

Grove Road, Greensfork, Indiana. From October 2003 to April 2005, the Lantz's owned the Zook property which is adjacent to and directly West of the Stickdorn property.

4. Jurisdiction and venue are proper in this court as the Defendants reside in Wayne County, the events and omissions giving rise to the claims alleged herein occurred within Wayne County, and the property that is the subject of this action is situated in Wayne County.

GENERAL ALLEGATIONS

5. From 1994 to the present date, Plaintiffs have owned and operated a 120 acre farm on the Stickdorn property where they raise grass-fed cattle. Plaintiffs have lived on farms and raised livestock for more than twenty (20) years and are accustomed to the fumes and odors typically associated with livestock production.

6. In October of 2003, the Lantz's established an animal feeding operation ("AFO") on the Zook property to engage in confined feeding of approximately 100 head of dairy cattle plus horses. The AFO constructed by the Lantz's and currently owned, operated and maintained by the Zooks includes a 168 foot hoop building located due West of the Stickdorn property with a liquid manure system that consists of two interior pits that empty into an outdoor, uncovered, cylindrical concrete manure slurry pit. The Lantz's decided to build the manure slurry pit on the East side of the hoop building approximately 246 feet West and fifteen (15) feet uphill of the Stickdorn property.

7. The Indiana Department of Environmental Management ("IDEM") regulates confined feeding operations in Indiana, as well as smaller animal feeding operations which have violated water pollution rules or laws. IDEM regulations which govern confined feeding were adopted by the Water Pollution Control Board on November 14, 2001 and became effective on March 10, 2002.¹

¹ 327 IAC 16, *et. seq.*

9. IDEM's confined feeding regulations, as explained in IDEM's *Confined Feeding Operation Guidance Manual*,² are based on widely known, customary, and accepted agricultural standards and best management practices applicable to animal waste management for protection of human health and the environment.³

10. These customary standards and practices require that all animal waste management systems (AWMS) be designed, constructed and maintained to: ensure that animal waste applied to soil does not exceed the soil's infiltration rate causing erosion/runoff or the agronomic rate creating conditions that are toxic to plant growth; protect ground water and receiving waters from excess nutrients, waste contaminants and bacteria; minimize degradation of air quality from noxious odors and emissions of hydrogen sulfide, ammonia and other harmful emissions; and protect animals, wildlife and human health.⁴

11. Accordingly, Indiana CFO regulations require manure storage structures be designed, constructed and maintained with a combined capacity to store manure, bedding, net average rain fall, and run-off from a 25 year, 24 hour rainfall for 180 days. In addition, all uncovered liquid manure storage structures must have at least two (2) feet of freeboard and an emergency spillway directed to a secondary containment, manure storage structure, or vegetative management system.

12. The manure slurry pit designed and constructed by the Lantz's and currently maintained by the Zooks is approximately fifty (50) feet in diameter and eight (8) feet deep (approximately 11,775 cubic feet); a capacity to store the manure and bedding of 100 dairy cows for a mere thirty (30) days, not including rain fall. Consequently, approximately every thirty (30) days from October 2003 to the present date, the Lantz's and/or the Zooks have to agitate, empty

² IDEM, *Indiana Confined Feeding Regulation Program, Guidance Manual*, (March 2002) available at <http://www.in.gov/idem/files/cfomanual.pdf>

³ See e.g. U.S. Dept. of Agriculture, NRCS, NEH Part 651, *Agricultural Waste Management Field Handbook* (Apr. 1992) available at <http://www.wsi.nrcs.usda.gov/products/W2Q/AWM/handbk.html>.

⁴ *Id.*

and land apply animal waste from the manure slurry pit without regard to soil and/or weather conditions, wind direction, whether the ground was frozen, snow-covered, or saturated, or the Stickdorns' health, well-being, and property.

