

Midwest Environmental ADVOCATES

pro bono publico

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

April 27, 2004

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Glen Stahl
d.b.a Stahl Farms
E389 Luxemburg Rd.
Luxemburg, WI 54217-9457

Re: 60 Day Notice of Intent to Sue for Violations of WPDES Permit WI-0062332-01
60 Day Notice of Intent to Sue for Violations of 42 U.S.C. § 6945(a)
90 Day Notice of Intent to Sue for Violations of 42 U.S.C. § 6972(a)(1)(B)

Dear Mr. Stahl:

Midwest Environmental Advocates, Inc. and Garvey & Stoddard, S.C. represent Scott and Judy Tremel, who reside at E758 Church Road, Luxemburg, Wisconsin, 54217. We are writing you because you are the owner and operator of a Concentrated Animal Feeding Operation ("CAFO") located at NEQ Sec. 31 T24N R23E in the Town of Luxemburg, Wisconsin, and whose mailing address is E389 Luxemburg Road, Luxemburg, Wisconsin, 54217-9457.

This letter is to provide you with notice that Mr. and Mrs. Tremel intend to sue you for ongoing violations of:

1. Wisconsin Pollutant Discharge Elimination System ("WPDES") permit WI-0062332-01, issued pursuant to Wis. Stat. Ch. 283 and the Federal Water Pollution Control Act Amendments of 1972 ("Clean Water Act" or "CWA"), 33 U.S.C. § 1251 *et seq.*, after 60 days from the postmarked date of this letter;
2. The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(A), after 60 days from the postmarked date of this letter for operating an open dump in violation of 42 U.S.C. § 6945(a);
3. RCRA, 42 U.S.C. § 6972(a)(1)(B), after 90 days from the postmarked date of this letter for contributing to the past, present, and ongoing disposal of solid waste that may present an imminent or substantial endangerment to health or the environment in violation of that law.

Mr. and Mrs. Trembl and their three children use and enjoy groundwater as a source of drinking water, and they use and enjoy nearby School Creek and its tributaries. Upon information and belief, your violations of WPDES permit WI-0062332-01 and RCRA have resulted in discharges of pollutants to both the groundwater supplying the Trembls' drinking water and to intermittent tributaries to School Creek, presenting an imminent and substantial endangerment and harming their health and their recreational and aesthetic interests in School Creek and its tributaries.

I. VIOLATIONS OF THE FEDERAL CLEAN WATER ACT

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States, except pursuant to and in compliance with a WPDES permit. 33 U.S.C. § 1311(a), § 1342; Wis. Stat. § 283.31. The Act defines "pollutant" to include solid waste, biological materials, and agricultural waste discharged into water. 33 U.S.C. § 1362(6). CAFO's are point sources under the CWA. 33 U.S.C. § 1362(14); Wis. Stat. § 283.01(12)(a). As a CAFO, Stahl Farms currently holds WPDES permit No. WI-0062332-01, issued to Stahl Farms by the DNR on July 1, 2003 pursuant to Chapter 283 of the Wisconsin Statutes. You are the principal owner and/or operator of Stahl Farms.

Your violations of WPDES permit WI-0062332-01 have resulted and will likely continue to result in discharges of pollutants to waters of the state, including surface water and groundwater in the vicinity of the Trembl's residence. Specifically, upon information and belief, you have violated WPDES permit WI-0062332-01 in the following ways:

A. 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."

1. Ponding and Runoff from Lelou Property

Upon information and belief, you applied a total of approximately 192,000 gallons of liquid animal waste to an 80 acre field known as the Lelou property on County Trunk Highway N between Gasche Road and County Line Road in the Town of Luxemburg (hereinafter "Lelou property") on or around January 10, 15, 16, 27, and 28 of 2004 and additional but undisclosed amounts of animal waste on dates thereafter. On or before February 23, 24, 25, and 26, 2004 and likely on days thereafter, the animal waste that you applied to the Lelou property ran off the intended site and over snow-covered ground, beneath the snow-cover, and into a drain tile inlet, traveling several hundred yards to the north east, beneath Gasche Road, and to a road ditch on the east side of Gasche Road, flowing into an intermittent tributary of, and area of concentrated flow moving north towards, School Creek.

The foregoing is a violation of WPDES permit WI-0062332-01, section 3.2.11, because you allowed animal waste to pond on the intended site and run off the intended site.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis. You lack the needed animal waste storage capacity to prevent overflows from your animal waste storage facility and you consequently need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Lelou property and other properties. As a result, you are likely to continue to apply liquid animal waste on the Lelou property under frozen, thawing, or partially thawing conditions, and, therefore, are reasonably likely to continue to discharge animal waste to waters of the state in violation of Section 3.2.11.

2. Ponding and Runoff from Wachal Property

Upon information and belief, you applied a total of approximately 84,000 gallons of liquid animal waste to an 80 acre field known as the Wachal property located on Church road between Gasche Road and Rendezvous Road in the Town of Luxemburg (hereinafter "Wachal property") on or around February 24, 25, and 26, 2004, and additional but yet undisclosed amounts of animal waste on dates thereafter. On or around February, 26, 27, 28, and 29, 2004, and March 1, 2, and 3, 2004, the animal waste that you applied to the Wachal property ponded on the intended site and ran off the intended site, traveling across residential property owned by Kyle and Karla Kahr, into a road ditch, and then discharging into a tributary to School Creek.

