

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

SCOTT and JUDY TREML, individually
and on behalf of their children, KAITLYN
TREML, EMILY TREML, and SAMANTHA
TREML,
E758 Church Road
Luxemburg, Wisconsin 54217,

Plaintiffs,

v.

GLEN STAHL,
d.b.a. STAHL FARMS,
E389 Luxemburg Road
Luxemburg, Wisconsin 54217,

Defendant.

Civil Action
File No. _____

COMPLAINT

COMPLAINT

Scott and Judy Treml and their children, Kaitlyn, Emily, and Samantha, (“Tremls”), by and through their counsel, Midwest Environmental Advocates, Inc. and Garvey & Stoddard S.C., hereby allege:

I. INTRODUCTION

1. This is a civil action brought under the citizen suit provision, 33 U.S.C. § 1365(a)(1), 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.* Scott and Judy Treml, Plaintiffs, bring this suit to enjoin and remedy more than twenty years of chronic and intermittent violations of the Clean Water Act by the Defendant, Glen Stahl, d.b.a. Stahl Farms (“Glen Stahl” or “Stahl Farms”).

2. In addition to the preceding claim, this is also a civil action brought under the citizen suit provision, 42 U.S.C. § 6972(a)(1)(A), of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 *et seq.* Scott and Judy Treml bring this suit to enjoin and remedy discharges of animal waste to waters of the State of Wisconsin and United States by Glen Stahl that cause adverse effects on their health and the health of their three children and the environment. 42 U.S.C. § 6945(a), 6972(a)(1)(B).

3. In addition to the preceding claims, this is also a civil action brought under the common law of negligence of the State of Wisconsin. Scott and Judy Treml bring this suit to enjoin and remedy their personal injuries and injuries to their property rights, including their groundwater supply and riparian property, caused by Glen Stahl’s failure to exercise ordinary care in failing to prevent the discharge of animal waste to waters of the State of Wisconsin.

4. In addition to the preceding claims, this is also a civil action brought under the common law of private nuisance of the State of Wisconsin. Scott and Judy Treml bring this suit to enjoin and remedy the significant harm caused by invasions of their private use and enjoyment of their land, including subsurface groundwaters, and riparian property by Glen Stahl’s discharges of animal waste to a tributary of School Creek, a water of the State of Wisconsin and United States flowing through the Tremls’ property.

5. In addition to the preceding claims, this is also a civil action brought under the common law of trespass of the State of Wisconsin. Scott and Judy Treml bring this suit to enjoin and remedy invasions of their property by Glen Stahl’s discharges of animal waste to subsurface groundwaters flowing through their property.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 33 U.S.C. §

1365(a) (Clean Water Act's citizen suit provision), 42 U.S.C. § 6972(a) (RCRA's citizen suit provision), 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1367 (supplemental jurisdiction).

7. In accordance with the notice requirements of the Clean Water Act's citizen suit provision and RCRA's citizen suit provision, on or around April 27, 2004, Scott and Judy Tremel provided notice to Glen Stahl of his violations of the Clean Water Act, including violations of WPDES Permit WI-0062332-01 ("WPDES Permit" or "Permit"), and RCRA. Scott and Judy Tremel similarly provided notice to all entities required to receive such notices as required by the CWA and RCRA. 33 U.S.C. § 1365(b); 42 U.S.C. § 6972(b); 40 C.F.R. § 135.2; 40 C.F.R. § 254.2.

8. More than sixty days have passed since notice was served on Glen Stahl and the state and federal agencies. Scott and Judy Tremel are informed and believe, and thereon allege, that neither the United States Environmental Protection Agency nor the State of Wisconsin has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action is not barred by any prior administrative penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), or Section 3008 of RCRA, 42 U.S.C. § 6928.

9. Venue is appropriate in this judicial district and in this court pursuant to 33 U.S.C. § 1365(c) and 42 U.S.C. § 6972(a)(1) in that the violations giving rise to the claims in this suit occurred in the Eastern District of Wisconsin.

III. PARTIES

A. Plaintiffs

10. The Plaintiffs, Scott and Judy Tremel, are private citizens who reside and own property at E758 Church Road, Luxemburg, Wisconsin, 54217. Scott and Judy Tremel have three

children: Kaitlyn, eight (8) years old; Emily, six (6) years old; and Samantha, seven (7) months old.

11. Scott and Judy Treml and their three children have been and continue to be injured by Glen Stahl's ongoing and threatened future discharges of animal waste to waters of the State of Wisconsin and United States, including both groundwater and surface waters.

12. Upon information and belief, in late February and early March of 2004, Glen Stahl discharged animal waste from a landspreading field known as the Wachal property directly across the road from the residence of Scott and Judy Treml. Upon further information and belief, that animal waste entered the subsurface groundwater flowing through the Tremls' property that serves as a source of potable water for the Treml family, harming the Tremls by exposing them to harmful bacteria and pathogens and causing serious illness in each member of the Treml family.

