

DECLARATION OF ERNIE SUNDSTROM

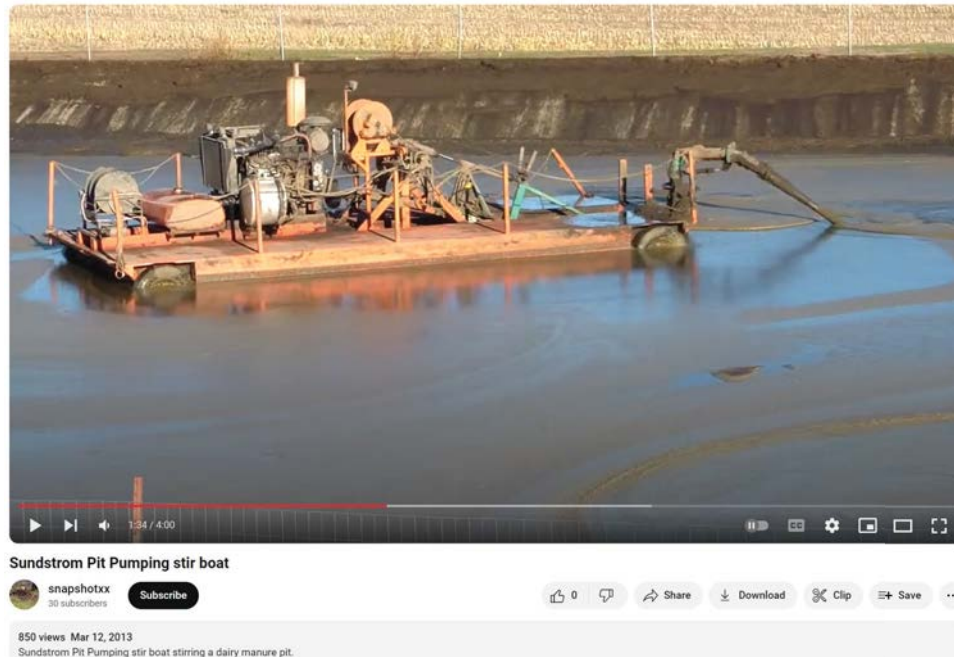
I, Ernie Sundstrom declare as follows:

1. I am over the age of 18. I currently reside in Colfax, Wisconsin.
2. I am an owner of Sundstrom's Pit Pumping, LLC ("Sundstrom"), which is a family business that I started and run with my brothers. I currently work for Sundstrom and have been an owner and operator of the company since Sundstrom was founded in 1994.
3. I am not being compensated for my testimony or involvement in any matter. I have no financial interest in the outcome of any proceeding.
4. Sundstrom has been providing professional manure services since 1994. At different points during that time, the company has offered a variety of services and products, such as manure agitation, manure pumping, manure application, septic pumping and portable toilet rentals, custom fabrication, and the construction of manure equipment, including manure hose reels and manure agitation boats.
5. As an owner of Sundstrom and during my decades of work for the company, I have personally worked in all aspects of the company, including the manure agitation, pumping, and application portion of the business, design and development of manure agitation boats, as well as pumping septic tanks containing

human waste. Through these decades of work with manure and human waste, I am knowledgeable about what pumps can pump liquid manure and human waste.

6. I have personally agitated thousands of manure lagoons over the course of about 30 years across ten different states. In some years we had about 70 to 80 accounts and we were agitating those lagoons twice a year. In my many years of experience agitating manure lagoons, many of the manure lagoons, about 50 percent or so, did not contain a crust. In particular, swine manure lagoons usually do not have a crust. Moreover, the liquid in many manure lagoons is much like water as much of the sediment has settled to the bottom. This watery manure is sprayed back into the lagoon to mix the sediment that has settled to the bottom into suspension so the lagoon can be pumped out and the nutrient-rich liquid manure can be applied to farm fields as fertilizer.