13. When animal waste from the manure slurry pit on the Zook property is agitated, emptied and land applied, noxious odors and excessive levels of harmful gases including hydrogen sulfide, ammonia, volatile organic compounds, endotoxin, and particulate matter are released into the atmosphere.⁵ Due to the location of the manure slurry pit and prevailing wind direction, the noxious odors and harmful gases travel in an easterly direction from the Zook property and onto the Stickdorn property and residence.

14. The noxious odors and harmful gases that emanate from the manure slurry pit on the Zook property have and continue to cause the Stickdorns to suffer from adverse health symptoms including dizziness, nausea, choking, headaches, shortness of breath, memory loss, eczematous dermatitis, eye, nose and throat irritation and burning, and intermittent burning sensations of the mouth and tongue - symptoms that abate when the Stickdorns leave their home for 2-3 days.

15. Hydrogen sulfide at 1-2 parts per million (ppm) causes nausea, diarrhea, sleep disturbance, shortness of breath, respiratory irritation and headache. At these levels it can exacerbate symptoms of asthma.⁶ The Occupational Safety and Health Administration (OSHA) has set a permissible exposure limit (PEL) for hydrogen sulfide of 10 ppm. For community exposure the EPA has recommended a long-term exposure limit of 7 parts per billion (ppb). Studies of community exposure to hydrogen sulfide have shown increased prevalence of asthma and chronic bronchitis, eye and throat irritation, headaches, depression, fatigue and nausea at

5 Buntun, B. et. al., Monitoring and modeling of emissions from concentrated animal feeding operations: Overview of methods. *Environmental Health Perspectives*, 115: 313-316 (2007).

6 Schiffman, SS., et. al., Symptomatic effects of exposure to diluted air sampled from swine confinement atmosphere on healthy human subjects. *Environmental health Perspectives*, 113: 567-576 (2005).

exposures below 0.1 ppm.⁷ Levels measured inside animal confinement buildings are typically 1-2 ppm. Lethal levels of hydrogen sulfide (over 200 ppm) can be released when stored manure is agitated.

16. Volatile Organic Compounds (VOCs) totaling over 300 different substances have been measured from animal feeding operations. They produce odor and nasal irritation. Animal operations also release particulate matter and endotoxin into the air. Particulate matter emissions are associated with respiratory and cardiovascular illness. Endotoxin is a component of Gram negative bacteria that can stimulate inflammatory responses. In the respiratory tract, it can cause throat irritation and narrowing of the airways, which exacerbates asthma.

17. Due to the severity of adverse symptoms caused from exposure to harmful levels of hydrogen sulfide, ammonia, volatile organic compounds, endotoxin, and particulate matter from the AFO constructed, operated and maintained on the Zook property, the Stickdorns were forced to move away from their home on the Stickforn property in 2004. To date, they return only to care for their own animals.

18. On March 18, 2004, the Lantz's caused an animal manure spill into waters of the state in violation of 327 IAC 2-6-1-7, 327 IAC 2-1-6(a)(1), and/or 327 IAC 5-2-2. The manure spill contaminated a stream that traverses the Stickdorn property and which the Stickdorns use as drinking water for their cattle. IDEM inspectors confirmed elevated ammonia nitrate levels in the stream, and advised the Stickdorns to refrain from watering their cattle from the stream.

19. On September 18, 2004, the Lantz's caused an animal manure spill into the waters of the state in violation of 327 IAC 2-6-1-7, 327 IAC 2-1-6(a)(1), and/or 327 IAC 5-2-2. The manure spill contaminated a tributary of Symonds Creek which traverses the Stickdorn property. IDEM found that the manure spill "settled to form putrescent or otherwise objectionable

⁷ Iowa State University and the University of Iowa College of Public Health, *Concentrated Animal Feeding Operations Air Quality Study* available at www.ehsrc.org.

deposits, in an amount sufficient to be unsightly or deleterious, that produced color, visible oil sheen, odor, or other conditions in such a degree to create a nuisance." The spill rendered the creek unfit for livestock consumption and contaminated the shallow aquifer that supplies the drinking water to the Stickdorn's residential well.

