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## [How a polluter gets stimulus money — and avoids environmental review](#)

Posted on November 29, 2010 by [Kate Golden](#)



In 2008, residents noticed a chunky, murky yellow liquid coming from a Didion Milling wastewater pipe into this stream, and worried what effect it might have when it got to Tarrant Lake, downstream. Kate Golden/WCIJ

**By Kate Golden**

*Wisconsin Center for Investigative Journalism*

Last December, when Gov. Jim Doyle announced \$14.5 million in federal stimulus funds for energy-efficiency projects involving nine companies, he called it “a tremendous opportunity to be one of the greenest manufacturing states in the country.”

What Doyle did not mention was that ethanol producer

**AUDIO  
SLIDESHOW  
Cambria  
residents react**

Hear neighbors who oppose Didion Milling’s grant describing what it’s like to live nearby. (Click picture to open a new page.)



Didion Milling Inc., which got the largest share at \$5.6 million, is one of Wisconsin’s most chronic air and water polluters — and a firm designated by the federal government as a “high priority violator.”

Less than a month before Doyle’s announcement, a federal judge ruled that Didion had violated the federal Clean Water Act many times in 2008 and 2009. Among the violations: the use of excessive amounts of chlorine and other chemicals, and the discharge of a murky yellow liquid with solids down a company wastewater pipe into a tributary of a fishing lake. The ruling came in a lawsuit filed by residents who lived near the company’s Cambria plant, about 45 miles northeast of Madison.

The company settled a state lawsuit in April by agreeing to pay \$1.05 million for 23 air and water claims that stretched from 1999 to 2010 — a move that effectively ended three federal lawsuits filed by residents living near the plant.

Documents obtained by the Wisconsin Center for Investigative Journalism under open-records laws show officials evaluating Didion’s application for the U.S. Energy Department stimulus grant didn’t ask about — and Didion didn’t disclose — details of its environmental compliance.

And once it won the grant, Didion’s project was exempted from an analysis of its environmental impact — just like 99 percent of the \$33 billion in stimulus projects funded by the Energy Department, according to a collaborative investigation by the Center for Public Integrity, a nonprofit investigative news organization based in Washington, D.C., and the nonprofit Wisconsin Center for Investigative Journalism.

Doyle’s office did not respond to e-mail and phone messages



## A collaborative investigation

Read about how Didion was one of thousands of companies were exempted from environmental review for stimulus projects in an investigation from the [Center for Public Integrity](#), which used our reporting; a version of CPI’s story also ran in the Nov. 29 [Washington Post](#).



seeking response.

Didion's vice president of operations, Dale Drachenberg, declined to address questions about the company's environmental record or the process that led to the grant. Instead, he issued a statement touting the job-creation and clean-energy benefits of the stimulus-funded project.

On [its website](#) and in statements, Didion has cast itself as an eco-friendly company. It was [one of 50 companies](#) that in August won a state Department of Commerce's Wisconsin Profitable Sustainability Initiative grant to examine and reduce its waste streams. And in September, the company hosted a Green Energy Expo at the Cambria plant where people could learn about recycling, energy usage tips and the future of alternative fuels.

But to Karen Dettman, who lives across the street from Didion and has lived with its spills, smells, noise, traffic and murky discharges, the federal stimulus grant represents "green energy at any cost."

Environmental advocates in Wisconsin also believe federal and state regulators should have taken companies' environmental records into account before awarding stimulus grants and exempting most of the projects from environmental review. "You'd think it would be a normal part of the check, whether they're in compliance with environmental laws. That's a phone call or two at the most," said George Meyer, a former state Department of Natural Resources secretary who is now executive director of the Wisconsin Wildlife Federation, a nonprofit environmental advocacy group.

Consultants working for the state's [Focus on Energy](#) program acknowledged they recommended Didion's plant-expansion proposal for a grant without considering the company's past environmental problems.

Betsy Lawton, an attorney for Midwest Environmental Advocates, a nonprofit environmental law center in Madison that represented Cambria residents in the Clean Water Act lawsuit, said, "From my perspective, polluters shouldn't be rewarded with free money to expand their pollution." "That money," Lawton said, "should be going to companies that comply with the law."

Niel Lawrence, senior attorney for a national environmental advocacy nonprofit group, the Natural Resources Defense Council, drew this analogy: "Go try to apply for a job without

being asked ‘Have you ever been arrested?’ But DOE is willing to give out five and a half million bucks without asking the questions that any employer would ask of a modern employee.” Drachenberg issued a statement to the Wisconsin Center for Investigative Journalism, saying the stimulus grant will allow Didion to use 25 percent less energy for every gallon of ethanol produced. The company plans to use the stimulus funding to hire 75 people this year during construction, and 10 full-time employees in the longer term.

“Since the day we started construction on our ethanol production facility, we’ve made innovation and conservation top priorities,” Drachenberg said.



A panorama of Didion's Columbia County ethanol plant.