The foregoing is a violation of WPDES permit WI-0062332-01, section 3.2.11, because you allowed liquid animal waste to pond on the intended site and run off the intended site.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis. You lack the needed animal waste storage capacity to prevent your animal waste storage facility from overflowing and, therefore, you need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Wachal property and other properties. As a result, you are likely to continue to apply liquid animal waste on the Wachal property under frozen, thawing, or partially thawing conditions, and, therefore, are reasonably likely to continue to discharge animal waste to waters of the state in violation of Section 3.2.11.

B. Violation of Section 3.2.7, Prohibiting Application of Animal Waste Within 300 Feet of an Open Tile Intake.

Section 3.2.7 of WPDES permit WI-0062332-01 states that "manure shall not be applied under the following conditions unless injected or incorporated within 72 hours:...within 300 feet of open tile intakes."

1. Animal Waste Application within 300 feet of Tile Inlet on Lelou Property

Upon information and belief, you applied a total of approximately 192,000 gallons of liquid animal waste to an 80 acre field known as the Lelou property on or around January 10, 15, 16, 27, and 28 of 2004 and additional but undisclosed amounts of animal waste on dates thereafter. Upon information and belief, that waste entered an open drain tile inlet on the Lelou property. Upon further information and belief, you applied animal waste within 300 feet of the open tile inlet on snow covered ground and without incorporating or injecting it within 72 hours. On or before February 23, 24, 25, and 26, 2004 and likely on days thereafter, the animal waste that you

applied to the Lelou property ran off the intended site and over snow-covered ground, beneath the snow-cover, and into a drain tile inlet, traveling several hundred yards to the north east, beneath Gasche Road, and to a road ditch on the east side of Gasche Road, flowing into an intermittent tributary of, and area of concentrated flow moving north towards, School Creek.

The foregoing is a violation of Section 3.2.7 because you applied liquid animal waste within 300 feet of an open drain tile.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis in the future. We note that you have violated this provision in the past, less than two weeks prior to being issued your WPDES permit by the DNR. On or around June 18, 2003, you applied animal waste to the Lelou property, where animal waste flowed into a broken tile line and consequently discharged into a tributary of School Creek.

You lack the needed animal waste storage capacity to prevent your need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Lelou property. As a result, you are likely to continue to apply liquid animal waste on the Lelou property under frozen, thawing, or partially thawing conditions. It is practically impossible to incorporate or inject animal waste under those conditions. Therefore, you are reasonably likely to continue to apply animal waste within 300 feet of the open tile inlet without first incorporating it or injecting it into the soil and likely to discharge animal waste into waters of the state in violation of Section 3.2.7.

2. Animal Waste Application within 300 feet of Tile Inlet on Wachal Property

Upon information and belief, you applied a total of approximately 84,000 gallons of liquid animal waste to an 80 acre field known as the Wachal property on or around February 24, 25, and 26, 2004, and additional but yet undisclosed amounts of animal waste on dates thereafter. You applied that waste within 300 feet of a tile inlet on the Wachal property without first incorporating or injecting that waste within 72 hours. On or around February, 26, 27, 28, and 29, 2004 and March 1, 2, 3, and 4, 2004, the animal waste that you applied to the Wachal property ponded on the intended site and ran off the intended site, traveling across residential property owned by Kyle and Karla Kahr, into a road ditch, and then discharging into a tributary to School Creek.

The foregoing is a violation of WPDES permit WI-0062332-01, section 3.2.8, because you applied animal waste within 300 feet of an open tile inlet, causing waste to discharge into tributaries of School Creek and groundwater.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis. You lack the needed animal waste storage capacity to prevent your animal waste storage facility from overflowing and, therefore, you need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Wachal property and other properties. It is practically impossible to incorporate or inject animal waste under those conditions. As a result, you are likely to continue to apply animal waste on the Wachal property within 300 feet of the open tile inlet without first incorporating or injecting it into the soil and likely to discharge animal waste into waters of the state in violation of Section 3.2.7.

C. Violation of 3.2.8, Prohibiting Application of Manure on Frozen and Snow Covered Ground on Slopes Greater than 9%.

Section 3.2.8 of WPDES permit WI-0062332-01 states that “manure shall not be applied on frozen or snow covered ground in the following areas:...on slopes greater than 9%...”

Upon information and belief, you applied a total of approximately 84,000 gallons of liquid animal waste to an 80 acre field known as the Wachal property on or around February 24, 25, and 26, 2004, and additional but yet undisclosed amounts of animal waste on dates thereafter and dates before. You applied that waste on areas of the field with slopes greater than 9%, including the eastern and southeastern areas of the Wachal property identified as “hazard areas” in your DNR-approved manure management plan. On or around February 26, 27, 28, and 29, 2004 and March 1, 2, and 3, 2004, the animal waste that you applied to the Wachal property ponded on the intended site and ran off the intended site, traveling across residential property owned by Kyle and Karla Kahr, into a road ditch, and then discharging into a tributary to School Creek.

The foregoing is a violation of WPDES permit WI-0062332-01, section 3.2.8, because you applied animal waste on frozen and snow-covered ground with slopes great than 9%.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis. You lack the needed animal waste storage capacity to prevent your animal waste storage facility from overflowing and, therefore, you need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Wachal property and other properties. As a result, you are likely to continue to apply animal waste on the Wachal property under frozen, thawing, or partially thawing conditions and on slopes greater than 9%, and, therefore, are reasonably likely to continue to discharge animal waste into waters of the state in violation of Section 3.2.8.

