

Midwest Environmental ADVOCATES

pro bono publico

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

May 19, 2004

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Barron Co. Solid Waste Mgmt Board
Barron County Waste to Energy
Facility
P.O. Box 68
Almena, WI 54805

Glen C. Anderson, Registered Agent
Zac, Inc.
513 2nd Street
P.O. Box 94
Chetek, WI 54728

RE: Sixty Day Notice of Intent to Sue Barron County (Barron County Waste to Energy Board) and Zac, Inc. for Air Violations Caused by the Barron County Waste to Energy Facility

To Whom It May Concern:

Midwest Environmental Advocates, Inc. (MEA), a 501(c)(3) nonprofit environmental law center, and Bender Law Offices represent the Sierra Club, a 501(c)(4) nonprofit organization incorporated under California law with over 700,000 members nationwide. The Chippewa Valley Group of the Sierra



Club is the local group in the Barron County area and has approximately 673 members. This letter is to inform you that the Sierra Club intends to sue Barron County (Barron County Waste to Energy Board) and Zac, Inc. for violations of the Clean Air Act.

Sierra Club intends to sue you, pursuant to section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), for the violations described below. The Clean Air Act requires that potential citizen plaintiffs notify violators, the Department of Natural Resources, and the Environmental Protection Agency 60 days before filing suit to enforce some provisions of the Clean Air Act. 42 U.S.C. § 7604(b). This notice is provided in accordance with 42 U.S.C. §7604(b)(1)(A) and 40 C.F.R. §§54.2-3 (2003). At the end of the 60 day period, we will file a lawsuit in the United States District Court for the Western District of Wisconsin to address the violations described below unless your violations are otherwise resolved during that time and we reach a reasonable settlement agreement that is memorialized in an enforceable consent decree.

Barron County's incinerator is a significant source of air pollution, including hazardous air pollutants such as mercury and dioxin. Mercury is a neurotoxin that causes brain damage and learning disabilities. Young children are at the greatest risk. EPA estimates that, every year, 630,000 children are born with harmful levels of mercury in their bodies. Much of this mercury comes from pregnant mothers who unknowingly eat mercury-contaminated fish. In 2002, the incinerator ranked as the sixth largest source of mercury emissions in the state. In fact, the incinerator is responsible for five percent (5%) of all mercury emissions in the state. This is very concerning at a time Wisconsin has issued a statewide health advisory for nearly all of Wisconsin's 15,000 inland waters due to mercury contamination.

EPA has reported that the primary source of dioxin that is contaminating our food supply comes from waste burning. EPA has described dioxin as the most dangerous chemical known to science. It causes cancer, suppression of the immune system, low sperm count, and birth defects. Dioxin is the component of Agent Orange that caused it to be banned. Just like mercury, ingestion of dioxin-contaminated food is the primary way people are exposed to dioxin. Of particular concern are reports that after one year of nursing, the daily dioxin intake for breast-fed infants is ten times the EPA "safe" dose. Although the incinerator no longer reports its dioxin emissions, historic information suggests that it is among one of the top five largest sources of dioxin in Wisconsin.

The incinerator is also a significant source of other harmful air pollutants, such as sulfur dioxide, an ingredient of acid rain and fine particle pollution. Fine particle pollution is able to bypass the lung's natural defenses and become lodged deeply in the lungs where it causes cancer, asthma attacks and even premature death.

Sierra Club members reasonably fear that they have been and will continue to be harmed by Barron County Waste to Energy Facility's incinerator (hereinafter "the Incinerator").

Members of the Sierra Club live, work and recreate in the area near the Incinerator and reasonably fear that the Incinerator's violations of the Clean Air Act result in greater emissions of air pollution.

The Incinerator has repeatedly violated and continues to violate air quality regulations contained in Wisconsin's State Implementation Plan ("SIP") and the Incinerator's Title V operation permit. These permit conditions and SIP provisions constitute "an emission standard or limitation," as defined in 42 U.S.C. § 7604(f), which includes any "standard, limitation, or schedule established under any permit issued pursuant to [Title V] or under any applicable State implementation plan approved by the Administrator, any permit term or condition" in effect under the Clean Air Act. 42 U.S.C. § 7604(f)(4).

