

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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Concerned Farmers and Neighbors
of the Town of Hixton, U.A.,
a nonprofit association;

Plaintiff,

vs.

Sedelbauer Farms, Inc., and Lynn
Sedelbauer;

Defendants.

Case No. 04-C-0491-C

Judge: Hon. Barbara B. Crabb

(Environmental)

CONSENT DECREE

WHEREAS, after providing proper notice to the Defendants Sedelbauer Farms, Inc. and Lynn Sedelbauer (collectively "Sedelbauer") and all requisite entities pursuant to 33 U.S.C. § 1365(b) and 40 C.F.R. § 135.2, the Plaintiff, Concerned Farmers and Neighbors of the Town of Hixton, U.A. ("Concerned Farmers"), filed a complaint and amended complaint commencing this action under the citizen suit provision of the Federal Water Pollution Control Act (commonly known as and hereinafter referred to as the "Clean Water Act" or "CWA"), 33 U.S.C. §§ 1251 *et seq.*, alleging that Sedelbauer has violated Wisconsin Pollutant Discharge Elimination System ("WPDES") Permit WI-0062421-01-0 ("Permit") and section 301 of the CWA, 33 U.S.C. § 1311, by discharging manure and silage runoff from concentrated animal feeding operations owned and operated by Sedelbauer at the intersection of Pole Grove and Sand

Copy of this document has been provided to: Counsel

this 27th day of June 2005
by [Signature]

S. Vogel, Secretary to
Judge Barbara B. Crabb

Prairie Road and on Holmes Road in the Town of Hixton, Jackson County, Wisconsin, at levels greater than those allowed under the Permit or the CWA;

WHEREAS, the Plaintiff has commenced this action seeking declaratory judgment, injunctive relief, the imposition of civil penalties and the award of costs, including attorneys' fees;

WHEREAS, Sedelbauer Farms, Inc. and Lynn Sedelbauer, Defendants, (collectively "Sedelbauer"), deny any and all liability under the CWA and any state, regional or local law;

WHEREAS, the Plaintiff and the Defendants, by their authorized representatives and without trial or final adjudication of the issues of fact or law, consent to the entry of this Consent Decree ("Decree") with respect to Plaintiff's claims, and the Court, by entering this Decree, finds that this Decree has been negotiated by the Parties in good faith and it is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, and without the adjudication of issues of fact or law, and without admission by the Defendant of the non-jurisdictional allegations in the Complaint (and any amendments thereto), IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 33 U.S.C. § 1365(a) (Clean Water Act's citizen suit provision) and 28 U.S.C. § 1331 (federal question jurisdiction).
2. Venue is appropriate in this judicial district and in this court pursuant to 33 U.S.C. § 1365(c), in that the alleged violations of the effluent limitations and WPDES permit conditions giving rise to the claims in this suit occurred in the Western District of Wisconsin.

3. For purposes of this Decree, the Defendant agrees not to contest the jurisdiction of the Court to enter and to enforce this Decree.

4. For purposes of this Decree, the Defendant further consents to the Court's jurisdiction over the Defendant and consents to venue in this judicial district.

II. APPLICABILITY

5. The provisions of this Decree apply to and are binding upon the Plaintiff, Concerned Farmers, and the Defendant, Sedelbauer, and upon any of Plaintiff's and Defendant's respective members, successors and assigns or other entities or persons otherwise bound by law.

6. Defendant will provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree. Plaintiff will make efforts to provide a copy to all members.

7. In any action to enforce this Decree, the Defendant shall not raise as a defense the failure of any of its officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES AND SCHEDULE OF COMPLIANCE

8. It is the express purpose of the Parties entering into this Decree to resolve any and all of the claims of Plaintiff and Plaintiff's members as alleged in the Complaint (and any amendments thereto) and any other claims which could have been brought arising out of or related to the facts alleged therein against Defendant for declaratory judgment, injunctive relief, the imposition of civil penalties, damages, the award of costs, and a demand for attorneys' and experts' fees.

9. Plaintiffs agree to use best efforts to provide a broad release from each individual member of Plaintiff group that signed an affidavit or declaration filed with the court in this

matter. The form of the release shall be agreed upon by counsel and shall not exceed one page in length.

10. All of the injunctive relief described in Section III of the Decree is subject to government approval, including but not limited to, state and local regulatory, land use, zoning and permitting. Plaintiff and each of its individual members agrees to provide reasonable support to defendants' request for these approvals. Reasonable support does not include undertaking acts that would constitute a violation of ethical standards applicable to public officials.