D. 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 you 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.”

Upon information and belief, beginning on July 1, 2003, and everyday thereafter, you have violated Section 1.1 of WPDES permit WI-0062332-01 on a sporadic and intermittent basis by discharging animal waste and other pollutants and causing direct runoff from your animal production area to intermittent tributaries flowing north towards School Creek. Those discharges

were not in the event of a 25-year, 24-hour rainfall event or a chronic rainfall event. At least one of these intermittent tributaries flows north and east towards Luxemburg Road, through a culvert beneath Luxemburg Road, and north towards School Creek through areas of concentrated flow.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis in the future. You lack 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, you are likely to cause direct runoff and discharges from your animal production area on an intermittent or sporadic basis in the future.

E. Violation of Section 1.2, Requiring Land Application of Animal Waste in Accordance with Manure Management Plan

1. Spreading in Hazard Areas

Section 1.2. of WPDES permit WI-0062332-01-0 states:

All landspreading of manure and other process wastewaters shall be completed in accordance with the land application conditions of this permit and Manure Management Plan once approved, in a manner that does not cause or contribute to the non-attainment of surface water quality standards or groundwater standards.

Upon information and belief, you applied approximately 84,000 gallons of liquid animal waste, and possibly more, to an 80 acre field known as the Wachal property on or around February 24, 25, and 26, 2004, and additional but yet undisclosed amounts of animal waste on dates thereafter. You applied that waste on areas identified in your manure management plan as "hazard areas," meaning that those areas have greater than 9% slopes. This is a violation of your manure management plan and Section 1.2. of WPDES permit WI-0062332-01.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis. You lack the needed animal waste storage capacity to prevent your animal waste storage facility from overflowing and, therefore, you need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Wachal property and other properties. As a result, you are likely to continue to apply animal waste on the Wachal property under frozen, thawing, or partially thawing conditions and on slopes greater than 9%, and, therefore, are reasonably likely to continue to discharge animal waste into waters of the state in violation of Section 1.2.

2. Nonattainment of Surface Water or Groundwater Standards

Upon information and belief, on or around February, 26, 27, 28, and 29, 2004 and March 1, 2, and 3, 2004, the animal waste that you applied to the Wachal property ponded on the intended site and ran off the intended site, traveling across residential property owned by Kyle and Karla Kahr, into a road ditch, and then discharging into a tributary to School Creek. Upon further

information and belief, this caused or contributed to the nonattainment of surface water quality standards in tributaries to School Creek and/or groundwater standards in violation of Section 1.2 of WPDES permit WI-0062332-01-0.

There is a reasonable likelihood that you will repeat this violation on an intermittent or continuing basis. You lack the needed animal waste storage capacity to prevent your animal waste storage facility from overflowing and therefore you need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Wachal property and other properties. This is likely to cause or contribute to the nonattainment of surface water quality standards in tributaries to School Creek and groundwater quality standards. As a result, you are likely to continue to apply liquid animal waste on the Wachal property under frozen, thawing, or partially thawing conditions, and therefore are reasonably likely to continue to discharge animal waste into waters of the state in violation of Section 1.2.

F. Violation of Section 1.4, Failure to Submit of Monitoring and Inspection Program

Section 1.4 of WPDES permit WI-0062332-01 requires that you submit a proposed monitoring and inspection program 90 days after the effective date of your permit, or Monday, September 29, 2003. This monitoring and inspection program is to include “information on the use of models, visual inspections, rainfall records, or other proposed methods to determine compliance with the effluent limitation specified in the General Discharge Limitations and Performance Standards subsection.”

Upon information and belief and based on a search of public records, you have failed to submit a monitoring and inspection program that complies with the terms of Section 1.4 of your permit. Every day since September 29, 2003 that you have failed to submit a monitoring and inspection program that complies with the terms of Section 1.4. is a separate and ongoing violation of the Clean Water Act.

Section 1.4 also requires you to maintain records onsite of all completed monitoring and inspections for DNR review. Upon information and belief, you have failed to maintain records onsite of all completed monitoring and inspections for DNR review in violation of section 1.4. of WPDES permit WI-0062332-01. Everyday since September 29, 2003 that you fail to keep these records is a separate and ongoing violation of the Clean Water Act.

G. Violation of Section 1.4.1, Failure to Create Adequate Daily Logs of Discharge and Monitoring Activities for Sample Points 001 and 003, Earthen Storage.

Section 1.4.1 of WPDES permit WI-0062332-01 states under the heading “Daily Log Requirements” that “[a]ll discharge and monitoring activity shall be documented on log sheets” for Sample Points 001 and 003, your earthen storage pits for liquid animal waste and other process wastewaters and runoff. The daily log is required to identify the fields used for waste application, the acres applied, waste type landspread, soil conditions (frozen or snow-covered ground), application method (e.g. injection, incorporation, or surface applied), application rate – nitrogen, and application rate – phosphorus.

Upon information and belief, you have failed to keep daily logs in accordance with Section 1.4.1 of your permit. The only information that you have kept, and subsequently submitted to the DNR, are two documents, each titled "Manure Application Log Sheet for Stahl Farms." One document appears to identify animal waste applications on the Wachal property during the month of February of 2004. Another document appears to identify animal waste applications on the Lelou property during January of 2004. Both documents fail to comply with the requirements of Section 1.4.1 in the following respects:

- Failure to include the acres applied;
- Failure to include waste type landspread;
- Failure to include soil conditions;
- Failure to include application method;
- Failure to include application rate – nitrogen;
- Failure to include application rate – phosphorus.