The Sierra Club reasonably believes that the Incinerator has violated Wis. Stat. § 285.60(7) (previously Wis. Stat. § 144.391(7) (1991-92)) and Wis. Admin. Code § NR 407.09(2)(d), contained in Wisconsin's SIP, 40 C.F.R. § 52.2570, 60 Fed. Reg. 3538, 3543-44 (Jan. 18, 1995), in the following respects:

I. Violations of Title V Operation Permit No. 603049040-P01, § I.A.2.a.(8)

The Incinerator is a "municipal solid waste combustor" and its permit identifies it as such. Moreover, the Incinerator's permit explicitly prohibits it from burning any material that is not "municipal waste." See Permit No. 603049040-P01, § I.A.2.a.(8).

"Municipal solid waste combustor" means any solid waste treatment facility that is used to burn *municipal solid waste* or products derived from municipal solid waste, alone or in conjunction with other materials." Wis. Admin. Code § NR 500.03(151) (emphasis added).

Moreover, "Municipal solid waste" is defined under Wisconsin law as:

- (a) Household waste, or
- (b) Solid waste from commercial or industrial sources that does not contain hazardous waste and does not contain any process waste which is the direct or indirect result of the manufacturing of a product or the performance of a service such as dry cleaners or paint shops. 'Municipal solid waste' does not include waste wood, papermill sludge, sewage sludge, tires or industrial process wastes.

Wis. Admin. Code § NR 500.03(150) (emphasis added). Municipal waste is further defined by federal law pertaining to small municipal waste incinerators as excluding the following: used oil; sewage sludge; wood pallets; construction; renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff). 40 CFR § 62.15410.

Based on information obtained from eye witness accounts and documents in the public domain, we reasonably believe that the Incinerator routinely illegally burns waste that falls outside of the definition of "municipal solid waste," including but not limited to the following four types of waste: 1) tires, 2) demolition wastes and waste wood, 3) commercial or industrial process waste, and 4) special waste that may be considered either hazardous waste or commercial or industrial process waste.

Due to the burning of these illegal wastes, we reasonably believe that the Incinerator violates section I.A.2.a.(8) of its permit daily, and has since the permit was issued on April 25, 2002. Sierra Club intends to sue for each and every day on which the Incinerator burned such waste. These violations include, but are not limited to, the occasions specified in Table A, below. Violations consisting of unlawful incineration of non-municipal waste are listed by the date and source of such waste. Upon information and belief, the waste was burned within one to two days of receipt.

TABLE A
Barron County Incinerator Violations

Tires		
Date Waste Recieved	Source of Tire Waste	Amount of Waste Received (Tons)
7/1/2003	The Tire Shop	1.93
7/1/2003	Day's Tire Auto	4.56
7/1/2003	Nobel Tires	1.26
7/2/2003	LAD	6.26
7/3/2003	Louisiana Pacific	2.85
7/9/2003	Nobel Tires	21.09
7/9/2003	Nobel Tires	2.6
7/9/2003	Tire City	1.84
7/11/2003	Kadingers	5.56
7/15/2003	LAD Auto Crushing	8.06
7/16/2003	Toy's Scrap and Salvage	4.57
7/17/2003	Nobel Tires	0.99
7/19/2003	Nobel Tires	2.51
7/22/2003	LAD	7.64
7/23/2003	Lake Area Disposal	6.77
7/28/2003	Waterman Sanitation	7.44
7/29/2003	North Star Environmental Construction	1.41
7/29/2003	Nobel Tires	1.9
7/30/2003	Nobel Tires	2.59
7/31/2003	MDC Recycling	14.92
7/31/2003	Waterman Sanitation	7.24

