



# BENDER LAW OFFICES

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VIA CERTIFIED MAIL -RETURN RECEIPT REQUESTED

May 13, 2004

Managing Agent  
Sedelbauer Farms Inc.  
W14804 Highway 95  
Hixton, WI 54635

Lynn Sedelbauer  
Registered Agent  
Sedelbauer Farms Inc.  
W14804 Highway 95  
Hixton, WI 54635

Re: **60 Day Notice of Intent to Sue for Violations of WPDES Permit WI-0062421-01**

To whom it may concern:

We represent the Concerned Farmers and Neighbors of the Town of Hixton, UA ("CFN"). We are writing to you because you are the owner or operator and onsite representative or agent of Sedelbauer Farms, Inc. ("Sedelbauer") located in Jackson County, Wisconsin in the Town of Hixton. This letter is to inform you that CFN intends to sue Sedelbauer under 33 U.S.C. §1365(a)(1) for violating the Clean Water Act ("CWA") and its Wisconsin Pollution Discharge Elimination System ("WPDES") permit, No. WI-0062421-01-0 ("Permit"). Sedelbauer's current WPDES permit was effective beginning January 1, 2004, and was issued pursuant to Chapter 283 of the Wisconsin Statutes.

Sedelbauer is located only 0.75 miles from Tank Creek, a Class I trout fishery with excellent water quality that is capable of supporting a community of cold water fish and aquatic life that is sustained by natural reproduction. Sedelbauer spreads animal waste and other pollutants on fields that drain to tributaries to Tank Creek. Sedelbauer's open feedlot discharges animal waste and other pollutants to tributaries to Tank Creek during periods of snow melt and rainfall. Despite the fact that Tank Creek is a class I trout fishery, Sedelbauer has discharged and is reasonably likely to continue to discharge animal waste and other pollutants in violation of its Permit.

CFN is an unincorporated not-for-profit association organized under Chapter 184 of the Wisconsin Statutes. CFN is organized to protect the natural resources and quality of life of its members, residents of the Town of Hixton. Among other purposes, CFN is organized to protect environmental quality and enforce environmental laws. CFN is registered with the State of Wisconsin and is located at N8460 Sand Prairie Road, Hixton, Wisconsin 54635, tel. (715) 963-5602. CFN's members swim, fish and use Tank Creek, live near Tank Creek and enjoy the diverse ecosystem and aesthetic values of Tank Creek. More specifically, CFN's members use and enjoy the waters and shorelines of Tank Creek in the vicinity of Sedelbauer's operation and have been and will continue to be personally affected by the operation's discharges of pollutants. Polluted discharges from Sedelbauer have and will continue to diminish CFN's members' use and aesthetic enjoyment of Tank Creek in the future.

Section 505(b) of the Clean Water Act requires citizens to give notice of their intent to sue under the Act sixty (60) days prior to the initiation of a civil action under Section 505(a), 33 U.S.C. § 1365(a), of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

This letter is being sent to you as the registered agents, responsible owners, officers and/or operators of Sedelbauer. As required by the Clean Water Act, CFN, by its attorneys and agent, hereby places you on formal notice that, after the expiration of sixty (60) days from the date of this Notice, pursuant to Section 505 of the Clean Water Act, 33 U.S.C. §1365, CFN intends to file suit in the United States District Court for the Western District of Wisconsin against the persons responsible for the violations described in this letter. Violations of Sedelbauer's permit are also violations of the Clean Water Act.

Sedelbauer has violated its Permit in the following particulars:

**I. VIOLATION OF SECTION 1.1, PROHIBITING THE DISCHARGE OF POLLUTANTS TO NAVIGABLE WATERS AND DIRECT RUNOFF FROM A FEEDLOT OR STORED ANIMAL WASTE TO WATERS OF THE STATE.**

Section 1.1 of WPDES permit WI-0062332-01 prohibits Sedelbauer from discharging pollutants into navigable waters from the animal production area except in limited circumstances identified in Section 1.1 of your WPDES permit. The "animal production area" includes, but is not limited to: "(1) any storage, containment or treatment structures, facilities or areas for manure, raw materials, mortality management and process wastewaters, (2) animal confinement areas including outdoor animal lots and (3) unconfined storage areas (such as headland stacking), if approved." Section 1.1 also prohibits you from allowing "direct runoff from a feedlot or stored manure to waters of the state" and from allowing "overflow of manure storage facilities."