13. In addition to groundwaters flowing through the Tremls' property, a navigable tributary to School Creek flows through Scott and Judy Treml's property and has been and will likely continue to be polluted by Glen Stahl's discharges of animal waste to that tributary and its upstream tributaries.

14. The Tremls are no longer able to use and enjoy the tributary to School Creek because it has become polluted with animal waste and other pollutants as the result of Glen Stahl's illegal discharges. The Tremls no longer see fish or wildlife in the tributary, or in the pond that has formed on their property in the center of the tributary. As a result, Scott and Judy Treml no longer use or recreate on the tributary, or allow their children to use or recreate on the tributary, for its lack of fish and wildlife and other aesthetic values, and also because of their concern about exposure to harmful bacteria and other pathogens that may cause illness in them

and their children.

15. The Tremls have also been denied critical information that they need to protect their health, their children's health, and the health of School Creek and its tributaries by Glen Stahl's failure to satisfy the reporting requirements of his WPDES Permit. Specifically, Glen Stahl has failed to submit a program for monitoring and inspecting his animal waste storage facilities and run-off control structures. Glen Stahl has also failed to keep adequate daily logs of his landspreading activities, and to submit adequate annual reports of landspreading activities. Failure to keep adequate records and provide this information to the Wisconsin Department of Natural Resources ("WDNR") obstructs the WDNR's ability to monitor the environmental impacts of Glen Stahl's activities and Scott and Judy Tremls' right to know what pollutants may be entering waters of the State of Wisconsin and United States, including groundwaters, as a result of Glen Stahl's activities.

16. Glen Stahl's violations of the WPDES Permit have adversely affected and continue to adversely affect the Tremls' health and School Creek and its tributaries. Further, by violating the WPDES Permit, Glen Stahl is operating an "open dump" at his animal production area within the meaning of RCRA and has harmed and continues to threaten the health of the Tremls and their aesthetic, recreational, and property interests in School Creek.

17. This Court has the power to redress the foregoing injuries caused by Glen Stahl through permanent injunctive relief, civil penalties under relevant statutes, damages and declaratory relief.

B. Defendant

18. Upon information and belief, Defendant Glen Stahl owns and operates a concentrated animal feeding operation ("CAFO"), doing business under the name "Stahl Farms,"

that houses approximately 1,000 dairy cattle at E389 Luxemburg Road, Luxemburg, Wisconsin, 54217, approximately two miles to the south and west of Scott and Judy Treml's residence.

19. Glen Stahl holds Wisconsin Pollutant Discharge Elimination System ("WPDES") Permit WI-0062332-01, issued by the WDNR pursuant to Chapter 283 of the Wisconsin Statutes and the Clean Water Act. The WPDES Permit, discussed more fully below, prohibits discharges of animal waste and other pollutants to waters of the State of Wisconsin except in limited circumstances.

20. Glen Stahl has violated, and continues to violate, the Clean Water Act and the WPDES Permit, as well as the requirements of RCRA, on an ongoing and intermittent basis since 1982.

IV. STATUTORY FRAMEWORK

A. The Clean Water Act

21. Congress enacted the CWA in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). In the CWA, Congress identified the national goal of eliminating "the discharge of pollutants into navigable waters" by 1985. 33 U.S.C. § 1251(a)(1). In furtherance of this goal, the CWA provides a comprehensive approach for the regulation of pollutant discharges into the waters of the United States.

22. Section 301 of the CWA and Wisconsin law prohibit the discharges 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, 1344; Wis. Stat. § 283.31. The CWA defines "pollutant" to include solid waste, biological materials, and agricultural waste discharged into water. 33 U.S.C. § 1362(6); Wis. Stat. § 283.01(13). A CAFO is a point source under the CWA.

33 U.S.C. § 1362(14); Wis. Stat. § 283.01(12)(a).

23. Under Wisconsin law, a CAFO is an animal feeding operation which feeds, confines, maintains or stables 1,000 animal units or more. Wis. Admin. Code § NR 243.03(9).¹ An “animal unit” is a unit of measure used to determine the total number of single animal types or combination of animal types “which are fed, confined, maintained or stabled in an animal feeding operation.” § NR 243.03(3).

24. CAFOs are required to obtain WPDES permits that place restrictions on the discharge of pollutants into waters of the State of Wisconsin. Specifically, Glen Stahl’s WPDES Permit prohibits him from discharging pollutants from his animal production area at the CAFO to navigable waters “except in the event of a 25-year, 24-hour rainfall event, or a chronic rainfall event.” WPDES Permit, Section 1.1. Among other requirements, the WPDES Permit also prohibits Glen Stahl from allowing “surface applied manures” to “run off the intended site at any time” or “pond on the intended site at any time.” WPDES Permit, Section 3.2.11. The WPDES Permit also requires Glen Stahl to keep daily records of monitoring and inspection activities and to submit annual reports of animal waste spreading activities for review by the WDNR. WPDES Permit, Section 1.4.

