

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

COLUMBIA COUNTY

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STATE OF WISCONSIN  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 10-CX-\_\_\_\_\_  
Complex Forfeiture: 30109

DIDION MILLING, INC.  
520 Hartwig Blvd.  
P.O. Box 400  
Johnson Creek, WI 53038

and

DIDION ETHANOL, LLC  
520 Hartwig Blvd.  
P.O. Box 400  
Johnson Creek, WI 53038,

Defendants.

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1) (d).

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CIVIL COMPLAINT

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The State of Wisconsin, by Attorney General J.B. Van Hollen and Assistant Attorney General Steven Tinker, brings this action against Didion Milling, Inc. and Didion Ethanol, LLC at the request of the Wisconsin Department of Natural Resources and alleges as follows:

1. The plaintiff is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin. The plaintiff has enacted Wis. Stat. ch. 285 statutes governing sources of air contaminant emission so as to prevent and reduce air pollution and its Department of Natural Resources (DNR) administers regulations in Wis. Admin. Code chs. NR 400 to 499 as authorized by Wis. Stat. § 285.11 to enhance the quality, management and protection of the state's air resources. The plaintiff has enacted Wis. Stat. ch. 283 statutes governing the discharge of pollutants into the waters of the state and DNR administers regulations in Wis. Admin. Code chs. NR 200 to 299 as authorized by Wis. Stat. ch. 283 to enhance the quality, management and protection of the state's water resources.

2. Defendant Didion Milling, Inc. ("Didion Milling") is a domestic corporation in the State of Wisconsin that owns and operates a corn milling facility located at 501 South Williams Street, Cambria, Columbia County, Wisconsin 53923. Didion Milling's corporate offices and registered agent, John A. Didion, are located at 520 Hartwig Boulevard, Johnson Creek, Wisconsin 53038.

3. Didion Ethanol, LLC ("Didion Ethanol") is a domestic limited liability company in the State of Wisconsin that owns and operates an ethanol production facility located in the Town of Courtland, Columbia County, Wisconsin. Didion Ethanol's corporate offices and registered agent, John Didion, are located at 520 Hartwig Boulevard, Johnson Creek, Wisconsin 53038. Didion Milling and Didion Ethanol are collectively referred to as "Didion."

4. Didion owns an approximately 27-acre parcel of land in the Village of Cambria, Columbia County, Wisconsin ("Cambria property"). The address of this property is 501 South Williams Street, Cambria, Wisconsin 53923 and its legal description is SE 1/4, NW 1/4, Section 5, T12N R12E, Village of Cambria, Columbia County, Wisconsin. Didion owns an approximately 11.4 acre parcel of land in the Town of Courtland, Columbia County, Wisconsin ("Courtland Property") with a legal description of N 1/2 of the N 1/2 of the NE 1/4 of the SW 1/4, Section 5, T12N, R12E. The Courtland Property lies directly south of the Cambria Property and the two are divided by Cabbage Road.

5. Didion Milling is a grain milling company that processes corn at its Cambria property. The original date of construction at this site is unknown, but Didion states they have been in operation for 17 years. In 1999 an expansion occurred at the Cambria property and in 2006 construction of an ethanol plant began on the Courtland property.

6. On March 4, 1999, Didion submitted an air pollution control construction and operation permit application. The proposed project at the Cambria property would have increased the facility's capacity of grain storage from 800,000 bushels and 8 silos to 3 million bushels and 19 silos.

7. On May 10, 1999, Didion withdrew the March 4, 1999 permit application and replaced it with a smaller scale proposal involving 7 new silos.

8. On May 26, 1999, the DNR determined the smaller scale proposed project was exempt from construction permit requirements and New Source Performance Standards ("NSPS") requirements.

9. On July 23, 2002, the DNR issued a notice of violation after DNR determined Didion's facility had exceeded NSPS and construction permit exemption criteria.

10. On August 22, 2002, RSV Engineering ("RSV") sent, on behalf of Didion, a response to the July 23, 2002 notice of violation. RSV and Didion maintained that the Cambria facility was not subject to construction permit or NSPS requirements.

11. On September 22, 2002, an enforcement conference was held between Didion and the DNR.

12. On November 22, 2002, Didion submitted an air pollution control construction and operation permit application.

13. On February 1, 2005, the Environmental Protection Agency (EPA) made a determination that Didion's Cambria facility was subject to NSPS as of 1999.

14. The permanent grain storage at the Cambria property exceeded one million bushels in 1999 with the construction of a second storage silo of 189,239 bushel capacity. Subsequent to the construction of that silo, all additional equipment installed fell within the scope of NSPS and are subject to the requirements of NSPS.

15. On May 12, 2005, the DNR issued Air Pollution Control Construction and Operation Permit 02-RV-166 to Didion for its Cambria facility.

16. On March 20, 2006, DNR Air Compliance Inspector Mike Sloat inspected the Didion facility. He noted alleged violations of notification, reporting, and testing requirements. He also found that the facility was operating without the required fabric filters on the silo vents.

17. On April 5, 2006, DNR issued a notice of violation to Didion for Air Program violations at the Cambria property.

18. On May 3, 2006, an enforcement conference was held between Didion and the DNR. At the conference, Didion expressed concerns that installation of the fabric filters could result in structural damage to the silos and proposed to install a baghouse filter system in place of the silo vents.

19. On June 2, 2006, Didion submitted an air pollution control construction and operation permit application. The proposed project included the construction of an ethanol production facility on the Courtland Property and the installation of a baghouse filter system on the Cambria Property and coverage of both the grain milling facility and the ethanol facility under a single permit.

20. On October 19, 2006, the DNR issued Air Pollution Control Construction Permit 06-DCF-166 to Didion. The permit authorized Didion to construct a 50 million gallon per year fuel grade ethanol production facility, modify and operate a grain mill and fuel grade ethanol production facility.

21. On December 20, 2006, the DNR issued Didion a Notice of Violation alleging that Didion had operated its grain dryers outside the time limits provided in Permit 06-DCF-166.

22. On January 8, 2007, Didion submitted a request to modify Permit 06-DCF-166 to address, among other things, the grain dryer operating hours issue.

23. On January 23, 2007, an enforcement conference was held between Didion and the DNR.

24. On April 6, 2007, DNR notified Didion that DNR had referred Didion to the Wisconsin Department of Justice for alleged violations of pollution control laws.

25. On September 4, 2007, the DNR issued Air Pollution Control Construction Permit 07-DCF-003 to Didion. The permit authorized Didion to modify the grain dryer and construct additional DDGS silos and grain toaster.

26. On September 20, 2007, Didion submitted a Wisconsin Pollution Discharge Elimination System permit application, to allow Didion to discharge wastewater from Didion's ethanol facility.

27. On February 15, 2008, the DNR issued Didion a Notice of Violation alleging that Didion failed to conduct required monitoring and sampling and exceeded ambient air quality standards.