According to information in the public domain, Sedelbauer discharged animal waste and other pollutants from an open feedlot on its animal production area into waters on the state, including an unnamed tributary to Tank Creek. The waste ultimately reached Tank Creek. These discharges occurred during the period February 27 through March 2, 2004. However, similar discharges likely occurred before and after these dates because the land slopes from the feedlot to Tank Creek and there are insufficient structures to trap runoff, especially soluble forms of nitrogen and phosphorous.

There is a reasonable likelihood that Sedelbauer will repeat this violation on an intermittent or continuing basis in the future. The Sedelbauer operation lacks sufficient animal waste storage capacity and runoff controls to prevent direct runoff from your animal production area and to contain the manure, process wastewater, direct precipitation and contaminated runoff from a 25-year, 24-hour rainfall event or chronic rainfall event. As a result, Sedelbauer is likely to cause direct runoff and discharges from its animal production area on an intermittent or sporadic basis in the future.

Further, Dr. Byron Shaw, CFN'S expert, studied and commented on Sedelbauer's failure to implement practices necessary to prevent violations of its Permit. (*See* Dr. Byron Shaw, Evaluation of Potential Surface Water and Groundwater Impacts By the DNR's Issuance of a Wisconsin Pollutant Discharge Elimination System Permit to Sedelbauer Farms, Inc., September 17, 2003 ("Shaw Report").) Dr. Shaw prepared analysis of the water quality risks posed by Sedelbauer's plan to house hundreds of cattle on an open dirt lot. Specifically, Dr. Shaw states:

Viewing the existing facilities and extensive areas of totally denuded soils, it is highly likely that serious runoff and erosion will occur from these sites. I have not seen any plans that would suggest that there are structures at the site large enough to trap this runoff, or that such structures will be built. There is no mention in the preliminary manure management plan for disposal of any runoff water from these facilities, only for dry manure. The only pollution prevention practices shown on the site plans are some vegetated filter-strips to slow down runoff water from the feed lots and trap some of the solids and associated nutrients. These may trap some nutrients but will trap few soluble forms of nitrogen or phosphorus. Moreover, these runoff controls may quickly be overwhelmed given that they are the only runoff controls in place. In other words, the proposed facility provides inadequate runoff control to prevent almost certain surface and groundwater contamination.

(Shaw Report at ¶ 18)

Dr. Shaw concluded:

Sedelbauer Farms will not be able to comply with the permit condition prohibiting discharge to surface water except in the event of a 25 year, 24 hour rainfall event without further runoff controls in place. In fact, in my opinion impermeable storage basins to contain runoff are needed to meet this requirement. Additionally, permit requirements should be added to require prompt pumping and land spreading when the capacity approaches its limit.

(Shaw Report at ¶ 24)

Because Sedelbauer has not installed long term manure storage and adequate runoff controls sufficient to meet the requirements of Section 1.1 of the Permit, you are reasonably likely to violate Section 1.1 on a sporadic or intermittent basis in the future.

**II. VIOLATION OF SECTION 3.2.11, PROHIBITING SURFACE APPLIED MANURES FROM PONDING ON THE INTENDED SITE AND RUNNING OFF THE INTENDED SITE.**

Section 3.2.11 of WPDES permit WI-0062332-01 states that “surface applied manures shall not run off the intended site at any time” or “pond on the intended site at any time.”

Based on records in the public domain, Sedelbauer spread animal waste on a field (“Laufenberg field” or “site”) located on Pole Grove Road immediately to the west and across the road from Sedelbauer’s animal production area. That animal waste ponded on the site and ran off the intended site during a period of snow-melt. The animal waste discharged from the site into an unnamed tributary of Tank Creek, and ultimately reached Tank Creek. These discharges occurred between February 27 and March 2, 2004. However, similar violations likely occurred before and after these dates.

There is a reasonable likelihood that Sedelbauer will repeat this violation on an intermittent or continuing basis. Sedelbauer lacks the needed animal waste storage capacity to prevent overflows from its animal waste storage facility and consequently needs to apply animal waste on frozen, thawing, or partially thawing soil. As a result, Sedelbauer is likely to continue to apply animal waste on the Laufenberg field and other fields under frozen, thawing, or partially thawing conditions, and, therefore, is reasonably likely to continue to discharge animal waste to waters of the state in violation of Section 3.2.11.

