Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the matter of WPDES Permit No. WI-0062928-04-2 for Ridge Breeze Dairy, LLC, located at W2686 390th Avenue, Maiden Rock

DHA Case No. DNR-25-0004
DNR Case No. DNR-25-014

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The PARTIES to this proceeding are:

GrassRoots Organizing Western Wisconsin, Larry Brenner, Ty Fisher, Kay Kashian, Dick Dart, and Gerald Steien (Petitioners), by

Midwest Environmental Advocates, Inc.
Attorneys Adam Voskuil and Michael Greif
634 West Main Street, Suite 201
Madison, WI 53703

Ridge Breeze Dairy, LLC, (Permittee), by

Michael, Best & Friedrich LLP
Attorneys Taylor Fritsch and Jordan Hemaidan
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806

Wisconsin Department of Natural Resources (Department), by

Attorneys P. Duncan Moss and Nathaniel Moore
101 S. Webster St
P.O. Box 7921
Madison, WI 53707-7921

PROCEDURAL HISTORY

On February 20, 2025, the Wisconsin Department of Natural Resources (Department) noticed the final determination to issue Wisconsin Pollutant Discharge Elimination System (WPDES) Permit WI-0062928-04-2 to Ridge Breeze Dairy, LLC. (Ridge Breeze). On April 21, 2025, GrassRoots Organizing Western Wisconsin (GROWW), Larry Brenner, Ty Fisher, Kay Kashian, Dick Dart, and Gerald Steien (collectively Petitioners) filed a Petition for a Contested Case Hearing with the Department pursuant to Wis. Stat. §§ 227.42-227.50 and 283.63. By letter dated April 28, 2025, the Department granted the Petitioners' request for a contested case hearing on two issues.

On April 30, 2025, the matter was referred to the Division of Hearings and Appeals (Division), and Administrative Law Judge (ALJ) Angela Chaput Foy was assigned as the hearing examiner. On July 17, 2025, a prehearing conference was held with the parties, at which the issues for hearing were discussed and clarified, and a scheduling order was issued. The issues for hearing are:

(1) Whether Section 1.6 of the Modified Permit and the Nutrient Management Plan are unreasonable if the Nutrient Management Plan (NMP) submitted by Ridge Breeze fails to comply with Wis. Admin. Code § NR 243.14.

(2) Whether the Modified Permit is unreasonable if it fails to ensure that discharges authorized by the Modified Permit comply with groundwater quality standards.

Pursuant to the scheduling order, on September 15, 2025, the Petitioners filed a brief in support of their request made at the prehearing conference to exclude post-permit NMP Modifications. Additionally, on October 10, 2025, the Petitioners filed a motion and supporting brief for interim relief, seeking an order directing the Permittee to cease expansion activities while the matter was pending. In addition to some discussions on the motions at prehearing conferences on November 21, 2025 and February 3, 2026, Ridge Breeze and the Department each filed response briefs on November 3, 2025 and January 16, 2026. On February 17, 2026, the ALJ issued in order denying the Petitioners' motions.

By letter dated February 24, 2026, the Petitioners withdrew Issue 1 from further consideration. The matter proceeded solely on Issue 2.

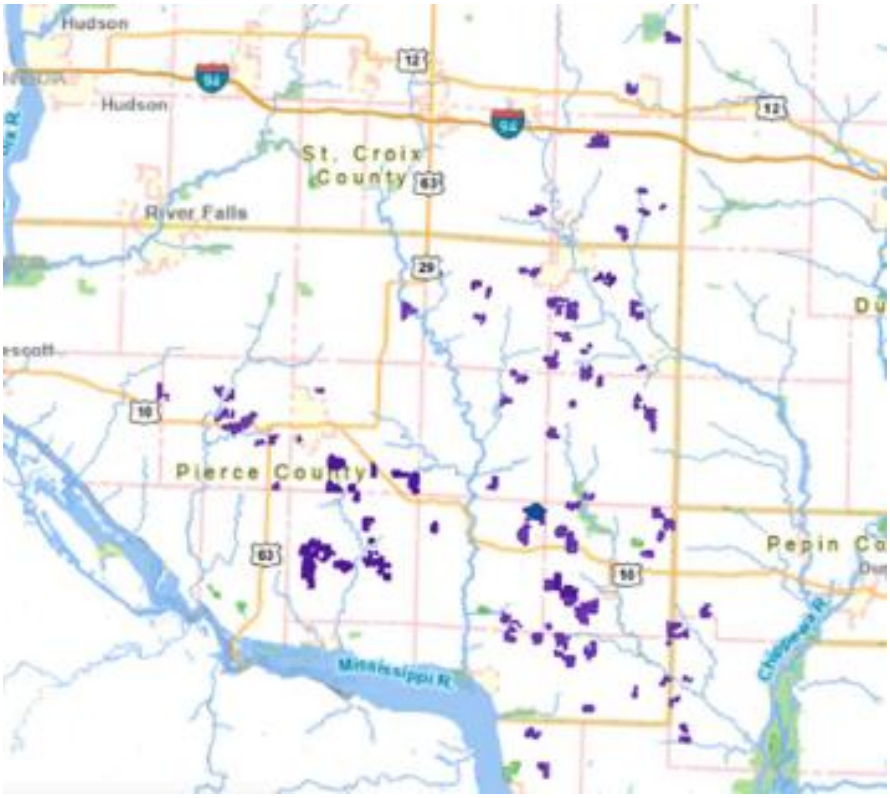
Pursuant to due notice, a hearing was held on March 3 and 4, 2026, commencing with testimony from members of the public and continuing with testimony and witnesses offered by the parties. The hearing was held in person at the Eau Claire State Office Building in Eau Claire Wisconsin 54701-4558. The hearing was digitally recorded. All three parties filed post-hearing briefs as closing arguments on April 10, 2026, and response briefs on April 24, 2026. The record includes the audio recordings from the hearing and Exhibits 1-5, 100-103, 105, 114, 117, 119-125, 206-209, 211, 215-217, 219-224, 301, 309, 317, 329, 336, 347, 353-367, 369, 371-372, and 400-401.[1]