B. RCRA (Prohibition on Maintaining an Open Dump)

25. RCRA prohibits the open dumping of solid or hazardous waste. 42 U.S.C. § 6945(a); 40 C.F.R. pt. 257.

26. Federal regulations implementing RCRA’s prohibition on open dumps establish criteria for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment. 40 C.F.R. § 257.1(a). Facilities

¹ An animal feeding operation is a feedlot or facility, other than a pasture, where animals have been, are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month period. § NR 243.03(2).

failing to satisfy these criteria are considered “open dumps,” which are prohibited under section 4005 of RCRA, 42 U.S.C. § 6945(a). 40 C.F.R. § 257.1(a)(1).

27. RCRA defines “facility” as “all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.” 40 C.F.R. § 257.2.

28. 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).

25. 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). 40 C.F.R. § 257.2.

26. Federal regulations exempt manure returned to the soil as fertilizers or soil conditioners from the criteria for operating an open dump. 40 C.F.R. § 257.1(c)(1).

27. Animal manure that is applied in excess amounts beyond the needs of the crops and on frozen ground and is discharged to surface waters from point and nonpoint sources is not being returned to the soil as fertilizer, but rather is “discarded” and is not covered by this exemption.

28. A facility is deemed an open dump, and thereby poses a reasonable probability of adverse effects on health or the environment, when the facility causes a “discharge of pollutants into waters of the United States that is in violation of the requirements of” a WPDES permit issued under the CWA. 40 C.F.R. § 257.3-3(a).

III. FACTS COMMON TO ALL CLAIMS

A. Discharges of Animal Waste to School Creek and its Tributaries

29. School Creek and its intermittent and navigable tributaries are waters of the State of Wisconsin and United States, subject to the jurisdiction of the Clean Water Act and the requirements of Glen Stahl's WPDES Permit.

30. Scott and Judy Treml and their three children would use and enjoy the tributary to School Creek but for the pollution caused by Glen Stahl's discharges of animal waste and other pollutants to that waterway and its tributaries.

31. Glen Stahl has a history of operation and maintenance problems that have caused discharges of animal waste to these tributaries to School Creek in violation of the Clean Water Act since at least 1982. These include, but are not limited to:

- a. On or around March 21, 1982, Glen Stahl's liquid animal waste storage facility overflowed to a tributary of School Creek.
- b. On or around July 28, 1982, Glen Stahl discharged animal waste to a tributary of School Creek.
- c. On or around March 12, 1985, Glen Stahl caused spray-irrigation runoff on fields adjacent to Glen Stahl's property to a tributary of School Creek.
- d. On or around March 12, 1986, Glen Stahl discharged pollutants as the result of an elbow pipe rupture underground to a drainage way that drains to a tributary of School Creek.

e. On or around November 25, 1986, Glen Stahl 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 Glen Stahl's 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 WDNR issued Glen Stahl a Notice of Discharge, noting that Glen Stahl 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 WDNR 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 structures that would reduce the volume of Glen Stahl's liquid animal waste to be disposed of, Glen Stahl did not comply with the requirements of the Notice of Discharge until on or around March 20, 1991.

f. On or around September 10, 1993, Glen Stahl over-applied animal waste near Glen Stahl's livestock operation using Glen Stahl's spray-irrigation system, causing a discharge of pollutants to tributaries to School Creek. On or around December 3, 1993, the WDNR issued a Notice of Discharge for the discharge

of pollutants Glen Stahl caused on or around September 10, 1993, requiring Glen Stahl to, among other measures, establish a 20-foot grassed buffer along each side of waterways to the south of Glen Stahl's barns. The bacterial levels in Glen Stahl's 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 Glen Stahl's livestock operation.

g. On or around May 12, 1994, Glen Stahl experienced a mechanical failure in his 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.

h. On or around September 7, 1994, Glen Stahl discharged pollutants to a tributary to School Creek when Glen Stahl's contractor opened earthen berms holding back animal waste from Glen Stahl's barn flushing system. On a site inspection on or around September 8, 1994, a WDNR official found that Glen Stahl had violated the requirements of Glen Stahl's December 3, 1993 Notice of Discharge by failing to install buffers along streams in the area behind Glen Stahl's barns. Instead, the WDNR official found that Glen Stahl had opened a direct channel from the area behind Glen Stahl's barns to the tributary to School Creek,

allowing discharges of pollutants into that tributary.