This is a violation of Section 1.4.1 of your permit because you have failed to keep daily log sheets of all of your discharge and monitoring activities, in addition to animal waste applications on the Wachal and Lelou properties. In fact, correspondence between John Donaldson, apparently your nutrient management planner and DNR staff person, Dave Bougie, dated December 31, 2003, states that Mr. Donaldson is "working with [Stahl Farms] on improving their manure logging records," indicating that you have failed to keep adequate daily log records. Upon information and belief, you began violating Section 1.4.1 on July 1, 2003, the effective date of your permit, and have violated Section 1.4.1 every day thereafter. Every day that you fail to keep adequate daily log sheets in violation of Section 1.4.1 is an ongoing violation of the Clean Water Act.

H. Violation of Section 1.4.1, Failure to Submit Adequate Annual Report of All Landspreading Activity for Sample Points 001 and 003, Earthen Storage.

Section 1.4.1 of WPDES permit WI-0062332-01-0 requires that by January 31, 2004, you "[s]ubmit an annual report that summarizes all landspreading activity and includes the lab analyses of the manure and other waste landspread" for Sample Points 001 and 003, your earthen storage pits for liquid animal waste and other process wastewaters and runoff.

Upon information and belief, you have failed to prepare and submit an adequate annual report of all of your landspreading activity. Your annual report is deficient in the following respects:

- Failure to include estimated nitrogen utilized in pounds/acre/year;
- Failure to include estimated phosphorus utilized in pounds/acre/year;
- Failure to include total phosphorus applied per field in pounds/acre/year;

- Failure to include total available phosphorus applied per field in pounds/acre/year;
- Failure to include total available nitrogen applied per field in pounds/acre/year.

This is a violation of 1.4.1 of WPDES permit WI-0062332-01 because you have failed to submit an adequate annual report of your landspreading activities, obstructing the DNR's ability to monitor the environmental impacts of your activities and the Tremels' and the public's right to know what pollutants may be entering waters of the state, including groundwaters, as a result of your activities. Every day since February 1, 2004 that you fail to submit an annual report of your landspreading activities that complies with the requirements of Section 1.4.1 is an ongoing violation of the Clean Water Act.

I. Violation of Section 1.4.2, Failure to Create Adequate Daily Logs of Discharge and Monitoring for Activities for Sample Point 002, Solid Manure.

Section 1.4.2 of WPDES permit WI-0062332-01 states under the heading "Daily Log Requirements" that "all discharge and monitoring activity shall be documented on log sheets" for Sample Point 002, your solid manure storage facility. The daily log is required to identify the fields used for waste application, the acres applied, waste type landspread, soil conditions (frozen or snow-covered ground), application method (e.g. injection, incorporation, or surface applied), application rate – nitrogen, and application rate – phosphorus.

Upon information and belief, you have failed to maintain adequate daily logs of your discharge and monitoring activities for Sample Point 002 on an intermittent basis since July 1, 2003, the effective date of WPDES permit WI-0062332-01. Your nutrient management planner, John Donaldson, apparently left a note on a document titled "Manure Spreading Log" with handwritten "July 1 – December 31, 2003" and "#002." That note is apparently addressed to DNR staff person Dave Bougie, and states "Dave, I set Greg up with a manure (daily) log system on #002 so his record keeping should be better for 2004."

Upon information and belief, you began violating Section 1.4.2 on July 1, 2003, the effective date of your permit, and have violated Section 1.4.2 every day thereafter. Every day that you fail to keep adequate daily log sheets in violation of Section 1.4.2 is an ongoing violation of the Clean Water Act.

J. Violation of Section 1.4.2, Failure to Submit Adequate Annual Report of All Landspreading Activity for Sample Point 002, Solid Manure.

Section 1.4.2 of WPDES permit WI-0062332-01-0 requires that by January 31, 2004, you "[s]ubmit an annual report that summarizes all landspreading activity and includes the lab analyses of the manure and other waste landspread" for Sample Point 002, your solid manure storage facility.

Upon information and belief, you have failed to prepare and submit an adequate annual report of all of your landspreading activity. Your annual report is deficient in the following respects:

- Failure to include estimated nitrogen utilized in pounds/acre/year;
- Failure to include estimated phosphorus utilized in pounds/acre/year;
- Failure to include total phosphorus applied per field in pounds/acre/year;
- Failure to include total available phosphorus applied per field in pounds/acre/year;
- Failure to include total available nitrogen applied per field in pounds/acre/year.

This is a violation of 1.4.2 of WPDES permit WI-0062332-01 because you have failed to submit an adequate annual report of your landspreading activities, obstructing the DNR's ability to monitor the environmental impacts of your activities and the Tremls' and the public's right to know what pollutants may be entering waters of the state, including groundwaters, as a result of your activities. Every day since February 1, 2004 that you fail to submit an annual report of your landspreading activities that complies with the requirements of Section 1.4.2 is an ongoing violation of the Clean Water Act.

