulation of water quality protection. No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore, no changes were made to the permit.

Comment: Through the DNR permitting process, are there requirements to assess alternatives to the proposed project? If so, at what level do impacts to the natural environments and human health weigh in when choosing an alternative? Are mitigation strategies used and measured in assessing alternatives during the permitting process? If so, what role does mitigation play in choosing an alternative? What alternatives and mitigations strategies have the Gilberts looked at before deciding to significantly increase the size of their herd in Door County?

Response: Gilbert Farms Ltd is a defined as an existing source CAFO under s. NR 243.03(23), Wis. Adm. Code. The Department will be issuing a WPDES Permit to Gilbert farms under its authority provided in ch. 283, Wis. Stat. In accordance with s. 283.93, Wis. Stat., regulatory actions taken by the Department under ch. 283, Wis. Stat. to control environmental pollution are exempt from provisions of s. 1.11, Stats., and the environmental analysis and review procedures in ch. NR 150, Wis. Adm. Code except for issuance of permits or approvals for new sources of environmental pollution.

Comment: Through the DNR permitting process, have you and/or your colleagues come across a sink hole within a CAFO that has similar soil structures as the Gilbert property? If so, where is this farm located and what type of mitigations strategies were put in place to protect the natural environment and human health? What is the current status of that farm?

Response: Each production site is unique with its own site-specific characteristics and environmental conditions that vary from farm to farm. As a result, practices that are effective at one operation may not be appropriate or produce the same outcomes under different facts.

Comment: Can the DNR deny a permit based upon the unsuitability of a site?

Response: Under Wisconsin State Statute 283 the Department does not have the authority to deny a permit if a facility meets all the requirements necessary to comply with the law. For sites with challenging environmental conditions the terms of the permit are more stringent. It is up to the permitted business to determine if it can cost-effectively comply with the requirements.

Comment: What is the logic / methodology for why you will allow and out of compliance operation to increase the size of their operation (by almost double!) considered protecting the public and a very fragile environment?

Response: Through technical review of the application materials, include a 5-year nutrient management plan and engineering documentation, the Department has determined that Gilbert Farms will have sufficient land base and infrastructure to comply with applicable regulations included in ch. NR 243, Wis. Adm. Code and ch. 283, Wis. Stat. The permit and the practices set forth in the nutrient management plan are designed to be protective of water quality. The proposed permit reflects the best management practices and nutrient management planning requirements in ch. NR 243, Wis. Adm. Code, designed to minimize impacts to surface and groundwater quality and avoid exceedances of water quality standards. Once Gilbert Farm's WPDES permit is issued and in effect, the permit will address the identified deficiencies. This is Gilbert Farm's first WDPES permit therefore, until the permit is issued and in effect, the farm is not required to implement any permit actions. Gilbert Farms is operating without a permit and is subject to enforcement for operating without authorization.

Comment: How many cows (including heifers and calves) are currently confined at Gilbert Farms?

Response: As of October 7, 2025, Gilbert Farm's has 600 milking cows, 45 dry cows, 100 heifers 800-1,200lbs, 190 heifers 400-800lbs, 315 calves, and 3 bulls.

Comment: Are there any procedures that you/DNR can recommend or impose upon Gilbert Farms to help insure there will not be any pollution problems - in addition to complying with the various regulations?

Response: The Department believes the requirements included in the permit are sufficiently protective to prevent degradation of surface waters. The permit and the practices set forth in the 5-year nutrient management plan are designed to be protective of water quality. The proposed

permit reflects the best management practices and nutrient management planning requirements in ch. NR 243, Wis. Adm. Code, designed to minimize impacts to surface and groundwater quality and avoid exceedances of water quality standards.

Comment: The Wisconsin DNR should establish more stringent regulations for agricultural operations in karst geology, particularly those near environmentally sensitive watersheds.

Response: In 2018, s. NR 151.075, Silurian Bedrock Performance Standards, were promulgated to add additional restrictions on land applications of manure on soils with less than 20 feet of depth to Silurian dolomite bedrock. These restrictions include horizontal setback increases from direct conduits to groundwater, private wells, and conduits to direct conduits to groundwater, as well as rate restrictions on shallow soils. In addition, Department engineers are requiring additional measures for reviewable facilities in Sensitive Environmental Settings (SES), which will require additional measures for proposed reviewable facilities at Gilbert Farms.

Comment: What mapping technology is being used by the DNR to assess the short and long-term impacts to the natural environments and human health from existing CAFOs? To what extent does the DNR use GIS and/or artificial intelligence (AI) mapping and/or modeling to assess the short- and long-term environmental impacts from existing CAFOs? Does the DNR use AI or other analytical tools to assess proposed CAFO projects before they are built?

Response: The Department uses an internal mapping system as well as GIS mapping. At this time, the Department does not use AI or other analytical tools to access proposed CAFO projects before they are built.

Comment: Does the DNR assess the cumulative environmental and cultural impacts from all CAFOs in the State of Wisconsin? Does the DNR work with other states to collectively assess the cumulative impacts CAFOs are having on the health of our nation?

Response: Under a WPDES permit, the department evaluates the cumulative impacts of land application. When a field may be utilized by multiple farms, all contributing operations are responsible to account for the nutrients applied to that field.

<u>Comments Received from EPA or Other Government Agencies and Any Permit Changes as Applicable</u>
No comments received.

As provided by s. 283.63, Stats., and ch. 203, Wis. Adm. Code, persons desiring further adjudicative review of this final determination may request a public adjudicatory hearing. A request shall be made by filing a verified petition for review with the Secretary of the Department of Natural Resources within 60 days of the date the permit was signed (see permit signature date above). Further information regarding the conduct and nature of public adjudicatory hearings may be found by reviewing ch. NR 203, Wis. Adm. Code, s. 283.63 Stats., and other applicable law, including s. 227.42, Stats.

Information on file for this permit action may be inspected and copied at either the above-named permit drafter's address or the above-named basin engineer's address, Monday through Friday (except holidays), between 9:00 a.m. and 3:30 p.m. Information on this permit action may also

be obtained by calling the permit drafter at (608) 228-9184 or by writing to the Department. Reasonable costs (15 cents per page for copies and 7 cents per page for scanning) will be charged for copies of information in the file other than the public notice and fact sheet. Pursuant to the Americans with Disabilities Act, reasonable accommodation, including the provision of informational material in an alternative format, will be made to qualified individuals upon request.