i. On or around May 13, 1996, Glen Stahl's animal waste storage facility overflowed and discharged into a tributary of School Creek.

j. On or around April 15, 1998, Glen Stahl discharged animal waste into a tributary of School Creek when Glen Stahl drained his animal waste storage facility 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 Glen Stahl's December 3, 1993 Notice of Discharge he had allegedly constructed animal waste handling structures designed to prevent these discharges.

k. On or around January 17, 2003, Glen Stahl's animal waste storage pump failed and resulted in a discharge into a tributary to School Creek.

l. On or around April 21, 2003, Glen Stahl's animal waste storage facility overflowed and discharged animal waste and other pollutants into a tributary of School Creek.

m. On or around June 18, 2003, Glen Stahl applied animal waste on a property in the Town of Luxemburg known as the Lelou property, where animal waste flowed into a broken tile line and consequently discharged into a tributary of School Creek.

32. Despite this repeated history of discharging animal waste to waters of the State of Wisconsin and United States in violation of the Clean Water Act and Wisconsin law, WDNR issued Glen Stahl a WPDES Permit to operate a CAFO on or around July 1, 2003. WDNR issued the WPDES Permit because Glen Stahl began housing 1,000 animal units or more at his CAFO before or around that time.

33. Almost immediately upon issuance of the WPDES Permit by WDNR, Glen Stahl began violating the terms of the WPDES Permit by discharging animal waste to waters of the State of Wisconsin and United States.

34. On or around July 12, 2003, Glen Stahl's animal waste storage facility overflowed and discharged animal waste and other pollutants into a tributary of School Creek.

35. On subsequent dates and continuing to the present date, Glen Stahl has repeatedly violated and continues to violate the requirements of the WPDES Permit by:

- a. discharging animal waste and other pollutants from his animal production area to tributaries to School Creek;
- b. failing to install adequate animal waste storage facilities and runoff controls to prevent discharges of animal waste and other pollutants from his animal production area and land application areas to waters of the State of Wisconsin and United States;
- c. allowing liquid animal waste to pond and runoff of landspreading sites to waters of the State of Wisconsin and United States;
- d. applying animal waste within 300 feet of open tile

intakes (which reasonably include “open vent pipes”) without first incorporating the waste within 72 hours and allowing that waste to enter the open tiles and discharge to tributaries to School Creek;

e. failing to submit an adequate monitoring and inspection program;

f. failing to create adequate daily logs of discharge and monitoring activities;

g. failing to submit adequate annual reports of animal waste landspreading activities.

45. Scott and Judy Treml and their three children have been and continue to be injured by Glen Stahl’s ongoing discharges of animal waste to waters of the State and United States, and other violations of the WPDES Permit.

B. Contamination of the Tremls’ Drinking Water Well

46. Prior to the events giving rise to this action, Scott and Judy Treml drew drinking water from a private well on their property immediately adjacent to and to the west of their home.

47. Upon information and belief, Glen Stahl applied liquid animal waste to an approximately eighty (“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.

48. The Wachal property is directly across the road and to the south from the Treml residence on Church Road, and at the time of Glen Stahl’s application of animal waste to that

property, the ground on the Wachal property was saturated with melting snow and water.

49. On or around the evening of February 25, 2004, Scott Treml witnessed Glen Stahl spreading animal waste on the Wachal property and confronted Glen Stahl. During this encounter, Scott Treml requested that Glen Stahl stop spreading animal waste because Scott Treml was concerned that his drinking water would become contaminated with animal waste and that the tributary to School Creek flowing through the Tremls' property would also become contaminated with animal waste. Among other statements, Glen Stahl shouted a profanity at Scott Treml and continued spreading animal waste on the Wachal property.

50. On or around February 26, 27, 28, and 29, 2004, and March 1, 2, and 3, 2004, the animal waste that Glen Stahl 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.

51. Prior to discharging to School Creek, the animal waste ponded on the Wachal property upgradient of and within approximately 100 yards of the Tremls' drinking water well.

52. On or around the early evening of March 1, 2004, Scott and Judy Treml noticed that their well had become contaminated with animal waste approximately three days after Glen Stahl spread animal waste on the Wachal property. The Tremls immediately reported their well-contamination to WDNR, and took precautionary measures to avoid and minimize their exposure to the contaminated water.

53. On or around March 3, 2004, the DNR sampled the Tremls' drinking water well. 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 exceeded the WDNR public health enforcement standard

of “0” for bacteria. *See* § NR 140.10, Table 1.

54. Beginning on or around March 4, 2004 and continuing through March 11, 2004, each member of the Treml family became seriously ill from prior exposure to contaminated drinking water, despite their efforts to minimize their exposure to the water.

