

Midwest Environmental ADVOCATES

pro bono publico

OPEN LETTER TO DAIRY BUSINESS ASSOCIATION

November 29, 2005

Laurie Fischer, Executive Director
Dairy Business Association
4039 Ponce De Leon Blvd
Oneida, WI 54155

Re: Re: November 29, 2005 Press Release “Dairy Business Association Responds to Lawsuit”

Dear Ms. Fischer:

I read with great interest your lobbying group’s recent press release on the settlement reached between Stahl Farms and Scott and Judy Treml, whose well was contaminated with liquid manure. The Tremls alleged that Stahl Farms spread liquid manure in late February of 2004 near their well and that the liquid manure contaminated the well and made their family sick, including their three children. In fact, the Tremls’ then seven-month-old daughter, Samantha, had to be rushed to the hospital for emergency medical attention.

First, it is unclear to me why the Dairy Business Association would issue a press release on the *Treml v. Stahl* settlement in the first place. You are lobbyists and you were not a party to the state or federal lawsuits. Perhaps it was because this case highlights **the already well-known dangers of spreading liquid manure on frozen and snow covered ground.** The DNR is proposing to more stringently regulate this practice to prevent innocent families like the Tremls from getting sick.

Your lobbying group has stated that it opposes those common-sense standards. In fact, I understand one of the largest law firms in Wisconsin that represented Stahl Farms is also represented on your board of directors, and further that this law firm has assisted you in your intense lobbying effort to strike down (or substantially water down) those basic public health protections. (See October 14, 2005 Letter from David Crass, Michael Best & Friedrich to Tom Bauman, DNR, Re: Comments on Proposed Repeal and Recreation of Chapter NR 243, Wis. Admin. Code, Relating to Regulations for Animal Feeding Operations, pp. 2-3, October 14, 2005, found at <http://www.widba.com> (last checked November 29, 2005)). **In opposing these standards, the Dairy Business Association appears to be putting profit before the health of Wisconsin’s children.**

Second, why is your lobbying group aligning itself with Stahl Farms? This facility has a well-documented history over the past twenty years of discharging manure to School Creek from both land application of manure and overflows from its manure pit. Perhaps you have not reviewed records compiled by the Wisconsin Department of Natural Resources (“DNR”) showing Stahl’s disregard of water pollution laws. If not, I am confident the DNR would provide these records to you upon a proper request.

Regardless, in reading your press release, one is left to ask: Is Stahl Farms the example that the Dairy Business Association intends to display as the future of dairying in Wisconsin? If so, then the dairy industry in Wisconsin may be in more trouble than anyone had previously thought.

Lastly, you speculate wildly about the details of confidential settlement negotiations to which you were not a party. This conduct is unprofessional at best. However, since we are a public interest organization that seeks to educate the public, I will address each of your complaints in turn:

- You state that Stahl is only required to pay \$50,000 in forfeitures to the State for having violated its DNR permit on several occasions. That is simply not true. The Stipulation and Order for Judgment, signed by Stahl, the Tremels, and the State, makes clear that Stahl is liable to the State for \$100,000 in civil forfeitures. If, and only if, Stahl meets the compliance deadlines requiring it to install additional manure storage and make other environmental improvements, then the forfeitures will be reduced to \$50,000. Stahl has not yet performed those tasks, so his liability remains at \$100,000. I suggest that you review the Stipulation and Order for Judgment prior to making further statements on this case.
- You state that Stahl allowed the Tremels to participate in settlement negotiations between the State and Stahl. That is not true. Although they did not file the lawsuit, by order of the Kewaunee County Circuit Court, the Tremels were lawful intervenors in the case and had a right to participate in its resolution. Moreover, the state’s lawsuit contained claims that were identical to those raised by the Tremels in the federal lawsuit they filed three months earlier.
- You quibble that it was Rural Mutual Insurance Co., not Stahl, that agreed to pay the \$80,000 in damages to the Tremels. The proposed Consent Decree states: “Rural Mutual, on its own behalf and on behalf of Stahl, will pay the total sum of \$80,000...” Stahl paid for liability insurance through Rural Mutual Insurance Co., and Stahl apparently invoked the policy to cover his liability to the Tremels. In any event, the Tremels will receive a payment for their injuries by an agent of Stahl, specifically, Stahl’s insurance company.
- You criticize the Tremels for allocating \$2,000 to each of their three children. Who are you to question the Tremels’ decision to allocate the settlement funds? The bulk of the settlement funds went to refund the Tremels for the expenses they incurred to provide a clean source of drinking water after it was contaminated by manure runoff. Frankly, you

have no right, legally, morally, or otherwise to suggest that the Tremels should formally allocate more or less to their children under the settlement. This approach by the Dairy Business Association is nothing short of offensive.

- You complain that the Tremels did not “win” the federal lawsuit. From the Tremels’ perspective, they *did* win this case. They were compensated for their injuries. They obtained a settlement that required Stahl to stop polluting.
- By noting that Midwest Environmental Advocates was willing to forgo a portion of its attorney fees, you appear to criticize Midwest Environmental Advocates for not seeking full recovery of the attorney fees to which it is lawfully entitled. We will take your advice for future cases against polluters.
- You stated that “a significant portion of the \$80,000 is expected to go to MEA as compensation for professional legal services.” Of course, you have no basis for this clearly false and misleading statement. In any event, it is true that Midwest Environmental Advocates has accepted less in attorney fees in this case than it is otherwise entitled. This eliminates any suggestion by you that Midwest Environmental Advocates has received any windfall whatsoever from this case.
- You state that the Tremels received an order from Kewaunee County to update their septic system after their well became contaminated. You neglect to mention that Stahl Farms also received such an order. Further, there was no finding by Kewaunee County that the Tremels’ septic system contributed to their well contamination and there is no other evidence whatsoever that their septic system was the cause of the contamination. In fact, we “dosed” the septic system with a potassium chloride solution and then tested Tremels’ well for a number of weeks thereafter. Results showed that there was no hydrological connection between their septic system and their well. These results were provided to Stahls’ attorneys well in advance of settlement negotiations. You obviously have not adequately investigated this matter to substantiate the claims you now make.
- You claim that “there is no direct evidence that the well water contamination was in fact caused by manure from Stahl Farms or any other source.” Again, you have failed to investigate the facts of this case; we are seeing a pattern here. The Tremels provided a detailed expert report to Stahl stating specifically how Stahl’s liquid manure reached the Tremels’ well. The report was accompanied by several exhibits, including maps showing the depth to bedrock where Stahl applied the manure and video showing how Stahl’s liquid manure ponded in areas of shallow bedrock upgradient of the Tremels’ well. No other person applied liquid manure upgradient of the Tremels’ well at the time of the contamination. To our knowledge, nothing refutes this expert report.
- You complain that the Tremels’ well only had 24 feet of casing at the time of the alleged contamination. However, the Tremels’ well had always been safe to use up until the point at which Stahl applied liquid manure across the road from their property. There is no

evidence that the Tremls' well was unsafe, and surely you wouldn't suggest that the Tremls somehow deserved to have their well become contaminated.

In short, your press release is misinformed and misleading. Rather than spending valuable membership fees on speculating about the merits of a settled lawsuit and defending a livestock factory with a history of manure discharges documented by the DNR, **perhaps you should consider finding ways to reduce the risk of spreading liquid manure on frozen and snow-covered ground.** This would reduce the risk to Wisconsin's children, and would further help your members address this growing problem.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.

Andrew C. Hanson
Staff Attorney