[1] Some exhibits have multiple sets of page numbers (*See e.g.* Ex. 122). Pinpoint citations to page numbers of exhibits in this decision are to the pdf number.

FINDINGS OF FACTS

1. Ridge Breeze Dairy, LLC (Ridge Breeze or Permittee) is a large, concentrated animal feeding operation (CAFO) which operates under a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued by the Wisconsin Department of Natural Resources (Department). Pursuant to a Department-approved nutrient management plan, Ridge Breeze disposes of manure and process wastewater (CAFO waste) through permitted land applications. (Ex. 1 § 1.6)

2. Ridge Breeze is located in Maiden Rock, Wisconsin. Its fields used for land applications are primarily located in eastern Pierce County but also extend into northwest Pepin and southeast St. Croix counties. (Nysse testimony; Ex. 215 at 4)



(Ex. 364 at 1, purple identifying the fields Ridge Breeze plans to use for land applications)

3. To prevent groundwater contamination, WPDES permit terms and the design and operation of the CAFO must consider the specific geology of the area.

   a. Pierce County was subject to glaciation during the quaternary period (the most recent ice age spanning from 2.58 million years ago to the present day). It is not

located in the driftless area in Wisconsin.[2] (Hedinger testimony; Ex. 215 at 13; Ex. 355 at 10; Ex. 358; Ex. 359; Ex. 360 at 17, Fig. 6)

b. The top geological layer, also called the overburden, is composed of glacial sediments, which is clay, silt, and sand, and residual sediment from the weathering of Prairie du Chien dolomite, which is clay and silt. This layer ranges in thickness in the area where Ridge Breeze is located from 8 to 106 feet deep, with an average thickness of 34.7 feet. (Jansen testimony, Ex. 121 at 32-33, Figs. 5 and 6; Ex. 355 at 5-6; Ex. 357; Ex. 365)

c. This overburden exhibits low permeability. Small layers of clay can hold water causing a perched water table, instead of allowing water to filter down to the aquifer. This overburden, particularly where it is thicker, can slow water movement and naturally filter the water, shielding groundwater. (Ex. 355 at 5; Ex. 365 at 3; *see also* Ex. 361; Ex. 362)

d. Below the overburden, the top layer of bedrock is Prairie du Chien dolomite, which forms part of the upmost aquifer. The dolomite rock is impermeable; however, the dolomite is also extensively fractured in many directions and forms karst. Karst is a geological formation where soluble rock has dissolved over time creating a network of sinkholes, fractured bedrock, and caves that allow water to move rapidly without natural soil filtration. (Jansen testimony; Ex. 121 at 29, 32-33, Figs. 2, 5 and 6; Ex. 355 at 6-8; Ex. 123 at 3)

e. Sinkholes, old wells, or deep cracks form conduits directly into the groundwater, bypassing the protection of the overburden. Rain or surface runoff can pour directly into these openings. The variable overburden thickness and the presence of these conduits make both the water's path to the aquifer and its level of natural filtration unpredictable. (*See* Jansen testimony; Ex. 121 at 10, 28, Fig. 1)

4. The area where Ridge Breeze is located also features rivers, streams, springs, and tributaries, most notably the Rush River, celebrated as a Class 1 trout stream. These surface waters are fed from below by groundwater, in addition to precipitation. Any contamination of the underground aquifer will also contaminate these surface waters because there is no filtration between the aquifer and the surface water. Similarly, the surface water can also sink down to recharge and, if polluted, contaminate groundwater. (*See generally* Ex. 102; Ex. 121 at 14, 16, 35, Fig 8; Ex. 119 at 1-2)