28. Didion responded in writing to the February 15, 2008 Notice of Violation by letter dated February 29, 2008. Didion noted that an employee responsible for conducting the required monitoring had failed to do so and had lied to Didion management. Didion subsequently terminated the employee and transferred the duties to a newly hired Environmental Compliance Manager.

29. On March 6, 2008, the DNR issued Didion a Notice of Violation alleging that Didion constructed three new hammermills without obtaining an air construction permit.

30. On March 20, 2008, an enforcement conference was held between Didion and the DNR to discuss the February 15, 2008 Notice of Violation.

31. Didion responded in writing to the March 6, 2008 Notice of Violation by letter dated March 24, 2008. Didion advised the DNR that: Didion understood the hammermills to be exempt from the requirement to obtain a construction permit; Didion had not yet operated the hammermills and would not do so until the issue was resolved; and Didion had instructed its consultant to include the hammermills in a construction permit application then being prepared for submittal to the DNR.

32. On March 26, 2008, an enforcement conference was held between Didion and the DNR to discuss the March 6, 2008 Notice of Violation.

33. On March 28, 2008, the DNR issued WPDES Permit No. WI-0063771-01-0 (the "WPDES Permit") to Didion Ethanol. The WPDES Permit authorized Didion to discharge to an unnamed tributary of the North Branch of Duck Creek in the Duck Creek and Rocky Run Watershed of the Lower Wisconsin River Basin.

34. On April 14, 2008, the DNR issued Didion a Notice of Violation alleging that Didion exceeded air emission limitations on particulate matter from September 6, 2007 to February 27, 2008.

35. Didion responded in writing to the April 14, 2008 Notice of Violation by letter dated April 24, 2008. Didion advised the DNR that: Didion performed a stack test

as required by its air construction permit, for PM10 emissions and opacity, which tests showed compliance; Didion also performed a stack test for PM emissions from the grain dryer, though not required by the permit, which test showed elevated PM levels; Didion had not operated the grain dryer since receiving the stack test results and would not until the issue was resolved; and Didion believed the permit emission limitations should be increased and Didion would be submitting a permit modification request.

36. On May 7, 2008, the DNR issued Didion a Notice of Violation alleging that Didion had failed to record baghouse pressure drop data and had failed to comply with the baghouse pressure drop range. The DNR revised this Notice of Violation on May 15, 2008 to clarify that the alleged violations related to operating outside the baghouse pressure drop range.

37. Didion responded in writing to the May 15, 2008 Revised Notice of Violation by letter dated May 23, 2008. Didion advised the DNR that: the failure to record data properly related back to the terminated employee referenced during the March 3, 2008 enforcement conference; Didion had recorded the pressure drop data since that time; and Didion believed the pressure drop range may be inappropriate and Didion was considering requesting that the ranges be modified.

38. On July 1, 2008, Didion submitted to the DNR an application to modify and replace its air construction permits and obtain an air pollution control operation permit.

39. On February 17, 2009, the DNR issued Didion a Notice of Violation alleging that Didion had violated several terms of the WPDES Permit.



40. Didion did not respond in writing to the February 17, 2009 Notice of Violation, but rather requested a meeting with DNR officials to discuss Didion's proposal to eliminate its wastewater discharge altogether.

41. On March 12, 2009, Didion and DNR officials met to discuss Didion's proposed water reuse project, by which wastewater discharges from Didion's ethanol facility could be eliminated. The proposal would require certain physical plant modifications that might otherwise necessitate an air construction permit.

42. On March 16, 2009, James S. Rickun Environmental Consulting, on behalf of Didion, submitted to the DNR a request for an exemption from permitting for equipment used or to be used for the purpose of research or testing. The exemption, if granted, would allow Didion to pilot test the facility modifications necessary to eliminate the ethanol facility wastewater discharge.

43. On April 22, 2009, the DNR approved Didion's exemption request to allow testing of the proposed modifications during a six month period.

44. On May 21, 2009, Didion ceased discharging wastewater from the ethanol facility.

45. On July 22, 2009, the DNR issued Didion a Notice of Violation alleging that Didion failed to operate within the required pressure drop ranges, failed to keep daily records of the vapor collection/disposal equipment, failed to timely perform compliance tests, violated air emission limits and air permit limitations regarding total dissolved solids in the cooling tower water.

46. On July 24, 2009, the DNR completed the draft Air Pollution Control Construction and Operation Permit No. 08-DCF-155. The DNR set August 26, 2009 as the date for public hearing on the draft permit.

47. Didion responded in writing to the July 22, 2009 Notice of Violation by letter dated August 20, 2009 and noted that many of the alleged violations related to permit provisions that will be amended once the DNR completes its review and action on Didion's July 1, 2008 permit application.

48. On August 21, 2009, an enforcement conference was held between Didion and the DNR to discuss the July 22, 2009 Notice of Violation.

49. On August 21, 2009, the DNR issued Didion a Notice of Violation alleging violations of Didion's WPDES Permit related to unauthorized discharges of corn mash on June 4, 2009 and of dilute caustic on July 26, 2009.

50. On September 9, 2009, DNR issued Air Pollution Control Construction and Operation Permit 08-DCF-155.

51. On January 25, 2010, the DNR issued Didion a Notice of Violation alleging that Didion failed to operate within the permitted PM emission rate for stack S40.

52. On February 11, 2010, Didion submitted a letter to DNR indicating that Didion had determined that its facility can operate successfully under the closed-loop wastewater reuse system and formally requesting that DNR revoke Didion's WPDES Permit pursuant to DNR's statutory authority.

53. Didion responded in writing to the January 25, 2010 Notice of Violation by letter dated February 12, 2010 and noted that a second compliance test of stack S40

conducted on December 29, 2009 demonstrated compliance with the permitted PM emission limit.

54. On February 15, 2010, Didion submitted a semi-annual monitoring report that covered the period of September 9, 2009 to December 31, 2009, which identified various permit deviations related to baghouse pressure drop monitoring, recording and pressure drop levels during the reporting period. Didion subsequently provided follow-up information to the DNR regarding corrective actions related to these deviations.

55. DNR revoked Didion's WPDES Permit, effective March 5, 2010.

FIRST CLAIM: FAILURE TO OBTAIN AIR  
POLLUTION CONTROL CONSTRUCTION PERMIT

56. Wisconsin Admin. Code § NR 406.03(1) states:

Except as provided in sub. (2), no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 285.60 (5), Stats., or under this chapter.

57. Under Wis. Admin. Code § NR 406.04(1)(cm), an operation such as Didion Milling is exempt from the construction permit requirements of Wis. Stat. § 285.60 if its average tonnage of grain received does not exceed 4,500 tons per month.

58. Didion Milling has exceeded the 4,500 tons per month exemption level since 1998, when it processed an average of 4,982 tons of grain per month.