### **An unusually chronic polluter**

Aside from the 2009 Clean Water Act lawsuit, a second group of residents sued Didion last year under the federal Clean Air Act for years of air violations that the state of Wisconsin had documented — but for which it had never punished the company.

Those and many other violations dated back to 1999. Among them: Didion built 15 grain silos, three mills and a grain dryer without applying for the required air pollution permit. The company exceeded emission limits and ran a grain dryer outside permitted times. And it falsely claimed on a permit application that it was complying with the law, according to court records.

Johnson Creek-based Didion Milling Inc., which owns the grain mills, is a family-owned company and the parent of Didion Ethanol LLC, the ethanol plant. The two plants are across the street from each other and joined by a tunnel, though the mill is in Cambria and the ethanol plant is in the town of

Courtland. The companies, whose registered agent is John Didion, are jointly referred to as “Didion” in court documents. A U.S. Environmental Protection Agency database shows Didion has received 11 notices of violation in the past five years — among the most for any Wisconsin company listed. The notices signify that state regulators believe they have solid evidence the company has broken the law, and they are the first step toward punishing the company with a formal enforcement action.

“It’s highly unusual for us to have a source that we’ve sent this many notices of violation to,” said Tom Roushar, DNR air management program supervisor for the region. “Usually if we send one, the source corrects it, and we don’t have to repeat it.”



Cambria resident John Mueller has sued Didion twice in federal court for air pollution permit violations. Neither suit succeeded, but the state folded those violations into its \$1.05 million settlement with the company this year.

Kate Golden/WCIJ

In late 2009, while the governor was trumpeting the grant for Didion, the state Department of Justice was taking the company to task. Assistant Attorney General Steven Tinker alleged in a letter before the agency sued Didion that the company had racked up thousands of air permit violation-days, a measure of the number of days that each violation continued, though the total number was never counted in the Columbia County Circuit Court case that followed.

In March, the state sued Didion, and the two parties reached a settlement in April: The company would pay \$1.05 million for 23 air and water claims from 1999 to 2010.

The settlement in state court effectively rendered the federal citizen lawsuits moot. According to Lawton, Didion got a deal: It could have been liable for \$22 million if the citizens in the water lawsuit had prevailed.

### **Other violators have received funds nationwide**

Examples of past environmental violators getting stimulus money have cropped up nationwide. Aerospace giant Boeing won a noncompetitive contract for \$15.9 million to clean up a stream it had been fined \$471,000 for polluting, according to California Watch, a nonprofit investigative news organization.

**LINK:** [Stimulus funds aiding companies fined for pollution, accused of fraud](#)

And the nonprofit New England Center for Investigative Reporting found three construction contractors awarded stimulus funds in Massachusetts had failed to report their pollution-related fines.

**LINK:** [Public works, hidden violations.](#)

The lack of attention to companies' environmental records infuriates some residents of Cambria, a village of 792 people in south central Wisconsin.

"It's crazy not to consider their background and their history," said John Mueller, a Cambria resident who lives a half-mile from Didion's mills and co-founded [Cambrians for Thoughtful Development](#).

The group sued the company twice for violations that were later included in the state's settlement. During his eight-year fight against the company, Mueller trudged through freezing rain at night to photograph the plume from Didion's grain dryer, later alleged by the state to be operating illegally.

"We know they're not trustworthy," he said.





Cambrians have become familiar with the sticky corn dust that settles on their windows and cars. Courtesy of John Mueller.

He described how Cambria residents have learned to distinguish the different particles from Didion's milling that settle on the village: the airy "redeye" from the corn cob, and the gooey "bees' wings" that stick to cars and windows. Dettman, Didion's neighbor, described the plant's smell. "People say sometimes beer, sometimes corn. To me it's nauseating, gives me a headache, so I think it's more than that," she said.

**WATCH THE SLIDESHOW:** [Cambria residents describe life near Didion](#)

But residents are divided over whether the plant is good for the community. At a county planning and zoning meeting earlier this year, Didion's expansion plans were approved unanimously.

Joelle DeBoer, who works for Didion but is not a spokeswoman for it, said her company has been a good neighbor by supporting local charities and providing local jobs. She wrote a letter supporting its expansion for the county meeting.

"I believe it's really going to help Cambria's community, just because we'll be bringing more jobs to the community," DeBoer said.

### **Didion never quizzed on violations**

Records and interviews show that Focus on Energy, a state program that promotes energy conservation, didn't look at Didion's environmental compliance before recommending it for stimulus funding.

Officials at Focus on Energy, established by the Wisconsin Legislature to encourage renewable energy and energy efficiency, worked through a private contractor, CleanTech Partners of Middleton. Focus on Energy solicited applications from Wisconsin industries for federal energy efficiency stimulus grants. CleanTech picked nine, bundled them up and sent them off to DOE.

CleanTech got about 25 applications — from paper companies, a lawnmower engine manufacturer and others — and winnowed the field using American Reinvestment and Recovery Act and DOE criteria: whether the project would preserve or create domestic jobs, how the project would be



managed, how much it would cost and the potential energy savings.

