

Midwest Environmental ADVOCATES

pro bono publico

VIA CERTIFIED MAIL

September 9, 2002

Dean Doornink, Registered Agent
Jon De Farm, Inc.
2061 30th Ave.
Baldwin, WI 54002

Barry Serier, Owner/Operator
Jon De Farm, Inc.
2061 30th Ave.
Baldwin, WI 54002

RE: NOTICE OF INTENT TO SUE FOR VIOLATIONS OF CWA.

Dear Messrs. Doornink and Serier:

Midwest Environmental Advocates, Inc. and Garvey & Stoddard, S.C. represent the St. Croix Valley Interstate Group of the John Muir Chapter of the Sierra Club, Inc., and the Western Wisconsin Chapter of the Izaak Walton League of America. We are writing to you because you are the owner or operator and onsite representatives or agents of Jon De Farm, Inc., a

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concentrated animal feeding operation located at the NE _ of the NE _ and the NE _ of the NW _, Section 24, T28N, R17W, St. Croix County, Wisconsin and whose mailing address is 2061 30th Avenue, Baldwin, Wisconsin 54002.

This letter is to inform you that the Sierra Club and the Izaak Walton League of America intend to sue Jon De Farm, Inc. under 33 U.S.C. §1365 for violating the federal Clean Water Act (CWA) by discharging manure, silage leachate, and other pollutants to the Rush River, a Class II Trout Stream and an Exceptional Resource Water under Wisconsin Department of Natural Resources (DNR) regulations.

Members of the St. Croix Valley Interstate Group of the Sierra Club and the Izaak Walton League of America use, recreate on, and enjoy the aesthetic values of the natural resources of St. Croix County, including the Rush River. Harold Fosmo, an Izaak Walton League of America member, enjoys using and fishing the waters of the Rush River. Audrey Halverson, a Sierra Club member, enjoys viewing wildlife on and using the Rush River. Both Mr. Fosmo's and Ms. Halverson's interests, as representative members of the Izaak Walton League of America and Sierra Club, respectively, in the Rush River have been harmed by Jon De Farm, Inc.'s violations of the CWA.

I. VIOLATION OF THE FEDERAL CWA

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States, except pursuant to and in compliance with a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. 33 U.S.C. §1311(a), §1342; WIS. STAT. §283.31. The Act defines "pollutant" to include solid waste, biological materials, and agricultural waste discharged into water. 33 U.S.C. §1362(6). Concentrated animal feeding operations (CAFO's) are point sources under the CWA. 33 U.S.C. §1362(14); WIS. STAT. §283.01(12)(a). Both the Wisconsin DNR and the U.S. Environmental Protection Agency define a CAFO as any animal feeding operation that feeds, confines, or stables 1,000 animal units or more. 40 C.F.R. §122.23(b)(1); WIS. ADMIN. CODE NR §243.04(13).

Jon De Farm, Inc. is a CAFO because it is an animal feeding operation that feeds, confines, or stables 1,000 animal units or more. As a CAFO, Jon De Farm currently holds WPDES

permit No. WI-0058408-02-0, which was issued by the Wisconsin DNR pursuant to Chapter 283 of the Wisconsin Statutes.

A. Violations of WPDES Permit No. WI-0058408-02-0.

Section 1.1 of WPDES Permit No. WI-0058408-02-0 requires that there shall be no discharge of pollutants from any manure storage facilities, outdoor animal lots, composting and leachate containment systems, milking center wastewater treatment/containment systems, raw material storage areas, or other areas of the operation to navigable waters, except in the event a 25-year, 24-hour rainfall event, or a chronic rainfall event causes a discharge of pollutants to navigable waters from a facility, structure or area properly designed for a 25-year, 24-hour rainfall event. If such a discharge occurs, surface water quality standards may not be exceeded.

Section 3.10 of WPDES Permit No. WI-0058408-02-0 requires that Jon De Farm notify the DNR in accordance with ch. NR 706, WIS. ADM. CODE, in the event that a spill or accidental release of any material or substance results in the discharge of pollutants to the waters of the state at a rate or concentration greater than the effluent limitations established in Jon De Farm, Inc.'s WPDES permit.

Based on information gathered from the public domain, Jon De Farm, Inc. violated WPDES Permit No. WI-0058408-02-0 in the following ways:

1. On or about April 11, 2002, and April 8, 2002, and likely on days before and on days subsequent, Jon De Farm, Inc. violated section 1.1 of WPDES Permit No. WI-0058408-02-0 by discharging liquid leachate runoff from its leachate containment system to the Rush River.
2. On or about April 11, 2002, and April 8, 2002, and likely on days before and on days subsequent, Jon De Farm, Inc. violated section 3.1.10 of WPDES Permit No. WI-0058408-02-0 by failing to report to the DNR its leachate runoff discharges to the Rush River in accordance with ch. NR 706, Wis. Adm. Code.

