

Water Quality Trade Agreement

This Water Quality Trade Agreement (this “Agreement”) is made by and between Baker Cheese Factory, Inc. (“Baker Cheese”) and the Wisconsin Department of Natural Resources (“WDNR” and together “the Parties”).

1. Recitals

- a. Water quality trading is an alternative compliance option for Wisconsin Permit Discharge Elimination System (“WPDES”) permit holders and is authorized by Wis. Stat. § 283.84.
- b. Wis. Stat. § 283.84(1)(e) provides that, “the [WDNR] may authorize a person required to obtain a permit to increase the discharge of pollutants above levels that would otherwise be authorized in the permit if the person . . . [r]eaches a binding, written agreement with [WDNR] under which the person constructs a project or implements a plan that results in reducing the amount of water pollution from sources other than the source covered by the permit.”
- c. The WDNR has issued guidance regarding water quality trading, including:
 - i. Guidance for Implementing Wisconsin’s Phosphorus Water Quality Standards for Point Source Discharges, No. 3800-2011-02 (January 3, 2012);
 - ii. A Water Quality Trading How To Manual, No. 3400-2013-03 (September 9, 2013); and
 - iii. Guidance for Implementing Water Quality Trading in WPDES Permits, No. 3800-2013-04 (August 21, 2013) (“WQT in WPDES Permits Guidance”).
- d. WDNR issued a WPDES Permit to Baker Cheese for wastewater discharges from its cheese factory in St. Cloud, Wisconsin, on December 16, 2014.
- e. The WPDES Permit contains phosphorus water quality based effluent limits (“WQBELs”) for new Outfall 003, which is located in HUC-12 Subwatershed 040301010901.
- f. Baker Cheese owns three farm fields (the “Fields”) within the same HUC-12 watershed as Outfall 003.
- g. The legal descriptions of the lands that include three Fields are: S26 T15N R19E SE 1/4 NE 1/4 EXC APPROX 7.26 ACRES IN NE COR and S26 T15N R19E SW 1/4 NE 1/4 EXC CSMS #1336-8-61 #3729-20-128 #3730-20-129.
- h. For the past three years, the Fields have been planted in corn silage or soybeans.

- i. Baker Cheese submitted to WDNR a Water Quality Trading Plan (WQT Plan) under which Baker Cheese will establish and maintain permanent vegetative cover on all three Fields consistent with Natural Resources Conservation Service ("NRCS") Technical Standard 327.
- j. The WQT Plan includes an Establishment Plan and an Operation and Maintenance Plan for the permanent vegetative cover on the Fields.

2. Agreement Terms


- a. Baker Cheese shall establish and maintain the permanent vegetative cover on the Fields consistent with the requirements in the attached WQT Plan, the Establishment Plan, and the Operation and Maintenance Plan.
- b. WDNR shall propose to modify the WPDES Permit issued to Baker Cheese to allow Baker Cheese to use water quality trading as a compliance option, in accordance with the WQT Plan as approved by WDNR.
- c. Subject to the terms of this Agreement and the terms of the WPDES Permit issued to Baker Cheese, WDNR shall allow Baker Cheese to utilize phosphorus credits in the amount set forth in the approved WQT Plan to demonstrate compliance with phosphorus WQBELs in the WPDES Permit.
- d. Unless the Agreement is terminated in accordance with Sections 2(f), (2)(g) or 2(h), this Agreement shall continue through the end date of each successive WPDES Permit term. In accordance with Wis. Stat. § 227.51(2), if Baker Cheese files a timely application for the reissuance or modification of the WPDES Permit, the terms of the Permit and this Agreement will continue until the later of the following: (1) the application has been finally acted upon by WDNR, (2) the last day for seeking review of the agency's decision, or (3) a later date fixed by order of a reviewing court.
- e. Any duly authorized officer, employee or representative of WDNR shall have the right to access and inspect the Fields pursuant to Wis. Stat. § 283.55(2) so long as this Agreement remains in effect.
- f. The Parties may terminate this Agreement by written mutual agreement at any time.
- g. Baker Cheese may terminate this Agreement by providing at least sixty (60) days written notice to WDNR of Baker Cheese's intent to terminate the Agreement.
- h. In accordance with the procedures and requirements of 283.53(2), Wis. Stats. and Wis. Admin. Code NR 203.135 and 203.136, WDNR may terminate this Agreement if, after providing Baker Cheese notice, an opportunity to discuss with WDNR, and a reasonable period of time to correct or address any of the conditions listed below, any one of the following occur:

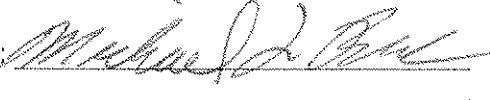
- i. Baker Cheese fails to implement the WQT Plan as approved;
 - ii. Baker Cheese fails to comply with WPDES Permit terms and conditions related to water quality trading;
 - iii. New information becomes available that causes WDNR to determine that water quality trading is no longer an acceptable option.
- i. Any action by WDNR to terminate this Agreement or otherwise to reduce or eliminate the number of phosphorus credits in the approved WQT Plan shall be implemented and become effective only through a modification of the WPDES Permit.
 - j. This Agreement may be amended only by a further written document signed by each of the Parties.
 - k. This Agreement shall be effective upon signature by both Parties.
 - l. This Agreement shall be interpreted pursuant to the laws of the State of Wisconsin.
 - m. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.
 - n. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision involved and shall not affect the validity or enforceability of the remaining provisions, and the Parties shall work together in good faith to modify this Agreement if necessary to preserve its original intent.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year entered below.

BAKER CHEESE FACTORY, INC.

**WISCONSIN DEPARTMENT OF
NATURAL RESOURCES**

By: 
 Name: JEFF BAKER
 Title: Vice President
 Date: 9/30/15

By: 
 Name: Michael L. Bruhn
 Title: Assistant Deputy Secretary
 Date: 9/30/15