55. The Tremls’ debilitating symptoms were consistent with a bacterial inflammation of the gastrointestinal tract. Several members of the family required emergency medical attention, including the Tremls’ 7 month old infant, Samantha.

56. As a result of the past actual and future threatened drinking water contamination of the Tremls’ well by Glen Stahl, Scott and Judy Treml relied on drinking water supplied in a tanker truck by the City of Luxemburg and a local citizen. The Tremls relied on the tanker truck as a source of potable water from early March, 2004 to mid June, 2004.

57. At a cost of thousands of dollars, in mid June, 2004, Scott and Judy Treml entered into a contract for the construction and drilling of a new, deeper well to serve as a source of potable water for them and their children in an attempt to protect their drinking water from future contamination.

58. The Tremls have suffered significant harm to their health and property, in addition to considerable personal expenses, discomfort, inconvenience and annoyance as a result of Glen Stahl’s actions in discharging animal waste to the Tremls’ source of drinking water.

IV. CLAIMS

FIRST CAUSE OF ACTION

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

59. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

60. Section 1.1 of the WPDES Permit prohibits Glen Stahl from discharging pollutants from the animal production area into navigable waters except in the event of a 25-year, 24-hour rainfall event, or a chronic rainfall event.

61. Glen Stahl's 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."

62. Section 1.1 also prohibits Glen Stahl from allowing "direct runoff from a feedlot or stored manure to waters of the state" and from allowing "overflow of manure storage facilities."

63. Upon information and belief, beginning on July 1, 2003, and everyday thereafter, Glen Stahl has violated Section 1.1 of the WPDES Permit on a sporadic and intermittent basis by discharging animal waste and other pollutants and causing direct runoff from Glen Stahl's animal production area to intermittent tributaries flowing north towards School Creek.

64. Upon information and belief, those discharges are not and were not in the event of a 25-year, 24-hour rainfall event or a chronic rainfall event.

65. There is a reasonable likelihood that Glen Stahl will repeat these violations on an intermittent or continuing basis in the future.

66. Upon information and belief, Glen Stahl lacks sufficient animal waste storage capacity and runoff controls to prevent direct discharges of animal waste and other pollutants from his animal production area except in the event of a 25-year, 24-hour rainfall event or chronic rainfall event. As a result, Glen Stahl is likely to cause direct runoff and discharges from his animal production area on an intermittent or sporadic basis in the future.

67. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing the acts and omissions alleged above will harm Scott and Judy Treml and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

SECOND CAUSE OF ACTION

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

68. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

69. Section 3.2.11 of the WPDES Permit states that “surface applied manures shall not: run off the intended site at any time” or “pond on the intended site at any time.”

70. Upon information and belief, Glen Stahl 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 yet undisclosed amounts of animal waste on dates thereafter.

71. On or before February 23, 24, 25, and 26, 2004 and likely on days thereafter, the animal waste that Glen Stahl applied to the Lelou property ran off the intended site and over snow-covered ground, beneath the snow-cover, and into an open vent pipe connected to a subsurface drain tile system, traveling several hundred yards to the northeast, 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.

72. Upon information and belief, Glen Stahl 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.

73. On or around February, 26, 27, 28, and 29, 2004, and March 1, 2, and 3, 2004, the animal waste that Glen Stahl 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.

74. The foregoing are violations of Section 3.2.11 of the WPDES Permit because Glen Stahl allowed animal waste to pond on the intended site and run off the intended site.

75. There is a reasonable likelihood that Glen Stahl will repeat this violation on an intermittent or continuing basis.

76. Glen Stahl lacks the needed animal waste storage capacity to prevent overflows from Glen Stahl’s animal waste storage facility and consequently needs to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Lelou property, the Wachal property, and other properties. As a result, Glen Stahl is likely to continue to apply liquid animal waste on those properties under frozen, thawing, or partially thawing conditions, and, therefore, is reasonably likely to continue to discharge animal waste to waters of the State of Wisconsin in violation of WPDES Permit Section 3.2.11.

77. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing the acts and omissions alleged above will harm Scott and Judy Treml and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

THIRD CAUSE OF ACTION

**(Violation of Section 3.2.7 – Application of Animal Waste
Within 300 feet of Open Vent Pipes
Without Incorporation Within 72 Hours)**

78. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

79. Section 3.2.7 of the WPDES Permit 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.”

80. Open vent pipes are the substantial equivalent of open tile intakes, in that both facilitate drainage in a subsurface drain tile system, and both allow animal waste and other pollutants to enter the subsurface drain tile system and eventually to waters of the State of Wisconsin and United States.

81. Upon information and belief, Glen Stahl applied animal waste within 300 feet of an open vent pipe connected to a subsurface drain tile system on snow covered ground and without incorporating or injecting it within 72 hours on the Lelou property on or around January 10, 15, 16, 27, and 28 of 2004.

