

**Midwest Environmental
ADVOCATES**

VIA CERTIFIED MAIL

April 11, 2002

Mr. Gary Ruegsegger
Maple Ridge Dairy, Inc.
EP 4271 March Rapids Ave.
Stratford, WI 54484

Mr. Ken Hein
Maple Ridge Dairy, Inc.
EP 4271 March Rapids Ave.
Stratford, WI 54484

Gary Halopka
Custom Applicator
5913 County Road F
Dorchester, WI 54425

RE: NOTICE OF INTENT TO SUE FOR VIOLATIONS OF CLEAN WATER ACT AND
RESOURCE CONSERVATION AND RECOVERY ACT.

To the representatives of the Maple Ridge Dairy:

We represent the Wisconsin River Country Group of the John Muir Chapter of the Sierra Club, Inc. I am writing to you because you are the owner or operator and onsite representative or agent of the Maple Ridge Dairy located in Marathon County, Wisconsin on NW 3 Section 21 T27N, R3E, Township of Eau Pleine. This letter is to inform you that the Sierra Club intends to sue Maple Ridge Dairy under 33 U.S.C. §1365 for violating the

Clean Water Act (CWA), and under 42 U.S.C. §6972 for violating the Resource Conservation and Recovery Act (RCRA).

Members of the Wisconsin River Country Group of the Sierra Club use, recreate on, and enjoy the aesthetic values of the natural resources of Marathon County, including the Big Eau Pleine River. Richard Wentzel, a Sierra Club member, enjoys using and fishing the waters of the Big Eau Pleine River. Mr. Wentzel's and the Sierra Club's interests in the Big Eau Pleine River have been impaired by Maple Ridge Dairy's violations of federal environmental laws.

I. VIOLATION OF THE FEDERAL CLEAN WATER ACT

The Clean Water Act prohibits the discharge of pollutants from a point source to the waters of the United States, except pursuant to and in compliance with a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. 33 U.S.C. §1311(a), §1342; WIS. STAT. §283.31. The Act defines "pollutant" to include solid waste, biological materials, and agricultural waste discharged into water. 33 U.S.C. §1362(6). Concentrated animal feeding operations (CAFO's) are point sources under the Clean Water Act. 33 U.S.C. §1362(14); WIS. STAT. §283.01(12)(a). Both the Wisconsin Department of Natural Resources (DNR) and the U.S. Environmental Protection Agency define a CAFO as any animal feeding operation that feeds, confines, or stables 1,000 animal units or more. 40 C.F.R. §122.23(b)(1); WIS. ADMIN. CODE NR §243.04(13).

Maple Ridge Dairy is a CAFO because it is an animal feeding operation that feeds, confines, or stables 1,000 animal units or more. As a CAFO, Maple Ridge holds a WPDES permit No. WI-0061832-01-0 issued by the Wisconsin DNR pursuant to Chapter 283 of the Wisconsin Statutes.

Section 1.1 of Maple Ridge Dairy's WPDES permit requires that there shall be no discharge of pollutants from any manure storage facilities, outdoor animal lots, composting and leachate containment systems, milking center wastewater treatment/containment systems, raw material storage areas, or other areas of the operation to navigable waters, except in the event a 25-year, 24-hour rainfall event, or a chronic rainfall event causes a discharge of pollutants to navigable waters from a facility, structure or area properly designed for a 25-year, 24-hour rainfall event. If such a discharge occurs, surface water quality standards may not be exceeded.

Section 1.2 of Maple Ridge Dairy's WPDES permit further states that manure shall be collected and safely spread on land or stored until it can be safely landspread. All landspreading of manure must be completed in accordance with the land application conditions of the permit and in accordance with the DNR-approved Manure Management Plan, and in a manner that does not cause or contribute to the non-attainment of surface water quality standards or groundwater standards.

Section 3.2.10 of Maple Ridge Dairy's WPDES permit prohibits Maple Ridge Dairy from causing surface applied manures to run off the intended site at any time or pond on the intended site at any time. The purpose of this spreading limitation is to prevent discharges to waters of the United States.

Section 3.2.7 of Maple Ridge Dairy's WPDES permit prohibits Maple Ridge Dairy from spreading manure on frozen and snow covered ground on slopes on the crop field greater than 9%. The purpose of this spreading limitation is to prevent discharges to waters of the United States.

Section 3.2.4 of Maple Ridge Dairy's WPDES permit requires Maple Ridge Dairy to seek approval from the DNR to include crop fields for manure spreading not already included in Maple Ridge Dairy's Manure Management Plan, required under Wis. Admin. Code NR §243.14.

