

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CONCERNED FARMS AND NEIGHBORS OF  
THE TOWN OF HIXTON, U.A.,  
a nonprofit association,

Plaintiffs,

Case No. 04-C-0491-C

v.

SEDELBAUER FARMS, INC., AND LYNN  
SEDELBAUER,

Defendants.

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**ANSWER TO FIRST AMENDED COMPLAINT**

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Defendants Sedelbauer Farms, Inc. and Lynn Sedelbauer, by their attorneys Michael Best & Friedrich LLP, respond to the First Amended Complaint in this matter as follows:

**I. JURISDICTION AND VENUE**

1. Paragraph 1 sets forth allegations of law and requires no response.
2. Admit receiving written correspondence from Plaintiff on or around May 13, 2004, which correspondence speaks for itself but deny that the written correspondence gave notice of all alleged violations within the Complaint and deny that the written correspondence was attached as Exhibit A to the Complaint. Defendant admits that on July 19, 2004, Plaintiff filed an original Complaint in this action which is attached as Exhibit A to the First Amended Complaint. Defendants lack knowledge or information sufficient to admit or deny the remainder of allegations in paragraph 2 of the Complaint. Affirmatively assert that Lynn Sedelbauer is not a proper Defendant under the citizen suit enforcement provision of the Clean Water Act, 33 U.S.C. § 1365(a).

3. Admit receiving written correspondence from Plaintiff on or around July 22, 2004, which correspondence speaks for itself. Admit that the July 22, 2004 correspondence is attached as Exhibit B to the First Amended Complaint. Defendants lack knowledge or information sufficient to admit or deny the remainder of allegations in paragraph 3 of the First Amended Complaint. Affirmatively assert that Lynn Sedelbauer is not a proper Defendant under the citizen suit provision of the Clean Water Act, 33 U.S.C. § 1365(a).

4. Admit that sixty days have elapsed since Defendants' receipt of the written correspondence referenced in paragraphs 2-3, but deny that the written correspondence gave notice of all alleged violations within the Complaint and/or First Amended Complaint and deny the remainder of the allegations in paragraph 4 of the First Amended Complaint.

5. Deny.

6. Deny any violations of federal law and lack knowledge or information sufficient to admit or deny the remainder of allegations in paragraph 6 of the First Amended Complaint.

## **II. INTRODUCTION**

7. Deny allegations of fact and deny any characterization of the Permit, as the document speaks for itself. The allegations of law require no response. Deny that the Permit was attached to the Complaint.

8. Deny.

9. Deny.

10. Deny allegations of fact and the allegations of law require no response.

## **III. PARTIES**

11. Deny any allegations that the alleged conduct has caused harm to the environment or to Plaintiff and its members and lack knowledge or information sufficient to admit or deny the

remainder of the allegations in paragraph 11 of the Complaint.

12. Deny.

13. Admit that Sedelbauer Farms, Inc., is a corporation organized under the laws of the State of Wisconsin and is located and has its principal place of business at 14804 Hwy 95, Hixton, WI, 54635. Admit that Sedelbauer Farms, Inc. is the operator and/or owner of the animal feeding operations located on Highway 95 and on Holmes Road in Hixton, WI, 54635. Admit that Lynn Sedelbauer is the registered agent for Sedelbauer Farms, Inc. but deny the remainder of allegations in paragraph 13 of the Complaint and affirmatively assert that Lynn Sedelbauer is not a proper Defendant under the citizen suit enforcement provision of the Clean Water Act, 33 U.S.C. § 1365(a).

#### **IV. STATUTORY FRAMEWORK**

14. Paragraph 14 sets forth allegations of law and requires no response.

15. Paragraph 15 sets forth allegations of law and requires no response.

16. Paragraph 16 sets forth allegations of law and requires no response.

17. Paragraph 17 sets forth allegations of law and requires no response.

18. Allegations of law in paragraph 18 require no response. Admit that the Permit effective date is January 1, 2004 but deny any characterization of the Permit, as the document speaks for itself.

19. Deny any characterization of the Permit, as the document speaks for itself.

20. Deny any characterization of the Permit, as the document speaks for itself.

21. Deny any characterization of the Permit, as the document speaks for itself.

22. Paragraph 22 sets forth allegations of law and requires no response.

23. Paragraph 23 sets forth allegations of law and requires no response.

- 24. Paragraph 24 sets forth allegations of law and requires no response.
- 25. Paragraph 25 sets forth allegations of law and requires no response.
- 26. Admit that a WPDES permit has not been obtained, but deny any violation of applicable law.
- 27. Deny.
- 28. Deny.