7. While at Sundstrom, I was personally involved in the design, development, production, public use, and public display, such as at trade shows and demonstrations, of the Sundstrom agitation boat (“Sundstrom Boat”), which was designed and built in about 2005 or 2006. An image of the Sundstrom Boat, dated March 23, 2013, is shown below:



8. The Sundstrom Boat was offered for sale, publicly displayed and demonstrated at various trade shows in the United States, sold, and publicly used from about 2006 through 2014 and thereafter. I was also personally involved in marketing efforts related to selling, demonstrating, and promoting the Sundstrom Boat, including at trade shows.

9. As part of our company's developmental efforts, Sundstrom began designing a manure agitation boat, the Sundstrom Boat, in 2005 or 2006. The Sundstrom Boat was offered for sale, sold, and used publicly from about 2006 until 2014 and beyond. The Sundstrom Boat had four wheels, with one wheel at each corner, and floats between the wheels. The Sundstrom Boat could be maneuvered over land via the unpowered wheels, maneuvered into a manure lagoon, and remotely maneuvered and controlled, including the speed and direction of the boat,

in the manure lagoon. The Sundstrom Boat was designed to agitate large manure lagoons by using an engine powered pump connected to a conduit that was connected to an agitation nozzle. The pump, conduit, and nozzle were controlled by a remote control, which allowed the operator to remotely maneuver the vehicle around the lagoon by adjusting the flow rate and direction of the nozzle and manure sprayed therefrom. The pump, conduit, and nozzle also sprayed the manure to agitate the manure lagoon and, if present, break up any crust that may have formed.

10. The original design of the Sundstrom Boat was created by an individual from North Carolina. To the best of my recollection his name was Mr. Christie. I received this individual's permission to use his initial design.

11. The Sundstrom Boat had a floatable vehicle body using three metal buoyant elements or pontoons.

12. There was an unpowered wheel on each of the four corners of the Sundstrom Boat so it could be rolled into and out of the manure lagoon.

13. One of the buoyant elements was positioned between the front right and rear right wheels. Another buoyant element was positioned between the front left and rear left wheels. The third buoyant element was positioned near the middle of the Sundstrom Boat.

14. The Sundstrom Boat used a pump and agitator nozzle from a Houle three-point tractor mounted manure agitator. We chose to use the Houle manure

agitator so customers could easily get parts without Sundstrom having to stock parts as Houle had dealerships around the country. The pump used on the Sundstrom Boat could pump liquid with suspended solids, such as liquid manure from animals and human sewage. I have used the Sundstrom Boat to pump animal manure and human sewage. Because the two types of waste are similar in terms of pumpability, the same pumps can be used to pump both fluids.

15. In 1994 and to this day, general water pumps or irrigation pumps have been commonly used to pump liquid manure. Water pumps from number of popular suppliers such as Gorman-Rupp Pumps, the Cornell Pump Company, Doda pumps, or Pioneer Pump all make water pumps that were used to pump liquid manure or liquids with suspended solids. Water pumps were commonly used to pump liquid manure from lagoons to irrigate it onto fields. From when I entered the manure business in 1994 through the present, dredge pumps were also commonly used to pump liquid manure or fluids with suspended solids. The Houle pump was chosen because its parts were readily available across the nation should customers need replacement parts.

16. The pump on the Sundstrom Boat was connected to a nozzle by a fluid conduit or pipe.

17. The pump had an impeller located in a housing with an opening or inlet in the bottom which it sucked in liquid manure and expelled it through the nozzle to agitate the contents of the liquid manure lagoon.

18. The nozzle was connected to a remote controlled, hydraulically powered linkage system that facilitates articulation of the nozzle to different orientations to agitate the manure lagoon and to maneuver the boat around the lagoon.

19. A P170 HP Case engine was connected to the pump by a mechanical drive and powered the pump. While the Case engine power source was mechanically connected to the pump it also could have been hydraulically connected to the pump. We chose to use a mechanical connection instead of a hydraulic connection as it was less expensive, and we wanted to keep our price-point low. However, a mechanical drive system could have easily been replaced with a hydraulic drive system as the two are easily interchangeable.

20. The locations of the various components were selected to provide a center of gravity close to the center of the boat for stability.