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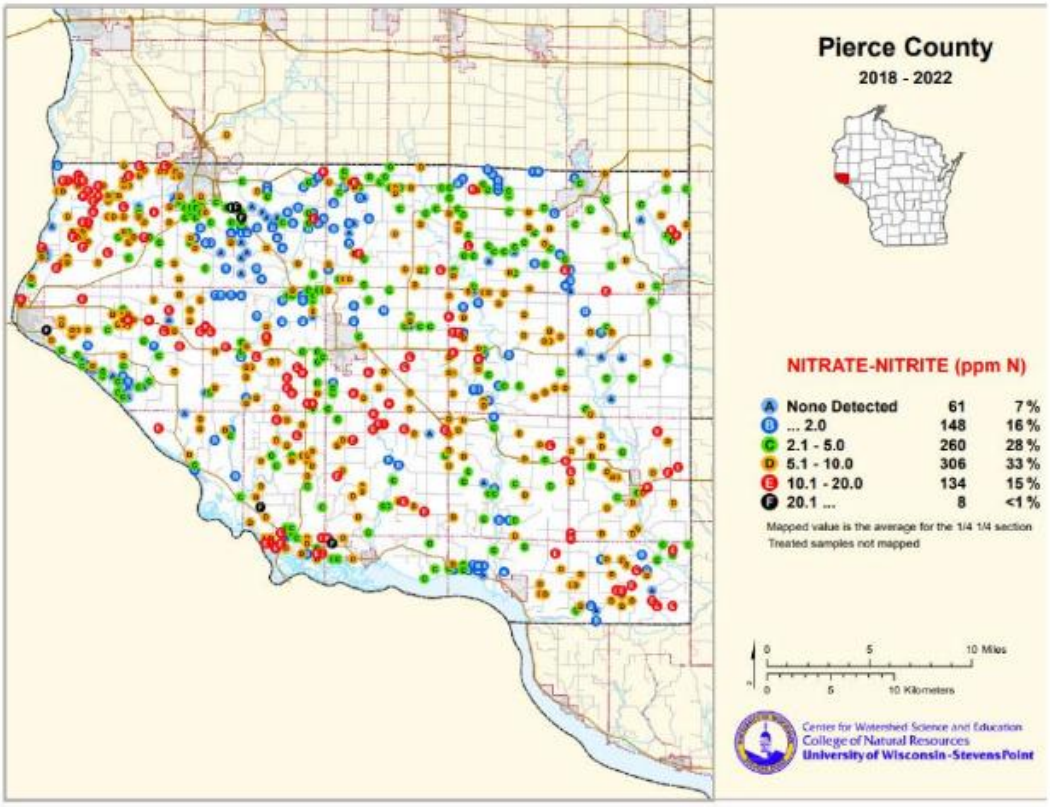
[2] One aspect of the dispute between the parties is how they characterize the region's geological features, including whether the area where Ridge Breeze plans its land applications was subject to glaciation. The driftless area is a unique geological region, primarily in southwest Wisconsin. During the last ice age, glaciers flattened most of the Midwest and left behind "drift" as the glaciers melted. Drift is a thick blanket of crushed rock, gravel, silt, and clay. The driftless area is a specific region that the glaciers avoided. The driftless area was not run over by glaciers, and it lacks drift. Instead, this area has a karst landscape of steep bluffs, deep river valleys, and exposed ancient bedrock. As a result, the driftless area is highly vulnerable to groundwater contamination. However, the Ridge Breeze production area is almost 20 miles west of the westernmost boundary of the driftless area. (Hedinger testimony; Ex. 215 at 13, 5, and 25; Ex. 355 at 10)

5. The residents of Pierce County rely on groundwater sources for drinking water. Many residents have experienced significant nitrate contamination in their private drinking wells.[3] In 2024, the Pierce County Groundwater Ad Hoc Committee published a report on groundwater that included results from their sampling program. Approximately one in every seven wells tested exceed the federal nitrate drinking water standard (10 ppm N), and contamination was found across the county.[4] However, with the exception of a cluster of wells in the northwest part of the county, there is not a discernable geographic pattern of nitrate contamination in groundwater. For example, wells with less than 5 mg/L nitrate (blue or green dots) can be found next to wells with more than 10 mg/L nitrate (red or black dots). The committee identified agriculture as one of the most likely activities impacting groundwater. (Ex. 122 at 4, 8, Fig. 1; Ex. 121 at 34, Fig. 7)



Map of Pierce County's 2019-2022 sampling program generated by UW-Stevens Point Water and Environmental Analysis Lab. Each circle represents the average for the ¼ ¼ section. Samples denoted in red and black exceed the drinking water standard of nitrate at 10 ppm. (Ex. 122 at 8, Fig. 1)

[3] 38% of Pierce County residents draw their drinking water from 5,824 private wells. The remainder access drinking water from municipal water, which is also drawn from groundwater. (Ex. 122 at 4)

[4] Under natural conditions (i.e. without contamination), one would expect groundwater nitrate concentrations to be approximately 2 ppm N or less. (Ex. 122 at 7)

6. In the summer of 2023, Ridge Breeze submitted plans to the Department to expand its facilities and expand its herd from 1,700 cows and heifers to 6,200 cows and heifers. This expansion would result in the facility producing a total of approximately 78 million gallons of CAFO waste per year after the expansion. (Ex. 100 at 5; Ex. 102 at 1; Ex. 119 at 1)

7. For its expansion, Ridge Breeze plans to land apply its CAFO waste over 279 fields.

    a. Most of these acres Ridge Breeze controls through contracts, rental agreements, leases, or manure agreements, but not direct ownership. The new fields added for the expansion were previously farmed. Prior agricultural activities on these fields involved applying nutrients to grow crops, similar to Ridge Breeze's plans. Many of the fields are neighbored by fields being farmed by other entities. (Nysse testimony; Murphy testimony; Ex. 355 at 9)

    b. Most of the land application fields that Ridge Breeze plans to use are primarily situated on upland plateaus above steep river valleys where the soils have a high capacity to filter and absorb potential contaminants. (Hedinger testimony; Ex. 215 at 30; Ex. 355 at 7; Ex. 364)

    c. Of the 279 fields, four have vertical conduits to groundwater, such as sinkholes, from a karst formation. (French testimony; Nysse testimony; Ex. 367)

8. In January 2024, Ridge Breeze submitted an application to modify its WPDES permit to accommodate its planned increase in livestock. The permit application included a revised engineering plan and an updated nutrient management plan. (Ex. 100; Ex. 372 at 2)

9. On June 12, 2024, the Department published notice of the availability of a nutrient management plan, informational hearing, and intent to modify Ridge Breeze's permit. On July 11, 2024, the Department held a public hearing via Zoom video conference on Ridge Breeze's permit modification and allowed public comment. (Ex. 101; *See also* Ex. 2 at 1)

10. On February 13, 2025, the Department approved Ridge Breeze's application and issued the modified WPDES permit (WPDES Permit No. WI-0062928-04-02). The permit does not require groundwater monitoring. Instead, the Department intends to ensure compliance with groundwater quality standards at the production area[5] via the revised engineering plan and at land application sites[6] via the nutrient management plan. (Ex. 3; Ex. 1)

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[5] The production area is "that part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas but not CAFO outdoor vegetated areas." Wis. Admin. Code § NR 243.03(54).