## V. FACTS

### A. Discharges from the Animal Production Area

- 29. Deny.
- 30. Admit having a current herd of approximately 1,800 animals and having feedlots consisting of open front sheds, fence line feeding and windbreaks which comprise, in part, the animal production area and deny remainder of allegations in paragraph 30 of the Complaint.
- 31. Admit having a current herd of approximately 1,800 animals and that Defendant has considered expansion but deny the remainder of allegations of paragraph 31 of the Complaint.
- 32. Admit that the southwest lot slopes toward the east ditch of Pole Grove Road and that the east side lot slopes toward an unnamed stream on the north side of Prairie Road.
- 33. Deny.
- 34. Lack knowledge or information sufficient to admit or deny the allegations in paragraph 34 of the Complaint.
- 35. Deny all allegations of discharges in paragraph 35 of the Complaint and lack knowledge or information sufficient to admit or deny the remainder of allegations in paragraph 35 of the Complaint.

36. Deny all allegations of failure to prove sufficient controls, storage, and spreading practices to prohibit polluted runoff in paragraph 36 of the Complaint and lack knowledge or information sufficient to admit or deny the remainder of allegations in paragraph 36 of Complaint.

37. Deny all allegations of deficiencies in paragraph 37 of the Complaint and deny any characterization of the Permit, as the document speaks for itself. Lack knowledge or information sufficient to admit or deny the remainder of allegations in paragraph 37 of the Complaint.

38. Deny.

39. Deny and affirmatively assert that the allegations in paragraph 39 of the Complaint were not included in the Plaintiff's correspondence to Defendants on or around May 13, 2004 and therefore, the Plaintiff failed to satisfy Section 505 (b)(1)(A) of the Clean Water Act, 33 U.S.C. 1365(b)(1)(A) and 40 C.F.R. § 135.2 for all allegations in paragraph 39.

40. Deny and affirmatively assert that the allegations in paragraph 40 of the Complaint were not included in the Plaintiff's correspondence to Defendants on or around May 13, 2004 and therefore, the Plaintiff failed to satisfy Section 505 (b)(1)(A) of the Clean Water Act, 33 U.S.C. 1365(b)(1)(A) and 40 C.F.R. § 135.2 for all allegations in paragraph 40.

**B. Discharges from the Sedelbauer-Holmes Road Animal Production Area**

41. Defendant admits owning an animal feeding operation on Holmes Road but denies the remainder of the allegations of paragraph 41.

42. Defendant admits that it owns and operates the Holmes Road operations and that it uses common equipment to collect and dispose of manure generated at the Holmes Road site and the main site, but denies the remainder of the allegations of paragraph 42. Defendant

affirmatively alleges that the two sites are subject to separate manure management plans and that manure from the two sites is spread on separate lands and is not commingled.

43. Defendant admits that it does not have a WPDES Permit for the Holmes Road operations, but denies the remainder of the allegations of paragraph 43.

44. Deny.

**B. Discharges from the Land Application Areas**

45. Admit land-spreading animal waste on fields in conformance with its Nutrient Management Plan and the Permit.

46. Admit land-spreading animal waste on property known as Laufenberg field during the fall of 2003 and early 2004 in accordance with the Permit and Defendants' Nutrient Management Plan and that on or around February 27, 2004 to March 2, 2004 snowmelt runoff occurred from the Laufenberg field due to unusually warm weather and precipitation but deny the remainder of allegations in paragraph 46 of the Complaint.

47. Deny.

**D. Silage Leachate Discharges in Violation of Sedelbauer's WPDES Permit and the CWA.**

48. Deny.

49. Defendant lacks knowledge and information sufficient to admit or deny paragraph 49 as it does not know what "information in the public domain" Plaintiff refers to. Subject to the foregoing, Defendant denies violating any legal requirements implied by this paragraph.

50. Deny any characterization of the Permit, as the document speaks for itself.

51. Deny.

**IV. CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION**

**(Violation of WPDES Permit Section 1.1 –  
General Discharge Limitations and Performance Standards)**

52. In response to paragraph 52 of the Complaint, Defendants incorporate by reference the responses in paragraphs 1-51 above.

53. Deny any characterization of the Permit, as the document speaks for itself.

54. Admit having an animal production area that falls within the definition included in the Permit but deny any characterization of the Permit or animal production area as alleged in paragraph 54.

55. Deny any characterization of the Permit, as the document speaks for itself.

56. Deny.

57. Deny and affirmatively assert that the allegations in paragraph 57 of the Complaint were not included in the Plaintiff's correspondence to Defendants on or around May 13, 2004 and therefore, the Plaintiff failed to satisfy Section 505 (b)(1)(A) of the Clean Water Act, 33 U.S.C. 1365(b)(1)(A) and 40 C.F.R. § 135.2 for all allegations in paragraph 57.