20. On April 7, 2005, the Lantz's entered into an Agreed Order with IDEM to resolve the manure spill violations and, thereafter, sold the Zook property to the Zooks to avoid further IDEM regulation. Since that time, the Zooks have operated and maintained the AFO constructed by the Lantz's for confined feeding of approximately 100 head of dairy cattle.

21. Approximately every thirty (30) days from April 2005 to the present date, the Zooks agitate, empty and land apply animal waste from the manure slurry pit without regard to soil and/or weather conditions, wind direction, whether the ground is frozen, snow-covered, or saturated, or the Stickdorns' health, well-being, and property.

22. Approximately every thirty (30) days from April 2005 to the present date, the Zooks land apply animal waste to areas West of the Stickdorn property that contain flowing waters of the State and sensitive wetland areas causing elevated levels of total suspended solids (TSS), phosphorus, ammonia, nitrates and E.coli in streams that traverse the Stickdorn property.

23. The Zooks have continued manure storage and land application activities from April 2005 to the present time that cause noxious odors and harmful air pollutants, including hydrogen sulfide, volatile organic compounds, and particulate matter to travel downwind of the Zook property and invade the Stickdorn property including the Stickdorn's residence causing the Stickdorns to become ill and suffer adverse health symptoms.

24. On numerous occasions from 2004 to the present time, the Stickdorns informed the Lantz's and/or the Zooks that their manure storage, disposal and land application practices have and continue to create intolerable living conditions for the Stickdorns such that they are

unable to live in their home. Nevertheless, the Defendants refuse to change their manure storage, disposal and land application practices or implement measures to reduce noxious odors and harmful air emissions, protect ground water, and abate nuisance conditions.

25. On August 13, 2008, the Stickdorns sent a letter to the Lantz's and the Zooks notifying them that legal proceedings would ensue if the Defendants did not change their manure storage, disposal and land application practices or otherwise implement measures to reduce noxious odors and harmful air emissions, protect ground water, and abate nuisance conditions caused by the Defendants' past and ongoing waste storage, disposal and land application practices at the Zook property.

26. On November 22, 2008, the Defendants requested a meeting with Plaintiffs to resolve the matter without need for litigation stating "we are investigating the manure pit covers, etc."

27. On February 6, 2009, the Stickdorns, Lantz's and Zooks held a settlement conference during which the Stickdorns agreed not to pursue their legal claims and the Zooks and Lantz's agreed to: 1) cover the manure slurry pit on the Zook property with an impermeable barrier utilizing an appropriate vent and flare or gas treatment system to remain in place at all times including during agitation and pump out; 2) direct all milking parlor waste to the manure slurry pit; 3) land apply liquid manure at accepted agronomic rates using knife injection in a manner consistent with Indiana's manure management guidelines; and 4) provide twenty-four (24) hour notice to the Stickdorns prior to any land application of manure on the Zook property.

28. On May 22, 2009, Plaintiffs' counsel reduced the parties' oral agreement to writing and sent the written Settlement Agreement to the Defendants for signature.

29. Although Plaintiffs did not pursue their legal claims against the Defendants in accordance with the parties' oral agreement, on July 10, 2009, Defendants notified Plaintiffs' counsel of their intent to breach the parties' agreement.

30. To date, the Defendants have not implemented any of the agreed to measures or taken any other steps to reduce air emissions and odors, protect ground water, and abate nuisance conditions at the Zook property. Indeed, water quality testing performed on August 4, 2009 and again on October 23, 2009 revealed that animal waste from the Zook property caused E.coli contamination of streams that traverse the Stickdorn property at levels greatly exceeding water quality standards (e.g. 58,000 colonies/100 ml). Dangerous levels of ammonia, nitrogen and total suspended solids were found as well.