82. On or before February 23, 24, 25, and 26, 2004 and likely on days thereafter, the animal waste that Glen Stahl applied to the Lelou property ran off the intended site and into an open vent pipe connected to a subsurface drain tile system, traveling several hundred yards to the northeast, 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.

83. Upon information and belief, Glen Stahl applied animal waste on or around February 24, 25, and 26, 2004, and additional but yet undisclosed amounts of animal waste on

dates thereafter, within 300 feet of an open vent pipe on the Wachal property without incorporating or injecting that waste within 72 hours.

84. On or around February, 26, 27, 28, and 29, 2004 and March 1, 2, 3, and 4, 2004, the animal waste that Glen Stahl 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.

85. The foregoing are violations of Section 3.2.7 because Glen Stahl applied liquid animal waste within 300 feet of open vent pipes connected to a subsurface drainage tile system, and open vent pipes are the substantial equivalent of open tile inlets in that both are conduits to surface waters and groundwater.

86. There is a reasonable likelihood that Glen Stahl will repeat this violation on an intermittent or continuing basis in the future, in part because Glen Stahl has violated Section 3.2.7 in the past on or around June 18, 2003, where Glen Stahl allowed animal waste he applied to the Lelou property to discharge into a broken tile line and a tributary of School Creek.

87. Glen Stahl lacks the needed animal waste storage capacity to prevent his need to apply liquid animal waste on frozen, thawing, or partially thawing soil on the Lelou, Wachal, and any other properties that contain open vent pipes connected to subsurface drainage tile systems that in turn discharge animal waste to waters of the State of Wisconsin and United States.

88. Therefore, Glen Stahl is reasonably likely to continue to apply animal waste within 300 feet of open vent pipes on the Wachal, Lelou and other properties without first incorporating it or injecting it into the soil and likely to discharge animal waste into waters of the State of Wisconsin and United States in violation of Section 3.2.7.

89. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §

1365(a). Continuing the acts and omissions alleged above will harm Scott and Judy Treml and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

FOURTH CAUSE OF ACTION

(Violation of WPDES Permit Section 1.4 – Failure to Submit Adequate Monitoring and Inspection Program)

90. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

91. Section 1.4 of the WPDES Permit requires that Glen Stahl submit a proposed monitoring and inspection program 90 days after the effective date of the WPDES Permit, or on or around Monday, September 29, 2003.

92. The 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” WPDES Permit Section 1.1.

93. Section 1.4 of the WPDES Permit also requires that Glen Stahl maintain records onsite of all completed monitoring and inspections for review by WDNR and the public.

94. Upon information and belief, Glen Stahl has failed to submit a monitoring and inspection program that complies with the terms of WPDES Permit Section 1.4.

95. Upon further information and belief, Glen Stahl has failed to maintain records onsite of all completed monitoring and inspections for WDNR review in violation of WPDES Permit Section 1.4.

96. Every day since September 29, 2003 that Glen Stahl has failed to submit a monitoring and inspection program that complies with the terms of Section 1.4 of the WPDES Permit is a separate and ongoing violation of the Permit.

97. Every day since September 29, 2003 that Glen Stahl has failed to keep and maintain records onsite for all completed monitoring and inspections for WDNR review in violation of Section 1.4 of the WPDES Permit is a separate and ongoing violation of the Permit.

98. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing the acts and omissions alleged above will harm Scott and Judy Treml and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

FIFTH CAUSE OF ACTION

(Violations of WPDES Permit Section 1.4.1 – Failure to Create Adequate Daily Logs of Discharge and Monitoring Activities and Submit Adequate Annual Report for Sample Point 001, Earthen Storage)

99. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

100. Section 1.4.1 of the WPDES Permit states under the heading “Daily Log Requirements” that “[a]ll discharge and monitoring activity shall be documented on log sheets” for Sample Point 001, Glen Stahl’s earthen storage pits for liquid animal waste and other process wastewaters and runoff.

101. Section 1.4.1 of the WPDES Permit also requires that by January 31, 2004, Glen Stahl “[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 001, Glen Stahl’s earthen storage pits for liquid animal waste and other process wastewaters and runoff.

102. Upon information and belief, Glen Stahl has failed to keep daily logs in accordance with WPDES Permit Section 1.4.1 on an intermittent basis since July 1, 2003, the effective date of Glen Stahl’s WPDES Permit.

103. Upon information and belief, Glen Stahl has failed to prepare and submit an adequate annual report of all of his animal waste landspreading activity by January 31, 2004 in violation of WPDES Permit Section 1.4.1.

104. Every day that Glen Stahl fails to keep adequate daily log sheets in violation of Section 1.4.1 is an ongoing violation of the WPDES Permit.

