



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Lloyd L. Eagan, Regional Director

South Central Region Headquarters
3911 Fish Hatchery Road
Fitchburg, Wisconsin 53711-5397
Telephone 608-275-3266
FAX 608-275-3338
TTY Access via relay - 711

Hand Delivered

August 21, 2009

Casetrack ID#2009-SCEE-033

Mr. Dale Drachenberg, Vice President Operations
Didion Ethanol LLC
501 South Williams Street
Cambria, WI 53923

Subject: **Notice of Violation/Enforcement Conference**

Dear Mr. Drachenberg:

Based on information compiled by the Department, we are alleging that Didion Ethanol LLC violated Wisconsin Pollution Discharge Elimination System permit # 0063771-01. We are basing this belief on that fact that spills occurred at the facility on June 4, 2009 and on July 26, 2009. The facility is located in the NW 1/4 of the SW 1/4 Section 5, Township 12N R 12E, Town of Cambria, Columbia County.

June 4, 2009

Didion Ethanol had a spill on the morning of June 4, 2009. The incident occurred when a main way access door was breached at the bottom of a 700,000 gallon fermentation tank. Approximately 43,500 gallons of corn mash was released. The access door failed due to human error. Didion personnel reported to Conservation Warden Heather Gottschalk it was believed that the access door was not latched correctly after employees exited the door the day before. The mash flowed across the property via the ground, entered the storm sewer to an open ditch and then into a storm water settling basin. The mash ultimately discharged to a wetland and tributary of the North Branch of Duck Creek on the west side of Highway 146.

The Department is alleging the following violations based on the June 4, 2009 spill:

1. Discharge without a permit under s. 283.31, Wis. Stats. The discharge of any pollutant into any waters of the state ... by any person is unlawful unless such discharge ... is done under a permit issued by the department.
2. Section NR 708.05 (1)^d(2), Wis. Adm Code, requires Didion to take adequate actions to control the spill and to conduct all necessary emergency immediate actions.

Due to the spill, a large volume of corn mash flowed 700' (1.3 acres) into a stormwater detention pond, overflowed the detention pond under Hwy 146 creating a plume of over .97 acres in the adjacent wetland and tributary of the North Branch of Duck Creek.

Didion reported that the spill occurred at 4:30-5:00 am. Didion management was notified at 5:00 am. The first contact to DNR wastewater program was a voice message at 7:40 am, then messages were left to the DNR air program at 7:43 am, and DNR stormwater at 9:00 am. The Village of Cambria was called at 7:49 am and the Town of Courtland was called at 8:41 am. The DNR hotline was called at 11:00 am.

3. WPDES Permit condition 2.2.1 requires a written report describing the non-compliance to be submitted to the Department's regional office within 5 days after the permittee becomes aware of the noncompliance.

The written report for the June 4, incident was received on June 25, 2009, twenty one days after the spill occurred.

4. WPDES permit condition 2.2.3 requires the permittee to operate and maintain all facilities and systems of treatment and control which are installed and operated by the Permittee to achieve compliance with the conditions of the permit including spill prevention and/or unregulated discharges. This must be documented and implemented for all equipment and tanks.

Didion needs to implement operation and maintenance procedures to prevent spills and unpermitted discharges. These procedures need to be part of a Spill Plan. The Department does not have a copy of Didion's Spill Plan. An August 19, 2009 email from Dan Ketter stated that a Spill Response Plan would be submitted on August 20, 2009.

5. WPDES permit condition 2.3.3 requires there shall be no discharge of floating solids or visible foam in other than trace amounts to surface waters.

Bonestroo, Didion's consultant, estimates a volume of approximately 7800 cu ft (6") of waste material was removed from the mash plume in the wetland during the initial clean up effort. However, Bonestroo also estimates that considerable mash solids will remain in the wetland with additional potential impacts to the North Branch of Duck Creek and its tributary.

Didion identified 4 steps to prevent future spills in their June 25, 2009 written submittal to the Department. On July 26, 2009 a second major spill occurred at the ethanol facility.

July 26, 2009

A second spill occurred on July 26, 2009. An estimated 3,500 to 4,000 gallons of dilute caustic (3.2% by volume sodium hydroxide) was released from a failed valve between the dilute caustic tank and fermentation tank at the facility. The released caustic followed the same pathway as the June 4, 2009 incident flowing on the ground into the storm drain and drainage ditch along the south side of the property flowing west/northwest along Highway 146 to Cabbage Road. The release continued through the storm drain under Hwy 146 to the wetland and tributary of the North Branch of Duck Creek.

The Department is alleging the following violations based on the July 26, 2009 spill:

1. Discharge without a permit under s. 283.31, Wis. Stats. The discharge of any pollutant into any waters of the state ... by any person is unlawful unless such discharge ... is done under a permit issued by the department.
2. WPDES Permit condition 2.2.1 requires a written report describing the non-compliance shall be submitted to the Department's regional office within 5 days after the permittee becomes aware of the noncompliance.

The written report for the July 26, incident was received on August 19, 2009. The report is 19 days late.

3. WPDES permit condition 2.2.3 requires the permittee to operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the permit.

Didion needs to implement operation and maintenance procedures to prevent spills and unpermitted discharges. These procedures need to be part of a Spill Plan. The Department does not have a copy of Didion's Spill Plan. An August 19, 2009 email from Dan Ketter stated that a Spill Response Plan would be submitted on August 20, 2009.

4. WPDES permit condition 2.3.3 requires there shall be no discharge of floating solids or visible foam in other than trace amounts to surface waters. The Department considers the discharge of dilute caustic to the wetland and tributary of the North Branch of Duck Creek as a discharge of floating solids to surface waters.

Within 51 days, two major spills have taken place at Didion Ethanol. The spills originated from almost the same location at the facility. I have scheduled an **enforcement conference for Friday September 11, 2009 at 10:30 AM** so that we may discuss a schedule for the following spill related issues:

1. Updating the facility's operation and maintenance plan.
2. Retaining a consultant to evaluate all areas of the facility that have a potential for spills. Installation of spill prevention measures including berms, alarm systems and other measures identified by the consultant.
3. Improving or developing a spill plan and/or procedures for preventing and reacting to spills.
4. Submittal and Department approval of plans for continued remediation and monitoring of the wetland, tributary and North Branch of Duck Creek.
5. Implementation of Didion's 4 steps that will be taken to prevent re-occurrence of a spill identified in the June 23, 2009 letter to the Department.
6. Plans for restoration of the impacted wetland.

Please be advised that the Department is authorized to seek forfeitures of up to \$10,000 per violation per day pursuant to s. 283.91(2), Wis. Stats.

If you have questions regarding this letter please contact me at 608-743-4852. If you have technical questions pertaining to your wastewater permit contact Ken Denow at 920-387-7886.

Sincerely,



Pamela Kober
Environmental Enforcement Specialist

cc: Dino Tsois – SCR
Ken Denow – Horicon Service Center
Dan Heim – Horicon Service Center
Laura Stremick-Thompson - Horicon Service Center
Warden Heather Gottschalk – Beaver Dam
Warden Paul Nadolski – Poynette Service Center