[6] Land application is the "surface application, injection or incorporation of manure, process wastewater or other waste generated by a CAFO on cropland using manure hauling vehicles or equipment." Wis. Admin. Code § NR 243.03(30).

a. The permit requires that all facilities at the Ridge Breeze production area that are used to manage CAFO waste are designed, constructed, and operated to exact engineering standards. The Department reviews all design plans and specifications for these facilities to ensure they meet these engineering standards. (Ex. 1 at 5 § 1.1, at 6 § 1.3.1, at 14 §1.8.1, at 39 § 4.4.13, at 41 § 4.5.6, at 42 § 4.5.9)

b. The permit also requires Ridge Breeze to conduct land application of CAFO waste in a manner which prevents "delivery of manure and process wastewater to the waters of the state, and minimize[s] the loss of nutrients and other contaminants to waters of the state to prevent exceedances of groundwater and surface water quality standards." (Ex. 1 at 8 § 1.6.1; Nysse testimony)

11. On April 21, 2025, GrassRoots Organizing Western Wisconsin (GROWW), Larry Brenner, Ty Fisher, Kay Kashian, Dick Dart, and Gerald Steien (collectively Petitioners) filed a petition for a contested case hearing with the Department, challenging the terms of the modified permit, arguing that the permit is unreasonable because it fails to ensure that authorized discharges comply with groundwater quality standards. (Ex. 4)

12. On April 28, 2025, the Department reviewed the Petition and granted a contested hearing on two of the issues raised by the Petitioners. (Ex. 5)

13. Pierce County residents are concerned about facing ongoing, significant groundwater contamination in wells and the health effects of spreading additional CAFO waste in the area. They consider existing nitrate levels to be already high and maintain that the permit lacks enforceable requirements. Further, the authorized waste volume exceeds the land's capacity. Other specific concerns include the impact of heavy rains on waste runoff, potential depletion of water resources, increases in water temperature affecting the Rush River trout population, and declining property values. Additionally, residents doubt the Department's ability to monitor current permits and object to terms that they believe effectively require the public to report contamination events. (Hearing Public comments, 40:20-2:57:00; *See also* Ex. 400 and 401)

DISCUSSION

To protect the waters of Wisconsin, the Wisconsin Department of Natural Resources (Department) has "all authority necessary to establish, administer and maintain a state pollutant discharge elimination system." Wis. Stat. § 283.001(2); *Clean Wisconsin, Inc. v. Wis. Dept. of Nat'l Res.,* 2021 WI 71, ¶ 17, 398 Wis. 2d 386, 961 N.W.2d 346 (2021). The law prohibits discharging pollutants into the state's water without a discharge permit. Wis. Stat. § 283.31(1). The Department may issue a Wisconsin Pollution Discharge Elimination System (WPDES) permit to an applicant on the condition that any discharges will meet legal requirements and comply with groundwater quality standards. *Clean Wisconsin*, 2021 WI 71, ¶ 17; Wis. Stat. Ch. 160; Wis. Admin. Code Ch. NR 140. Additionally, Wis. Stat. § 283.31(4) mandates that the Department prescribe additional permit conditions necessary to achieve compliance with the requirements listed in Wis. Stat. § 283.31(3).

Concentrated Animal Feeding Operations (CAFOs) are required to apply to the Department for a WPDES permit. *See* Wis. Stat. § 283.31. CAFOs are defined as a point source, Wis. Stat. § 283.01(12)(a), and the CAFO waste, including manure and process wastewater, is defined as a pollutant subject to regulation. Wis. Stat. § 283.01(13). *See also Clean Wisconsin,* 2021 WI 71, ¶¶ 18-19.

In this case, the Department issued Ridge Breeze Dairy, LLC (Ridge Breeze) a modified permit for their planned expansion. The Petitioners argue that the permit at issue is unreasonable because the terms are insufficient to ensure that the discharges it authorizes comply with groundwater quality standards. They argue that groundwater monitoring is necessary, that additional permit terms are necessary to evaluate groundwater susceptibility and ensure compliance, and that the terms of the permit provide the Department with no feasible way to ensure compliance. Conversely, Ridge Breeze argues that the Petitioners have failed to meet their burden of proof, that they reply on conclusions rather than facts to support their claims, and that the Petitioners have not established that monitoring conditions are necessary or reasonable. Ridge Breeze asserts that the Department has reasonably exercised its discretion in declining to impose groundwater monitoring. The Department maintains that the permit contains adequate conditions to ensure compliance at land application locations and that groundwater monitoring would not provide data needed to ensure that the permitted activities comply with groundwater quality standards. Supporting its conclusion, the Department emphasizes (1) the thickness of potentially low permeability glacial deposits above the bedrock; (2) the unpredictable nature of groundwater recharge pathways; (3) the significant depth to groundwater; and (4) the ubiquitous nitrate contamination in the area.