Section 3.2.13 of Maple Ridge Dairy's WPDES permit requires Maple Ridge Dairy to submit an annual report detailing all manure, compost, and compost leachate that is landspread.

Based on information gathered from the public domain, Maple Ridge Dairy violated its WPDES permit in the following ways:

1. On or around February 1, 2002, Maple Ridge Dairy violated section 1.1 of its WPDES permit by discharging manure into waters of the state in violation of the prohibition against all discharges except in the case of a 25 year, 24 hour storm event when Maple Ridge Dairy spread manure on an agricultural field located at E1/2, NW1/4, T27N, R3E, Sec. 14 in the Town of Eau Pleine, Marathon County (the "field" or "intended site") and manure discharged into a water of the state.
2. On or around February 27, 2002, Maple Ridge Dairy violated Section 1.2 of its WPDES permit by failing to safely spread manure on the field by spreading manure

on frozen ground within 200 feet of a water of the state and on frozen ground with slopes greater than 9%, and allowing manure to pond on the intended site and runoff the intended site.

3. On or around February 27, 2002, Maple Ridge Dairy violated Section 1.2 of its WPDES permit by causing or contributing to a violation of water quality standards in the Big Eau Pleine River, a stream listed as impaired by a lack of dissolved oxygen and excess bacteria on Wisconsin's Clean Water Act Section 303(d) list.
4. On or around February 27, 2002, Maple Ridge Dairy violated Section 1.2 of its WPDES permit by failing to landspread manure on the field in accordance with its DNR-approved Manure Management Plan.
5. On or around February 27, 2002, Maple Ridge Dairy violated Section 3.2.10 of its WPDES permit by causing surface applied manure to run off the intended site and causing manure to pond on the private property adjacent to the intended site.
6. On or around February 27, 2002, Maple Ridge Dairy violated Section 3.2.7 of its WPDES permit by spreading manure on frozen and snow covered ground on slopes on the crop field greater than 9%.
7. On or around February 27, 2002, Maple Ridge Dairy violated Section 3.2.4 of its WDPES permit by failing to obtain approval from the DNR to include crop fields for manure spreading not already included in Maple Ridge Dairy's Manure Management Plan.
8. On or around February 1, 2002, Maple Ridge Dairy violated Section 3.2.13 of its WPDES permit by failing to submit an annual report detailing all manure, compost, and compost leachate that is landspread by January 31, 2002.

Due to the nature of these violations, the Sierra Club reasonably believes that Maple Ridge will continue to discharge pollutants in violation of its WPDES permit unless significant management and technical measures are taken to prevent further discharges of pollutants to waters of the state.

First, records in the public domain indicate that Maple Ridge Dairy has placed a sand berm around the cropped field to prevent future manure discharges on the field. The sand berm

around the spreading area has breached, indicating that the berm lacks sufficient strength to prevent manure discharges. This sand berm is likely to be inadequate to prevent future discharges because pollutants may leach through the sand and runoff the intended site.

Second, Maple Ridge Dairy spread manure on a field that was not included in its Manure Management Plan, failed to obtain DNR approval to spread manure on that field, and failed to submit the required annual report detailing manure spreading on croplands, all of which indicate that Maple Ridge Dairy has shown a pattern of mismanaging manure in violation of its permit and reasonably indicates that Maple Ridge Dairy will continue to violate its permit.

Third, Maple Ridge Dairy's continued business relationship with the custom applicator, Gary Halopka, creates a reasonable likelihood of future violation because Mr. Halopka has shown a complete disregard for state and federal law by spreading manure on frozen and snow covered ground on steep slopes and within 200 feet of a river, thus causing discharges to waters of the state in violation of Maple Ridge Dairy's WPDES permit.

At the close of the 60 day notice period, the Sierra Club intends to file a citizen suit pursuant to section 505(a)(1), 33 U.S.C. §1365(a)(1) of the Clean Water Act, for all violations of Maple Ridge Dairy's WPDES permit. Maple Ridge Dairy is liable for up to \$ 27,500 per day for each violation of its WPDES permit. 33 U.S.C. §1319(d). 40 C.F.R. §19.4, Table 1.

In filing this action, the Sierra Club also 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).

II. VIOLATION OF THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT

The Sierra Club intends to sue Maple Ridge Dairy for maintaining an open dump in violation of section 4005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6945(a). 40 C.F.R. pt. 257.