105. Every day since January 31, 2004 that Glen Stahl fails to submit an annual report of his landspreading activities that complies with the requirements of Section 1.4.1 is an ongoing violation of the WPDES Permit.

106. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing the acts and omissions alleged above will irreparably harm Scott and Judy Treml and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

SIXTH CAUSE OF ACTION

(Violation of WPDES Permit Section 1.4.2 - Failure to Create Adequate Daily Logs of Discharge and Monitoring for Activities and Submit Adequate Annual Report for Sample Point 002, Solid Manure)

107. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

108. Section 1.4.2 of the WPDES Permit states under the heading “Daily Log Requirements” that “all discharge and monitoring activity shall be documented on log sheets” for Sample Point 002, which is Glen Stahl’s solid manure storage facility.

109. Section 1.4.2 of the WPDES Permit requires that by January 31, 2004, Glen Stahl “[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.

110. Upon information and belief, Glen Stahl has failed to maintain adequate daily logs of his discharge and monitoring activities for Sample Point 002 on an intermittent basis since July 1, 2003, the effective date of Glen Stahl's WPDES Permit.

111. Upon information and belief, Glen Stahl has failed to prepare and submit an adequate annual report of all of his landspreading activity by January 31, 2004, in violation of WPDES Permit Section 1.4.2.

112. Every day that Glen Stahl fails to keep adequate daily log sheets in violation of Section 1.4.2 is an ongoing violation of the WPDES Permit.

113. Every day since January 31, 2004 that Glen Stahl fails to submit an annual report of his landspreading activities that complies with the requirements of Section 1.4.2 is an ongoing violation of the WPDES Permit.

114. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing the acts and omissions alleged above will harm Scott and Judy Treml and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

SEVENTH CAUSE OF ACTION

(Violation of RCRA, 42 U.S.C. § 6945(a) – Prohibition on Operating an Open Dump)

115. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

116. 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).

117. Federal 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).

118. Violations of a WPDES permit pose a reasonable probability of adverse effects on health or the environment, and facilities at which the WPDES permit violations occurred are deemed "open dumps" under RCRA. 40 C.F.R. §§ 257.3-3(a).

119. Glen Stahl has violated and continues to violate his WPDES Permit.

120. Glen Stahl's animal production area is a "facility" within the meaning of RCRA. 40 C.F.R. § 257.2.

121. Glen Stahl disposed of and continues to dispose of solid waste, including animal waste, within the meaning of RCRA, 42 U.S.C. § 6903(3), (27), by continuing to discharge that solid waste on an intermittent or sporadic basis to waters of the State of Wisconsin and United States from its animal production area.

122. An action for injunctive relief under RCRA is authorized by 42 U.S.C. § 6972(a)(1)(A). Continuing the acts and omissions alleged above will harm Scott and Judy Tremel and the citizens of the State of Wisconsin, for which harm they have no plain, speedy or adequate remedy at law.

EIGHTH CAUSE OF ACTION

(Declaratory Judgment Wis. Stat. §806.04(2) - 28 U.S.C. § 1367 (Supplemental Jurisdiction))

123. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

124. The Tremels are entitled to a declaratory judgment that Wisconsin's Right to Farm Statute, Wis. Stat. §823.08, does not bar any claim or available relief for a cause of action for a

private nuisance, negligence, or trespass brought by the Tremls against Glen Stahl.

125. In the alternative, the Tremls are entitled to a declaratory judgment that Wisconsin's Right to Farm Statute, Wis. Stat. §823.08, on its face and as applied to this case, violates Article 1, Section 13 of the Wisconsin Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, prohibiting the governmental taking of private property for public use without payment of just compensation by allowing Glen Stahl the right to maintain a private nuisance, thus taking an interest in the Tremls' property without just compensation and for a use that is not in the public interest.

NINTH CAUSE OF ACTION

(Wisconsin Common Law of Negligence - 28 U.S.C. § 1367 (Supplemental Jurisdiction))

126. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

127. Upon information and belief, Glen Stahl 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.

128. On or around February, 26, 27, 28, and 29, 2004, and March 1, 2, and 3, 2004, the animal waste that Glen Stahl applied to the Wachal property ponded on the intended site, discharging into subsurface groundwaters flowing through the Tremls' property, 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.

129. Glen Stahls' discharge of animal waste to subsurface groundwaters contaminated

the Tremls' drinking water well with harmful bacteria, causing serious illness in every member of the Treml family unknowingly exposed to that contamination.

130. Glen Stahl failed to exercise ordinary care by creating an unreasonable risk of injury and damage to the Tremls and their property in applying animal waste to the Wachal property on frozen, thawing, and partially thawing conditions and by violating his WPDES Permit.