The Department's permitting decisions are reasonable if they are the result of a process of logical reasoning. *See Madison Gas & Elec. Co. v. Pub. Serv. Comm'n of Wisconsin,* 109 Wis. 2d 127, 136-137, 325 N.W.2d 339, 344 (1982). The Petitioners bear the burden to prove that the permit is unreasonable by a preponderance of the evidence. Wis. Admin. Code §§ NR 2.13(3)(b) and HA 1.17(2). To determine whether the Petitioners met their burden of proof, this decision first examines the four hydrogeological factors the Department relied upon in making its permit determination. It then evaluates permit conditions to determine whether they assure compliance with ground water quality standards, as mandated by Wis. Stat. § 283.31(4). With that context, the decision then answers the sole issue for hearing in this matter: whether the Modified Permit is unreasonable if it fails to ensure that discharges authorized by the Modified Permit comply with groundwater quality standards.

I. Whether the Department properly evaluated and relied upon the local hydrogeological factors in making its permitting decision.

In reviewing Ridge Breeze's application for a modified permit, the Department weighed and evaluated (1) the thickness of glacial deposits or sediment with low permeability above the bedrock; (2) the complex mechanics of groundwater recharge; (3) the depth to groundwater; and (4) the current level of nitrate contamination in the area. The parties' views of each factor differ. Each factor is examined in more detail here, and as explained, the Department properly relied upon local, site-specific data in reviewing Ridge Breeze's permit application.

A. The glacial sediment

The parties differ over their characterization of the geology of the relevant area, in particular the glacial sediment constituting the overburden or top layer of the stratigraphic column. The Petitioner's expert, Dr. John Jansen, is a professional geologist in Wisconsin with over 40 years of experience in groundwater issues and well design. (Ex. 120; Ex. 121) He has a Ph.D. in geological sciences with an emphasis in hydrogeology and geophysics. (*Id.*) Dr. Janson concluded that glacial sediments were generally absent from Pierce County. However, this conclusion ignores evidence of low permeability glacial sediments in the area of Ridge Breeze, and his testimony did not adequately explain why he did not factor the overburden into his opinions.

Mr. Ian Anderson, a hydrogeologist program coordinator for the Department, opined that the geological conditions at Ridge Breeze's production area and land application sites are comprised of 8-106 feet of low permeability unconsolidated glacial sediments above the bedrock. (Ex. 355 at 5-6; Ex. 356) He formed his opinion by studying the map of the quarternary sediments in Wisconsin developed by the Wisconsin Geological and Natural History Survey (Ex. 358)[7] and the Lexicon of Pleistocene Stratigraphic Units of Wisconsin (Ex. 360). This sediment stems principally from glacial deposits from the Pierce and River Falls Formations. (Exs. 358 and 359) In addition to the glacial deposits, the area also has residual sediment from the weathering of Prairie du Chien dolomite, which is also composed of clays and silts. (Ex. 359) At the Ridge Breeze production area, well construction reports show that the depth to bedrock ranges from 8 to 106 feet, with an average depth of 34.7 feet. (Ex. 357) Geotechnical soil data from production area investigations confirmed that the production area site has more than 20 feet of clay, silt, and sandy sediments.

The Department properly weighed the presence of glacial sediment with its low permeability as protective of groundwater, despite its varied thickness. These glacial deposits are good at attenuating contaminates in the soil, which limits the contamination's migration to groundwater. (Anderson testimony)

B. The depth to groundwater

Anderson also found considerable depth to groundwater at both the production area and land application locations. (Ex. 355 at 5-7, 11) In reviewing well construction reports from the production areas, he determined that the average depth to bedrock was 217 feet, with a range of 23 to 364 feet. With the exception of two wells drilled in valley locations, all of the other well construction reports showed a depth to groundwater greater than 125 feet. (Ex. 357)

While this factor is significant, it is not dispositive of groundwater protection. Generally, in a flat landscape with deep sand or clay and no karst bedrock underneath, a greater depth to groundwater allows for more natural filtration as the water travels through glacial sediment. However, here, the path water takes to recharge groundwater is complex.

C. The groundwater recharge

[7] Ex. 359 is a screenshot of Ex. 358, focused on Pierce County.

Groundwater recharge is the process where surface water moves through soil and rock to refill underground aquifers. Considering both the geological conditions and the depth to groundwater in the Ridge Breeze area, determining the pathways and rate that water recharges to groundwater is difficult. The glacial sediment present in the Ridge Breeze area is composed of sand, gravel, silt, and clay. Finer grained silt and clay are less permeable than sand or gravel. Small layers of clay can hold water from recharging an aquifer, causing a perched water table instead of allowing the water down to the aquifer, and some perched water tables were found in the Ridge Breeze production area. (Ex. 365 at 3; *see also* Exs. 361, 362) Below the glacial sediment, the bedrock is largely composed of dolomite, which tends to form karst. The rock is impermeable, but water moves quickly through fractures, and it dissolves more rock as it moves, causing larger openings and allowing the water to move faster. (Ex. 362)

The Petitioner's expert, Dr. Jansen, concluded that because the bedrock in the area is subject to karst development, contamination on the surface will migrate rapidly to groundwater. He did not explain, however, why the detailed mapping of Ridge Breeze's land application sites show very few karst features that could act as conduits to groundwater. Dr. Jansen's conclusions did not appear to be specific to the land application sites, just to Pierce County in general, and he testified that site-specific data was not available.