3. On or about March 15, 2001, Jon De Farm, Inc. violated section 1.1 of WPDES Permit No. WI-0058408-02-0 by causing an undetermined quantity of manure to spill from a manure storage facility into a tributary of the Rush River.
4. On or about March 15, 2001, Jon De Farm, Inc. violated section 3.1.10 of WPDES Permit No. WI-0058408-02-0 by failing to report the discharge arising from the March 15, 2001 manure spill.
5. On or about January 26, 2001, when Jon De Farm, Inc.'s WPDES Permit No. WI-0058408-02-0 became effective, Jon De Farm, Inc. violated section 3.1.10 of WPDES Permit No. WI-0058408-02-0 by failing to notify the DNR of a discharge to waters of the state that occurred in or around November of 2000, December of 2000, or January of 2001.
6. Discharges one and three, stated above, were violations of section 1.1 of Jon De Farm, Inc.'s WPDES Permit No. WI-0058408-02-0 because none of the discharges were in the event of a 25-year, 24-hour rainfall event or catastrophic or chronic rainfall event. Even if such discharges were the result of a 25-year, 24-hour rainfall event or catastrophic or chronic rainfall event, the discharges resulted in exceedances of water quality standards for the Rush River.

B. Violations of WPDES Permit No. WI-0058408-1

Until January 25, 2001, Jon De Farm held WPDES Permit No. WI-0058408-1, issued by the Wisconsin DNR, pursuant to Chapter 283 of the Wisconsin Statutes. Part I, Section III.1.A of WPDES Permit No. WI-0058408-1 requires that manure stored in exposed conditions shall be retained on or within manure storages that meet or exceed the performance criteria of Natural Resources Conservation Service (NRCS) Standards 313, Waste Storage Structure, or Standard No. 425, Waste Storage Pond, and are operated and maintained in such a manner as to minimize leakage to groundwater and runoff to surface water.

Part I, Section I.1.G of WPDES Permit No. WI-0058408-1 requires that manure shall not be spread in a waterway, terrace, channel, or any areas where there may be a concentration of runoff.

Based on information gathered from the public domain, Jon De Farm, Inc. violated WPDES Permit No. WI-0058408-1 in the following ways:

1. On or before January 25, 2001, the last day on which Jon De Farm, Inc.'s WPDES Permit No. WI-0058408-1 remained effective, Jon De Farm, Inc. violated Part II, Section 1.18 of WPDES Permit No. WI-0058408-1 by failing to notify the DNR of a discharge to waters of the state that occurred in or around November of 2000, December of 2000, or January of 2001.
2. On or about January 10, 2001, Jon De Farm, Inc. violated Part I, Section III.1.A of WPDES Permit No. WI-0058408-1 by failing to retain manure in its storage structures and minimize runoff to surface waters when it caused approximately 1,000 gallons of manure and leachate to discharge from a manure storage facility to a frozen wetland pond.
3. On or about January 9, 2001, Jon De Farm, Inc. violated Part I, Section III.1.A of WPDES Permit No. WI-0058408-1 by failing to retain manure in its storage structures and minimize runoff to surface waters when it caused approximately 500 gallons of manure to discharge from a manure storage facility to a frozen wetland pond.
4. On or about November 30, 2000, Jon De Farm, Inc. violated Part I, Section III.1.A of WPDES Permit No. WI-0058408-1 by failing to retain manure in its storage structures and minimize runoff to surface waters when it caused several hundred gallons of manure and silage leachate to discharge from a manure storage facility to the Rush River.
5. On or about December 1, 2000, Jon De Farm, Inc. violated Part II, Section I.18 of WPDES Permit No. WI-0058408-1 by failing to notify the DNR of a discharge to waters of the state that occurred on or around November 30, 2000.

6. On or about November 10, 2000, Jon De Farm, Inc. violated Section III.1.A of WPDES Permit No. WI-0058408-1 by failing to retain manure in its storage structures and minimize runoff to surface waters when it caused approximately 500 gallons of manure to overflow from a manure storage facility and discharge to the Rush River.

7. On or about November 7, 1997, Jon De Farm violated Section I.1.G of WPDES Permit No. WI-0058408-1 by spreading manure in a waterway, terrace, channel, or any areas where there may be a concentration of runoff, when it caused a manure hose pumping 500 gallons per minute to burst, resulting in a road closure on County Trunk Highway N and manure spill on residential property and in the ditch line on County Trunk Highway N.