59. A general exemption for particulate matter ("PM") sources is available under Wis. Admin. Code § NR 406.04(2)(c) for facilities with a maximum theoretical emission rate of less than 5.7 pounds per hour.

60. According to Didion Milling's emissions records, the Cambria facility produced 40.12 tons of PM emissions in 1999, which equates to 9.16 pounds per hour if divided by 8,760 hours for the year. This is in excess of the general exemption threshold.

61. NSPS for grain storage elevators under Wis. Admin. Code § NR 440.47 became effective in 1999. Any modifications or new construction at the Cambria facility would be subject to construction permits and NSPS requirements beginning in that year.

62. Didion Milling's violations of Wis. Admin. Code § NR 406.03 include construction without a permit of unloading legs for the following silos and year of construction: silo 9, 1999; silos 10-16, 2000; silos 17-19, 2001; and silos 20-21, 101, and 102 in 2002. Didion Milling has identified that grain dryer #3 was constructed in 1999. No permit was acquired prior to this construction and was in violation of Wis. Admin. Code § NR 406.03.

63. Didion Milling constructed the south truck unloading area in 2003. No permit was acquired prior to this construction in violation of Wis. Admin. Code §§ NR 406.03, 440.47, and 440.08.

64. Didion Milling constructed three new hammermills in 2007. No permit was acquired prior to this construction in violation of Wis. Admin. Code §§ NR 406.03 and 406.10, Permit 06-DCF-166 §§ II.H. and II.L. and Permit 07-DCF-003 §§ I.ZZZ.3, II.H. and II.L.

65. Didion Milling operated three new hammermills without a permit in violation of Wis. Admin. Code § NR 406.10. Each day that Didion Milling failed to amend its pending operating permit application to identify the hammermills and their

emissions, as required by Wis. Admin. Code §§ NR 407.05(4), (9) and (10), constitutes a separate violation.

SECOND CLAIM: FAILURE TO OBTAIN AIR POLLUTION CONTROL  
OPERATION PERMIT UNDER  
WIS. ADMIN. CODE §§ NR 440.07 AND 440.08

66. Wis. Admin. Code § NR 407.04 requires that the owner or operator of an air contaminant source submit an operation permit application or renewal application. Wis. Admin. Code § NR 407.08 prohibits any stationary source which is required to obtain an operation permit from operating without an operation permit issued by the DNR.

67. Between July 1, 2000 and November 21, 2002, Didion Milling was an air contaminant source and failed to submit an operation permit application or renewal application in violation of NR 407.04 . From July 1, 2000 through May 12, 2005, Didion Milling was a stationary source and operated without an operation permit in violation of NR 407.08.

THIRD CLAIM: FAILURE TO COMPLY WITH NSPS  
NOTIFICATION AND TESTING REQUIREMENTS UNDER  
WIS. ADMIN. CODE §§ NR 440.07 AND 440.08

68. Didion's Cambria facility is an affected facility under Wis. Admin. Code § NR 440.47(1) and (2)(h), and subject to the provisions of Wis. Admin. Code § NR 440.47.

69. Under Wis. Admin. Code § NR 440.07(1)(a), "[a]ny owner or operator subject to the provisions of [ch. NR 440]" shall provide the DNR "notification of the date construction, or reconstruction as defined under s. NR 440.15, of an affected facility is commenced, postmarked no later than 30 days after such date."

70. On February 1, 2005, a letter to Amy Litscher of RSV was sent from George Czerniak of the United States Environmental Protection Agency ("EPA") determining that the NSPS requirements outlined in Wis. Admin. Code ch. NR 440 apply to Didion Milling's Cambria facility since 1999 when additional storage bins were added.

71. Didion Milling failed to notify the DNR within 30 days of the date of construction for the 15 silos/unloading legs and the south truck unloading area described above in violation of Wis. Admin. Code § NR 440.07(1)(a).

72. Under Wis. Admin. Code § NR 440.07(1)(c), Didion Milling was required to provide the DNR "[a] notification of the actual date of initial startup of an affected facility, postmarked within 15 days after such date."

73. Didion Milling failed to notify the DNR of the actual dates of the initial startup of the 15 silos and the south truck unloading area within 15 days after those dates in violation of Wis. Admin. Code § NR 440.07(1)(c).

74. Under Wis. Admin. Code § NR 440.07(1)(e), Didion Milling was required to provide the DNR "[a] notification of the date upon which demonstration of the continuous monitoring system performance commences in accordance with s. NR 440.13(3). Notification shall be postmarked not less than 30 days prior to such date."

75. Didion Milling failed to notify the DNR as required under Wis. Admin. Code § NR 440.07(1)(e) with regards to the 15 silos and the south truck unloading area in violation of Wis. Admin. Code § NR 440.07(1)(e).

76. Under Wis. Admin. Code § NR 440.07(1)(f), Didion Milling was required to provide the DNR "[a] notification of the anticipated date for conducting the opacity observations required by s. NR 440.11 (5) (a). The notification shall also include, if appropriate, a request for the department to provide a visible emissions reader during a performance test. The notification shall be postmarked not less than 30 days prior to the anticipated opacity observation date."

77. Didion Milling failed to notify the DNR as required under Wis. Admin. Code § NR 440.07(1)(f) with regards to the 15 silos and the south truck unloading area.

78. Wisconsin Admin. Code § NR 440.08(1) states:

Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility and at such other times as may be required by the department, the owner or operator of the facility shall conduct performance tests and furnish the department a written report of the results of the performance tests.

79. The DNR did not receive any information from Didion Milling pertaining to the performance test required under Wis. Admin. Code § NR 440.08(1) with regards to 15 silo unloading legs and the south truck unloading area.

FOURTH CLAIM: OPERATION OF GRAIN DRYER OUTSIDE  
PERMITTED OPERATING HOURS

80. Pursuant to Wis. Admin. Code §§ NR 404.08(2) and 406.10 and Wis. Stat. § 285.65(3) and (7), Part I.S.1.b.(3) of Permit 06-DCF-166 requires:

**Part I.S.1.b.(3):** The grain dryer may only be used during the period from October through November and only during the hours of 10 AM through 3 PM.

81. Didion Milling operated the grain dryer prior to 10 AM and/or after 3 PM on numerous days between October 19, 2006 and November 30, 2006.

82. Didion Milling operated the grain dryer during the period of December 1, 2006 to December 6, 2006.

83. By operating the grain dryer outside the permitted operating months and hours, Didion Milling violated Wis. Admin. Code §§ NR 404.08(2) and 406.10 and the Permit section referenced in ¶ 80.

FIFTH CLAIM: FAILURE TO COMPLY WITH AIR POLLUTION  
CONTROL CONSTRUCTION PERMIT REQUIREMENTS

84. Wisconsin Admin. Code § NR 406.10 states:

Any owner or operator who fails to construct a stationary source in accordance with the application as approved by the department; any owner or operator who fails to construct and operate a stationary source in accordance with conditions imposed by the department under s. 285.65, Stats.; [or] any owner or operator who modifies a stationary source in violation of conditions imposed by the department under s. 285.65, Stats.... shall be considered in violation of s. 285.60, Stats.