Further, Dr. Shaw studied and commented on Sedelbauer's failure to implement practices necessary to prevent violations of its Permit. *See* Shaw Report. Dr. Shaw prepared analyses of the water quality risks posed by Sedelbauer's plan to spread solid manure on thawing or partially thawing ground. Dr. Byron Shaw stated that manure spreading during the winter at the Sedelbauer facility will almost certainly result in runoff:

I note that none of the documents I have reviewed detail how Sedelbauer Farms, Inc. will handle animal waste on a daily basis and where it will be stored or how runoff will be contained, stored, or disposed of. It has been suggested that [Sedelbauer] will spread waste every day, 365 days a year. This is not an environmentally acceptable practice. Spreading manure during winter months on sloping frozen ground will result in manure runoff to receiving waters during most spring thaw periods. Manure on other areas that do not drain as quickly will likely pond in the spring thaw. Moreover, the practice violates acceptable practices when soils are already near saturated or when incorporation cannot be done immediately.

(Shaw Report, ¶ 23)

As Dr. Shaw concludes and as demonstrated by the recent spring thaw, Sedelbauer is likely to discharge animal waste and other pollutants into waters of the state from any fields it on which it intends to spread solid animal waste. Because Sedelbauer has failed and continues to fail to implement sufficient manure storage to prevent its need to spread solid animal waste on thawing or partially thawing ground, Sedelbauer will violate its Permit on an intermittent or sporadic basis in the future.

### III. CONCLUSION

Based on records in the public domain, Sedelbauer farms violated these two distinct WPDES permit requirements on at least 5 separate days. According to these investigations and eyewitness accounts, from at least February 27, 2004 up until and including March 2, 2004, Sedelbauer violated its WPDES permit at least 10 times since the permit was issued in January, 2004.

Sedelbauer's violations have directly harmed CFN's individual members' interests in a clean and safe Tank Creek for fishing, swimming, and other recreational and aesthetic interests in, around, and downstream of Sedelbauer.

Wisconsin's citizens are not only users of the waters in this state, but are beneficiaries of the public trust by which the state protects these waters. Pollution such as Sedelbauer's causes not only real and tangible harm to CFN's members and those who use Tank Creek near the facility but inflicts untold harm to the state's tourism economy and to public health.

At the close of the 60 day notice period, if you have not corrected the foregoing violations of the Permit, CFN intends to file a citizen suit pursuant to section 505(a)(1), 33 U.S.C. §1365(a)(1) of the CWA for all violations of WPDES permit WI-0062332-01. You may be liable for up to \$32,500 per day for each violation of the WPDES permit. 33 U.S.C. §1319(d). 40 C.F.R. §19.4, Table 1.

In filing this action, CFN also intends to pursue penalties and/or injunctive relief as well as costs, attorneys' fees and litigation expenses pursuant to 33 U.S.C. 1365(d).

During the 60-day notice period, we will be available to discuss effective remedies and actions and the possibility of resolving this matter without litigation, as well as any facts you believe are incorrectly set forth in this notice letter and other relevant facts not itemized above. You should direct all correspondence or telephone contact to the following attorneys for CFN: Andrew C. Hanson, Midwest Environmental Advocates, Inc., at 702 E. Johnson Street, Madison, Wisconsin 53703, tel. (608) 251-5047 and fax (608) 268-0205; Attorney David Bender, Bender Law Offices, 354 West Main St., Madison, WI 53703, tel. (608) 442 3585 and fax (608) 442-9494; and Attorney Noah Golden-Krasner, Law Offices of Noah Golden-Krasner, 354 West Main St., Madison, WI 53703, Tel. (608) 441-8924, and fax (608) 442-9494.

Sincerely,

**MIDWEST ENVIRONMENTAL ADVOCATES, INC.**



Andrew C. Hanson  
State Bar #1038367

**BENDER LAW OFFICES**




David Bender  
State Bar # 1046012

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Notice of Intent to Sue For Clean Water Act Violations

**LAW OFFICES OF NOAH GOLDEN-KRASNER**



Noah Golden-Krasner  
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