11. This Decree does not apply to the Holmes Road facility.

12. In light of the foregoing objective, the Defendant agrees to comply with the following schedule to achieve compliance with the effluent limitations and conditions contained in the Permit, which is effective from January 1, 2004 to December 31, 2008:

A. Large Open Lot and Helstad Lot

i. Sedelbauer will construct an animal confinement facility, similar in design to defendants' existing three-sided and covered confinement facilities, with an associated outdoor exercise/loafing and grazing area on the Large Open Lot.

ii. The animal confinement will be located at the approximate location indicated on the attached map and labeled A.

iii. All confinements will be routinely scraped and the waste will either be land applied or placed in the manure storage facility constructed pursuant to section B below.

iv. All outdoor exercise/loafing or grazing areas, including the one mentioned above, will be vegetated and managed without bare ground and in a way that substantially maintains the vegetative cover.¹

v. Compliance Schedule²:

a. Animal Confinement Facility: submit plans and applications for applicable governmental approvals within two months; complete construction and initiate use of facility within 12 months.

b. Revegetation of outdoor lots: initiate revegetation of large open lot within 16 months; complete revegetation by May of 2007.

B. Manure Storage

i. At one or more locations, excluding the Helstad Lot,³ and subject to proper engineering design, plan and specification approval and any required local and state approval, defendants will construct a solid manure stacking/storage system designed pursuant to NRCS standards to stack and store all manure wastestreams from the operations regulated by the WPDES permit for a duration of not less than 90 days.

ii. The manure storage system will be a structure designed in compliance with NRCS standards that ensures compliance with the WPDES Permit. The plaintiff and defendants discussed, but do not limit the design options to a concrete confined stacking facility with concrete walls or a flat stacking pad with three or more concrete walls and an outfall pipe to a storage lagoon for liquid wastes.

¹ Bare ground does not include stone or concrete animal walkways or paths.

² Compliance schedule timeframes throughout this Decree start on the day after entry of the Consent Decree by Judge Crabb.

³ Helstad Lot is identified on the attached map with a B.

iii. Manure will not be manually transported to the settling basins for storage.⁴ The settling basin will be scraped at the same frequency as scraping of the confinement facility.

iv. Upon completion of the construction of the manure storage described above, Sedelbauer will utilize this storage structure throughout the year in order to meet the effluent limit in the WPDES permit, and will refrain from any land application of manure wastestream annually thereafter from February 1 through and including March 31 of that same year. This prohibition will first apply on February 1, 2007.

v. Compliance Schedule:

Defendant will consult with an expert within two months; submit plans and necessary documents to obtain government approvals within seven months; complete construction and have system fully operational by February 1, 2007.

C. Silage Storage

i. The feed storage at the main facility is already underlain by concrete. Within four months, defendants will place asphalt under and clean water diversions around approximately half of the feed storage structure located across the road from the main facility. Within 16 months, defendants will place asphalt under and clean water diversions around the other half of the silage pile.

ii. The feed storage will be covered except for the working face, and the working face will be kept swept and clean following access to the feed. Sawdust will not be used to berm the feedpiles once existing contents are removed.

⁴ Storage does not include temporary placement of manure into a basin that is done as part of the manure scraping process.

iii. Within four months, clean water diversions will be constructed at the main facility to divert stormwater from coming into contact with the piles via overland flow.

iv. Within 16 months, both feed storage facilities will have runoff control systems in place that are designed and constructed to ensure that leachate and runoff are collected or controlled in a manner that complies with the effluent limit in defendants' WPDES Permit.

D. WPDES Permit Compliance

i. Defendant agrees to comply with all terms and conditions in its WPDES permit.

V. REPORTING

13. Within 20 calendar days following each compliance date in section IV above, defendant will submit a letter to the court reporting whether defendant has met obligations under the Decree.

VI. CIVIL PENALTIES

14. No later than thirty (30) days after the entry of this Decree, the Defendant shall pay a total sum of \$ 5,000 to be allocated in the following manner:

15. Defendant shall pay \$ 3,000 in lieu of civil penalties to Trout Unlimited to fund a Supplemental Environmental Project for habitat restoration in the watersheds of the Trempealeau River and/or Tank Creek. The payment shall be made by bank check payable to Trout Unlimited and mailed to Midwest Environmental Advocates, 702 East Johnson Street, Madison, Wisconsin, 53703.

16. Defendant shall pay \$ 2,000 in civil penalties to the United States Treasury by means of payment by bank check or wire transfer to:

Sandra Doyle
Debt Collection Specialist
United States Department of Justice
Environment and Natural Resources Division
Executive Office
PO Box 7754
Washington, DC 20044-7754

Proof of the payment of such sums shall be provided to Plaintiff's counsel at the same time such sums are paid.

VIII. ATTORNEYS' FEES AND COSTS

19. Within two months, Defendant agrees to pay Plaintiff's reasonable attorneys' fees and costs relating to this action in the total amount of \$35,000, of which \$17,500 is due to Midwest Environmental Advocates within 30 days of the Decree and \$17,500 is due on January 1, 2006. The payment shall be made by bank check payable to Midwest Environmental Advocates and mailed to Midwest Environmental Advocates, 702 East Johnson Street, Madison, Wisconsin, 53703.