85. Pursuant to Wis. Stat. § 285.65(7), Part I, J.1.b.(1) and Part I, K.1.b.(2) of Permit 02-RV-166 required:



**Part I, J.1.b.(1); Part I, K.1.b.(2):** The permittee shall install simple fabric filter on all the silo vents – "socks" identified in this process within 90 days from the date the permit is issued.

86. During an inspection on March 20, 2006, DNR Air Management Specialist Mike Sloat observed that fabric filters had not been installed on five silo vents. Permit 02-RV-166 was issued to Didion Milling on May 12, 2005, and the fabric filters were not installed until December 1, 2006 and not turned on until January 15, 2007 in violation of Wis. Stat. § 285.60.

**SIXTH CLAIM: FAILURE TO CONDUCT AMBIENT AIR MONITORING  
FOR TOTAL SUSPENDED PARTICULATE MATTER**

87. Permit 06-DCF-166 was effective from October 19, 2006 through September 3, 2007. Pursuant to Wis. Stat. §§ 285.65(3) and 285.65(10), Part 1.V1.a.1 of the permit requires Didion to monitor total suspended particulate matter ("TSP") levels in the ambient air. Part 1.V1.a.1 requires:

**Part 1.V1.a.1:** [The TSP monitoring device] shall be installed and operated ... within 60 days of commencing construction of the ethanol facility, in according (sic) to guidance provided by the DNR's Ambient Air Monitoring Section of the Bureau of Air Management as found in the Air Monitoring Comparability Program guidelines, and in consultation with the local compliance inspector. This shall be for a period of thirty six (36) months or up to 24 months following initial operation of the ethanol facility, whichever is later.

88. Permit 07-DCF-003 was issued on September 4, 2007 and was in effect through September 9, 2009. It replaced Permit 06-DCF-166 when that permit expired. Part I.U.1.a.1 of Permit 07-DCF-003 contains TSP monitoring provisions functionally identical to Part 1.V1.a.1 of Permit 06-DCF-166.

89. Section II.K of Permit 06-DCF-166 and Permit 07-DCF-003 prohibit Didion from using any article, process or method to conceal an emission, which would otherwise constitute a violation of an applicable rule, and from rendering inaccurate any monitoring device or method.

90. The DNR has not received from Didion any ambient air monitoring results for numerous days, including for the period from July 2007 through February 2009, in violation of the permit sections referred to in §§ 87-89 and Wis. Stat. § 285.60.

91. On numerous days, including, but not necessarily limited to, the period from July 2007 through February 2009, Didion failed to properly operate an air monitor as required by the permit sections referred to in §§ 87-88 and Wis. Stat. § 285.60.

92. On numerous days, including, but not necessarily limited to, the period from July 2007 through February 2009, Didion rendered the particulate air quality monitor required by the DNR inaccurate by failing to report results and by tampering with, disabling, shutting off or otherwise manipulating the monitor to prevent a full and representative 24-hour sample from being recorded, in violation of Section II.K of Didion's permits and Wis. Admin. Code §§ NR 439.03(12) and NR 439.10.

**SEVENTH CLAIM: OPERATION IN VIOLATION OF  
AMBIENT AIR QUALITY STANDARD FOR TSP**

93. Wisconsin Admin. Code § NR 404.04(3) states:

The secondary standard for particulate matter measured as total suspended particulates is 150 micrograms per cubic meter - maximum 24-hour average concentration, not to be exceeded more than once per year.

94. Permit 06-DCF-166 Part II.C.1 and Wis. Admin. Code § NR 415.03 both state that no person may cause, allow or permit particulate matter to be emitted into the ambient air which substantially contributes to exceeding of an air standard, or creates air pollution.

95. Ambient air monitoring results submitted to DNR by Didion document exceedances of the ambient air quality standard to TSP on the following days: April 30, 2007; May 3, 8, 18, 24 and 30, 2007; June 11, 13 and 29, 2007; February 21, 2008; March 13, 2008; April 24, 2008; July 29, 2008; and August 4, 2008.

96. On numerous days, including, but not necessarily limited to, those days identified in ¶ 92, Didion caused or contributed to exceedance of the TSP standard in violation of Wis. Admin. Code §§ NR 404.04(3) and NR 415.03.

#### EIGHTH CLAIM: OPERATION OF ETHANOL FACILITY IN VIOLATION OF PARTICULATE MATTER EMISSION LIMIT

97. Part I.G.1.b.(1) of Permit 06-DCF-166 provides that Didion's compliance with the Particulate Matter emissions limit for the cooling tower stack is demonstrated by reporting Total Dissolved Solids or Total Solids concentration levels in the cooling tower water below 2,500 parts per million or 2,500 mg/l.

98. Based on cooling tower water sampling results provided by Didion, the Total Dissolved Solids concentrations exceeded the allowable limit on February 27, 2009. Didion reported that the cooling tower water sampling results were in compliance on May 1, 2009.

99. Didion failed to demonstrate compliance with the cooling tower stack particulate emission limit as provided in Part I.G.1.b.(1) of Permit 06-DCF-166 on numerous days, including, but not necessarily limited to, February 27, 2009 through April 30, 2009.

100. Part I.N.1.a.(1)(a) of Permit 08-DCF-155 provides that the emissions from stack S40 may not exceed 1.25 lbs/hr of PM and PM10.

101. Didion commenced operation of stack S40 on October 10, 2009. Didion conducted a stack test on November 5, 2009 on stack S40, which measured PM emissions of 1.61 pounds per hour. Didion conducted a second compliance stack test on December 29, 2009 on stack S40, which measured PM emissions of less than 1.25 pounds per hour.

102. Didion operated its facility in violation of Part I.N.1.a.(1)(a) on numerous days between October 10, 2009 and December 29, 2009.

**NINTH CLAIM: OPERATION OF GRAIN DRYER IN  
VIOLATION OF PARTICULATE MATTER EMISSION LIMIT**

103. Pursuant to Wis. Admin. Code §§ NR 404.08(2) and 415.05(2) and Wis. Stat. § 285.65(3), Part I.S".1.a.(1) of Permit 07-DCF-003 requires:

**Part I.S".1.a.(1):** The emissions may not exceed 6.96 lb/hr of PM and 1.74 lb/hr of PM10 from [Grain Dryer #3].

104. Part I.S".1.b.(5) of Permit 07-DCF-003 specifies that Didion must "conduct a stack test of the grain dryer PM10 emission rate within 90 days of enclosure and stack venting of the grain dryer."

105. Didion conducted stack tests on January 3 and 4, 2008 on stack S-23, which measured emissions from Grain Dryer #3 of 15.52 pounds per hour of particulate matter.