31. To date, the Stickdorns are unable to live in their home on the Stickdorn property due to adverse health conditions and symptoms caused by the Defendants' unreasonable animal waste management practices.

COUNT I - NUISANCE

32. Plaintiffs repeat, restate and reallege each and every allegation contained in paragraphs 1 through 31, above as though fully set forth in this Count I.

33. Defendants' past and ongoing animal feeding operations, animal waste storage, disposal and land application activities and violations of the laws, statutes and regulations of the State of Indiana have created conditions on the Zook property that: are injurious to the health of Plaintiffs; are indecent and offensive to the senses of Plaintiffs; obstruct the free use of property owned by Plaintiffs; and interfere with Plaintiffs' comfortable enjoyment of life or property and, therefore, constitute a nuisance as defined in Ind. Code § 32-30-6-6.

34. Defendants have been aware of nuisance conditions caused by their animal feeding operation, animal waste storage, disposal and land application activities, and violations

of the laws, statutes and regulations of the State of Indiana, yet they have allowed those nuisance conditions to continue to this day with blatant disregard for Plaintiffs' health, safety, well-being and inability to live in their own home.

35. Defendants have committed numerous violations of state law meant to protect Plaintiffs and their property from environmental pollution thereby creating a nuisance.

36. Defendants' past and ongoing animal waste storage, disposal and land application activities and violations of the laws, statutes and regulations of the State of Indiana constitute the “negligent operation of an agricultural operation and its appurtenances” as defined by Indiana’s Right to Farm Act, Ind. Code § 32-30-6-9 (the “Act”), thereby removing the animal feeding operation on the Zook property from the Act’s protection.

37. As a direct and proximate result of the nuisance created by Defendants' past and continued negligent animal waste storage, disposal and land application activities and operations, the Plaintiffs have been injured and sustained personal, property and other pecuniary damages, and will in the future continue to suffer injury to their property and persons if Defendants' nuisance activities are not abated.

38. By reason of the foregoing, Plaintiffs respectfully request judgment against the Defendants for relief as set forth in paragraph 66.

COUNT II - NEGLIGENCE

39. Plaintiffs repeat, restate and reallege each and every allegation contained in paragraphs 1 through 31, above as though fully set forth in this Count II.

40. At all times relevant herein, the Defendants had and have a duty to design, construct, maintain, manage, operate, direct and/or control animal feeding operations including but not limited to animal waste storage, disposal and land application activities on the Zook property in accordance with all applicable laws and regulations.

41. At all times relevant herein, the Defendants had and have a duty to design, construct, maintain, manage, operate, direct and/or control animal feeding operations including but not limited to animal waste storage, land application, and disposal activities on the Zook property in a reasonable manner and condition so as not to substantially injure the interests of adjoining land owners including Plaintiffs herein.

42. At all times relevant herein, the Defendants had and have a duty to design, construct, maintain, manage, operate, direct and/or control animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property in accordance with prevailing agricultural standards and practices exercised by reasonably prudent persons engaged in designing, constructing, maintaining, managing, operating, directing and/or controlling animal feeding operations under same or similar circumstances.

43. At all times relevant herein, it was the duty of the Defendants to exercise ordinary care in designing, constructing, maintaining, managing, operating, directing and controlling animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property so as not to cause injury or harm to the personal and/or property interests of others including Plaintiffs herein.

44. Notwithstanding the aforesaid duties, the Defendants committed the following acts and/or omissions:

a. failed to design, construct, maintain, operate, manage, direct and/or control animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property in accordance with all applicable laws, statutes and regulations;

b. failed to design, construct, maintain, operate, manage, direct and/or control animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property in accordance with prevailing agricultural standards and practices exercised by reasonably prudent persons engaged in designing, constructing, maintaining,

managing, operating, directing and/or controlling animal feeding operations under same or similar circumstances;

c. failed to design, construct, maintain, manage, operate, direct and/or control animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property in a reasonable manner and condition so as not to substantially injure the interests of adjoining land owners including Plaintiffs herein;

d. failed to exercise ordinary care in designing, constructing, maintaining, managing, operating, directing and/or controlling animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property.