K. Reasonable Likelihood of Ongoing Violations Based on History of Mismanagement

Based on records in the public domain, you are likely to repeat violations of WPDES permit WI-0062332-01 given your long history of mismanagement and discharges of pollutants into waters of the state from your livestock operation. As examples of this mismanagement, the following allegations are drawn from records in the public domain:

- On or around March 21, 1982, your liquid animal waste storage facility overflowed to tributary of School Creek.
- On or around July 28, 1982, you discharged animal waste to School Creek.
- On or around March 12, 1985, you caused spray-irrigation runoff on fields adjacent to your property to a tributary of School Creek.
- On or around March 12, 1986, you discharged pollutants as the result of an elbow pipe rupture underground to a drainage way that drains to a tributary of School Creek.
- On or around November 25, 1986, you over-applied animal waste using spray irrigation equipment to frozen and snow-covered ground and discharged pollutants that traveled through a tributary to School Creek to the east of your facility as far as a culvert beneath Gasche Road at the border of Sections 31 and 32 in the Town Luxemburg. On January 28, 1987, the DNR issued you a Notice of Discharge, noting that you had caused "a significant discharge of animal waste to surface water resources of this state...as a result of overapplication of liquid manure to frozen and snow-covered soil..." The DNR had collected evidence of "manure runoff to drainage ways and a tributary to School Creek." Despite an initial deadline of June 30, 1987, several time extensions, several warnings, and receipt of more than \$6,000 in public financial assistance from the State of Wisconsin to install a system that would reduce the volume of your liquid animal waste to be disposed, you did not comply with the requirements of the Notice of Discharge until on or around March 20, 1991.

- On or around September 10, 1993, you over-applied animal waste near your livestock operation using your spray-irrigation system, causing a discharge of pollutants to tributaries to School Creek. On or around December 3, 1993, the DNR issued a Notice of Discharge for the discharge of pollutants you caused on or around September 10, 1993, requiring you to, among other measures, establish a 20-foot grassed buffer along each side of waterways to the south of your barns. The bacterial levels in your discharge were 200,000 colonies of fecal coliform per 100 milliliters (ml) as far as the School Creek tributary crossing at Church Road, almost one mile from your livestock operation.
- On or around May 12, 1994, you experienced a mechanical failure in your animal waste handling system, resulting in discharges of animal waste to a tributary into School Creek. The animal waste traveled through the tributary to School Creek as far as Gasche Road, approximately ½ mile to the east. The discharge continued until at least May 17, 1994.
- On or around September 7, 1994, you discharged pollutants to a tributary to School Creek when your contractor opened berms holding back animal waste from your barn flushing system. Upon a site inspection on or around September 8, 1994, a DNR official found that you had violated the requirements of your December 3, 1993 Notice of Discharge by failing to install buffers along streams in the area behind your barns. Instead, the DNR official found that you had opened a direct channel from the area behind your barns to the tributary to School Creek, allowing discharges of pollutants into that tributary.
- On or around May 13, 1996, your animal waste storage facility overflowed and discharged into a tributary of School Creek.
- On or around April 15, 1998, you discharged animal waste into a tributary of School Creek when your animal waste storage facility was drained to prevent an overflow, and land application of the waste resulted in a discharge to a drain tile, which then flowed to a tributary to School Creek at least as far as Church Road to the north and east and likely farther. This was despite that after issuance of your December 3, 1993 Notice of Discharge you had allegedly constructed animal waste handling structures designed to prevent these discharges.
- On or around January 17, 2003, your animal waste storage pump failed and resulted in a discharge into a tributary to School Creek.
- On or around April 21, 2003, your animal waste storage facility overflowed and caused a discharge into a tributary of School Creek.
- On or around June 18, 2003, you applied animal waste to the Lelou property, where animal waste flowed into a broken tile line and consequently discharged into a tributary of School Creek.

In light of your current and ongoing violations and based on your past history of mismanagement and discharges of animal waste to drainages and tributaries of School Creek, there is a reasonable likelihood that you will violate WPDES permit WI-0062332 on an intermittent and sporadic basis in the future.

L. Conclusion of Clean Water Act Claims

At the close of the 60 day notice period, if you have not corrected the foregoing violations of WPDES permit WI-0062332-01, the Tremls intend 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, the Tremls also intend to pursue penalties and/or injunctive relief as well as costs, attorneys' fees and litigation expenses pursuant to 33 U.S.C. 1365(d).

II. VIOLATION OF THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT

We also place you on notice that the Tremls intend to sue you as an owner or operator of Stahl Farms for violating at least two provisions of RCRA, 42 U.S.C. §§ 6945(a), 6972(a)(1)(B).

A. Open Dumping

The Tremls intend to sue you for maintaining an open dump in violation of section 4005(a) of RCRA, 42 U.S.C. § 6945(a). 40 C.F.R. pt. 257.

RCRA prohibits "any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste..." pursuant to criteria established in federal regulations. 42 U.S.C. § 6945(a). Those regulations establish criteria for determining "...which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under [RCRA] sections 1008(a)(3) and 4004(a)." 40 C.F.R. § 257.1(a). Facilities which meet these criteria are considered "open dumps." 40 C.F.R. § 257.1(a)(1). These criteria include, but are not limited to, violations of a WPDES permit and violations of drinking water maximum contaminant levels. 40 C.F.R. §§ 257.3-3(a), 257.3-4.

RCRA defines "solid waste" as:

[A]ny garbage...and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations...

42 U.S.C. § 6903(27). Federal regulations promulgated under RCRA define "facility" as "all contiguous land and structures, other appurtenances, and improvements on the land used for disposal of solid waste." 40 C.F.R. § 257.2.

RCRA defines "disposal" as:

[T]he discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or

hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3).