58. Deny and affirmatively assert that the allegations in paragraph 58 of the Complaint were not included in the Plaintiff's correspondence to Defendants on or around May 13, 2004 and therefore, the Plaintiff failed to satisfy Section 505 (b)(1)(A) of the Clean Water Act, 33 U.S.C. 1365(b)(1)(A) and 40 C.F.R. § 135.2 for all allegations in paragraph 58.

59. Deny.

60. Deny the first sentence of paragraph 60 and lack knowledge and information sufficient to admit or deny the remainder of the allegations.

61. Deny any allegations of a discharge in paragraph 61 of the Complaint and deny any characterization of the Permit, as the document speaks for itself.

62. Deny.

63. Deny.

64. Deny.

65. Paragraph 65 sets forth allegations of law and requires no response. Subject to the foregoing, deny that Plaintiff is entitled to injunctive relief.

## **SECOND CAUSE OF ACTION**

### **(Violation of Section 3.2.11 – Ponding and Runoff of Animal Waste From the Intended Site)**

66. In response to paragraph 66 of the Complaint, Defendants incorporate by reference the responses in paragraphs 1-65 above.

67. Deny any characterization of the Permit, as the document speaks for itself.

68. Admit land-spreading animal waste on property known as Laufenberg field during the fall of 2003 and early 2004 in accordance with the Permit and Defendants' Nutrient Management Plan and that on or around February 27, 2004 to March 2, 2004 snowmelt runoff occurred from the Laufenberg field due to unusually warm weather and precipitation but deny the remainder of allegations in paragraph 68 of the Complaint.

69. Deny.

70. Deny.

71. Deny.

72. Deny.

73. Deny.

## **THIRD CAUSE OF ACTION**

### **(Violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a)- Discharging of Pollutants to Waters of the United States Without a Permit)**

74. Paragraph 74 sets forth allegations of law and requires no response.

75. Paragraph 75 sets forth allegations of law and requires no response.

76. Paragraph 76 sets forth allegations of law and requires no response.

77. Paragraph 77 sets forth allegations of law and requires no response.

78. Defendant admits owning an animal feeding operation on Holmes Road but denies the remainder of the allegations of paragraph 78.

79. Defendant admits that it owns and operates the Holmes Road operations and that it uses common equipment to collect and dispose of manure generated at the Holmes Road site and the main site, but denies the remainder of the allegations of paragraph 79. Defendant affirmatively alleges that the two sites are subject to separate manure management plans and that manure from the two sites is spread on separate lands and is not commingled.

80. Deny.

81. Deny.

82. Deny.

83. Paragraph 83 sets forth allegations of law and requires no response. Subject to the foregoing, deny.

### **AFFIRMATIVE DEFENSES**

Defendants state the following affirmative defenses to the allegations of the Complaint:

1. Plaintiff lacks standing to assert a claim under Article III of the United States Constitution.
2. Plaintiff lacks standing to assert a claim under the Clean Water Act, as amended.
3. Sedelbauer Farms, Inc. has achieved substantial compliance with applicable permit and legal requirements.
4. Plaintiff has failed to establish conditions precedent to relief under the Clean

Water Act, as amended. Among other things, Plaintiff has failed to satisfy the notice requirements of Section 505 (b)(1)(A) of the Clean Water Act, 33 U.S.C. 1365(b)(1)(A) and 40 C.F.R. § 135.2, with respect to certain alleged violations.

5. The alleged Permit and statutory violations are the subject of diligent enforcement action by the WDNR.

6. Plaintiff's claims are moot as there is no reasonable expectation that any alleged violations will continue.

7. There is no justiciable controversy ripe for adjudication by declaratory judgement.

8. Plaintiff is not a real party in interest.

9. The alleged conduct was not a substantial cause of injury suffered by Plaintiff or its' members.

10. The Complaint fails to state a course of action against Lynn Sedelbauer, as he is not a proper Defendant under the citizen suit enforcement provision of the Clean Water Act, 33 U.S.C. § 1365(a).

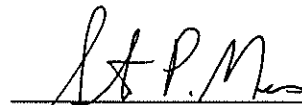
WHEREFORE, Defendants Sedelbauer Farms, Inc. and Lynn Sedelbauer request that this Court enter judgement against the Plaintiff on all counts alleged in the First Amended Complaint and award them the costs and attorney fees incurred in this action to the extent provided by law.

Dated this 25th day of October, 2004.

Respectfully submitted,

**MICHAEL BEST & FRIEDRICH LLP**

By:



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