Due to the prolonged nature of the violations of WPDES Permit No. WI-0058408-1 and WPDES Permit No. WI-0058408-02-0, the Sierra Club and the Izaak Walton League of America reasonably believe that Jon De Farm, Inc. will continue to discharge pollutants in violation of its WPDES permit unless significant management and technical measures are taken to prevent further discharges of pollutants to waters of the state. This is based on the following:

First, the owners and operators of Jon De Farm, Inc. have established a pattern of mechanical failures of the waste management system at Jon De Farm, Inc. Several of the violations articulated above arose from the mechanical failures of the manure storage system and leachate containment system. These include violations on November 10, 2000, November 30, 2000, January 9, 2001, January 10, 2001, March 15, 2001, and April 11, 2002. These are all violations of section 1.1 of the permit where discharges to surface waters have resulted. Moreover, the Sierra Club and Izaak Walton League of America have reason to believe that the manure storage system and/or leachate containment system at Jon De Farm, Inc. will continue to violate federal law because it was not designed to contain the runoff from a 25 year, 24 hour rainfall event. Given the frequency of the mechanical problems, design flaws, and corresponding discharges, it is reasonably likely that other mechanical problems will arise and result in future discharges to waters of the state.

Second, other violations of the law indicate management problems at Jon De Farm, Inc. that will reasonably lead to permit violations and future discharges to surface waters. For example, Jon De Farm, Inc. violated its Stormwater Permit No. WI-SO67831-2 by repeatedly failing to implement best management practices to control erosion during construction of the Julimar Too Expansion at Jon De Farm, Inc.; failed to retain and maintain erosion control and stormwater management plans; and failed to inspect and monitor erosion control best management practices and maintain inspection reports.

Third, Jon De Farm, Inc. failed on at least two occasions to report manure spills on December 1, 2000 and on March 15, 2001. Jon De Farm received a Notice of Violation (NOV), dated February 15, 2002, from the Department of Natural Resources for failing to report a manure spill. Failing to report these manure spills indicates that there may have been other unreported manure spills. Moreover, failing to report manure spills and discharges to waters of the state to the DNR shows a flagrant disregard for federal law and for public health and safety.

Finally, records in the public domain indicate that an entity known as D&S Ag Services, owned and operated by the owners and operators of Jon De Farm, Inc. was partially responsible for a three million gallon manure runoff event in March of 2002 on land owned or rented by the Baldwin Dairy for manure spreading.

Taken as a whole, these repeated violations of federal law show that Jon De Farm, Inc. is reasonably likely to continue to discharge pollutants to waters of the United States.

At the close of the 60 day notice period, the Sierra Club and Izaak Walton League of America intend to file a citizen suit pursuant to section 505(a)(1), 33 U.S.C. §1365(a)(1) of the CWA, for all violations of Jon De Farm, Inc.'s past and present WPDES permits. Jon De Farm, Inc. is liable for up to \$27,500 per day for each violation of WPDES Permit No. WI-0058408-02-0, and up to \$25,000 per day for each violation of WPDES Permit No. WI-0058408-1. 33 U.S.C. §1319(d). 40 C.F.R. §19.4, Table 1.

In filing this action, the Sierra Club and Izaak Walton League of America also intend to pursue penalties and/or injunctive relief as well as costs, attorneys' fees and litigation expenses pursuant to 33 U.S.C. 1365(d).

CONCLUSION

The persons giving notice are the Sierra Club, 85 Second Street, San Francisco, CA 94105, (415) 977-5500; the John Muir Chapter of the Sierra Club, Caryl Terrell, Chapter Director, (608) 256-0565, 222 S. Hamilton St., Suite 1, Madison, Wisconsin, 53703-3201; and Harold D. Fosmo, Member, Western Wisconsin Chapter of the Izaak Walton League of America, W5403 780th Ave., Spring Valley, Wisconsin 54767, (715) 273-4757.

The business entities and persons referenced above as "Jon De Farm, Inc." include all related business entities and corporate officers who are responsible for the violations outlined in this letter.

During the 60-day notice period, we will be available to discuss effective remedies and actions and the possibility of resolving this matter without litigation, as well as any facts you believe are incorrectly set forth in this notice letter and other relevant facts not itemized above. You should direct all correspondence or telephone contact to the following attorneys for the Sierra Club: Melissa K. Scanlan, Midwest Environmental

Advocates, Inc., at 702 E. Johnson St., Madison, Wisconsin 53703, tel. (608) 251-5047 and fax (608) 268-0205; Glenn M. Stoddard, Garvey & Stoddard, SC, 634 W. Main St. Suite 101, Madison, Wisconsin 53703.

Sincerely,

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