

Pretrial settlement reached in suit on rural well pollution

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LUXEMBURG

Pending acceptance by state and federal courts, a settlement has been reached in a case involving a rural family's contaminated well that was located across the road from a western Kewaunee County farm field on which liquid manure had been applied less than a week earlier in late winter 2004.

In June 2004, Scott and Judy Tremel and their three children, of Church Road southwest of Luxemburg, sued area farmer Glen Stahl, contending that liquid manure that Stahl applied on rented farmland across the road from their residence had run off the field during a subsequent rapid snowmelt and entered their well. The manure application began on Feb. 24, less than a week before the Tremels became ill and needed medical care.

Representatives of the Wisconsin Department of Natural Resources and the Kewaunee County Land Conservation Department investigated the incident. They were never able to establish a conclusive link between the manure application by Stahl and the contamination of the Tremels' well. They noted there were up to four possible sources for the contamination.

Following the Tremels' federal court suit on June 29, 2004, for medical expenses, the cost of a new well, and the disruption of their lives, the state of Wisconsin cited Stahl on Sept. 28, 2004, for pollution of nearby School Creek and for violation of his Wisconsin Pollution Discharge Elimination System permit. In 1996, Stahl paid a \$368.20 fine for a water pollution incident. The DNR renewed Stahl's WPDES in July 2003.

With the help of his son Greg and a number of full- and part-time employees, Stahl operates a farm with more than 900 head of dairy cattle that are housed in several barns along Luxemburg Road, about two miles from where the Tremels live. The farm has about 340 owned and 700 rented acres in the area.

The settlement announced last week totals \$380,000 - \$80,000 to compensate the Tremels (paid by the liability insurance carrier), a \$100,000 civil fine payable to the state of Wisconsin, and \$200,000 worth of improvements to Stahl's housing facilities, manure storage and control of runoff from both from fields and around feed storage. The proposed settlement with the state indicates the fine would be reduced to \$50,000 if a deadline for making the facility changes is met.

Stahl's attorney Steven Means, of the Madison-based Michael, Best, Friedrich Law Firm, told the *Wisconsin State Farmer* that the higher fine would apply only if Stahl fails to comply with the terms of the judgment. The terms include paying the

fine by early 2007 and completing the facility renovations by October 2006.

Regarding those renovations, Means said the \$200,000 figure was not supplied by Stahl but is perhaps an estimate made by the Tremels. With some of the improvements already completed by the time of the settlement and others still in the planning stage, he pointed out that it is impossible to state a total cost at the moment.

A deposition hearing on March 10, 2005, was led by Andrew Hanson, an attorney with the Midwest Environmental Advocates, who represented the Tremels. During the deposition, Hanson repeatedly asked Stahl about his management practices regarding manure storage and field application. Nearly as often, Stahl replied, "It's possible," "I don't know" and "I don't remember."

Several times during the session in Madison, Means and Hanson clashed about the nature, relevance and implications of the questions put to Stahl. The query started with Hanson asking Stahl about any previous encounters with the law, including several that did not pertain to manure management practices or the incident involving the Tremels.

During the deposition, it was established that Tremel confronted Stahl when the application began on Feb. 24, that on Feb. 23 a DNR representative had visited to check on a report about runoff on Stahl's rented land on another farm where liquid manure had been applied on several days in January 2004, that Stahl carried liability insurance with Rural Insurance that included a pollution endorsement with coverage up to \$300,000, and that pictures were taken by Dave Allen of the DNR on April 21, 2003, following the spill of some manure from a storage pit at Stahl's home farm. Stahl said that overflow was caused by a combination of heavy rain and strong winds.

Means indicated to the *Wisconsin State Farmer* that Stahl, and not the insurance carrier, is responsible for paying the state's fine (\$100,000 or \$50,000). He also noted that the federal court litigation settled some questions between Stahl and the insurer on the applicability of the insurance coverage for pollution.

The complaint filed by the Tremels and processed in Wisconsin's Eastern District of the U.S. Federal Court stated that 84,000 gallons of liquid manure were applied on a field on the Wachal farm across Church Road from the Tremels' residence. During the deposition, Stahl indicated that he rents about 73 acres on the Wachal farm and that liquid manure was applied to approximately 25 to 30 acres there during the last week of February, just before the Tremels became ill early in March.

In a news release accompanying the

announcement of the settlement, MEA indicated that a water sample taken from the Tremels' well early in March 2004 was contaminated with 2,500 colonies of E. coli bacteria and 9,800 colonies of fecal coliforms per measuring unit. The proposed agreement stipulates that manure will not be applied on the Wachal farm field south of the Tremel residence from Dec. 1 to April 1.

Means pointed out that \$2,000 of the \$80,000 payment to the Tremels was allocated for the child who was most seriously ill. A portion of the \$80,000 being paid by Rural Insurance is going to MEA for their legal services, he added.

Throughout the deposition, Stahl insisted that he followed the county's land conservation department and DNR recommendations and cautions on applying manure, including setbacks from property lines and on field portions or entire fields where manure was not to be applied on snow or frozen ground because of shallow soil depth. Stahl said he never received any specific order on what to do about manure application.

Later in 2004, construction began to increase the manure storage capacity at Stahl Farms. As a result, Stahl told Hanson

he did not have to consider emptying any manure during the 2004-05 winter to avoid a storage pit overflow. He did not admit to any connection between the February 2004 application and the contamination of the Tremels' well.

To repeated questions by Hanson, Stahl said he had never noticed manure as such running off fields and into a tributary of the nearby School Creek. He agreed that he had seen water running off fields following rains or snowmelt but not that the runoff contained manure.

Attorneys for both parties indicated they are satisfied with the settlement - Means on Stahl's behalf for avoiding the costs of a court trial and for allowing him to focus his attention on operating the dairy farm and Hanson on behalf of the Tremels for the compensation they will be receiving and for an assurance that similar incidents will not be repeated at Stahl Farms.

The settlement does not indicate any admission of wrongdoing by Stahl Farms or any agreement by it to make a payment to the Tremels, Means stated. He said it was the decision of Rural Insurance to settle as a way to avoid further legal costs and the uncertainty of going to trial with the case.



UW-PLATTEVILLE CROPS TEAM NATIONAL CHAMPIONS - Twenty points out of 5,112 points separated the victorious UW-Platteville crops team from Kansas State in the 77th annual Collegiate Crops Contest on Nov. 19. Joe Osenga (senior, soil and crop science, Union Grove) was the top contestant with 1,779 points out of 1,800 points. This score marked the seventh highest in the contest's 77-year history. He also placed first among all participants in the three contest phases: commercial grain grading, seed analysis and plant/seed identification. Strong efforts by Steve Wilkens (sophomore, soil and crop science, Random Lake) and Kevin Boehm (senior, soil and crop science, Mauston), who placed fifth and seventh, respectively, helped assure the UWP first-place finish. Earlier in the week the Kansas State team edged the UWP team by five points out of 5,060 points to set up the Chicago finale. In that contest, Osenga placed first; Wilkens, sixth; and Wade McLaughlin (junior, soil and crop science, Alpha, Ill.), seventh. The team is voluntarily coached by Dr. Roger Higgs, professor emeritus. Pictured, from left, are Roger Higgs, Steve Wilkens, Kevin Boehm and Joe Osenga.

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