Didion proposed to install a host of new technologies at its Cambria plant that would produce more ethanol from every bushel of corn with less energy, thus allowing the company to expand production. The new technology would also extract a new product in the process, corn oil, to get more value out of the corn.

The Energy Department grant money, matched by Didion's utility, Alliant Energy, would help the project pay for itself in 3.9 years, according to Didion's application. It would save 11 million kilowatt-hours of energy — enough to power 828 homes for a year.

Past pollution never came up, said Thomas Reitter, a consultant for CleanTech who worked on the applications for Focus on Energy. The only environmental criterion he addressed was to make sure companies fully filled out DOE's boilerplate environmental questionnaire.

"It's DOE's evaluation," he said.

### **Environmental form is blank on environmental history**

In fact, Didion did not answer a few of the questions.

The environmental questionnaire is designed to help DOE decide whether a project should trigger a detailed environmental review under the National Environmental Policy Act, or NEPA. Such reviews can take months or even years to complete.

The form asked questions including what permits would be required, how solid waste would be hauled and what emissions would result. But nothing in the 12-page form asks firms about their compliance history.

"Describe any issues that would generate public controversy regarding the project," the form says.

Didion checked "None."

"Summarize the significant impacts that would result from the proposed project," the last question on the form states, asking for details.

Didion left that one blank.

### **Background checks don't focus on pollution**

DOE officials also do background checks on potential awardees, said Angela Harshman, the DOE contract specialist who approved Didion's award, in an e-mail response to questions about the grant.

DOE's National Energy Technology Laboratory, which awarded the grant, declined to release the results of its backgrounding of Didion or any other company.

But a Wisconsin Center for Investigative Journalism review of DOE's process and Didion's application provided no evidence that officials who approved the grant looked at the company's environmental record.

A typical check includes "financial capability," such as audits, assessments of a company's financial health and "environmental information via an environmental questionnaire," Harshman wrote.

The government's own oversight of stimulus funding emphasizes waste, fraud and abuse. Ed Pound, spokesman for the federal stimulus oversight board, said the board would be concerned about a company's past, for example, if it had a history of failing to complete contracts, rigging bids or misappropriating funds, or if it had been barred from doing business with the government.

Past environmental violations might raise a red flag, Pound said, "if they involved potential criminal activity."

That wouldn't include Didion's \$1.05 million payment to settle its violations. It was a civil matter.

### **Exemptions from environmental review are standard**

Didion asked for and got a categorical exemption from federal NEPA review, which means the project was found legally to have no "significant effect on the human environment." A checked box on an application form indicated the exemption was granted in part because the project would save energy. That's the norm for such stimulus projects, according to a report from the White House Council on Environmental Quality.

Out of 8,117 DOE-funded stimulus projects, 99 percent were exempted from detailed study of their environmental impacts, according to the council's figures.

**LINK:** [Read the Center for Public Integrity investigation, "Big Polluters Freed from Environmental Oversight by Stimulus."](#)

Despite that, the White House council insisted the government was taking the proper steps to ensure "environmental stewardship and commitment to the sustainability goals embodied in many of the provisions of (the stimulus act)."

Meyer, the former DNR secretary, said, "Obviously, the fact that companies are getting money to expand and create jobs, I

would think, is a good thing.

“But literally, some of these companies that have not been good actors in terms of managing the facility are getting rewarded,” Meyer said. “Even though they’re paying fines, they’re getting far more back from the government.”

***Editor’s note:** Christa Westerberg, a Madison attorney who provides pro bono legal services to the Wisconsin Center for Investigative Journalism, has represented Cambrians for Thoughtful Development, a citizens group, in two federal environmental lawsuits against Didion Milling Inc. Westerberg provided the Center with information about the suits that has been independently verified. She did not provide the Center with legal services or participate in the writing or editing of this report.*

*The nonprofit Wisconsin Center for Investigative Journalism ([www.WisconsinWatch.org](http://www.WisconsinWatch.org)) collaborates with its partners — Wisconsin Public Television, Wisconsin Public Radio and the UW-Madison School of Journalism & Mass Communication — and other news media. Kate Golden may be reached at [kgolden@wisconsinwatch.org](mailto:kgolden@wisconsinwatch.org).*

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## This story's national context

WisconsinWatch.org contributed its reporting on this project to a [Center for Public Integrity](#) investigation that reveals how thousands of stimulus winners were exempted from environmental review. CPI's story ran in the [Washington Post](#) and at CPI's site:

- Post: [Obama administration gives billions in stimulus money without environmental safeguards](#)
- CPI: [Big Polluters Freed from Environmental Oversight by Stimulus: BP, Westar, and DuPont Among Companies Exempted from Environmental Law.](#)
- CPI: [NEPA Exemptions: The Dirty Dozen List](#), which includes Didion Milling.
- CPI also ran a [version of our story](#) on its site.

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