106. Upon receiving the stack tests results, and by February 27, 2008, Didion stopped operating Grain Dryer #3 until it could resolve the particulate emissions issue.

107. Didion resumed operations of Grain Dryer #3 on November 10, 2008.

108. Didion conducted a stack test on November 18 and 19, 2008 on stack S-23, which measured emissions from Grain Dryer #3 of 21.58 pounds per hour of particulate matter and 7.32 pounds per hour of PM10.

109. Pursuant to Wis. Admin. Code §§ NR 404.08(2) and Wis. Stat. § 285.65(3), Part I.M.1.a.(1) of Permit 07-DCF-003 requires:

**Part I.M.1.a.(1):** The emissions may not exceed 0.22 lb/hr of PM and PM10 from [stack S11].

110. Didion conducted a stack test on November 20, 2008 on stack S-11, which measured emissions of 0.22 pounds per hour of PM and PM10.

111. Pursuant to Wis. Admin. Code §§ NR 404.08(2) and Wis. Stat. § 285.65(3), Part I.P.1.a.(1) of Permit 06-DCF-166 requires:

**Part I.P.1.a.(1):** The emissions may not exceed 0.069 lb/hr of PM and PM10 from [stack S17].

112. Didion conducted a stack test on November 21, 2008 on stack S-17, which measured emissions of 0.768 pounds per hour of particulate matter.

113. Didion has operated Grain Dryer #3 on numerous days between September 27, 2007 and September 9, 2009 in violation of the emissions limit of 6.96 pounds per

hour of particulate matter and 1.74 pounds per hour of PM10 established in Part I.S".1.a.(1) of Permit 07-DCF-003.

114. Didion has operated stack S11 on numerous days in violation of the emissions limit of 0.22 pounds per hour of PM and PM10 established in Part I.M.1.a.(1) of Permit 07-DCF-003.

115. Didion has operated stack S17 on numerous days in violation of the emissions limit of 0.069 pounds per hour of PM and PM10 established in Part I.P.1.a.(1) of Permit 06-DCF-166.

116. By operating in violation of its emission limits, Didion violated Wis. Stat. § 285.60, Wis. Admin. Code §§ NR 406.10 and NR 415.03, Sections I.ZZZ.3, II.B., II.C. and II.L. of Permit 07-DCF-003 and the respective Permit sections referenced in ¶¶ 103-115, above.

#### TENTH CLAIM: FAILURE TO RECORD BAGHOUSE PRESSURE DROP

117. Wisconsin Admin. Code § NR 439.04(2) requires that copies of all records of all sampling, testing, and monitoring conducted or required under an air pollution control permit be retained by the owner or operator for a period of 5 years or for such other period as may be specified by the department.

118. Pursuant to Wis. Admin. Code §§ NR 439.04 and NR 439.055(1)(a) and (2), Part I.J.1.c.(2) of Permit 06-DCF-166 requires:

**Part I.J.1.c.(2):** The facility shall monitor and record the pressure drop across the baghouse at least once for each 8 hours of operation of any process or once per day of operation, whichever yields the greater number of measurements.

119. The permit provision referred to in ¶ 118 applies to a particular baghouse. Identical language is repeated numerous times in Permit 06-DCF-166 and Permit 07-DCF-003 in sections covering individual baghouses, including the following permit sections: I.K.1.c.(2); I.L.1.c.(2); I.M.1.c.(2); I.N.1.c.(2), I.O.1.c.(2); I.P.1.c.(2); I.Q.1.c.(2); I.R.1.c.(2); and I.R'.1.c.(2). Permit 08-DCF-155 includes identical or similar language in the following permit sections: I.A.1.c.(3); I.A.2.c.(2); I.A.3.c.(3); I.A.4.c.(3); I.C.1.c.(2); I.C.1.c.(3); I.J.1.c.(2); I.K.1.c.(2); I.L.1.c.(2); I.M.1.c.(2); I.N.1.c.(2), I.O.1.c.(2); I.P.1.c.(2); I.Q.1.c.(2); and I.R.1.c.(2).

120. Part I.J.1.c.(2)(a) of Permit 08-DCF-155 includes the additional requirement that if a pressure drop across the baghouse is observed as less than 1.5 inches during normal operation, or following bag replacement, the pressure drop shall be noted and recorded at least once every 2 hours. Identical language is repeated numerous times in the following sections of Permit 08-DCF-155: I.C.1.c.(3)(a); I.K.1.c.(2)(a); I.L.1.c.(2)(a); I.N.1.c.(2)(a); I.O.1.c.(2)(a); I.Q.1.c.(2)(a); and I.R.1.c.(2)(a).

121. Pressure drop records are missing for baghouses C21 and C22 for the period from October 19, 2006 through February 19, 2008.

122. Pressure drop records are unavailable for baghouse C08 prior to January 1, 2007.

123. Records provided by Didion list January 15, 2007 as a "Turned on" date for baghouse C14's pressure drop monitor. This indicates no readings were taken prior to that date.

124. Records provided by Didion indicate that various mechanical, electrical and programming problems resulted in various missed pressure drop readings between September 9, 2009 and March 15, 2010.

125. Didion failed to record the pressure drop of various baghouses and other control devices every 2 hours following an observation of pressure drop readings of less than 1.5 inches on numerous occasions between September 9, 2009 and March 15, 2010.

126. By failing to properly monitor and record baghouse pressure drop readings, Didion violated Wis. Stat. § 285.60, Wis. Admin. Code §§ NR 406.10, NR 439.03(12), NR 439.04(1), NR 439.04(2) and NR 439.055(2), Section I.Y.4.A. of Permit 06, DCF-166, Section I.ZZZ.3 of Permit 07-DCF-003 and the respective Permit sections referenced in ¶¶ 117-20, above.

**ELEVENTH CLAIM: OPERATION OF BAGHOUSES OUTSIDE OF  
PRESSURE DROP RANGE SPECIFIED IN AN AIR PERMIT**

127. Pursuant to Wis. Stat. § 285.65(3) and Wis. Admin. Code § NR 407.09(1)(c), Part I.J.1.b.(3) of Permit 06-DCF-166 requires:

**Part I.J.1.b.(3):** The pressure drop across the baghouse shall be maintained within the range of 2-5 inches of water column or with approval from the Department in writing, an alternative range or monitoring technology used to demonstrate compliance.

128. The permit provision referred to in ¶ 127 applies to a particular baghouse. Identical language is repeated numerous times in Permit 06-DCF-166 and Permit 07-DCF-003 in sections covering individual baghouses, including the following permit



sections: I.K.1.b.(3); I.L.1.b.(3); I.M.1.b.(3); I.N.1.b.(3), I.O.1.b.(3); I.P.1.b.(3); I.Q.1.b.(3); and I.R'.1.b.(3).