7/31/2003	Lake Area Disposal	4.1
8/1/2003	Nobel Tires	1.52
8/5/2003	Nobel Tires	1.32
8/6/2003	Lake Area Disposal	2.03
8/8/2003	Tire Shop	n/a
8/8/2003	Nobel Tires	0.93
8/9/2003	Nobel Tires	2.22
8/10/2003	Nobel Tires	2.02
8/14/2003	Nobel Tires	2.67
8/18/2003	Lake Area Disposal	2.4
8/21/2003	Nobel Tires	2.6
8/21/2003	Ricci Tire	1.92
8/25/2003	Nobel Tires	2.16
8/26/2003	Nobel Tires	2.26
8/29/2003	Nobel Tires	2.61
9/5/2003	Nobel Tires	2.67
9/8/2003	Goldy Meyer	1.45
9/10/2003	Nobel Tires	2.87
9/15/2003	LPD Auto	9.44
9/15/2003	Nobel Tires	2.68
9/15/2003	Nobel Tires	2.19
9/16/2003	Nobel Tires	1.8
9/18/2003	Day's Tire Auto	6.23
9/19/2003	Nobel Tires	2.61
9/25/2003	Nobel Tires	3.11
9/26/2003	Nobel Tires	1.76
9/30/2003	Nobel Tires	1.94
9/30/2003	Nobel Tires	1.64
10/8/2003	Tire City	1.46
10/8/2003	Nobel Tires	1.97
10/9/2003	Nobel Tires	1
10/11/2003	Ricci Tire	2.09
10/13/2003	Nobel Tires	2.84
10/15/2003	Nobel Tires	2.07
10/16/2003	Nobel Tires	1.2
10/22/2003	Nobel Tires	2.43
10/24/2003	Nobel Tires	1.96
10/27/2003	Tire Shop	1.78
10/31/2003	Ricci Tires	0.79
11/4/2003	Nobel Tires	1.36
11/4/2003	Tire Shop	1.64
11/5/2003	Ricci Tire	0.74
11/6/2003	Mike Zuru	0.31

11/7/2003	Nobel Tires	2.65
11/8/2003	Nobel Tires	0.86
11/11/2003	Bruce Hill	1.38
11/11/2003	Nobel Tires	1.02
11/11/2003	Nobel Tires	1.06
11/12/2003	Tire City	1.55
11/12/2003	Nobel Tires	2.77
11/12/2003	Nobel Tires	1.28
11/13/2003	A-1 Express Trucking Inc.	8.83
11/13/2003	Tire City	1.54
11/13/2003	Lake Area Disposal	1.57
11/15/2003	Ivan Poews	0.44
11/15/2003	Nobel Tires	1.81
11/17/2003	Ricci Tires	1.97
11/18/2003	Nobel Tires	1.39
11/18/2003	Day's Tire Auto	5.6
11/18/2003	Day's Tire Auto	1.11
11/19/2003	Nobel Tires	1.02
11/21/2003	Nobel Tires	1.83
11/22/2003	Oasis Auto Body	0.37
11/24/2003	Nobel Tires	1.26
11/26/2003	Nobel Tires	0.81
11/26/2003	Ricci Tire	1.68
12/1/2003	Nobel Tires	1.23
12/3/2003	Kadingers	3.09
12/3/2003	Nobel Tires	1.48
12/6/2003	Nobel Tires	1.31
12/8/2003	Nobel Tires	0.94
12/12/2003	Ricci Tire	2.34
12/15/2003	Nobel Tires	2.51
12/15/2003	Nobel Tires	2.62
12/17/2003	Nobel Tires	0.83
12/17/2004	Tire City	1.65
12/19/2003	Nobel Tires	2.06
12/22/2003	Nobel Tires	1.24
12/26/2003	Ricci Tire	2.07
	Total Tire Waste	297.82