The Department also reviewed conduits to groundwater in the area, where there may be a direct connection to groundwater. Falon French, a CAFO permit intake specialist with the Department's agricultural runoff program, reviewed Ridge Breeze's nutrient management plan. (Ex. 301) The nutrient management plan includes restriction maps, which are maps that display sensitive landscape features where applying CAFO waste or other fertilizers is prohibited, limited, or subject to specific setbacks to protect water. (Ex. 336) Ms. French reviewed the restriction maps to identify fields that had sinkholes, groundwater depression areas, or other conduits to groundwater, excluding private wells. She determined that four of 279 fields featured sinkholes, but she found no other conduits to groundwater in the other 275 fields. (French testimony; Ex. 355 at 13; Ex. 367)

The Department's determination that recharge pathways are complex and unpredictable is supported by significant evidence. They can be impacted by perched water tables. The dolomite is extensively fractured, with the fractures oriented in many directions. Where vertical conduits in karst are present, water can flow directly to groundwater.

D. The nitrate contamination in the area

To protect groundwater quality, the Department established an enforcement standard (ES) and a preventative action limit (PAL) for each regulated substance. Wis. Admin. Code Ch. NR 140. The ES is a regulatory ceiling that defines the concentration that poses a public health risk. Wis. Stat. §§ 160.01(2), 160.001(5). Wis. Admin. Code § NR 140.10. If a contaminant is detected that exceeds the ES, the Department can mandate a response action such as cleanup, operational closure, or penalties. Wis. Admin. Code § NR 140.26, table 6. The PAL is an early warning system to detect potential contamination before the ES is reached, and it is a fraction of the ES. Wis. Stat. §§ 160.01(6), 160.001(8). Wis. Admin. Code § NR 140.01. The Department can also mandate design and practices to prevent further contamination. Wis. Admin. Code § NR 140.24, table 5. Nitrate has an ES of 10 mg/L and a PAL of 2mg/L. Wis. Admin. Code § NR

140.10, table 1. In groundwater that is not contaminated, nitrate from natural sources should occur at levels less than 2 mg/L. (Ex. 122 at 7)

In 2023, the Pierce County Board of Supervisors formed a committee, which identified nitrate and bacterial contamination as risks to the health of the residents of Pierce County. (Ex. 122) 14% of tested wells had nitrate levels above federal drinking water standard and Wisconsin's ES of 10 mg/L. (*Id.*; Ex. 121 at 14) The committee also identified septic systems and agricultural activities as likely sources of the contamination, but the committee did not draw any further conclusions about specific sources of contamination. (Ex. 122)

The Petitioners argue that the aquifer system underlying Ridge Breeze is vulnerable to contamination. This is certainly a concern from the members of the public that gave testimony in this hearing. Dr. Jansen concluded that since wells throughout the county were contaminated, the entire aquifer must be susceptible to contamination. (Jansen testimony; Ex. 121) He emphasized the vertical conduits to groundwater present in karst bedrock. He did not explain, though, why the degree of nitrate contamination in wells varied throughout the county, including why wells differed in nitrate levels despite being geographically close together.

Neither the Department nor Ridge Breeze deny that nitrate contamination is a concern in the area. The Department calls the nitrate contamination ubiquitous. However, they point to the varied contamination and conclude there must be varied vulnerability in the area. As the Department points out, identifying nitrate contamination in groundwater in Pierce County does not mean that groundwater is equally susceptible to nitrate contamination throughout the county. The Department explained the varying degrees of nitrate contamination in wells located close together as differences in the specific conditions at the site of the wells. Additionally, the Department points out, identifying contamination in groundwater does not necessarily mean that the contamination source was a permitted activity. (Ex. 355 at 9) It seems undisputed that sources of contamination in wells are both septic systems and agricultural sources. No evidence was presented directly linking Ridge Breeze's permitted activities to the contamination.

The widespread yet varied nitrate baseline levels in the area are a significant factor in reviewing Ridge Breeze's application. Because levels in some areas already exceed the PAL, and some exceed the ES, the Department must implement strict design standards and conditions because it cannot allow Ridge Breeze to worsen the trend. The next step is to determine whether the modified permit contains sufficient conditions to ensure compliance with these groundwater standards.

II. Whether the conditions in the modified permit are sufficient to ensure that authorized discharges comply with groundwater quality standards.

Chapter NR 140 authorizes the Department to "take any actions within the context of regulatory programs established in statutes or rules outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future." Wis. Admin. Code § NR 140.02(4); *See also Clean Wisconsin*, 2021 WI 71, ¶ 30. The conditions of a WPDES permit issued to a CAFO are specific to the facts of the applicant. "Examining the specific facts surrounding a particular permit application is consistent with how the [Department] has historically imposed conditions upon WPDES permits. This case-by-case analysis allows the [Department] to use its

expertise to make fact-specific determinations and gives it the flexibility to prescribe conditions that are specifically tailored to a particular applicant." *Clean Wisconsin*, 2021 WI 71, ¶ 32.