21. The Sundstrom Boat was remote controlled, and cable tethered to a point on land so that it could be operated by a person from shore. The remote control controlled the pump, throttle, clutch, cable winch, and nozzle. The remote control

controlled both the amount of liquid manure that flowed through the nozzle using valves and the direction of the liquid manure being sprayed from the nozzle.

22. The pump on the Sundstrom Boat drove liquid manure through the nozzle so that it pushed the boat against the cable and allowed the user to steer the boat around a manure lagoon by changing the orientation of the nozzle.

23. The initial, early design of the Sundstrom Boat had a chair for an operator to ride on and control the boat. However, due to safety concerns, the chair was replaced with a remote-control system so the operator could control the boat safely from shore. The Sundstrom Boat was remotely controlled by 2008. It was easy to add remote control to the boat's various functions, such as the engine, throttle, nozzle direction control, pump, and winch system.

24. Manure lagoons can be dangerous for people to be in or near given the risk of drowning or being overcome by harmful gasses. Therefore, it was obvious to me that the Sundstrom Boat should be remote controlled to remove the operator from being on the boat while operating in the manure lagoon.

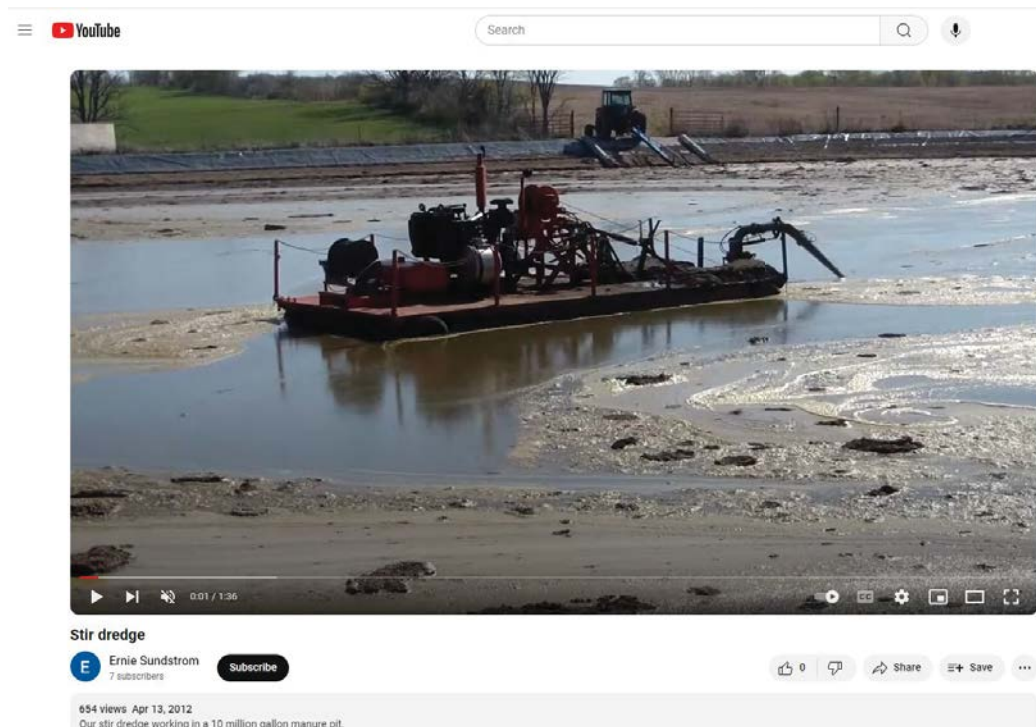
25. We chose to use a steel barge frame rather than a plastic frame, which was being used by others in the industry, to increase the durability of the Sundstrom Boat and allow for quick, on-the-job fixes using a welder to patch any holes.

26. It was obvious to me that the Sundstrom Boat should have wheels because wheels would increase the ease of moving it around a farm and decrease the

wear that would result from dragging the Sundstrom Boat over the ground. I was also motivated to add wheels to protect plastic-lined manure lagoons from the bottom of the Sundstrom Boat. I considered using powered wheels, such as wheels with hydraulic motors or planetary drives, to power the wheels on the Sundstrom Boat, but it would have driven up costs, so we chose not to because it did not fit within our desired price point.

