

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is made effective this 11th day of May, 2023 (the “**Effective Date**”), by and among Clean Wisconsin, Inc., a Wisconsin non-stock corporation (“**Clean Wisconsin**”), Sue Owen, Marilyn Sagrillo, Suzie Vania, Jodi Parins, Denise Skarvan and Sandra Winnemueller (each, an “**Intervenor**” and together with Clean Wisconsin, the “**Intervenors**”), Kinnard Farms, Inc., a Wisconsin corporation (“**Kinnard Farms**”), and the Wisconsin Department of Natural Resources, an agency of the State of Wisconsin (“**Department**”). Each of the Intervenors, Kinnard Farms and the Department are a “**Party**” and collectively, the “**Parties**”.

This Agreement sets forth the terms and conditions for resolving the following contested case proceedings currently pending before the Wisconsin Department of Administration, Division of Hearings and Appeals (“**DHA**”):

DHA Case No. DNR-22-0002; In the Matter of Wisconsin Pollutant Discharge Elimination System Permit No. WI-0059536-04-2, Issued to Kinnard Farms, Inc. (the “**Contested Case**”).

### RECITALS

WHEREAS, Kinnard Farms operates a Concentrated Animal Feeding Operation (“**CAFO**”) having production areas in Casco, Kewaunee County, Wisconsin (“**Production Areas**”);

WHEREAS, the Department modified Kinnard Farms’ Wisconsin Pollutant Discharge Elimination System Permit (“**WPDES**”) Permit on March 25, 2022, with the modified permit designated as WPDES Permit No. WI-0059536-04-2 (the “**Current Permit**”);

WHEREAS, Kinnard Farms timely petitioned for review of Sections 1.1.1, 2.1.2, and 3.10 of the Current Permit pursuant to Wis. Stat. § 283.63;

WHEREAS, on April 29, 2022, the Department granted a contested case hearing to address five issues:

1. Whether the animal unit maximum of 11,369 provided in Section 1.1.1 of the Current Permit is reasonable;
2. Whether the requirement to conduct groundwater monitoring at land application sites provided for in Section 2.1.2 of the Current Permit is reasonable;
3. Whether the frequency for groundwater monitoring at land application sites provided for in Section 2.1.2 of the Current Permit is reasonable or necessary;
4. Whether monitoring at least two land application sites as provided for in Section 3.10 of the Current Permit is reasonable or necessary; and

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5. Whether the deadlines for submitting Phase 1 and Phase 2 groundwater monitoring plans provided for in Section 3.10 of the Current Permit are reasonable or necessary (collectively, the “**Challenged Permit Terms**”);

WHEREAS, as a result of Kinnard Farms’ petition for review, the Challenged Permit Terms are not currently in effect pursuant to Wis. Stat. § 283.63(1)(am).

WHEREAS, Intervenor appeared by counsel in the Contested Case during a pre-hearing conference held on September 9, 2022 and pursuant to Notices of Appearances filed with DHA;

WHEREAS, the Current Permit expired, by its terms, on January 31, 2023;

WHEREAS, Kinnard Farms timely applied for reissuance of the Current Permit, and as a result, the Current Permit is administratively continued pursuant to Wis. Stat. § 283.53(3).

WHEREAS, the Department anticipates that it will reissue Kinnard Farms’ WPDES permit in 2023;

WHEREAS, the reissued permit will be designated Permit No. WI-0059536-05 (the “**Reissued Permit**”) and will have a term of five (5) years;

WHEREAS, Kinnard Farms is currently planning a commercial arrangement by which Kinnard Farms will transfer all of the Liquid Manure produced at its Production Areas to a third party (the “**Varcor Operator**”), who will install, own, operate, and maintain a Varcor System developed by Sedron Technologies to process the Liquid Manure (hereinafter referred to as the “**Varcor System**”); and

WHEREAS, once the Varcor System is fully operational following initial start-up, system shakedown, and testing, Kinnard Farms intends to land apply only Liquid Manure that is derived from flushing the Varcor System in connection with planned or unplanned maintenance or facility wash down (“**Clean-Out Manure**”), though it intends to continue to land apply Solid Manure and Process Wastewater; and

WHEREAS, the Parties hereto wish to fully and finally resolve the Contested Case upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## AGREEMENT

1. Recitals. The recitals and definitions set forth above are incorporated into this Agreement as if set forth fully herein.

2. Technical Terms. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the definition provided in ch. NR 243, Wis. Admin. Code, as it existed on the Effective Date.

