

# Midwest Environmental ADVOCATES

*pro bono publico*

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

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August 13, 2004

**Steven Palskill**  
Operations Manager  
Emmpak Foods, Inc.  
200 South Emmber Lane  
Milwaukee, WI 53233

**Cargill Meat Solutions**  
Attention: Legal Department  
PO Box 626.  
Minneapolis, MN 55440-5626

**Excel Corporation**  
Attention: Legal Department  
PO Box 2519  
Wichita, KS 67201

**Re: 60 Day Notice of Intent to Sue under the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(1), for Violations of Wastewater Discharge Permit 5.01 and Section 11.203 of the Milwaukee Metropolitan Sewerage District Regulations.**

To Whom It May Concern:

We represent the Sierra Club, a nonprofit organization incorporated under California law with over 700,000 members nationwide. The Great Waters Group of the Sierra Club has approximately 3,200 members in the Milwaukee area.

This letter is to inform you that the Sierra Club intends to sue Emmpak Foods, Inc., ("Emmpak") a domestic corporation doing business in Wisconsin as "Emmpak" and "Emmber Foods" for violations of Wastewater Permit 5.01 ("Permit") and Section 11.203 of the Milwaukee Metropolitan Sewerage District ("MMSD") regulations. Emmpak is owned by Excel Corporation, a wholly owned subsidiary of Cargill, Inc., a foreign corporation doing business in Wisconsin as "Cargill."

60 Day Notice of Intent To Sue Emmpak Foods, Inc.  
8/13/2004  
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Organizations listed for identification purposes only.

702 E. Johnson Street, Madison, WI 53703  
Telephone 608.251.5047 Fax 608.268.0205  
advocate@midwestadvocates.org • www.midwestadvocates.org

Members of the Great Waters Group of the Sierra Club use, recreate on, and enjoy the recreational and aesthetic values of the natural resources of Lake Michigan and the waters that flow into it. Emmpak has continuously violated its Permit by sending excessive amounts of fats, oil and grease into the MMSD system. Due to sewer overflows, these excessive amounts of fats, oil and grease discharge into Lake Michigan. Sierra Club members have a reasonable concern that their use and enjoyment of Lake Michigan have been and will be diminished by Emmpak's Permit violations. Members of the Great Waters Group are also ratepayers for sewer and water service provided by MMSD whose sewer rates are affected by the extent to which MMSD must expend public resources to monitor and treat effluent discharged by Emmpak. The Sierra Club believes that a federal court can redress its injuries by ensuring that Emmpak complies with the law and pays penalties for its violations.

Emmpak has repeatedly violated, and continues to violate, its Permit to discharge fats, oil and grease into the MMSD publicly owned treatment works and regulations setting forth local limits for oil and grease discharges established pursuant to 33 U.S.C. § 1317(d) (2003). *See also* 40 C.F.R. § 403.5(d) (2003). Violation of a pretreatment standard or permit is a violation of an effluent standard or limitation and is actionable under the citizen suit provision of the Clean Water Act. 33 U.S.C. 1365(f)(4); 40 C.F.R. § 403.5(d).

Under section 1.02(2) of the Permit, issued by MMSD on March 15, 2000, and section 11.203 of MMSD regulations, Emmpak is prohibited from discharging fat, oil and grease into the MMSD treatment system in concentrations that exceed 300 milligrams per liter (mg/L) as a daily maximum limit. On at least the following dates, records in the public domain show that Emmpak discharged fat, oil and grease into the MMSD treatment system from the Emmpak facility located in the vicinity of 200 South Emmer Lane in Milwaukee, Wisconsin, in excess of the limit established in section 1.02(2) of the Permit and MMSD regulations:

SAMPLE DATE	RESULT (mg/L)
5/22/00	487
5/22/00	1,220
7/27/00	850
8/03/00	1,500
8/24/00	750
9/15/00	4,020
10/11/00	500
8/03/00	740
2/9/01	6,400
2/23/01	980
3/13/01	890