The law requires that the Department prescribe conditions for permits it issues to assure compliance with water quality standards. Wis. Stat. § 283.31(4). These conditions must include *at least* the following:

> (a) That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;
> (b) That facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants at frequencies or levels in excess of the maximum discharges described in the permit shall be reported to the department under s. 283.59(1);
> (c) That the permittee shall permit authorized representatives of the department upon the presentation of their credentials to enter upon any premises in which an effluent source is located or in which any records are required to be kept for the purpose of administering s. 283.55;
> (d) That the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit;
> …

Wis. Stat. § 283.31(4). Additionally, the statute mandates that the Department prescribe additional conditions necessary to assure compliance with groundwater protection standards. *Id.; Clean Wisconsin,* 2021 WI 71, ¶ 17. Wis. Admin. Code § NR 243.13 ("[T]he department shall include conditions in a WPDES permit for the production area and ancillary service and storage areas to ensure that clean water is diverted, as appropriate, from the production area and that are necessary to achieve compliance with surface water and groundwater quality standards contained in chs. NR 102 to 105, 140 and 207, and the livestock performance standards and prohibitions prescribed in ch. NR 151.")

Here, the Department has taken steps to promote compliance with groundwater quality standards at both the production area and land application fields. The Department regulates the production area through engineering standards. Ridge Breeze's production area includes Department-reviewable facilities, including "manure storage facilities, manure treatment or transfer systems, or other structures or systems associated with the storage, containment, treatment or handling of manure or process wastewater." Wis. Admin. Code § NR 243.03(56). Plans for reviewable facilities, including engineering plans and specifications, must be approved by the Department to ensure, for example, that they are constructed to meet the National Resource Conservation Service Standard 313 and to ensure that they are designed to hold the expected CAFO waste for a minimum of 180 days. *See* Wis. Admin. Code §§ NR 243.15(1)(a) and 243.15(3)(f),(i), and (j). The Department reviewed and approved Ridge Breeze's construction plans here.

The Department regulates the land application fields through the nutrient management plan and additional terms in the permit. The permit includes terms intended to ensure compliance at land application sites, specifically in Section 1.6.1:

- Land application practices shall maximize the use of available nutrients for crop production, prevent delivery of manure and process wastewater to waters of the state, and minimize the loss of nutrients and other contaminants to waters of the state to prevent exceedances of groundwater and surface water quality standards and to prevent impairment of wetland functional values. Practices shall retain land applied manure and process wastewater on the soil where they are applied with minimal movement.
- Manure or process wastewater may not be applied on areas of a field with a depth to groundwater or bedrock of less than 24 inches.
- Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater.
- Manure or process wastewater may not be applied within 100 feet of a private well or non-community system as defined in ch. NR 812 or within 1000 feet of a community well as defined in ch. NR 811.

(Ex. 1 at 9)[8]

In addition to these permit terms, permit holders are also required to follow a Department-approved nutrient management plan. *See* Wis. Admin. Code §§ NR 243.12(2)(a)6 and 243.14(1). A nutrient management plan dictates how CAFO waste, and other fertilizers, are legally and safely applied to farm fields to protect water quality. *Id.* While WPDES permits are subject to renewal every five years, nutrient management plans are updated at least annually to reflect changes. Wis. Stat. § 283.53(1); Wis. Admin. Code §§ NR 243.14(1)(b)-(c). DNR staff explained in their testimony how they evaluate nutrient management plans generally, and also how they evaluated Ridge Breeze's nutrient management plans including the suitability and nutrient uptake capacity of each field proposed for land spreading. (Murphy, Jackson, and Anderson testimony)

The dispute between the parties is whether these conditions are sufficient to ensure compliance. The Department and Ridge Breeze argue that the above conditions assure compliance, in combination with the thick overburden of glacial sediment which provides natural protection to groundwater, the nutrient management plan, and the restriction maps which prevent contamination via direct conduits. The Petitioners argue that a permit that cannot determine whether groundwater standards are met does not satisfy the Department's obligation. The Petitioners contend that groundwater monitoring, or some other mechanism that can determine whether Ridge Breeze is in compliance with groundwater quality standards, is necessary.

Whether to include groundwater monitoring, at the production site or at land application sites, as a requirement in a WPDES permit is a discretionary determination made by the Department. Wis. Admin. Code § NR 243.15(7); *Clean Wisconsin*, 2021 WI 71, ¶ 40. The Department has broad authority to establish, monitor, and enforce groundwater standards. *See* Wis. Stat. ch. 160 (which resulted in the promulgation of Wis. Admin. Code ch. NR 140 (February 2021)). *Clean Wisconsin*, 2021 WI 71, ¶ 30. In this case, the permit at issue was drafted by Mr. Jeffrey Jackson, a senior wastewater specialist with the Department. (Ex. 347) Additionally, Mr. Anderson provided hydrogeological advice to Mr. Jackson to consider in

[8] As the Petitioners point out, these terms are copied from Wis. Admin. Code § NR 243.14(2)(b)6-9, and apply to every permitted CAFO in Wisconsin.

drafting the permit.[9] It is the Department's opinion, expressed by Mr. Anderson, that groundwater monitoring was not warranted for the Ridge Breeze permit at this time. (Ex. 355 at 1-2). First, the thick layer of glacial sediments have low permeability and protect groundwater from contaminates at the surface. (Hedinger testimony) Additionally, there are very few direct conduits identified at or near the land application fields, and restrictions for these are in the nutrient management plan. The Department asserts these conditions, with the mandates already included in the permit, ensure compliance with groundwater quality standards.