27. Exhibit A is a video, that truthfully and accurately depicts and describes the Sundstrom Boat and each of the components outlined above.

28. I recorded Exhibit A, which was uploaded to YouTube and publicly available on April 13, 2012, at Stir dredge (youtube.com) (<https://www.youtube.com/watch?v=RDyAyLgMETY>).



29. Included above is a true and accurate screenshot of Exhibit A.

30. The Sundstrom Boat shown in the video had four wheels, one wheel on each corner of the boat.

31. Between each of the pairs of wheels on the sides of the boat were the metal buoyant chambers that float the boat.

32. Throughout the video you can see the Sundstrom Boat floating in the manure lagoon, and pumping manure out its nozzle.

33. I created and uploaded the video of Exhibit A to demonstrate the Sundstrom Boat agitating manure in a 10-million-gallon manure lagoon. The purpose of this video was to create a more widespread public disclosure of the Sundstrom Boat to generate public interest and potential sales.

34. Exhibit B is another video that truthfully and accurately depicts and describes the Sundstrom Boat, and its components and functions outlined above. Exhibit B is publicly accessible at Sundstrom Pit Pumping stir boat (youtube.com) (<https://www.youtube.com/watch?v=tTtFx1AUQi0>) and was uploaded on March 12, 2013.

35. Below are true and accurate screenshots of Exhibit B:



Sundstrom Pit Pumping stir boat

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Sundstrom Pit Pumping stir boat stirring a dairy manure pit.



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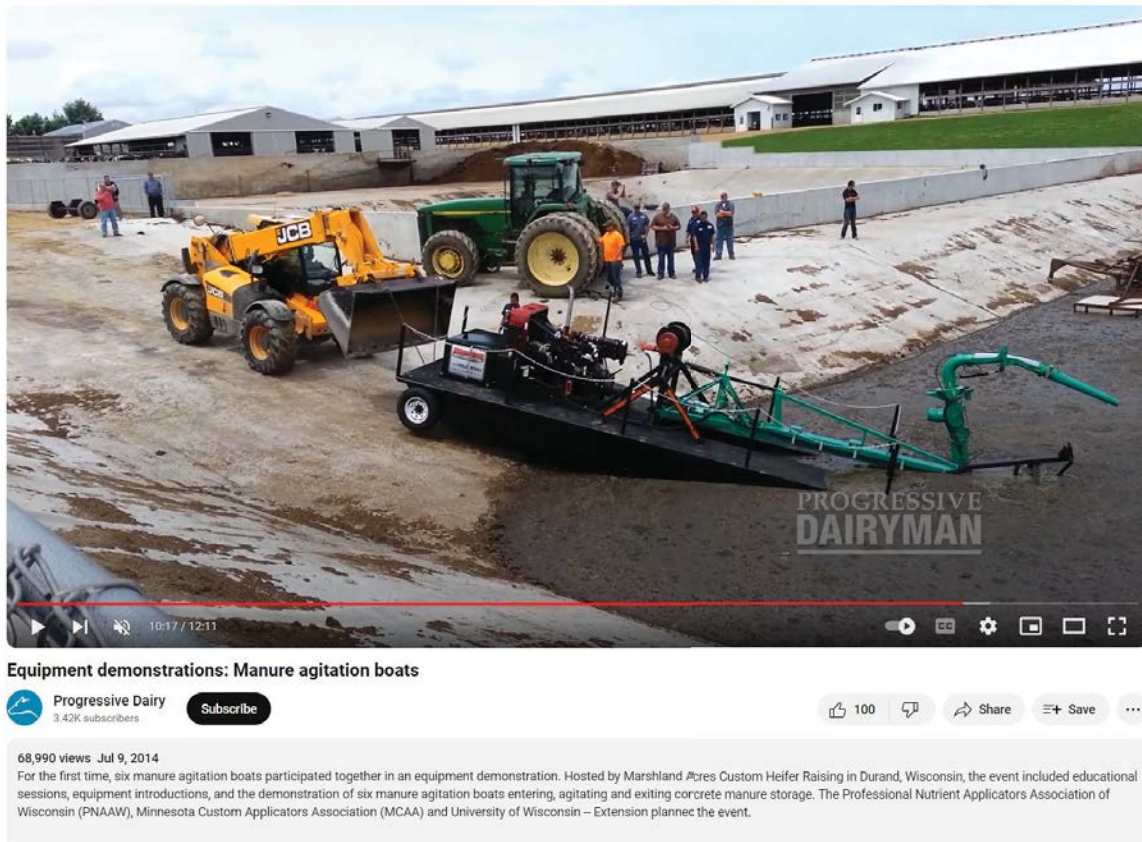
850 views Mar 12, 2013
Sundstrom Pit Pumping stir boat stirring a dairy manure pit.