5/18/01	320
5/21/01	350
6/11/01	870
6/19/01	1,100
8/06/01	880
9/26/01	3,430
10/24/01	520
10/29/01	370
11/16/01	1,100
12/03/01	470
12/17/01	410
1/11/02	790
2/11/02	1,100
2/22/02	370
3/11/02	420
4/8/02	1,500
4/17/02	1,300
4/23/02	640
5/10/02	660
6/26/02	1,400
7/12/02	1,600
9/13/02	330
10/10/02	370
1/6/03	880
2/20/03	330
3/17/03	320
5/13/03	800
6/09/03	640
6/16/03	5,800
6/17/03	2,200
6/18/03	2,700
7/22/03	960
8/29/03	390
9/05/03	670
9/10/03	1,500
9/22/03	610
9/24/03	400
9/29/03	460
10/13/03	850
11/04/03	730
11/05/03	2,000
11/11/03	910

11/19/03	3,800
12/10/03	710
1/8/04	410
3/10/04	1,700
4/1/04	510
4/28/04	430
5/6/04	1,100 <sup>1</sup>
5/11/04	1,100 <sup>2</sup>
5/17/04	780 <sup>3</sup>
5/21/04	730 <sup>4</sup>
5/24/04	670 <sup>5</sup>
5/26/04	1,200 <sup>6</sup>
6/1/04	730 <sup>7</sup>
6/4/04	460 <sup>8</sup>
6/15/04	1,300 <sup>9</sup>

Sierra Club intends to file a citizen suit pursuant to 33 U.S.C. §1365(a)(1) of the Federal Water Pollution Control Act against Emmpak for all violations of the Permit and MMSD regulations set forth in this letter, as well as other, yet to be discovered violations of the same nature. Emmpak may be liable for up to \$ 32,500 per day for each violation of the Permit that occurred after March 15, 2004, and \$27,500 for each violation on or before March 15, 2004 and after January 30, 1997. 33 U.S.C. §1319(d); 40 C.F.R. §19.4, Table 1.

In filing this action, the Sierra Club intends to pursue penalties and/or injunctive relief as well as costs, attorneys' fees and litigation expenses pursuant to 33 U.S.C. 1365(d).

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 Great Waters Group, resides at 222 S. Hamilton Street, Suite 1, Madison, Wisconsin, 53703.

The business entities and persons referenced throughout this letter as "Emmpak" include all related business entities and corporate officers who are responsible for the violations outlined in this letter.

<sup>1</sup> Highest sample from three grab samples, with average of 610 mg/l computed.

<sup>2</sup> Highest sample from four grab samples, with average of 775 mg/l computed.

<sup>3</sup> Represents an average of three to four grab samples.

<sup>4</sup> Highest sample from two grab samples.

<sup>5</sup> Highest sample from four grab samples, with average of 433 mg/l computed.

<sup>6</sup> Highest sample from four grab samples, average of 566 mg/l computed.

<sup>7</sup> Represents an average of three to four grab samples.

<sup>8</sup> Represents an average of three to four grab samples.

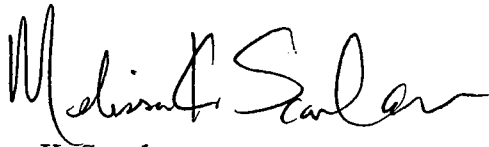
<sup>9</sup> Represents an average of three to four grab samples.

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 should direct all correspondence or telephone contact to the following attorneys for Sierra Club: Jodi Habush Sinykin, Of Counsel to Midwest Environmental Advocates, Inc., 9610 North Lake Drive, Milwaukee, Wisconsin, 53217, tel. (414) 961-8944, and fax. (414)961-9539; Melissa K. Scanlan or Andrew C. Hanson, Midwest Environmental Advocates, Inc., 702 E. Johnson Street, Madison, Wisconsin 53703, tel. (608) 251-5047 and fax (608) 268-0205;

Sincerely,

**MIDWEST ENVIRONMENTAL ADVOCATES, INC.**



Melissa K. Scanlan  
State Bar # 1034783  
Andrew C. Hanson  
State Bar # 1038367

Of Counsel  
Jodi Habush Sinykin  
State Bar # 1022100

cc: Mike Leavitt, Administrator U.S. Environmental Protection Agency  
Bharat Mathur, Acting Regional Administrator, U.S. EPA Region V  
Secretary Scott Hassett, Wisconsin Department of Natural Resources  
CT Corporation System, Registered Agent for Emmpak Foods, Inc.