	Waste Wood and Demolition Waste	
Date Waste Recieved	Source of Wood and Demolition Waste	Amount of Waste Received (Tons)
10/8/2002	Heintz Oil	7.56
10/9/2002	Heintz Oil	5.7
7/1/2003	Turcott Construction	0.83
7/1/2003	Turcott Construction	0.99
7/2/2003	Turcott Construction	1.26
7/2/2003	Turcott Construction	0.91
7/3/2003	Sunderland Construction	0.66
7/3/2003	Turcott Construction	1.03
7/3/2003	Sunderland Construction	0.71
7/7/2003	Turcott Construction	0.99
7/7/2003	Vermillion Construction	3.75
7/7/2003	Turcott Construction	0.48
7/7/2003	Kuhl Construction	0.5
7/7/2003	New Light Construction	n/a
7/8/2003	KM Construction	0.67
7/9/2003	Turcott Construction	1
7/10/2003	Turcott Construction	0.73
7/11/2003	Kuhl Construction	0.57
7/12/2003	Turcott Construction	0.71
7/13/2003	O'Brian's Construction	1.48
7/14/2003	Sunderland Construction	0.56
7/15/2003	Kuhl Construction	0.17
7/15/2003	Paul's Sheet Metal	0.39
7/16/2003	Kuhl Construction	0.83
7/21/2003	Paul's Sheet Metal	0.34
7/24/2003	Turcott Construction	0.3
7/25/2003	Turcott Construction	0.35
7/26/2003	Paul's Sheet Metal	0.37
7/30/2003	Sunderland Construction	0.51
8/4/2003	Turcott Construction	0.39
8/8/2003	n/a (shingles)	0.79
8/8/2003	n/a (shingles)	n/a
8/10/2003	Ronka Construction	n/a
8/11/2003	n/a (shingles)	0.87
8/12/2003	n/a (shingles)	1.88
8/18/2003	Diversified Builders	1.36
8/18/2003	Westphal Roofing	1.56
8/21/2003	Turcott Construction	0.45

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8/22/2003	C+K Construction (shingles)	n/a
8/22/2003	Moon Lake (shingles)	n/a
8/24/2003	Ronca Construction	n/a
8/25/2003	Diversified Builders	n/a (2 air conditioners)
8/26/2003	Turcott Construction	0.39
8/26/2003	n/a (shingles)	2.33
8/26/2003	n/a (shingles)	1.63
8/30/2003	n/a (shingles)	n/a
9/6/2003	Neitzel Construction	0.33
9/10/2003	Turcott Construction	0.92
9/27/2003	Kuhl Construction	0.35
9/28/2003	Turcott Construction	1.15
10/1/2003	Jacobsen Construction	0.5
10/4/2003	Manns Construction	n/a
10/7/2003	n/a (construction)	0.72
10/7/2003	Helling Construction	1.32
10/7/2003	Kuhl Construction	3.23
10/9/2003	Sella Construction	1.85
10/9/2003	Kuhl Construction	2.06
10/10/2003	Cordes Construction	0.52
10/11/2003	Cordes Construction	0.48
10/13/2003	Kuhl Construction	2.48
10/16/2003	Cordes Construction	0.68
10/16/2003	Kuhl Construction	0.35
10/20/2003	Cordes Construction	0.42
10/31/2003	Turcott Construction	0.56
11/2/2003	Kuhl Construction	0.53
11/3/2003	n/a (shingles)	1.03
11/18/2003	Kuhl Construction	0.08
11/21/2003	Kuhl Construction	0.33
11/22/2003	n/a (shingles)	0.5
11/26/2003	Cordes Construction	1.29
12/4/2003	Cordes Construction	0.43
12/4/2003	Kuhl Construction	1.55
12/5/2003	Turcott Construction	0.41
12/8/2003	Kuhl Construction	0.19
12/15/2003	Kuhl Construction	0.26
12/16/2003	Vermillion Construction	4.2
12/23/2003	Kuhl Construction	0.07
12/23/2003	McDonald Construction	0.43
	Total Waste Wood and Demolition Waste	75.22