The purpose of groundwater monitoring is "to evaluate potential impacts to groundwater from permitted activities and to assure that the permitted activities do not cause a violation of groundwater quality standards." (Ex. 355 at 3) Mr. Anderson opined that the depth to bedrock and the low permeability sediments above bedrock at the Ridge Breeze sites make it "almost impossible" to design a groundwater monitoring program that could identify the source of any agricultural pollutant found in groundwater. (Ex. 355 at 5) This causal relationship, or specifically identifying the source, is a concern of the Department's in monitoring. If groundwater monitoring could be done, and if contamination was found, the Department could not determine whether it was Ridge Breeze's permitted activities that cause the contamination, or whether the contamination came from, for example, another farm in the area or a private septic tank. As a result, data from groundwater monitoring would not be useful in enforcing the terms of the permit or addressing the contamination.

The evidence in the record is sufficient to find that if groundwater monitoring was implemented here, it may not produce useful data because any contamination may not be linked to a regulated source. However, that conclusion does not absolve the Department of its responsibility to assure compliance with groundwater quality standards. As Mr. Anderson testified, without monitoring, the Department could not detect whether the permitted activities cause exceedances of the groundwater standards. (Anderson testimony) Under the analysis of *Clean Wisconsin,* the Department's responsibility not only requires a review of the preparation (to be sure the farm is designed to comply) and the execution (to be sure the farm is operating in a manner to comply), it also must have verification or data to prove compliance. *See Clean Wisconsin,* 2021 WI 71, ¶¶ 37-39 ("[I]f the DNR did not have the ability to impose a groundwater monitoring requirement, then the groundwater protections standards would be essentially unenforceable.)[10]

The permit here sets Ridge Breeze up for anticipated compliance: the plans for the expanded production area were approved by the Department to be sure they are constructed to meet engineering standards, and it prohibits land application where the depth to groundwater or bedrock is less than 24 inches or within 100 feet of a direct conduit to groundwater. The permit also mandates compliance: it prohibits delivery of CAFO waste to waters of the state. However, the evidence in the record is insufficient to find that the permit contains conditions to ensure compliance because it does not verify that Ridge Breeze has complied and continues to comply

[9] Mr. Anderson has a bachelor's degree in geology and a master's degree in water resource management. He has worked for the Department for more than 13 years. (Ex. 355 at 1)

[10] Both in *Clean Wisconsin* and here, there is sufficient evidence to find significant contamination, though here that contamination is varied. *Id*., ¶ 38. Clearly the groundwater here is susceptible to contamination, though specific locations may vary in terms of their degree of susceptibility. (Ex. 122 at 8)

with groundwater quality standards. The Petitioners have met their burden to show that the conditions of the permit are insufficient to ensure that authorized discharges comply with groundwater quality standards.

III. Whether the permit is unreasonable because it fails to ensure that authorized discharges comply with groundwater quality standards.

As stated above, the Department's permitting decisions are reasonable if they are the result of a process of logical reasoning. *See Madison Gas & Elec. Co. v. Pub. Serv. Comm'n of Wisconsin,* 109 Wis. 2d 127, 136-137, 325 N.W.2d 339, 344 (1982). Here, there is a breakdown in the Department's logic because the permit lacks a mechanism to detect and verify groundwater standard compliance. The permit conditions set Ridge Breeze up for anticipated compliance, they also command compliance, but the permit lacks a mechanism to verify compliance. By omitting a mechanism to verify actual compliance, the Department has issued a mandate while simultaneously denying itself the tools or data necessary to know whether that mandate is broken. A permitting decision based on this inherent contradiction is not the product of logical reasoning, and therefore, under these circumstances, it is unreasonable. The permit must be remanded to the Department to incorporate additional conditions or requirements, which may include monitoring, capable of detecting whether the groundwater protection standards of Wis. Admin. Code Chapter NR 140 are being violated.

All of the arguments presented by the parties were carefully considered by the undersigned ALJ. The courts have recognized that an administrative decision-maker "is not required to make findings that respond to every issue [a party] raised in its request." *Peace Lutheran Church & Acad. v. Vill. of Sussex*, 2001 WI App 139, ¶ 33, 246 Wis. 2d 502, 631 N.W.2d 229. Thus, any arguments and evidence on the record that were not specifically mentioned were determined to not merit comment in the decision.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has the authority to hear this case and issue a final decision pursuant to Wis. Stat. § 227.43(1)(b) and Wis. Admin. Code § NR 2.155(1). Review is limited to the portions of the petition the Department determined met the applicable jurisdictional requirements. Wis. Admin. Code § NR 2.055.

2. The Petitioners bear the burden of proof on the issues by a preponderance of the evidence. Wis. Admin. Code § HA 1.17(2).

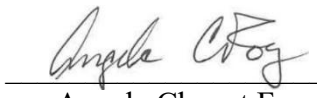
3. The Petitioners established that the permit fails to ensure that discharges authorized by the permit comply with groundwater quality standards. Therefore, the permit is unreasonable.

ORDER

For the reasons set forth above, IT IS ORDERED that WPDES Permit No. WI-0062928-04-02 is hereby remanded to the Department to incorporate additional conditions or requirements, which may include monitoring, capable of detecting whether the groundwater protection standards of Wis. Admin. Code Chapter NR 140 are being violated.

Dated at Madison, Wisconsin on August 24, 2026.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (414) 227-4025
FAX. (608) 264-9885

By 

Angela Chaput Foy
Administrative Law Judge

NOTICE OF APPEAL RIGHTS FOLLOW ON THE NEXT PAGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wis. Admin. Code § NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to ensure strict compliance with all its requirements.