

**FILED**  
**07-13-2023**  
**Clerk of Circuit Court**  
**Calumet County**  
**2023CV000066**

STATE OF WISCONSIN CIRCUIT COURT CALUMET COUNTY  
BRANCH 2

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WISCONSIN DAIRY ALLIANCE,  
INC. and VENTURE DAIRY  
COOPERATIVE,

Plaintiffs,

v.

Case No. 23-CV-0066

WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES and  
WISCONSIN NATURAL  
RESOURCES BOARD,

Defendants.

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**DEFENDANTS' ANSWER**

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Defendants Wisconsin Department of Natural Resources and the Wisconsin Natural Resources Board (collectively, "DNR"), by their attorneys, Wisconsin Attorney General Joshua L. Kaul and assistant attorneys general Gabe Johnson-Karp, Lynn K. Lodahl, and Jon J. Whitney, respond to the numbered allegations in the complaint as follows:

**INTRODUCTION**

1. DNR denies the allegations in paragraph 1.
2. DNR denies the allegations in paragraph 2.
3. DNR denies the allegations in paragraph 3.

4. DNR lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies.

5. DNR lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore denies.

### **PARTIES**

6. DNR lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore denies.

7. DNR lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and therefore denies.

8. DNR denies the allegations in paragraph 8.

9. Paragraph 9 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR admits the allegations in paragraph 9.

10. Paragraph 10 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR admits the allegations in paragraph 10.

### **JURISDICTION AND VENUE**

11. Paragraph 11 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 11.

12. DNR lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 relating to the Wisconsin Dairy Alliance's principal place of business, and therefore denies. The remainder of paragraph 12 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies those remaining allegations.

13. DNR denies the allegations in paragraph 13.

14. DNR denies the allegations in paragraph 14.

15. DNR denies the allegations in paragraph 15.

### **FACTUAL BACKGROUND**

16. Paragraph 16 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 16.

17. Paragraph 17 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 17.

18. Paragraph 18 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 18.

19. Paragraph 19 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 19.

20. Paragraph 20 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 20.

21. Paragraph 21 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 21.

22. Paragraph 22 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 22.

23. Paragraph 23 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 23.

#### **CLAIM ONE FOR DECLARATORY AND INJUNCTIVE RELIEF**

24. DNR incorporates all applicable responses as if set forth fully herein.

25. Paragraph 25 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 25.

26. Paragraph 26 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 26.

27. Paragraph 27 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 27.

28. DNR denies the allegations in paragraph 28.

29. Paragraph 29 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 29.

30. Paragraph 30 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 30.

31. Paragraph 31 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 31.

32. Paragraph 32 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 32.

33. DNR denies the allegations in paragraph 33.

34. DNR denies the allegations in paragraph 34.

35. DNR denies the allegations in paragraph 34.

## **CLAIM TWO FOR DECLARATORY AND INJUNCTIVE RELIEF**

36. DNR incorporates all applicable responses as if set forth fully herein.

37. DNR denies the allegations in paragraph 37.

38. Paragraph 38 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 38.

39. Paragraph 39 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 39.

40. DNR denies the allegations in paragraph 40.

41. DNR denies the allegations in paragraph 41.

42. Paragraph 42 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 42.

43. DNR denies the allegations in paragraph 43.

44. DNR denies the allegations in paragraph 44.

45. Paragraph 45 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 45.

46. Paragraph 46 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 46.

47. DNR denies the allegations in paragraph 47.

48. DNR denies the allegations in paragraph 48.

### **CLAIM THREE FOR DECLARATORY AND INJUNCTIVE RELIEF**

49. DNR incorporates all applicable responses as if set forth fully herein.

50. Paragraph 50 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 50.

51. Paragraph 51 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 51.

52. Paragraph 52 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 52.

53. Paragraph 53 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 53.

54. Paragraph 54 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 54.

55. Paragraph 55 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 55.

56. DNR denies the allegations in paragraph 56.

57. DNR denies the allegations in paragraph 57.

58. DNR denies the allegations in paragraph 58.

#### **CLAIM FOUR FOR DECLARATORY AND INJUNCTIVE RELIEF**

59. DNR incorporates all applicable responses as if set forth fully herein.

60. Paragraph 60 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 60.

61. Paragraph 61 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 61.

62. Paragraph 62 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 62.



63. Paragraph 63 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 63.

64. Paragraph 64 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 64.

65. DNR denies the allegations in paragraph 65.

66. Paragraph 66 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 66.

67. Paragraph 67 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, DNR denies the allegations in paragraph 67.

68. DNR denies the allegations in paragraph 68.

69. DNR denies the allegations in paragraph 69.

### **REQUEST FOR RELIEF**

1. DNR denies that plaintiffs are entitled to the relief requested in paragraph 1.

2. DNR denies that plaintiffs are entitled to the relief requested in paragraph 2.

3. DNR denies that plaintiffs are entitled to the relief requested in paragraph 3.

### **DEFENSES**

1. Plaintiffs lack standing for one or more of their claims.
2. One or more of Plaintiffs' claims is unripe.
3. One or more of Plaintiffs' claims is barred by sovereign immunity.
4. Plaintiffs fail to state a claim on which relief may be granted because the complaint does not show that Wis. Admin. Code NR § 243.11(3)(a)–(b), or the Department's definition of "agricultural stormwater discharge" in Wis. Admin. Code NR § 243.03(2)(a)–(b), or the actual or threatened application of any of those provisions actually "interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff." Wis. Stat. § 227.40(1).

### **DEFENDANT'S REQUESTED RELIEF**

WHEREFORE, DNR requests:

1. That the complaint be dismissed upon the merits and with prejudice.
2. An order that Plaintiffs are not entitled to any of the relief requested.
3. Such other relief as the Court deems appropriate.

Dated this 13th day of July 2023.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by:

Gabe Johnson-Karp  
GABE JOHNSON-KARP  
Assistant Attorney General  
State Bar #1084731

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## CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this *Defendants' Answer* with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 13th day of July 2023.

Electronically signed by:

Gabe Johnson-Karp

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GABE JOHNSON-KARP

Assistant Attorney General