Commercial or Industrial Process Waste		
Date Waste Received	Source of Commercial or Indus. Process Waste	Amount of Waste Received (Tons)
7/2/2003	3M	7.15
7/2/2003	3M-Menomonie	8.95
7/7/2003	3M	5.18
7/8/2003	3M-Menomonie	8.07
7/9/2003	3M	5.72
7/9/2003	3M	5.36
7/11/2003	3M	7.15
7/14/2003	3M	2.16
7/16/2003	3M	6.2
7/16/2003	3M-Menomonie	5.25
7/18/2003	3M	6.59
7/21/2003	3M	3.72
7/21/2003	3M	3.95
7/23/2003	3M	6.09
7/23/2003	3M-Menomonie	11.11
7/25/2003	3M	6.71
7/28/2003	3M	6.48
7/28/2003	3M-Menomonie	7.06
7/28/2003	3M	3.79
7/30/2003	3M	7.02
8/1/2003	3M	5.85
8/4/2003	3M	2.48
8/6/2003	3M	5.93
8/8/2003	3M	6.23
8/11/2003	3M	3.54
8/13/2003	3M	5.07
8/15/2003	3M	6.33
8/18/2003	3M	4.3
8/22/2003	3M	6.66
8/25/2003	3M	2.53
8/25/2003	3M	4.65
8/26/2003	3M-Menomonie	10.26
8/27/2003	3M	5.63
8/29/2003	3M	6.64
9/8/2003	3M	3.9
9/8/2003	3M	3.59
9/10/2003	3M	7.35
9/12/2003	3M	7.06
9/15/2003	3M	4.12
9/16/2003	3M	5.47

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9/17/2003	3M	5.83
9/24/2003	3M	5.95
9/25/2003	3M-Menomonie	7.77
9/26/2003	3M	6.83
9/29/2003	3M	4.56
9/29/2003	3M	3.74
9/29/2003	3M	9.09
10/16/2003	3M-Menomonie	9.57
11/3/2003	3M	4.27
11/5/2003	3M	5.91
11/5/2003	3M	6.53
11/7/2003	3M	6.34
11/10/2003	3M	3.45
11/12/2003	3M	6.33
12/1/2003	3M	2.23
12/1/2003	3M-Menomonie	10.36
12/3/2003	3M	4.73
12/5/2003	3M-Menomonie	7.54
12/5/2003	3M	7.37
12/8/2003	3M	4.25
12/10/2003	3M	5.56
12/12/2003	3M	5.88
12/15/2003	3M	5.32
12/15/2003	3M-Menomonie	6.29
12/16/2003	3M-Menomonie	8.2
12/16/2003	3M	7.11
12/24/2003	3M	5.36
12/29/2003	3M	2.09
12/30/2003	3M-Menomonie	7.75
	Total Commercial or Industrial Process Waste	407.51

	Special Waste	
Date Waste Recieved	Source of Special Waste	Amount of Waste Received (Tons)
10/8/2002*	Heintz Oil (Thimet)	0.003
10/9/2002*	Heintz Oil (Thimet)	0.003
7/10/2003	WRR Environmental Services	14.26
7/14/2003	CRI Recycling Services, Inc.	9.52
7/24/2003	Special Waste Disposal, Inc.	7.07
7/24/2003	WRR Environmental Services	7.35
8/7/2003	WRR Environmental Services	18.68

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8/14/2003	WRR Environmental Services	14.06
8/21/2003	WRR Environmental Services	13.44
9/8/2003	CRI Recycling Services, Inc.	14.68
9/11/2003	WRR Environmental Services	10.68
10/7/2003	WRR Environmental Services	10.2
10/9/2003	WRR Environmental Services	9.9
10/23/2003	WRR Environmental Services	9.24
11/3/2003	CRI Recycling Services, Inc.	8.97
11/4/2003	Recycle Technologies, Inc.	0.71
11/5/2003	CRI Recycling Services, Inc.	12.79
11/6/2003	WRR Environmental Services	16.73
11/20/2003	WRR Environmental Services	14.22
11/21/2003	CRI Recycling Services, Inc.	15.66
11/26/2003	Oxbo Int. (Paint Matts)	n/a
12/4/2003	WRR Environmental Services	13.27
12/12/2003	WRR Environmental Services	10.91
12/22/2003	WRR Environmental Services	10.38
12/31/2003	WRR Environmental Services	7.77
	Total Special Waste	250.49

* Date that Sierra Club believes waste was incinerated.