RCRA defines “disposal” as:

[T]he discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

42 U.S.C. 6903(3).

RCRA defines “solid waste” as:

[A]ny garbage...and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations...

42 U.S.C. 6903(27). Although regulations exempt manure returned to the soil as fertilizers or soil conditioners from the criteria for operating solid waste disposal, 40 C.F.R. §257.1(c)(1), animal manure that is applied in excess amounts beyond the needs of the crops and on frozen ground and is discharged to surface waters is not being returned to the soil as fertilizer, but rather is “discarded” and is not covered by this exemption. RCRA defines “open dump” as “a facility for the disposal of solid waste which does not comply with this subpart.” 40 C.F.R. §257.2.

Maple Ridge Dairy is violating RCRA’s prohibition against disposing of solid waste in open dumps by applying dairy manure on frozen ground, allowing manure to run off the intended site, allowing manure to form ponds off of the intended site, applying manure on fields not included in its Manure Management Plan and not approved by the DNR, and by discharging pollutants to a water of the state. These violations of Maple Ridge Dairy’s WPDES permit pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of RCRA. 40 C.F.R. §257.1; 40 C.F.R. §257.3-3(a).

In the alternative, causing runoff of nonpoint source pollution is also inconsistent with and a violation of the Upper Wisconsin River Basin's area water quality management plan (aka State of the Basin Report) approved by the U.S. Environmental Protection Agency under section 208 of the Clean Water Act. 40 C.F.R. §257.3-3(c). As a result, the violations of that plan pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of RCRA. 40 C.F.R. §257.1; 40 C.F.R. §257.3-3(c).

The Sierra Club expects that records in Maple Ridge Dairy's possession, to which the Sierra Club does not have access at this time, will provide further support for this claim.

At the close of the 60-day notice period, the Sierra Club intends to file a citizen suit pursuant to section 7002(a)(1) of RCRA, 42 U.S.C. §6972(a)(1), for all violations of section 4005(a), 42 U.S.C. §6945, described above, and all violations that occur after your receipt of this notice letter.

The Sierra Club intends to seek injunctive relief and civil penalties for the illegal handling and disposal of solid or hazardous waste in violation of RCRA. Maple Ridge Dairy is liable for up to \$27,500 per day for each violation of RCRA. 42 U.S.C. §6928(a)(3). 40 C.F.R. §19.4, Table 1. Sierra Club also intends to seek costs, attorneys' fees and litigation expenses. 42 U.S.C. §6972(e).

III. CONCLUSION

The persons giving notice are the Sierra Club, 85 Second Street, San Francisco, CA 94105, (415) 977-5500, and Richard Wentzel, Chair, Wisconsin River Country Group of the John Muir Chapter of the Sierra Club, 914 Grand Ave. # 14 Wausau, WI 54403, (715) 687-4391.

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

During the 60-day notice period, we will be available to discuss effective remedies and actions and the possibility of resolving this matter without litigation, as well as any facts you believe are incorrectly set forth in this notice letter and other relevant facts not itemized above. You should direct all correspondence or telephone contact to the following attorneys for the Sierra Club: Melissa K. Scanlan or Andrew C. Hanson, Midwest Environmental Advocates, Inc., at 22 E. Mifflin St. Suite 301, Madison, Wisconsin 53703, tel. (608) 251-

5047 and fax (608) 268-0205; and Glenn Stoddard, Garvey and Stoddard, S.C., at 634 W. Main St., Suite 101, Madison, WI 53703, tel. (608) 256-1003 and fax (608) 256-0933.

Sincerely,

Melissa K. Scanlan, Attorney and Executive Director
Midwest Environmental Advocates, Inc.

cc:

<p>Christine T. Whitman, Administrator U.S Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, NW Washington, DC 20460</p> <p>Honorable John Ashcroft Attorney General U.S. Department of Justice Room B-103 950 Pennsylvania Avenue NW Washington, DC 20530-0001</p> <p>Thomas Skinner Assistant Administrator, Region V U.S Environmental Protection Agency 77 W. Jackson Blvd. Chicago, IL 60604</p>	<p>Gov. Scott McCallum Wisconsin Office of the Governor 115 East State Capitol Madison, WI 53702</p> <p>James E. Doyle Attorney General of Wisconsin Wisconsin Department of Justice PO Box 7857 Madison, WI 53707-7857</p> <p>Darrel Bazzel, Secretary Wisconsin Department of Natural Resources 101 S. Webster St. Madison, WI 53703</p>
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