45. As a direct and proximate result of the Defendants' negligent acts and/or omissions, the Plaintiffs have been injured and sustained personal, property and other pecuniary damages, and will in the future continue to suffer injury to their property and persons.

By reason of the foregoing, Plaintiffs respectfully request judgment against Defendants for relief as set forth in paragraph 67.

COUNT III - NEGLIGENCE PER SE

46. Plaintiffs repeat, restate and reallege each and every allegation contained in paragraphs 1 through 31 above as though fully set forth in this Count III.

51. Indiana's environmental statutes and regulations were enacted to protect public health and environment from uncontrolled air, land and/or water pollution.

52. Plaintiffs are members of the public and, therefore, members of the class of persons that Indiana's environmental statutes and regulations were enacted to protect from uncontrolled air, land and/or water pollution.

53. At all times relevant herein, the Defendants had and have a duty to design, construct, maintain, manage, operate, direct and control animal feeding operations including but not limited to animal waste storage, land application and disposal activities on the Zook property in accordance with all applicable laws and regulations including but not limited to Indiana's

environmental statutes and regulations.

54. Notwithstanding the aforesaid duty, the Defendants committed the following acts and/or omissions:

- a. operated, controlled or maintained a mode of transportation and/or facility from which reportable spills occurred into soil and/or surface waters of the state without containing the spills to prevent additional spilled material from entering the waters of the state in violation of 327 IAC 2-6.1-7;
- b. operated, controlled or maintained a mode of transportation and/or facility from which reportable spills occurred into soil and/or surface waters of the state without undertaking or causing others to undertake activities needed to accomplish a spill response in violation of 327 IAC 2-6.1-7;
- c. operated, controlled or maintained a mode of transportation and/or facility from which reportable spills occurred into soil and/or surface waters of the state without reporting the spills to IDEM in violation of 327 IAC 2-6.1-7;
- d. caused and/or allowed discharges of animal waste into waters of the state that settled to form putrescent or otherwise objectionable deposits, in amounts sufficient to be unsightly or deleterious, that produced color, visible oil sheen, odor, or other conditions in such degree to create a nuisance in violation of 327 IAC 2-1-6(a);
- e. caused and/or allowed discharges of animal waste into waters of the state in amounts sufficient to be acutely toxic to, or otherwise severely injure or kill aquatic life, other animals, plants or humans in violation of 327 IAC 2-1-6(a);
- f. caused and/or allowed discharges of animal waste into waters of the state in concentrations or combinations that otherwise impaired designated water uses in violation of 327 IAC 2-1-6(a);
- g. caused and/or allowed discharges of animal waste into waters of the state without a valid NPDES permit in violation of 327 IAC 5-2-2;
- h. caused and/or allowed discharges of animal waste into waters of the state in violation of Ind. Code § 13-18-4-5;
- i. caused and/or allowed discharges of contaminants, animal wastes, and noxious odors into the environment in violation of I.C. § 13-30-2-1.

55. As a direct and proximate result of the Defendants' violations of Indiana's environmental statutes and regulations, which constitute prima facie negligence, Plaintiffs have been injured and sustained personal, property and other pecuniary damages, and will in the future continue to suffer injury to their property and persons.

By reason of the foregoing, Plaintiffs respectfully request judgment against Defendants for relief as set forth in paragraph 68.

COUNT IV - TRESPASS

56. Plaintiffs repeat, restate and reallege each and every allegation contained in paragraphs 1 through 31, above as though fully set forth in this Count IV.