II. Violations of Permit No. 603049040-P01, § I.B.3.a.(1)

Section I.B.3.a.(1) of BCI's permit limits sulfur dioxide emissions to 5.21 pounds/hour from each of two incinerators; a maximum of 10.42 pounds/hour cumulatively. Based on stack test data available to the Sierra Club, the Sierra Club reasonably believes that the Incinerator has repeatedly violated this limit. Specifically, stack tests of emissions from the Incinerator conducted on January 14 and 15, 2003, report that the Incinerator's average sulfur dioxide emissions were 10.83 pound per hour. Individual stack test runs resulted in hourly sulfur dioxide rates of 13.00, 10.70, and 8.80 pounds per hour.

Stack tests on May 16 and 17, 2002, also indicate violations of sulfur dioxide limits. During that test sequence the Incinerator's average sulfur dioxide emissions were 17.92 pound per hour. Individual runs resulted in hourly sulfur dioxide rates of 17.06, 16.57, and 20.12 pounds per hour.

Based on this pattern of stack test violations, Sierra Club and its members reasonably believe that the Incinerator has been violating the emission limits for sulfur dioxide in its Clean Air Act Title V permit every day since April 26, 2002, and continuing to the present.

III. Conclusion

The Sierra Club is authorized to sue, on behalf of its members, to enforce these violations of the Incinerator's Title V permit. See 42 U.S.C. §§ 7604(a); 7604(f)(1), (4).

At the close of this 60 day notice period, if you have not corrected these violations, we intend to file a citizen suit to enforce the terms of the federally-enforceable Title V permit and the State Implementation Plan. You are liable up to the statutory maximum of \$32,500 per violation per day for each violation stated above. In filing this action, the Sierra Club also intends to pursue injunctive relief as well as costs, attorneys' fees and litigation expenses.


The persons giving notice are the Sierra Club, whose principal office is located at 85 Second Street, 2d Floor, San Francisco, California 94105-3441, and who can be reached at (415) 977-5500. The John Muir Chapter of the Sierra Club, which includes the Chippewa Valley Group, has a principal place of business at 222 S. Hamilton Street, Suite 1, Madison, Wisconsin, 53703.

We are willing to discuss effective remedies for the violations noted in this letter during the 60 day notice period, as well as any facts that you believe are relevant but are not reflected in this notice letter. However, if you wish to pursue such negotiations in the absence of litigation, we suggest that you initiate those discussions within the next 10 days so that they may be completed before the end of the 60-day notice period. You can reach Melissa K. Scanlan directly by calling 608-251-5047 ext. 3 to initiate negotiations.

Sincerely,

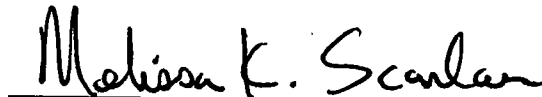
Attorneys for Sierra Club:

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**MIDWEST ENVIRONMENTAL
ADVOCATES, INC.**



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Sierra Club's Notice of Intent to Sue for Violations of the Clean Air Act Occurring At The Barron County Waste To Energy Facility

cc (via First Class U.S. mail):

<p>Honorable John Ashcroft Attorney General U.S. Department of Justice Room B-103 950 Pennsylvania Avenue NW Washington, DC 20530-0001</p> <p>Al Zeltner Barron County Waste to Energy Facility 575 10 ½ Avenue Almena, WI 54805</p> <p>Thomas Dawson Wisconsin DOJ- Environmental Protection Unit PO Box 7857 Madison, WI 53707-7857</p>	<p>Gov. James E. Doyle Wisconsin Office of the Governor 115 East State Capitol Madison, WI 53702</p> <p>Peg Lautenschlager Attorney General of Wisconsin Wisconsin Department of Justice PO Box 7857 Madison, WI 53707-7857</p> <p>Lloyd Eagan, Director Bureau of Air Management Wisconsin Department of Natural Resources 101 S. Webster St. Madison, WI 53703</p> <p>Bharat Mathur Acting Regional Administrator U.S. E.P.A. 77 W. Jackson Blvd. Chicago, IL 60604</p>
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