

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

Confidential

Date: September 28, 2011 (updated March, 2012)

To: Steve Sisbach – LE/8 Casetrack #2010-SCEE-037
Tim Andryk – LS/8 Dane County

From: Pam Buss – SCR

SUBJECT: Recommendation to refer Bailey Farms LLC to the Department of Justice for Alleged Violations of WPDES Permit # WI-0055301-05 and Chapters 281, and 283, Wis. Stats.

I. REFERRAL SUMMARY

Bailey Farms, is formerly known as Karem Inc. Bailey Farms is located on State Highway 19 in the eastern edge of the Village of Marshall in the Town of Medina, Dane County. Bailey Farms processes dead animals (mostly cows and horses) into meat sold to pet food manufacturers. The business has existed for over 30 years. In April 2007, Greg Sheil purchased Karem Inc. from Lee Merrick and is operating it as Bailey Farms. Lee Merrick recently passed away.

WPDES Permit No. WI-0055301-05-0 was issued September 30, 2004 to Karem Inc. authorizing Karem to landspread industrial waste on approved sites within the upper Rock River drainage basin. Bailey Farms is currently operating under Karem's expired permit. This permit is still in effect because Bailey Farms applied for permit reissuance before the application deadline.

During the summer of 2010, Warden Tyler Strelow received 7 complaints [REDACTED] said that Bailey Farms was dumping animal waste into a pit on the Lee Merrick property. The Merrick property is located at the NW ¼ of the NW ¼ of the NE ¼ of Section 22, Town of Medina, Dane County. On June 23, 2010 Strelow visited the Merrick property and noticed an extreme odor of decomposing animal matter and millions of flies on the ground. Strelow observed animal entrails next to a large (30 yards x 30 yards) open pit. On July 7, 2010 Strelow actually observed a Bailey Farms employee dumping wastewater into the pit on the Merrick Property.

An investigation by Strelow and Environmental Warden Kendall Frederick revealed that the pit was dug in May 2010 by Rice Excavating. A Bailey Farm employee stated that he was instructed to dump the plant wastewater into the pit. Approximately 40 loads of wastewater were dumped into the pit from May through July 2010. For many years, Bailey Farms has disposed of their wastewater by land spreading on the Merrick property.

In addition, waste from septic tanks that serve the Bailey Farms employee housing was also being disposed of in the pit. Bailey Farms has since contracted with Eckmayer Inc. to empty the septic tanks and haul the waste to the Village of Marshall wastewater treatment facility.

During their investigation Wardens Strelow and Frederick discovered that records were not being kept as required. In fact, information on the daily monitoring reports was being made up by Bailey Farms office manager, Lenne Millard.

At the April 2011, enforcement conference Bailey Farms stated that 400-600 dead animals, mostly cows and horses are brought in weekly. All parts of the animal are used or sold. Only a small amount of blood and manure gets washed into the wastewater collection tank. The collection tank waste and employee housing septic tank waste was being dumped into the pit on the Lee Merrick property.

SCR is requesting that Bailey Farms be referred to the Department of Justice to ensure that a long term solution for disposal of septage and industrial wastewater is developed, and that forfeitures are collected for the alleged violations.

II. POTENTIAL DEFENDANT

Bailey Farms LLC
Gregory Sheil, Registered Agent
549 Karem Drive
Marshall, WI 53559
608-577-1714

Attorney
Robert Proctor
Buck Sweeney
Axley Brynson
2 East Mifflin Street Suite 200
Madison, WI 53703
1-800-368-5661

III. DEPARTMENT CONTACTS

Tyler Strelow Conservation Warden Supervisor	Dodgeville Service Center 1500 Johns Street Dodgeville WI	608-935-1931
Kendall Frederick Environmental Warden	3911 Fish Hatchery Road Fitchburg, WI 53711	608-275-3326
Robert Liska Wastewater Specialist	3911 Fish Hatchery Road Fitchburg, WI 53711	608-275-3288
Richard Edwards Wastewater Specialist	3911 Fish Hatchery Road Fitchburg, WI 53711	608-275-3281
Pamela Buss Environmental Enforcement Specialist	3911 Fish Hatchery Road Fitchburg, WI 53711	608-275-3306