3. Current Permit. Notwithstanding the resolution and withdrawal of the Contested Case contemplated by this Agreement, the Department shall not enforce the Challenged Permit Terms during any period in which the Current Permit, or any term or condition thereof, remains in effect due to an administrative continuation of the Current Permit or review of a term or condition of the Reissued Permit pursuant to Wis. Stat. § 283.63(1)(am). Intervenors shall take no action to oppose the Department's agreement not to enforce the Challenged Permit Terms under this Section 3 or to otherwise seek enforcement of the Challenged Permit Terms.

4. Reissued Permit Terms.

4.1 The Department shall include terms and conditions relating to groundwater monitoring of land application sites in the Reissued Permit. Such terms and conditions shall be the same, in form and substance, to those included in Sections 2.1.2 and 3.10 of the Current Permit, with all of the following exceptions:

4.1.1 Sections 2.1.2 and 3.10 of the Reissued Permit will only be applicable to fields identified in Kinnard Farms' Nutrient Management Plan ("NMP") where Liquid Manure, other than Clean-Out Manure, is land applied by Kinnard Farms under the Reissued Permit after the due date for submitting a Phase 1 Groundwater Monitoring Plan for Kinnard Farms' land application sites.

4.1.2 The Department shall include the fourth anniversary of the issuance of the Reissued Permit as the schedule due date for Kinnard Farms to submit a Phase 1 Groundwater Monitoring Plan for Kinnard Farms' land application sites.

4.1.3 The condition in the Reissued Permit which specifies, "Monthly samples shall be collected from all wells, unless a different frequency is agreed upon in the Phase 2 Groundwater Monitoring Plan" shall be removed and replaced with the following:

"Monthly samples shall be collected from all wells in Phase 1. Groundwater monitoring in Phase 2 shall be conducted quarterly, unless a different frequency is agreed upon in the Phase 2 Groundwater Monitoring Plan."

4.1.4 The condition in the Reissued Permit which specifies, "Sampling of all off-site wells shall be conducted within 24 hours of a recharge event if a recharge event actually occurs during the month. If a recharge event does not occur in a particular month, then sampling

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for that month is still required” shall be removed and replaced with the following permit condition:

“The permittee’s Phase 1 and Phase 2 Groundwater Monitoring Plans shall include a procedure for identifying groundwater recharge events and completing recharge-triggered sampling.”

4.2 Upon issuance of the Reissued Permit, Kinnard Farms shall not seek judicial review under Wis. Stat. §§ 227.52 and 227.53 or contested case review under Wis. Stat. §§ 283.63 or 227.42 of the Department’s decision to include terms and conditions relating to groundwater monitoring of land application sites in the Reissued Permit, provided such terms and conditions are consistent with Section 4.1 hereof.

4.3 Upon issuance of the Reissued Permit, Intervenors, individually or collectively, shall not seek judicial review under Wis. Stat. §§ 227.52 and 227.53 or contested case review under Wis. Stat. §§ 283.63 or 227.42 of terms and conditions of the Reissued Permit related to groundwater monitoring of land application sites, provided such terms and conditions are consistent with Section 4.1 hereof.

4.4 Nothing contained herein shall limit the ability of any Party to seek judicial review under Wis. Stat. §§ 227.52 and 227.53 or contested case review under Wis. Stat. §§ 283.63 or 227.42 of any permit term or condition establishing an animal unit maximum for Kinnard Farms in the Reissued Permit.

4.5 For clarity and avoidance of all doubt, nothing in this Agreement requires Kinnard Farms to modify its NMP to limit or prohibit land application of Solid Manure, Process Wastewater, or other nutrient sources.

## 5. Non-Permit Terms

### 5.1 Varcor Project Milestones.

5.1.1 Kinnard Farms shall make commercially reasonable efforts to cause construction of the Varcor System to be commenced within 180 days of the Varcor Approval Date;

5.1.2 Within 545 days of the Effective Date, Kinnard Farms or the Varcor Operator shall cause an application for a WPDES permit authorizing a discharge of effluent from the Varcor System to a surface water of the state to be filed with the Department;

5.1.3 Kinnard Farms shall make commercially reasonable efforts to cause construction of the Varcor System to be completed within 30 months of the Effective Date; and

5.1.4 No later than the fourth anniversary of the Effective Date of the Reissued Permit, Kinnard Farms shall submit to the Department a substantial revision of its NMP which does not include land application of Liquid Manure, other than Clean-Out Manure.