Your animal production area and land application areas, including the Wachal and Lelou properties, are all separate facilities for the disposal of solid waste.

1. Open Dumping by Violating WPDES permit WI-0062332-01.

Your animal production area is an “open dump” because you have violated Section 1.1. of WPDES permit WI-0062332-01 by discharging and continuing to discharge animal waste on an intermittent or sporadic basis from the animal production area into tributaries of School Creek.

Your land application areas, including the Wachal and Lelou properties, among potentially others, are open dumps because you have violated WPDES permit WI-0062332-01 by applying and continuing to apply animal waste on frozen ground, on thawing or partially thawing ground, on slopes greater than 9% on the Wachal property, within 300 feet of a tile inlet on the Lelou property, and within 300 feet of a tile inlet on the Wachal property. These practices have caused and will be reasonably likely to continue to cause animal waste to run off the intended sites, form ponds on the intended sites, and otherwise discharge into waters of the state, including tributaries to School Creek. These actions are violations of WPDES permit WI-0062332-01. As such, these actions pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of RCRA. 40 C.F.R. § 257.1; 40 C.F.R. § 257.3-3(a).¹

2. Opening Dumping by Contaminating Drinking Water.

Your animal production area and land application areas, including the Wachal and Lelou properties, are open dumps also because your discharges of animal waste and other pollutants have likely caused and will cause pollutants associated with animal waste, including pathogens and nitrates, to enter groundwater supplies that the Tremels and other members of the public rely on as a source of drinking water.

Upon information and belief, your discharges of animal waste on the Lelou property and Wachal properties on or around January 10, 15, 16, 27, and 28 of 2004, and on or around February 24, 25, and 26, 2004, respectively, have resulted in the discharges of pathogens and nitrates and have caused or contributed to exceedances of the maximum contaminant level of 10 parts per million (“ppm”) for nitrates contained in 40 C.F.R. pt. 257, Appendix I.

¹ Although federal regulations exempt animal waste returned to the soil as fertilizers or soil conditioners from the criteria for defining a solid waste disposal facility as an open dump, 40 C.F.R. § 257.1(c)(1), animal manure that is applied in excess amounts beyond the needs of the crops or on frozen ground and is discharged to surface waters and groundwaters is not being returned to the soil as fertilizer, but rather is “discarded” and is not covered by this exemption.

The Tremls live immediately to the north and downgradient of the Wachal property. On or around February 4, 2004, just one week after you claim to have spread animal waste on the Lelou property, the Tremls received well sample results from their well that showed that their well was contaminated with nitrate levels of 14.3 ppm.

On or around March 1, 2004, the Tremls noticed that their well had become contaminated with animal waste on March 1, 2004, three days after you had spread animal waste on the Wachal property on February 26, 2004 and after the DNR discovered your discharges from the Lelou property into a tile inlet there. The Tremls reported their well contamination to the DNR immediately upon discovering it and took precautionary measures to avoid and minimize their exposure to the polluted drinking water.

The DNR sampled the Tremls' well on March 3, 2004. The sample results showed that the Tremls well had become contaminated with 9,800 colonies of fecal coliform bacteria per 100 ml, and 2,500 colonies of *E.coli* bacteria per 100 ml. The water sampled from the Tremls' well exceeds the state enforcement standard of "0" for bacteria. See Wis. Admin. Code § 140.10 Table 1. The water sampled from the Tremls' well on March 1, 2004 showed nitrate levels of 15.7 ppm, exceeding the maximum contaminant level of 10 ppm contained in 40 C.F.R. pt. 257 Appendix I.

Upon information and belief, your discharges of animal waste and other pollutants from your animal production area and land application areas on the Wachal property, Lelou property, and potential yet undisclosed properties are wholly or partly responsible for the contamination of the Tremls' drinking water well.

These actions in causing or contributing to violations of the maximum contaminant level for nitrates, exacerbated by causing or contributing to gross exceedances of the state enforcement standard for bacteria, pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of RCRA. 40 C.F.R. § 257.1; 40 C.F.R. § 257.3-4.

At the close of the 60-day notice period, if you have not ceased operating open dumps at your animal production area and land application areas, the Tremls intend to file a citizen suit pursuant to section 7002(a)(1)(A) of RCRA, 42 U.S.C. § 6972(a)(1)(A), for all violations of section 4005(a), 42 U.S.C. § 6945(a), described above, and all violations that occur after the postmarked date of this letter.

The Tremls intend to seek injunctive relief and civil penalties for the illegal handling and disposal of solid or hazardous waste in violation of RCRA. You may also be liable for up to \$32,500 per day for each violation of RCRA. 42 U.S.C. § 6928(a)(3). 40 C.F.R. § 19.4, Table 1. The Tremls also intend to seek costs, attorneys' fees and litigation expenses. 42 U.S.C. § 6972(e).

B. Imminent and Substantial Endangerment

The Tremels also intend to sue you for creating an imminent and substantial endangerment to their health and the environment. Specifically, the Tremels intend to sue you for violating RCRA's prohibition on "contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B).

As set forth in the preceding section, RCRA defines "solid waste" to include dairy animal waste, and defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903(27); 42 U.S.C. § 6903(3).

As shown in previous sections of this notice, you have repeatedly violated WPDES permit WI-0062332-01 and, prior to being issued that permit by the DNR, repeatedly discharged animal waste into tributaries to School Creek over more than 20 years from what is now your animal production area and land application areas.