129. Didion operated with one or more of its baghouses outside the range of pressure drop allowed under the permit numerous times. According to Didion's records, between October 19, 2006 and February 19, 2008 readings of pressure drop in violation of the permitted range include the following: baghouse C01, 7 readings; baghouse C10, 532 readings; baghouse C11, 389 readings; baghouse C14, 76 readings; baghouse C17, 16 readings. According to Didion's records, between February 21, 2008 and September 24, 2008 readings of pressure drop in violation of the permitted range include the following: baghouse C01, 70 readings; baghouse C10, 95 readings; baghouse C11, 83 readings; baghouse C14, 57 readings; baghouse C17, 13 readings; baghouse C21, 36 readings; and baghouse C22, 7 readings.

130. The numbers of readings in violation take into account the +/- 1 inch accuracy allowance for pressure drop monitors allowed under Wis. Admin. Code § NR 439.055(3)(b).

131. Didion's pressure drop records indicate readings were taken twice per day. An estimate of the number of days in violation prior to February 19, 2008 is thus  $(532+389+76+7+16) / 2 = 510$  days in violation.

132. For the period following February 19, 2008, Didion violated the respective Permit sections referenced in ¶¶ 127-28, above, on numerous occasions by operating the following processes out of the permitted range, including the following:

S01/P01/C01	18 violations over 14 days
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S10/P10/C10	62 violations over 30 days
S11/P11/C11	14 violations over 6 days
S14/P21, P22, P23/C14	22 violations over 15 days
S17/P15/C17	8 violations over 8 days
S21/P19/C21	4 violations over 4 days
S22/P20/C22	5 violations over 5 days

133. Pursuant to Wis. Stat. § 285.65(3) and Wis. Admin. Code § NR 407.09(1)(c), Part I.J.1.b.(3) of Permit 08-DCF-155 requires:

**Part I.J.1.b.(3):** The pressure drop across the baghouse shall normally be maintained within the range of 1.5 to 8 inches of water column or with approval from the Department in writing, an alternative range or monitoring technology used to demonstrate compliance.

134. The permit provision referred to in ¶ 133 applies to a particular baghouse. Identical or similar language is repeated numerous times in Permit 08-DCF-155 in sections covering individual baghouses and other control devices, including the following permit sections: I.A.1.b.(2) (pressure drop across wet scrubber shall be maintained between 1 to 10 inches of water column); I.C.1.b.(4) (pressure drop across the DDGS cooling system baghouse shall normally be maintained between 1.5 to 10 inches of water column); I.K.1.b.(3); I.L.1.b.(3); I.M.1.b.(3); I.N.1.b.(3), I.O.1.b.(3); I.P.1.b.(3); I.Q.1.b.(3); and I.R.1.b.(3).

135. According to Didion's records, on numerous occasions between September 9, 2009 and March 15, 2010, Didion operated with one or more of its baghouses or other control devices outside the range of pressure drop allowed under Permit 08-DCF-155.

136. Each time Didion failed to maintain its baghouses and other control devices within the allowed pressure drop range, Didion violated Wis. Stat. § 285.60, Wis. Admin. Code § NR 406.10, Sections I.Y.4.A. and II.L. of Permit 06-DCF-166, Sections I.ZZZ.3 and II.L. of Permit 07-DCF-003 and the respective Permit sections referenced in ¶¶ 127-28, 133-34, above.

**TWELFTH CLAIM: OPERATION OF PROCESSES OUTSIDE OF  
PRESSURE DROP RANGE SPECIFIED IN AN AIR PERMIT**

137. Pursuant to Wis. Stat. § 285.65(3) and Wis. Admin. Code § NR 407.09(1)(c), Part I.A.1.b.(2) of Permit 06-DCF-166 requires the following with respect to the fermentation wet scrubber process identified as S30/P30-35/C30:

**Part I.A.1.b.(2):** The pressure drop across the wet scrubber shall be maintained between 2 to 10 inches of water column gauge pressure, or with written approval from the Department, an alternative range determined to demonstrate compliance.

138. Didion operated the fermentation wet scrubber outside the range of pressure drop allowed under the permit numerous times. According to Didion's records, between February 21, 2008 and September 24, 2008 there were 177 pressure drop readings that were noncompliant.

139. Didion violated Part I.A.1.b.(2) of Permit 06-DCF-166 on numerous occasions by operating the fermentation wet scrubber process out of the permitted range, including, but not limited to, 43 violations over 25 days of violation.

140. Pursuant to Wis. Stat. § 285.65(3) and Wis. Admin. Code § NR 407.09(1)(c), Part I.C.1.b.(4) of Permit 07-DCF-003 requires the following with

respect to the DDGS Dryer and DDG Cooling Cyclone processes identified as S32/P49-50/C33:

**Part I.C.1.b.(4):** The pressure drop across the multiclones shall be maintained between 1 and 6 inches water column or with approval from the Department, an alternative range determined to demonstrate compliance.

141. Didion operated the DDG cooling cyclones outside the range of pressure drop allowed under the permit numerous times. According to Didion's records, between February 21, 2008 and September 24, 2008 there were 465 pressure drop readings that were noncompliant.

142. Didion violated Part I.C.1.b.(4) of Permit 07-DCF-003 on numerous occasions by operating the DDG cooling cyclones process out of the permitted range, including, but not limited to, 452 violations over 143 days of violation.

#### THIRTEENTH CLAIM: FAILURE TO TIMELY DEMONSTRATE COMPLIANCE

143. Wis. Admin. Code § NR 439.07(1) and Part I.M.1.b.(6) of Permit 07-DCF-003, require the following with respect to the North Filters: Grain Milling and Mill Bins processes identified as P11/S11/C11:

**Part I.M.1.b.(6):** Compliance emission tests shall be conducted within 180 days after the start of initial operation following completion or modification (or authorization to construct expiration, whichever comes first) to demonstrate compliance with the PM emission limit, exhaust flow and grain loading (gr/dscf). The stack testing shall be done following installation of the bag break detector/emissions monitor, to assist in calibration.

144. The bag house leak detectors for stack/process P11/S11/C11 were installed January 2007. The related stack test was performed on November 20, 2008.

145. The stack test performed on November 20, 2008 for stack/process P11/S11/C11 did not demonstrate compliance.

146. The particular provision referenced in ¶ 143, above, relates to a specific bag break detector. Identical language is repeated numerous times in Permit 06-DCF-166 and Permit 07-DCF-003, and in particular in section I.P.1.b.(6) with respect to the South Truck Unload/Loading Building Filter process P15/S17/C17.

147. The bag house leak detectors for stack/process P15/S17/C17 were installed January 2007. The related stack test was performed on November 21, 2008.

148. The stack test performed on November 21, 2008 for stack/process P15/S17/C17 did not demonstrate compliance.

149. Wis. Admin. Code § NR 439.07(1) and Part I.S".1.b.(5) of Permit 07-DCF-003, require the following with respect to Grain Dryer #3 processes identified as P16/S23:

**Part I.S".1.b.(5):** The facility shall conduct a stack test of the grain dryer PM10 emission rate within 90 days of enclosure and stack venting of the grain dryer.