IV. POTENTIAL WITNESSES

Lenne Millard – Office Manager 608-576-3521
Bailey Farms
549 Karem Drive
Marshall, WI 53559

Justo Dominguez – Bailey Farms Employee 608-655-1705
528 Karem Drive
Marshall, WI 53559

Steve Porter – Bailey Farms Employee 608-577-1719
529 Waterloo Road
Marshall, WI 53559

Dan Lieske – Merrick Property Manager
743 Water Tower Drive
Marshall, WI 53559

Steven Schulz 608-206-0657
Earth Scientist
1027 West Medina
Marshall, WI 53559

Robert Wendt 608-278-9933
Applied Science, Inc.
2902 Perry Street
Madison, WI 53713-3237

V. ENFORCEMENT ACTIONS

Notice of Violation: January 3, 2011 **EXHIBIT 13**

Enforcement Conference: April 15, 2011

Enforcement Conference Summary Letter: April 28, 2011 **EXHIBIT 14**

VI. VIOLATIONS AND PROOF

Violation #1 Failure to Submit Annual Land 3 Days of Violation
Application Reports for the Years
2007, 2009 and 2010 as Required

Section 2.3.2 of WPDES permit WI-0055301-05 requires that the annual totals for the land application loadings of liquid wastes, by product solids, and sludges to field spreading sites shall be submitted on the Land Application Report Form by January 31, following each year waste is land applied.

Section 283.55 (1), Wis. Stats. which states that every owner or operator of a point source who is required to obtain a permit issued under s. 283.31, Wis. Stats. shall do all of the following:

- (a) Establish and maintain records of the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control.
- (b) Make regular reports to the department on the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control.
- (e) Provide such other information as the department finds is necessary to identify the type and quantity of any pollutants discharged from the point source.

PROOF: WPDES permit WI-0055301-05 requires land application reports be submitted to the Department annually. **EXHIBIT 3** A review of Department records showed that records were never received for 2007, 2009 and 2010. Bailey Farms consultant, Applied Science, submitted the outstanding reports on July 9, 2011. **EXHIBIT 15**

Violation #2 Failure to Submit Quarterly 6 Days of Violation
Characteristic Reports for the First,
Second and Third Quarters of 2005
and for the First, Third and Fourth
Quarters of 2010 as Required

Section 1.2 of WPDES permit WI-0055301-05 outlines the monitoring requirements which include quarterly monitoring.

Section 2.3.1 of WPDES permit WI-0055301-05 states that the analytical results from testing of liquid wastes, by products solids and sludges that are land applied shall be reported annually on the Characteristic Form 3400-49. The report shall be submitted by January 31, following each year of analysis.

Section NR 205.07(1)(r), Wis. Adm. Code which states that monitoring results shall be reported at the intervals specified in the permit. Section NR 205.07(1)(r)1, Wis. Adm. Code states that monitoring results shall be reported on an electronic discharge monitoring report (eDMR) or in a form approved by the department for reporting results of monitoring of sludge use or disposal practices.

PROOF: WPDES permit WI-0055301-05 requires quarterly monitoring of the waste, and further requires that those quarterly sample results be reported annually on the Characteristics Form. **EXHIBIT 4**

A review of Department records showed that quarterly records were never reported for the first, second and third quarters of 2005 and for the first, third and fourth Quarters of 2010. Applied Science submitted the reports to the Department on July 9, 2011. **EXHIBIT 15**

Violation #3	Over application of Nitrogen to a Dug Pit on Approved Site DNR #40368	16 Days of Violation
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Section 2.3.7 of WPDES permit WI-0055301-05 limits waste TKN application to the nitrogen needs of the cover crop.

PROOF: The Lee Merrick property is approved as a land spreading site under the Karem Inc. permit. The site approval number is #40368. **EXHIBIT 2**

No cover crop was grown in the pit area so the nitrogen need of the crop there, and the TKN limit, was zero.

In a statement to Warden Strelow, Justo Dominguez estimated that Bailey Farms dumped 40 loads of wastewater into the pit during May, June, and July 2010. **EXHIBIT 8**

40 loads dumped in the pit equals a rate of 5 loads per week. According to Bob Liska, Department Wastewater Specialist, Bailey Farms usually land applies 2 or 3 loads per application day. Using 2.5 loads per application day as an average over the 40-load period of dumping, this equals 16 application days in which ponding occurred.