36. In the public video of Exhibit B, two wheels are visible on the corners of the Sundstrom Boat. There are four wheels in total, with the other two wheels on the two corners of the side of the Sundstrom Boat positioned away from the camera.

37. Between each of the pairs of wheels on the sides of the boat are the metal, square buoyant chambers that allow the boat to float.

38. Throughout the video the Sundstrom Boat is visible floating in the manure lagoon, and pumping manure out its nozzle.

39. Exhibit C is a video that truthfully and accurately depicts and describes another, slightly different version of the Sundstrom Boat and each of the components outlined above.



40. Exhibit C is publicly accessible at Equipment demonstrations: Manure agitation boats (youtube.com) (<https://www.youtube.com/watch?v=FXRS-9Ip1pE>).

41. Exhibit C depicts an equipment demonstration of six manure agitation boats that took place in June 2014. I was at this demonstration at Marshland Acres Custom Heifer Raising in Durand, Wisconsin.

42. Included above is a true and accurate screenshot of Exhibit C showing the other, slightly different version of the Sundstrom Boat.

43. Like the Sundstrom Boat depicted in the screenshot of Exhibit A, this version demonstrated in 2014 in Exhibit C had four wheels. One of the four wheels is visible in this screenshot.

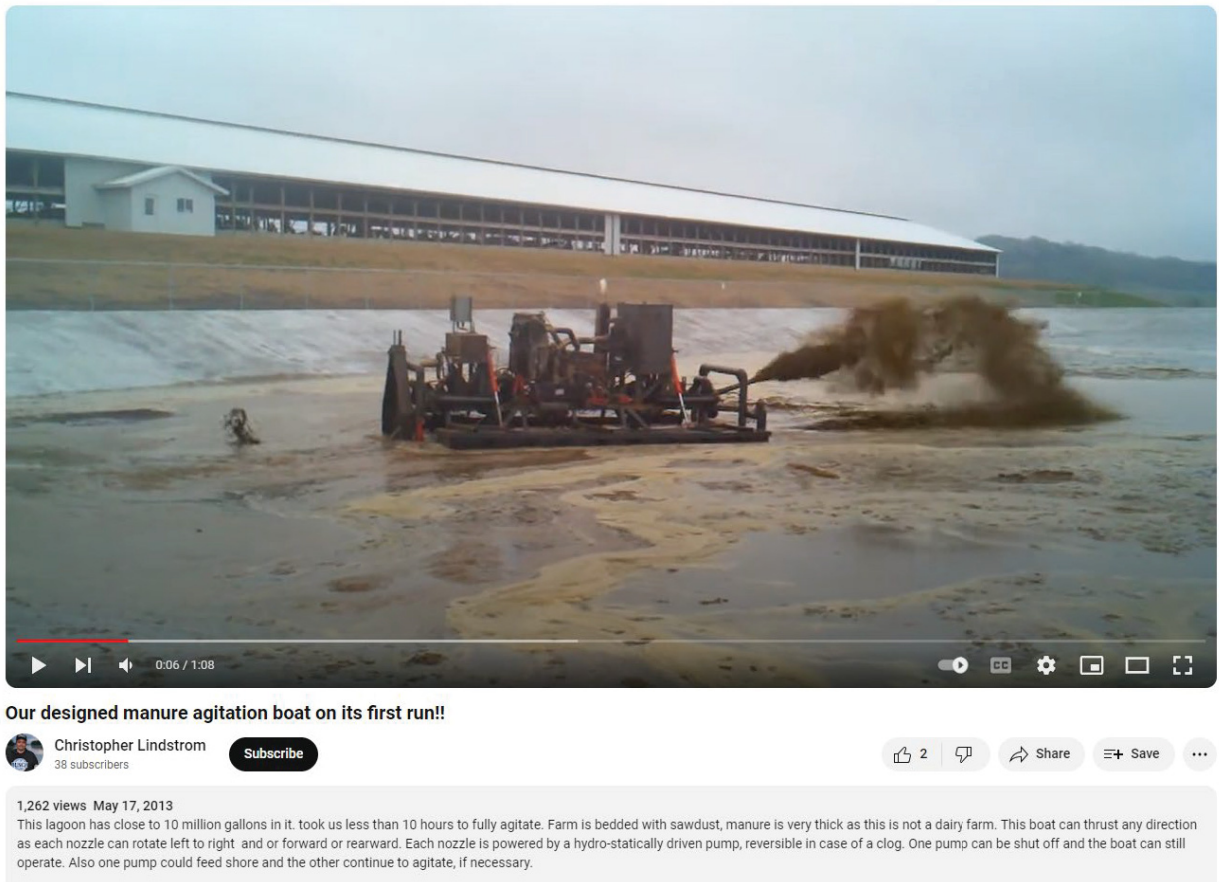
44. The model depicted in Exhibit C was on sale, publicly disclosed, and publicly used before 2013.