150. The enclosure and stack venting of the grain dryer was completed on January 9, 2007. The related stack test was performed on January 3-4, 2008.

#### FOURTEENTH CLAIM: FAILURE TO MAINTAIN RECORDS

151. Wis. Admin. Code § NR 439.04 and Part I.CC.3.c.(6) of Permit 07-DCF-003 require Didion to maintain daily records of the usage of the vapor collection/disposal equipment for the Railcar Ethanol Loadout and Tanker Truck Ethanol Loadout processes identified as S38/P52-53/C34 and any records needed to demonstrate compliance with the requirements of Wis. Admin. Code § NR 440.18.

152. On various occasions, including for the month of April 2008, Didion operated the ethanol loadout system without recording any data on the flare usage.

153. Didion violated Part I.CC.3.c.(6) of Permit 07-DCF-003 on numerous occasions by failing to record data on the usage of the vapor collection/disposal equipment for the ethanol loadout system, including, but not limited to, 6 violations over 6 days of violation.

#### FIFTEENTH CLAIM: FUGITIVE DUST CONTROL

154. Wis. Admin. Code § NR 415.04 and Part I.W. of Permit 07-DCF-003 require Didion to control the emission of fugitive dust.

155. Didion has failed to maintain and follow a fugitive dust plan for the facility, including documentation of protocol used to evaluate the parking and material handling areas, and has failed to keep daily records of evaluations, cleaning, sweeping and dust removal activities.

156. On numerous days after it began operating the ethanol facility, Didion failed to control fugitive dust emissions from the wet distiller's grain handling and

storage facility, referenced as stack S33B, at the ethanol facility, by failing to enclose S33B or take other measures to control fugitive emissions of PM and PM10.

157. Didion violated Part I.W. of Permit 07-DCF-003 on numerous occasions by failing to control fugitive dust emissions from the wet distiller's grain handling and storage facility.

158. By failing to control fugitive dust emissions, Didion also violated Wis. Stat. § 285.60, Wis. Admin. Code §§ NR 406.10 and NR 415.03 and Sections I.ZZZ.3, II.B. and II.C. of Permit 07-DCF-003.

#### SIXTEENTH CLAIM: FALSE CERTIFICATION

159. Wis. Admin. Code § NR 407.05(10) provides that "all material statements, representations and certifications in a permit application shall be truthful." Wis. Admin. Code § NR 439.03(11) provides that "[a]ll certifications . . . and all material statements and representations made in any report or notice required by an operation permit shall be truthful."

160. On July 27, 2008, Didion applied to modify or replace Permit 07-DCF-003 and to revise proposed permit 111081520-F02. Didion's application contained a signed certification stating that "the facility described in this air pollution permit application is fully in compliance with all applicable requirements."

161. Didion violated Wis. Admin. Code § NR 407.05(10) by certifying that the facility was fully in compliance with all applicable requirements on July 27, 2008.

162. Each day that Didion failed to correct its permit applications' false statements regarding compliance constitutes a separate violation of Wis. Admin. Code § NR 407.05(9).

163. Each day that Didion falsely certified compliance with applicable operating permit requirements constitutes a separate violation of Wis. Admin. Code § 439.03.

SEVENTEENTH CLAIM: FAILURE TO NOTIFY DNR  
OF DEVIATIONS OR VIOLATIONS

164. Pursuant to Wis. Admin. Code § NR 439.03(4) and Part II.D. of Permit 06-DCF-166 and Permit 07-DCF-003, Didion shall report to DNR the next business day following any violation of Didion's air construction permits.

165. On numerous occasions Didion failed to timely report violations referenced in the First through Sixteenth Claims, above.

EIGHTEENTH CLAIM: VIOLATION OF WPDES EFFLUENT LIMITS

166. Pursuant to Wis. Stat. § 283.31, Sections 1.2 and 1.2.1 of the WPDES Permit establish effluent limitations for the following pollutants: pH, Dissolved Oxygen, Total Suspended Solids, BOD<sub>5</sub>, Chlorine, Phosphorus, Zinc and Arsenic.

167. Based on discharge monitoring reports provided by Didion, on numerous occasions between April 8, 2008 and May 21, 2009, Didion exceeded the daily maximum effluent limit of 10 mg/L Total Suspended Solids.



168. Based on discharge monitoring reports provided by Didion, on numerous occasions between April 8, 2008 and May 21, 2009, Didion exceeded the daily maximum effluent limit of 690 µg/L Total Recoverable Zinc.

169. Based on discharge monitoring reports provided by Didion, on numerous occasions between April 8, 2008 and May 21, 2009, Didion exceeded the daily maximum effluent limit of 1.2 lbs/day Total Recoverable Zinc.

170. Based on discharge monitoring reports provided by Didion, on numerous occasions between April 8, 2008 and May 21, 2009, Didion exceeded the weekly average effluent limit of 0.57 lbs/day Total Recoverable Zinc.

171. Based on discharge monitoring reports provided by Didion, on numerous occasions between April 8, 2008 and May 21, 2009, Didion exceeded the weekly average effluent limit of 340 µg/L Total Recoverable Zinc.

172. Didion violated Sections 1.2 and 1.2.1 of the WPDES Permit on numerous occasions by discharging suspended solids and zinc in quantities and/or concentrations that exceeded the respective effluent limitations.

#### NINETEENTH CLAIM: VIOLATION OF WPDES SAMPLING, MONITORING AND TESTING REQUIREMENTS

173. Pursuant to Wis. Stat. § 283.31, Sections 1.2 and 1.2.1 of the WPDES Permit establish minimum sampling and monitoring frequencies for the following pollutants: pH, Dissolved Oxygen, Total Suspended Solids, BOD<sub>5</sub>, Chlorine, Phosphorus, Zinc and Arsenic. Wis. Admin. Code § NR 205.07(1)(p), (q) and Sections

2.1.1 and 2.1.2 of the WPDES Permit establish sampling and testing procedures and reporting requirements related to Didion's monitoring and sampling results.

174. On numerous occasions between April 8, 2008 and May 21, 2009, Didion failed to take effluent samples and measurements for the purpose of monitoring that were representative of the volume and nature of the monitored discharge.

175. Based on discharge monitoring reports provided by Didion, during the week May 22, 2008 to May 28, 2008, Didion failed to sample its effluent for pH, Dissolved Oxygen or Total Suspended Solids, and during the weeks November 1, 2008 to November 7, 2008 and April 1, 2009 to April 7, 2009, Didion failed to sample its effluent for Total Suspended Solids.

176. Pursuant to Wis. Stat. § 283.31, Sections 1.2, 1.2.1 and 1.2.1.9 of the WPDES Permit establish requirements related to Whole Effluent Toxicity (WET) testing.