Liska estimated 757 lbs of total Kjeldahl nitrogen (TKN) was applied to the pit in 2010. This estimate comes from an average of 2010 wastewater sample results, waste disposal volume from warden interviews, a truck tank capacity of 1800 gallons, an area of 0.186 acres (based on Warden Strelow estimate of 30 yds.X 30 yds.), and by 40 truckloads over 2 months.

Every day of the estimated 16 days of dumping waste in the pit exceeded the TKN limit of zero.

**Violation #4 Over application of Chlorides to a Dug
Pit on DNR Approved Site #40368**

**16 Days of
Violation**

Section 2.3.6 of WPDES permit WI-0055301-05 states that the total pounds of chloride applied shall be limited to 340 pounds per acre per 2 year period.

PROOF: The Lee Merrick property is approved as a land spreading site under the Karem Inc. permit. The site approval number is #40368. **EXHIBIT 2**

In a statement to Warden Strelow, Justo Dominguez estimated that Bailey Farms dumped 40 loads of wastewater into the pit during May, June, and July 2010.
EXHIBIT 8

According to Bob Liska, Department Wastewater Specialist, in 2010 Bailey Farms had a chloride application rate of 1130 lbs per acre for 2 years. Liska reviewed Bailey Farms wastewater characteristics reports. Based on this information, Liska estimates Bailey Farms chloride average for 2nd and 3rd quarters of 2010 to equal 350 mg/L. Using the estimated size of the pit the following calculation can be made. $(350 \text{ mg/L}) \times (8.34 \text{ lbs/gal.}) \times (0.0018 \text{ MG/truckload}) \times (40 \text{ truckloads})$ equals 210 lbs chlorides/0.186 acre pit area equals 1130 lbs chlorides/acre. Warden Strelow estimated the pit area as 30 yds X 30 yds which equals 8100 sq.ft., which equals 0.186 acres.

Violation #5 Failure to Prevent Ponding

**16 Days of
Violation**

Section 2.3.8 of WPDES permit WI-0055301-05 states that the volume of liquid wastes land applied shall be limited to prevent ponding.

PROOF: Bailey Farms dumped collection tank waste and septage directly from their trucks to a pit on the Lee Merrick property for the purpose of waste disposal.

In a statement to Warden Strelow, Justo Dominguez estimated that Bailey Farms dumped 40 loads of wastewater into the pit during May, June and July 2010.
EXHIBIT 8

40 loads dumped in the pit equals a rate of 5 loads per week. According to Bob Liska, Department Wastewater Specialist, Bailey Farms usually land applies 2 or 3 loads per application day. Using 2.5 loads per application day as an average over the 40-load period of dumping, this equals 16 application days in which ponding occurred.

Warden Strelow also received complaints from [REDACTED] Bailey Farms dumping on June 23, 2010, June 25, 2010, June 30, 2010, July 2, 2010, July 5, 2010, and July 6, 2010. On July 7, 2010 Warden Strelow observed Bailey Farm's employee Justo Dominguez dump waste into the pit. **EXHIBIT 8**

Violation #6 Failure to Properly Dispose of Septage 1 Day of Violation

Section NR 113.04(3), Wis. Adm. Code states that no vehicle operator or person may dispose of or recycle septage unless done in accordance with this chapter or under county authority approved by the department

Section NR 113.07(1)(a), Wis. Adm. Code states that the disposal of septage shall be by discharge into a POTW or other facility for treatment or storage under a WPDES permit or to approved agricultural lands.

PROOF: Bailey Farms employee Tom Porter told Wardens Frederick and Strelow that due to the cost, Bailey Farms did not always dispose of their septage at the Village of Marshall wastewater treatment facility. Porter said that it was cheaper for Bailey Farms to land apply the septage and that Bailey Farms usually land applied septage waste a couple of times a year. **EXHIBIT 11** Lenne Millard stated that since 2007 she has not seen a bill from any company for pumping the employee housing septic tanks. **EXHIBIT 9**

Violation #6 Failure of Landspreading Vehicle to Move Forward During Landspreading 1 Day of Violation

Section NR 113.04(3), Wis. Adm. Code states that the landspreading vehicle shall be moving forward at all times of application unless it is equipped with a high pressure spray nozzle which evenly distributes the waste over the land.