Furthermore, you have increased the risk of, and actually caused or contributed to, groundwater contamination in the areas surrounding your animal production area and land application areas by the following conduct:

- applying animal waste on frozen, snow-covered, thawing or partially thawing fields on the Wachal property on or around February 24, 25, and 26 of 2004 and potentially among other dates;
- applying animal waste on frozen, snow-covered, thawing or partially thawing fields the Lelou property on or around January 10, 15, 16, 27, and 28 of 2004 and potentially other dates;
- applying animal waste on slopes greater than 9% on the Wachal property on February 24, 25, and 26 of 2004 and potentially among other dates;
- applying animal waste within 300 feet of a drain tile on the Lelou property on or around January 10, 15, 16, 27, and 28 of 2004 and potentially other dates;
- applying animal waste within 300 feet of a drain tile on the Wachal property on or around February 24, 25, and 26, 2004 and potentially other dates;
- allowing animal waste to run off the Wachal property and into tributaries to School Creek on or around February 24, 25, and 26 of 2004, potentially among other dates; and
- allowing animal waste to run off the Lelou property and into tributaries to School Creek on or around January 10, 15, 16, 27, and 28 of 2004 and potentially other dates.

These actions have presented, and when repeated under similar conditions, will continue to present an imminent and substantial endangerment to health or the environment.

1. Contamination of Drinking Water and Groundwater with Pathogens and Nitrates.

The fragile geology, soil types, and high risk of groundwater contamination in the Town of Luxemburg and surrounding areas in the Kewaunee River watershed increase the risk that your animal waste discharges into tributaries to School Creek and groundwater may cause or contribute to groundwater contamination and pollute drinking water sources. According to the DNR, geologically sensitive areas such as western Kewaunee County and the Kewaunee River Watershed have high bedrock and thin soil cover.² Those areas have a limited ability to filter contaminants before they reach groundwater and drinking water sources, and consequently have a very high susceptibility of groundwater contamination.³ The DNR has ranked the Kewaunee River watershed as having a groundwater contamination potential of 85.6.⁴ A ranking over 30 is considered “high.”⁵ Further, the DNR ranked the Kewaunee River watershed as having the fourth highest groundwater contamination potential of the twelve watersheds in the Lakeshore Basin, comprising Manitowoc, Kewaunee and Door Counties.⁶

Dairy animal waste contains harmful, infectious pathogens that can be found in drinking water contaminated with animal waste. Those pathogens can consequently cause serious illness in humans who consume the contaminated drinking water. Without adequate controls on animal waste application or containment at the animal production area, it is possible for animal waste to discharge to surface waters and drinking water sources.

In addition to bacteria and pathogens, animal waste also contains nitrate, a chemical form of nitrogen.⁷ Approximately 90% of Wisconsin’s nitrate contamination can be traced to agricultural sources (fertilizer, manure, and legumes), while septic systems and other sources contribute only 10% of the contamination.⁸ Specifically, animal waste contributes to 28% of all nitrate inputs to Wisconsin soils.⁹ Nitrate exposure has been linked to lymphoma, gastric cancer, hypertension, thyroid disorder, birth defects, miscarriages, and in infants younger than six months, methemoglobinemia (“blue baby syndrome”).¹⁰

The Tremels live immediately to the north and downgradient of the Wachal property. On or around February 4, 2004, just one week after you claim to have spread animal waste on the Lelou property, the Tremels received well sample results from their well that showed that their well was contaminated with nitrate levels of 14.3 ppm, exceeding the maximum contaminant level of 10 ppm contained in 40 C.F.R. pt. 257 Appendix I.

² WISCONSIN DEPARTMENT OF NATURAL RESOURCES, THE STATE OF LAKESHORE BASIN, 25 (2001) (“Lakeshore State of the Basin Report”).

³ *Id.*

⁴ *Id.* at 27.

⁵ *Id.*

⁶ *Id.*

⁷ WISCONSIN DEPARTMENT OF NATURAL RESOURCES, NITRATE IN GROUNDWATER – A CONTINUING ISSUE FOR WISCONSIN CITIZENS, 2 (The Nutrient Management Subcommittee of the Nonpoint Source Pollution Abatement Program Redesign, 1999) (*hereinafter* NITRATE IN GROUNDWATER) (on file with author).

⁸ *Id.*

⁹ *Id.* at 5

¹⁰ *Id.*

On or around March 1, 2004, the Tremls noticed that their well had become contaminated with animal waste on March 1, 2004, three days after you had spread animal waste on the Wachal property on February 26, 2004 and after the DNR discovered your discharges from the Lelou property into a tile inlet there. The Tremls reported their well contamination to the DNR immediately upon discovering it and took precautionary measures to avoid and minimize their exposure to the polluted drinking water.

The DNR sampled the Tremls' well on March 3, 2004. The sample results showed that the Tremls well had become contaminated with 9,800 colonies of fecal coliform bacteria per 100 ml, and 2,500 colonies of *E.coli* bacteria per 100 ml. The water sampled from the Tremls' well exceeds the state enforcement standard of "0" for bacteria. See Wis. Admin. Code § 140.10 Table 1. The water sampled from the Tremls' well on March 1, 2004 showed nitrate levels of 15.7 ppm, exceeding the maximum contaminant level of 10 ppm contained in 40 C.F.R. pt. 257 Appendix I.