177. Didion reported a positive chronic WET test result on September 23, 2008. Didion has not submitted the results of at least two chronic WET retests subsequent to September 23, 2008.

178. Based on discharge monitoring reports provided by Didion, during the fourth quarter of 2008 and during the first and second quarters of 2009, Didion failed to perform acute WET tests or chronic WET tests.

179. Based on information provided by Didion, the Total Suspended Solids sample collected on November 21, 2008 and the BOD<sub>5</sub> sample collected on May 14, 2009 violated the sampling and testing procedures outlined in Section 2.1.2 of the WPDES Permit.

180. On numerous occasions, Didion failed to submit discharge monitoring reports on a timely basis, including, but not necessarily limited to, the monthly results for April, May and June 2008 and the quarterly results for the period April through June, 2008.

181. Didion violated Wis. Admin. Code § NR 205.07(1) and Sections 1.2, 1.2.1, 1.2.1.9, 2.1.1 and 2.1.2 of the WPDES Permit on numerous occasions by failing to properly sample its effluent for various pollutants, by failing to timely submit monitoring reports, by failing to submit chronic WET retests following a chronic WET test showing a positive result and by failing to perform quarterly WET tests.

#### TWENTIETH CLAIM: VIOLATION OF WPDES ADDITIVE LIMITATIONS

182. Pursuant to Wis. Stat. § 283.31, Sections 1.2.1.8 and 2.3.6 of the WPDES Permit establish regulations regarding Didion's use of water treatment additives. Section 2.3.6 provides that if Didion wishes to commence use of a water treatment additive, or increase the usage of the additives greater than indicated in Didion's permit application, Didion must get a written approval from DNR prior to initiating such changes. Section 1.2.1.8 requires Didion to report the dosage rate of all additives used on a monthly basis.

183. Information provided in Didion's permit application identified the following additives, at specified dosage rates: CWT-530, Sulfuric Acid, Chlorine, Biotrol-120, RO-503 and BWT-104.

184. Based on discharge monitoring reports provided by Didion, on numerous occasions between April 8, 2008 and May 21, 2009, Didion used the following additives

at increased usages greater than indicated in Didion's permit application: CWT-530, Sulfuric Acid, Chlorine and RO-503.

185. Didion commenced, and maintained, the use of the additive sodium bisulfite without receiving written approval from DNR.

186. Didion violated Section 2.3.6 of the WPDES Permit on numerous occasions by commencing the use of a water treatment additive, or increasing the usage of additives greater than indicated in Didion's permit application without first obtaining a written approval from DNR.

#### TWENTY FIRST CLAIM: VIOLATION OF WPDES LIMITS ON FLOATING SOLIDS

187. Pursuant to Wis. Stat. § 283.31 and Wis. Admin. Code ch. NR 205, Section 2.3.3 of the WPDES Permit provides that Didion shall not discharge floating solids or visible foam in other than trace amounts.

188. On numerous occasions, Didion discharged foam and floating solids and/or high suspended solids with a yellow or brown color to a tributary of Duck Creek, including, but not necessarily limited to, on the following days: September 12, 2008; November 14, 18 and 27, 2008; December 1 and 30, 2008; January 9 and 27, 2009; March 3, 2009; and April 3, 2009.

#### TWENTY SECOND CLAIM: DISCHARGE OF POLLUTANTS WITHOUT A PERMIT

189. Pursuant to Wis. Stat. § 283.31, the discharge of any pollutant into a water of the state is unlawful unless such discharge is done under a permit issued by DNR.

190. On June 4, 2009, approximately 43,500 gallons of corn mash was released from the Didion Ethanol facility into a storm sewer or open ditch, then into a storm sewer settling basin and ultimately into a wetland. This discharge is not authorized by the WPDES Permit.

191. On July 26, 2009, approximately 3,500 to 4,000 gallons of dilute caustic (3.2% by volume sodium hydroxide) was released from the Didion Ethanol facility and followed the same pathway as the corn mash released on June 4, 2009 – ultimately discharging into a wetland.

192. Didion violated Wis. Stat. § 283.31 by discharging corn mash and dilute caustic to a water of the state, which discharges were not pursuant to a validly issued discharge permit.

**TWENTY THIRD CLAIM: FAILURE TO NOTIFY DNR  
OF DEVIATIONS OR VIOLATIONS AND FAILURE TO OPERATE  
THE FACILITY PROPERLY**

193. Pursuant to Wis. Admin. Code § NR 205.07, Didion shall report to DNR any frequent increased discharges of any toxic pollutant not limited in the WPDES Permit.

194. Section 2.2.1 of the WPDES Permit requires Didion to notify DNR by telephone within 24 hours of becoming aware of certain instances of noncompliance and to submit a written report describing any such noncompliance within 5 days after Didion becomes aware of the noncompliance.

195. Section 2.2.3 of the WPDES Permit requires Didion to operate and maintain all facilities and systems of treatment and control, which are installed and operated by Didion, to achieve compliance with the WPDES Permit conditions.

196. Section 2.2.4 of the WPDES Permit requires Didion to notify DNR in the event of a spill or accidental release that is unregulated in the WPDES Permit.

197. On numerous occasions, Didion's discharge of iron exceeded five times the maximum concentration value reported for iron in Didion's WPDES permit application, and Didion failed to timely report such increased discharges to DNR.

198. On numerous occasions Didion failed to operate and maintain the ethanol facility in order to avoid the violations referenced in the Seventeenth through Twenty First Claims, above

199. On numerous occasions Didion failed to timely report violations referenced in the Eighteenth through Twenty First Claims, above.

#### PENALTIES

200. Wisconsin Stat. § 283.91(2) states that any person who violates chapter 283 or any rule promulgated under that chapter or any term or permit issued under chapter 283 shall forfeit not less than \$10 nor more than \$10,000 for each day of violation.

201. Wisconsin Stat. § 285.87 states that any person who violates chapter 285 or any rule promulgated under that chapter or any permit issued under chapter 285 shall forfeit not less than \$10 nor more than \$25,000 for each violation. Each day of continued violation is a separate offense.

202. Wisconsin Stat. §283.91(5) provide that the Court may also award the Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney's fees.

WHEREFORE, plaintiff asks the Court to enter judgment as follows:

1. An injunction requiring the defendant to operate the facility in compliance with Wisconsin laws regulating air and water pollution.
2. Forfeitures as provided in Wis. Stat. §§ 283.91(2) and 285.87(1).
3. For the 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18).
4. For the 10% environmental surcharge pursuant to Wis. Stat. § 814.75(12).
5. For the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14).
6. For \$25 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).
7. The reasonable and necessary expenses of the investigation and prosecution of this case, including attorney's fees, as provided for in Wis. Stat. § 283.91(5).
8. Any relief the Court deems appropriate.

Dated this 26 day of March, 2010.

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