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5.1.5 As used in this Agreement, “**Varcor Approval Date**” means the date on which Kinnard Farms or the Varcor Operator has received all of the following material approvals in connection with the Varcor System: (1) a building permit issued by the Town of Lincoln; (2) a conditional use permit issued by the Town of Lincoln and Kewaunee County, if required; (3) approval of plans and specifications for the Varcor System under Wis. Stat. § 281.41; (4) a Type A Registration Construction and Operation (ROP-A) Air Permit or any other required construction air permit or construction waiver issued by the Department; (5) an animal waste storage permit issued by Kewaunee County, if required; (6) any required construction site stormwater or erosion control permits; (7) a wetland delineation; and (8) any applicable wetland permit or exemption, if required.

5.2 If Kinnard Farms fails to achieve, or anticipates that it will fail to achieve, the project milestones identified in Section 5.1, above, due to factors substantially beyond the reasonable control of Kinnard Farms, including, without limitation, delays in receiving required governmental approvals or permits or delays in delivery of construction materials, the Parties may modify this Agreement to revise the schedule of project milestones. In the event a revision of the schedule of project milestones includes a delay in transfer of all of Kinnard Farms’ Liquid Manure, other than Clean-Out Manure, produced at its Production Areas to the Varcor Operator beyond the fourth anniversary of the issuance of the Reissued Permit, the Department may modify the Reissued Permit to extend the schedule for Kinnard Farms to submit a Phase 1 Groundwater Monitoring Plan.

5.3 If Kinnard Farms breaches any obligation it has under Section 5.1 hereof, as may be modified by the Parties pursuant to Section 5.2, or if at any time prior to the fourth anniversary of issuance of the Reissued Permit, Kinnard Farms determines that it will no longer pursue the transfer of all of the Liquid Manure, other than Clean-Out Manure, produced at its Production Areas to the Varcor Operator, it shall notify the Parties of such determination. Within sixty (60) days of such notification or breach, Kinnard Farms shall submit a Phase 1 Groundwater Monitoring Plan meeting the requirements of the Reissued Permit for review and approval by the Department. Within ninety (90) days of approval of the Phase 1 Groundwater Monitoring Plan by the Department, Kinnard Farms shall install the monitoring wells identified in the Phase 1 Groundwater Monitoring Plan in accordance with ch. NR 141, Wis. Admin. Code.

5.4 Kinnard Farms shall submit semi-annual progress reports to the Parties until the occurrence of the project milestone described in Section 5.1.4 or the fourth anniversary of the issuance of the Reissued Permit, whichever comes first. The first progress report shall be due on June 30, 2023, and subsequent reports shall be due each June 30 and December 31 thereafter. The progress reports shall provide an overview of the current status of the development, construction and commercial operation of the Varcor System and describe major project milestones achieved since the last progress report.

6. Termination of Contested Case. From and after the Effective Date, the Parties will cease all activity in the Contested Case. Within seven (7) days of the Effective Date, Kinnard Farms shall submit to the Department a letter formally withdrawing, with prejudice, its petition giving rise to the Contested Case. Within seven (7) days of receipt of Kinnard Farms’ letter withdrawing its petition, the Department shall submit to DHA a letter withdrawing its request for DHA to

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conduct a contested case hearing on the Current Permit, and none of the Intervenors or Kinnard Farms shall oppose such request.

### **7. General.**

7.1 The Parties acknowledge and agree that the terms of this Agreement bind only the Parties and are not intended to limit any rights of any other person with respect to the Current Permit or a future modification or reissuance thereof.

7.2 Each Party represents and warrants that the person executing this Agreement on behalf of the Party has been duly authorized to do so and that no further approvals of any kind are needed.

7.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

SIGNATURE PAGE FOLLOWS

SUE OWEN

Susan Owen

JODI PARINS

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MARILYN SAGRILLO

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DENISE SKARVAN

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SUZIE VANIA

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SANDRA WINNEMUELLER

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MIDWEST ENVIRONMENTAL ADVOCATES, INC.

As counsel for Intervenors SUE OWEN, MARILYN SAGRILLO, SUZIE VANIA,  
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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CLEAN WISCONSIN, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

KINNARD FARMS, INC.

By: \_\_\_\_\_

Name: Lee H. Kinnard

Title: President

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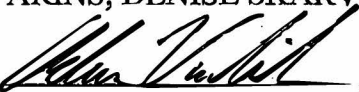
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