Beginning on or around March 4, 2004 and continuing through March 11, 2004, each member of the Treml family became ill from prior exposure to contaminated drinking water, despite their efforts to minimize their exposure to the water. Their debilitating symptoms were consistent with a bacterial inflammation of the gastrointestinal tract caused by *E.coli* poisoning. Several members of the family required emergency medical attention, including the Tremls' seven month old infant, Samantha. The contaminated drinking water endangered Samantha, the Tremls's two other school-age children and, ultimately, Scott and Judy.

In addition to exposing the Tremls to pathogens, you have exposed the Tremls' seven month old infant, Samantha, and other members of the Treml family to drinking water contaminated with excessive levels of nitrates beyond the enforcement standard of 10 ppm for public drinking water supplies contained in Wis. Admin. Code § NR 140.10 Table 1 and the maximum contaminant level of 10 ppm contained in 40 C.F.R. pt. 257 Appendix I, threatening their health.

2. Contamination of Surface Waters, including Tributaries to School Creek.

Surface waters, including tributaries to School Creek and School Creek itself, may also be harmed by your past, present, and prospective discharges of animal waste. Surface waters are threatened by pathogens in animal waste that can deplete the oxygen in a waterbody and cause significant fish kills, or harm humans that use those waters for surface contact recreation. The Tremls have a pond on their property that receives water from and discharges water into a tributary of School Creek. Upon information and belief, that pond has been contaminated and polluted by your past discharges of animal waste to tributaries to School Creek. Your past discharges have harmed the Tremls' use and enjoyment of that pond, and your future discharges pose a significant risk to the environment and health risk to the Tremls and their children.

In addition, your animal waste contains phosphorus. Natural waters are very sensitive to even small additions of phosphorus.¹¹ A University of Wisconsin report has identified concentrated

¹¹ Larry G. Bundy, *A Phosphorous Budget for Wisconsin Cropland*, University of Wisconsin Department of Soil Science, 6 (1998).

animal feeding operations such as yours as a partial cause of the build-up of soil phosphorus in Wisconsin.¹² The report noted that larger livestock operations typically do not have enough land to absorb the phosphorus contained in the manure when it is spread.¹³ Large amounts of manure applied on few acres results in the accumulation and eventual runoff of soil phosphorus.¹⁴ Phosphorus runoff contributes to fish kills by decreasing the available oxygen in a waterbody.¹⁵ In its Lakeshore State of the Basin report, the DNR further found that concentrated animal feeding operations like yours can discharge phosphorus to waterways through animal waste runoff, particularly when that waste is applied on frozen or snow-covered ground.¹⁶

Your discharges of animal waste from the land application areas and animal production area contribute to the overloading of phosphorus in nearby waterways, including tributaries to School Creek. Continuing this practice substantially threatens the water quality of School Creek and its tributaries.

In light of the foregoing potential health and environmental risks associated with the contamination of drinking water and surface water by animal waste, your conduct in discharging the animal waste “may present an imminent and substantial endangerment to health or the environment” within the meaning of 42 U.S.C. § 6972(a)(1)(B).

At the close of 90 days from the post-marked date of this letter, unless you take corrective measures to prevent the imminent and substantial endangerment to health and the environment that you have created, the Tremls intend to file a citizen suit against you pursuant to section 7002(a)(1)(B) of RCRA, 42 U.S.C. §6972(a)(1)(B), for contributing to the past, present, and ongoing handling of solid waste in a manner that presents an imminent and substantial endangerment to health and the environment.

The Tremls intend to seek injunctive relief and civil penalties for the illegal handling and disposal of solid or hazardous waste in violation of RCRA. You may also be liable for up to \$32,500 per day for each violation of RCRA. 42 U.S.C. § 6928(a)(3). 40 C.F.R. §19.4, Table 1. The Tremls also intend to seek costs, attorneys’ fees and litigation expenses. 42 U.S.C. §6972(e).

III. CONCLUSION

The persons giving notice are Scott and Judy Treml, E758 Church Road, Luxemburg, Wisconsin, 54217, tel. (920) 845-5285.

The business entities and persons referenced above as “Stahl Farms” or “Glenn Stahl” include all related business entities and corporate officers who are responsible for the violations outlined in this letter.

¹² University of Wisconsin-Extension, *Understanding Soil Phosphorus: An Overview of Phosphorus, Water Quality, and Agricultural Management Practices*, 7 (2002)

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 1.

¹⁶ Lakeshore State of the Basin Report, at 23.

Over the past twenty years, the DNR, the Wisconsin Department of Agriculture, Trade and Consumer Protection, the Kewaunee County Land and Water Conservation Department, and the public have given you several opportunities and more than \$10,000 in financial assistance to help you conduct your livestock operation in an environmentally acceptable manner. You have left the public and the Tremels with no reasonable alternative except to invoke the power of the United States District Court to compel you to end your pattern of gross environmental mismanagement and damage to public waters, and reimburse the public for the damage that you have done to those public waters.

The Tremels expect that records in your possession, to which the Tremels do not yet have access at this time, will provide further support for all of the foregoing claims.

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 the Tremels: Andrew C. Hanson, Midwest Environmental Advocates, Inc., at 702 E. Johnson Street, Madison, Wisconsin 53703, tel. (608) 251-5047 and fax (608) 268-0205; and Glenn Stoddard, Garvey and Stoddard, S.C., at 634 W. Main St., Suite 101, Madison, WI 53703, tel. (608) 256-1003 and fax (608) 256-0933.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



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