45. There was a lot of communication in the industry about the various designs used for manure agitation and we see many of the same companies at the various manure focused tradeshow and agricultural tradeshow, including Nuhn, Puck, and JT boats.

46. I spoke to Dennis Nuhn at the demonstration at Marshland Acres Custom Heifer Raising in Durand, Wisconsin illustrated in Exhibit C. He saw the Sundstrom Boat depicted in Exhibit C, and I told him that it and similar versions with wheels, such as the Sundstrom Boat depicted in Exhibit A, had been on the market for years.

47. As another example of a manure agitation boat publicly used at least by May 2013, Christopher Lindstrom designed a manure agitation boat with a hydraulically powered pump that was similar to the Sundstrom Boat. A video of this manure agitation boat was uploaded to YouTube and publicly available on May 17, 2013, at Our designed manure agitation boat on its first run!! (youtube.com) (<https://www.youtube.com/watch?v=EsBzgDfjsq0>).

48. Included below is a true and accurate screenshot of Christopher Lindstrom's manure agitation boat.



49. In addition, Sundstrom has shown its Sundstrom Boat at many manure and farm equipment tradeshow from 2006 to 2014, such as Wisconsin Farm Technology Days and The North American Manure Expo. I have seen Nuhn frequently at a number of manure and agricultural tradeshow prior to 2013. Prior to 2013, I have personally seen both Ian Nuhn and Dennis Nuhn look at the Sundstrom Boat. Both Ian Nuhn and Dennis Nuhn would have been aware of the Sundstrom Boat and its features and structure prior to 2013.

50. I have multiple manure agitation boats, which are used in Sundstrom's manure agitation business. The Nuhn Lagoon Crawler, or manure agitation boat, is my least preferred agitation boat to use because it has too many hydraulic parts and requires too much maintenance. It also does not agitate as well as boats with a propeller.

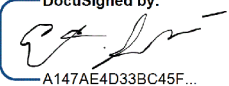
51. Given the various agitation boats that were on the market from 2008 to 2013, the Nuhn Lagoon Crawler agitation boat performed as expected given it is basically the Puck boat with powered wheels.

I. CERTIFICATION

52. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with knowledge that willful false statements and

the like so made are punishable by fine or imprisonment, or both, under the laws of the United States, including 18 U.S.C. § 1001.

53. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 8/1/2024
DocuSigned by: _____
Signature:  A147AE4D33BC45F... _____

Name: Ernie Sundstrom

Title: member, Sundstrom's Pit Pumping, LLC