PROOF: On July 12, 2010 Warden Strelow observed a Bailey Farms employee unloading a truck into the pit. The truck was stationary. **EXHIBIT 8**

VII. POTENTIAL DEFENSE ARGUMENTS AND MITIGATING FACTORS**Recordkeeping**

Until his death in February 2010, Joe Merrick, brother to Lee Merrick, was responsible for all recordkeeping at both Karem Inc., and Bailey Farms. No other employees knew what was required by the WPDES permit. **EXHIBIT 14** Steven Schulz, consultant, told Environmental Warden Kendall Frederick that he was hired by Bailey Farms to review the WPDES permit and explain testing procedures after Joe Merrick's death. **EXHIBIT 12**

Schulz added that he showed Lenne Millard where and how to take wastewater samples. Schulz said he explained to Millard how it appeared that Joe Merrick put together the annual and quarterly reports. Schulz showed Millard the correct way to complete the reports. Schulz said he was not hired by Bailey Farms to submit reports to DNR. **EXHIBIT 12**

Lenne Millard told Warden Strelow that she was not really familiar with what the forms were and what they meant; she just entered the numbers in. Millard stated she was instructed by Steven Schulz to falsify reports and to just copy the 2009 annual report. **EXHIBIT 9**

Pit

There is some discrepancy as to why the pit was dug. Daniel Lieske, Merrick Property Manager, told Wardens Frederick and Strelow that Merrick wanted to stockpile manure at the top of the hill. Rice Excavating dug a hole for Merricks to put fill in. Lieske said that Bailey Farms had been dumping the waste at the top of the hill for the last several years. Lieske added that Bailey Farm employees dumped and filled the hole with waste instead of land applying it as required. Lieske said that Bailey Farms would both dump on and landspread at 4 sites in the summer and at 3 of the same sites in the winter. **EXHIBIT 10**

In a contradictory statement, Bailey Farm employee Justo Dominguez told Warden Strelow that the pit had been excavated to get rid of Bailey Farms waste. Dominguez stated he was instructed by Dan Lieske to dump wastewater into the pit. **EXHIBIT 8**

The Department would like to work with DOJ to ensure the the remaining waste in the pit on the Lee Merrick property is properly removed and disposed of and abandonment of the pit is completed. Bailey Farms can't be ordered to clean up property they don't own or control. Lee Merrick recently passed away. It is unknown who is in control of the Merrick land.

VIII. SIGNIFICANCE OF VIOLATION

Owner Gregory Sheil told Warden Strelow that he had never looked at the WPDES permit to see what exactly the permit contained or what the proper requirements for disposal of waste were. Sheil added that as far as he knew, Bailey Farms had been land spreading the waste until the pit was dug. Sheil thought that septage from the employee housing was going to the Village of Marshall wastewater treatment facility. **EXHIBIT 8**

Office Manager Lenne Millard said that since 2007 she has never seen a bill for pumping and disposal of septage from the Bailey Farms employee housing. **EXHIBIT 9** Employee Tom Porter stated that it was cheaper to land spread the septage than pay for disposal at the Marshall wastewater treatment system. **EXHIBIT 11**

According to DNR estimates, it would have cost Bailey Farms \$11,700 to haul 40 truckloads of industrial waste to Madison Metropolitan Sewerage District in 2010. If Bailey Farms would have land applied as their permit allows, they would have incurred a minimal disposal cost.

The December 21, 2010 bill from Eckmeyer Incorporated presented at the enforcement conference shows it cost Bailey Farms \$160.00 to dispose of

septage from the employee housing. **EXHIBIT 14** Bailey Farms employee Tom Porter told Environmental Warden Kendall Frederick that the septage was usually land applied a couple of times per year and loads were also taken to the Marshall wastewater treatment facility. **EXHIBIT 11** Assuming 5 loads of septage were disposed of at the treatment facility, the annual cost would be \$800.00

IX. PENALTY RECOMMENDATIONS, REMEDIAL ACTIVITIES, PLAN MODIFICATION, COURT ORDERED SCHEDULE

Section 281.98(1), Wis. Stats allows for forfeitures of up to \$5,000 per violation per day.