57. From October 2003 to the present date, Defendants negligently and/or knowingly and intentionally caused or allowed animal waste, air pollutants, harmful gases, and noxious odors, to enter and invade property owned and/or possessed by Plaintiffs.

58. Defendants' negligent and/or intentional conduct described above constitutes a continuing trespass on property owned and/or possessed by Plaintiffs.

59. As a direct and proximate result of Defendants' continued trespass on Plaintiffs' property, Plaintiffs have been injured and sustained personal, property and other pecuniary damages, and will in the future continue to suffer injury to their property and persons if Defendants' trespassing activities are not abated.

60. By reason of the foregoing, Plaintiffs respectfully request judgment against Defendants for relief as set forth in paragraph 69.

COUNT V - GROSS NEGLIGENCE

61. Plaintiffs repeat, restate and reallege each and every allegation contained in paragraphs 1 through 31, above as though fully set forth in this Count V.

62. Defendants knowingly, intentionally, willfully, wantonly and/or recklessly:
- a. violated and continue to violate applicable state laws, statutes and regulations meant to protect public health, safety and environment;
 - b. caused or allowed and continue to cause or allow noxious odors, harmful gases, air pollutants and fumes from animal waste to be dispersed into the air and invade Plaintiffs' property and/or cause Plaintiffs to suffer adverse health symptoms;
 - c. caused or allowed and continue to cause or allow contamination of soils and surface waters on Plaintiffs' property;
 - d. stored, land applied, spilled, leaked and/or discharged harmful animal wastes with utter disregard for the safety, health and well-being of other persons including Plaintiffs.

63. As a direct and proximate result of the Defendants' intentional, willful, wanton and grossly negligent misconduct, Plaintiffs have been injured and sustained personal, property and other pecuniary damages, and will in the future continue to suffer injury to their property and persons.

64. In accordance with Ind. Code § 34-51-3-4, Plaintiffs are entitled to the recovery of punitive damages because Plaintiffs' harm results from the willful and wanton acts or omissions or gross negligence of the Defendants.

65. By reason of the foregoing, Plaintiffs respectfully request judgment against Defendants, jointly and severally, for punitive or exemplary damages as set forth in paragraph 70.

PRAYER FOR RELIEF

66. As to the allegations contained in Count I, Plaintiffs request the following relief:
- a. Compensatory damages against Defendants jointly and severally for all damages incurred by Plaintiffs according to proof;
 - b. Injunctive relief ordering Defendants to take action as necessary to abate nuisance conditions at the Zook property;
 - d. All other relief as the Court deems just and proper.

67. As to the allegations contained in Count II, Plaintiffs request the following relief:
- a. Compensatory damages against Defendants jointly and severally for all damages incurred by Plaintiffs according to proof;
 - b. All other relief as the Court deems just and proper.
68. As to the allegations contained in Count III, Plaintiffs request the following relief:
- a. Compensatory damages against Defendants jointly and severally for all damages incurred by Plaintiffs according to proof;
 - b. All other relief as the Court deems just and proper.
69. As to the allegation contained in Count IV, Plaintiffs request the following relief:
- a. Compensatory damages against Defendants jointly and severally for all damages incurred by Plaintiffs according to proof;
 - b. Injunctive relief ordering Defendants to take action as may be necessary to abate the continuing trespass on Plaintiffs' property;
 - d. All other relief as the Court deems just and proper.
70. As to the allegations contained in Count V, Plaintiffs request punitive damages against Defendants jointly and severally in accordance with Ind. Code § 34-51-3-4.

Plaintiffs request trial by jury on all issues so triable.

DATED: November 10, 2009

Respectfully submitted,

Kim E. Ferraro, Attorney No. 27102-64
Legal Environmental Aid Foundation of Indiana, Inc.
150 Lincolnway, Suite 3002
Valparaiso, IN 46383
219/464-0104

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

Date: _____

Kim E. Ferraro, Attorney No. 27102-64
Attorney for Plaintiffs