131. Glen Stahl created an actual injury and an unreasonable risk of injury to the Tremls by allowing animal waste to discharge from the Wachal property into the Tremls' source of drinking water and into the tributary to School Creek that flows through their property.

TENTH CAUSE OF ACTION

(Wisconsin Common Law of Private Nuisance - 28 U.S.C. § 1367 (Supplemental Jurisdiction))

132. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

133. Upon information and belief, Glen Stahl 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.

134. On or around February, 26, 27, 28, and 29, 2004, and March 1, 2, and 3, 2004, the animal waste that Glen Stahl applied to the Wachal property ponded on the intended site, discharging into subsurface groundwaters flowing through the Tremls' property, 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.

135. Glen Stahls' discharge of animal waste to subsurface groundwaters contaminated the Tremls' drinking water well with harmful bacteria, causing serious illness in every member of the Treml family unknowingly exposed to that contamination.

136. The actions of Glen Stahl in causing animal waste and other pollutants to enter the Tremls' property constitute actions that have substantially and unreasonably interfered with the use and enjoyment of the Tremls' property and continue to do so.

137. The actions of Glen Stahl have caused, and unless enjoined, will continue to cause significant harm to the Tremls and their property, including damage to their health, personal inconvenience, annoyance, discomfort, property damage, and other actual and potential damages.

ELEVENTH CAUSE OF ACTION

(Wisconsin Common Law of Trespass - 28 U.S.C. § 1367 (Supplemental Jurisdiction))

138. Plaintiffs incorporate the allegations of the preceding paragraphs, as though fully set forth herein.

139. Upon information and belief, Glen Stahl 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.

140. On or around February, 26, 27, 28, and 29, 2004, and March 1, 2, and 3, 2004, the animal waste that Glen Stahl applied to the Wachal property ponded on the intended site, discharging into subsurface groundwaters flowing through the Tremls' property, 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.

141. Glen Stahls' discharge of animal waste to subsurface groundwaters contaminated the Tremls' drinking water well with harmful bacteria.

142. Glen Stahl trespassed on the Tremls' property by causing animal waste and other pollutants to enter the subsurface groundwaters flowing through the Tremls' property without the Tremls' consent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Issue a declaratory judgment that Defendant has and continues to violate the CWA;
- B. Issue a declaratory judgment that Defendant has and continues to violate RCRA's prohibition on operating an "open dump;"
- C. Enjoin Defendant from operating its CAFO in such a manner as will result in further violations of the CWA, its WPDES Permit, and RCRA. In particular, Plaintiffs seek an order enjoining Defendant from discharging or engaging in activities likely to discharge any animal waste or other pollutants to waters of the State of Wisconsin and United States except where such discharge is due to or a direct result of a "25-year 24-hour rainfall event;"
- D. Order Defendant to pay civil penalties of up to \$32,500 per day of violation for violations after March 15, 2004, \$27,500 per day of violation for violations after January 30, 1997, and \$25,000 per day of violation for violations on or before January 30, 1997, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§1319(d) and 1365(a), including those identified in Plaintiffs' notice letter, violations identified during discovery, and violations committed subsequent to those identified in this complaint;
- E. Authorize the Plaintiffs, for the period beginning on the date of the Court's order

and running for five years after the defendant achieves compliance with the CWA, and the WPDES Permit, to sample or arrange sampling of any discharge of pollutants from the Defendant's CAFO, including upstream and downstream sampling, groundwater monitoring that could impact surface water, and soil sampling that could determine agronomic rates of uptake, with the costs of the sampling to be borne by the Defendant;

F. Order Defendant to provide the Plaintiffs, for a period beginning on the date of the Court's order and running for five years after Defendant achieves compliance with the CWA and Defendant's WPDES Permit, with a copy of all reports and other documents which Defendant submits to WDNR regarding Defendant's compliance with his WPDES Permit at the time the documents are submitted to the WDNR;

G. Issue a remedial injunction ordering Defendant to pay the cost of any environmental restoration or remediation deemed necessary and proper by the Court to comply with the Clean Water Act and ameliorate the water degradation caused by Defendant's violations;

H. Award Plaintiffs their costs, including reasonable attorney and expert witness fees, as authorized by 33 U.S.C. §1365(d) and 28 U.S.C. §2412(d);

I. Issue a declaratory judgment that Plaintiffs' claims for private nuisance, negligence, and trespass are not barred by Wis. Stat. § 823.08, or, in the alternative, that Wis. Stat. § 823.08 violates Article 1, Section 13 of the Wisconsin Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution;

J. Award Plaintiffs compensatory and equitable damages for harm to their health, annoyance, discomfort, property damage and inconvenience; and

K. Award such other relief as this Court deems appropriate.

Plaintiffs demand a trial by jury for Claims 9, 10, and 11.

DATED: June 29, 2004.

Respectfully submitted,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.

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