Section 283.91(2), Wis. Stats allows for forfeitures of up to \$10,000 per violation per day.

The Department recommends a forfeiture in the range of \$25,000 - \$30,000. DNR estimates that Bailey Farms saved at least \$11,700 by not hauling the collection tank waste to a treatment plant. It would have cost Bailey Farms very little to land apply the industrial waste as their permit allows.

Cost savings by not disposing of septage at a wastewater treatment facility were in the range of \$800.00 per year assuming 5 loads were land applied.

The Department would like to ensure the the remaining waste in the pit on the Lee Merrick property is properly removed and disposed of and abandonment of the pit is completed.

- 1) Hire someone with the appropriate expertise to assess and characterize the impacts to the soil lining the pit, and report what needs to be done to remove and properly dispose of any remaining waste and impacted soil so that the site is restored to approximately its condition prior to excavation and waste dumping, and
- 2) Restore the pit site as recommended in the report or as approved by the Department.

NR 213.07 Abandonment. Lagoons, storage structures and treatment structures which will no longer be used, shall be properly abandoned within 2 years of the date on which waste material was last stored or treated. A plan outlining the proposed method of abandonment shall be submitted to the department for approval. This plan shall contain a procedure to properly identify the presence and characteristics of any accumulated solid waste and provide appropriate removal, disposal or recycling or treatment alternatives in accordance with applicable solid and hazardous waste laws. All recycling, treatment and disposal shall be conducted so as to protect public health and the environment. Unless otherwise directed by the department, all abandonment plans shall comply with ch. NR 720 for soils that have been contaminated by the contents of the lagoon, storage structure or treatment structure. The plan shall also address site restoration and any landscaping

that will prevent accumulation of standing water or runoff. The department may require groundwater monitoring for a period of time after abandonment of the land treatment system to assess groundwater impacts. The design, installation, construction, abandonment and documentation of all monitoring wells shall be in accordance with the requirements of ch. NR 141.

The Department supports Applied Science's recommendation that Bailey Farms update their land application management plan to improve application documentation and compliance with wastewater landspreading requirements.

EXHIBIT The Department would like this plan to be final by June 30, 2012.

The Department has received several odor complaints from neighbors near Bailey Farms approved landspreading sites. A land application management plan shall address the odor concerns.

The plan shall include the following 7 points:

1. Site maps based on recent air photos
2. Site specific setbacks and soil limitations based on current code
3. Coordinate wastewater application with cropping and other nutrient sources used on receiving sites by the farm manager.
4. Provide for disposal of industrial wastewater year-round especially during the crop-growing season and when fields are too wet for land application of wastewater.
5. Address odor control of the landspread wastewater by chemical treatment or by incorporating the wastewater by discing it in with a tractor within four hours of application.
6. If wastewater incorporation is the method chosen for odor control, describe the tracking mechanism to be used to ensure that any land applied wastewater is incorporated within 4 hours of application and Bailey Farms is notified of such.
7. If chemical treatment is the method chosen for odor control, state the chemical supplier's recommendations for chemical addition and describe the tracking mechanism to be used, such as a logbook, to record the chemical name, date, time, receiving location, amount of chemical added and the initials of the person adding it.

EXHIBITS

Description	Date	Number
Maps of Site		1
Land Spreading Site Approval		2
Department of Financial Institutions Information		3
WPDES Permit – Issued to Karem Inc.	September 30, 2001	4
Phase 1 Environmental Site Assessment	April 2007	5
Interview with [REDACTED]	June 24, 2010	6
Warden Strelow Documentation of Complaints Photos	July 12, 2010	7
Warden Strelow Surveillance Interview with Justo Dominguez Interview with Gregory Shell	July 12, 2010	8
Interview with Lenne Millard	July 12, 2010	9
Interview with Daniel Lieske	August 2, 2010	10
Interview with Tom Porter	August 2, 2010	11
Interview with Steve Schulz	August 18, 2010	12
Notice of Violation	January 3, 2011	13
Enforcement Conference Summary Letter	April 28, 2011	14
Statement from Eckmayer Inc. Submitted at Enforcement Conference	December 22, 2010	
Applied Science Report Outstanding Reports	July 9, 2011	15