IX. GENERAL PROVISIONS

20. The undersigned representative for each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Decree and to execute and bind them legally to this Decree.

21. The Court shall retain jurisdiction of this matter for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out or enforce the terms of this Decree.

22. The material terms of this Decree shall not be changed, revised or modified except by a written instrument signed by the Parties to this Decree and shall not take effect until approved by the Court. Any non-material modification of this Decree shall be in writing and signed by the Parties.

23. Subject to the obligations set forth herein, which represent the judgment and order of this court, this action is dismissed, with prejudice, and without further costs or attorney fees.

Date: 4-22-05

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Date: 4-22-05

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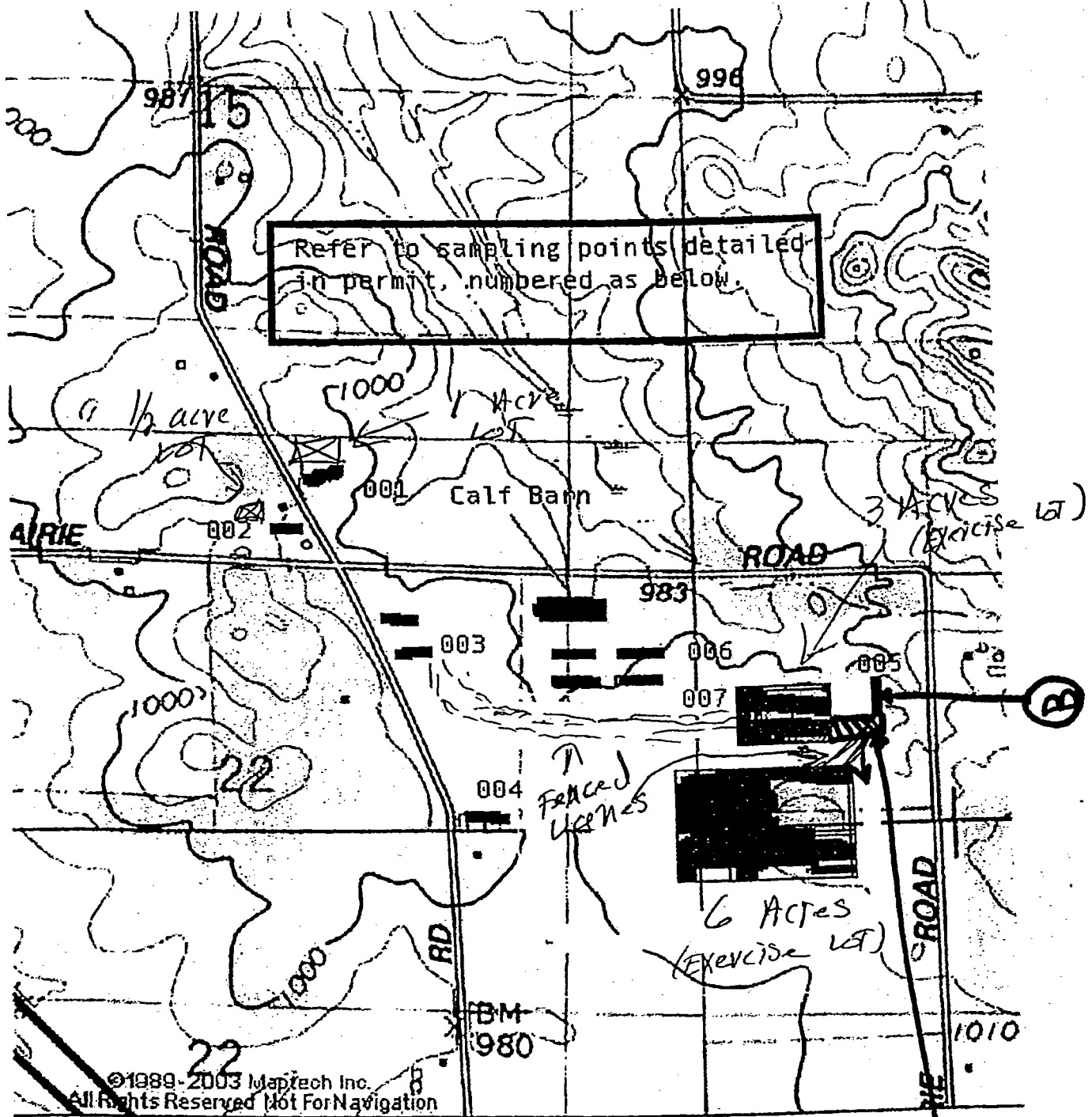
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Attorneys for Defendant Sedelbauer Farms,
Inc. and Lynn Sedelbauer

APPROVED AND ENTERED as an Order of this Court, this 27th day of

June, 2005.

Barbara B. Crabb
BARBARA B. CRABB
District Judge



Refer to sampling points detailed in permit, numbered as below.