

# Midwest Environmental ADVOCATES

*pro bono publico*

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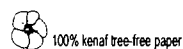
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Melissa K. Scanlan, Attorney  
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## CERTIFIED MAIL, RETURN RECEIPT REQUESTED

# ORIGINAL

August 26, 2003

Mr. Tod Leiteritz, Registered Agent  
Maple Leaf Dairy, Inc.  
6832 County Rd. X  
Cleveland, WI 53015

Marianne Lamont Horinko, Acting Administrator  
MC 1101A  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Lloyd Eagan, Director  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
101 S. Webster St.  
Madison, WI 53703

**Re: Notice of Intent to Sue Maple Leaf Dairy, Inc. for Violations of  
the Federal Clean Air Act, 42 U.S.C. § 7604(a)(1).**

To whom it may concern:

Midwest Environmental Advocates, Inc. (MEA), a 501(c)(3) nonprofit environmental law center, represents Centerville Citizens for Air, River, and Environmental Solutions ("Centerville CARES"), an unincorporated association of citizens living in and near the Town of Centerville promoting responsible, productive agriculture and water and air quality protection. Centerville CARES

Letter to Maple Leaf Dairy, Inc.  
Re: Notice of Intent to Sue Maple Leaf Dairy, Inc. for Violations of the  
Federal Clean Air Act, 42 U.S.C. § 7604(a)(1).

August 26, 2003

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

has approximately 60 members in and around the Town of Centerville, and its mailing address is 12505 Lakeshore Rd., Cleveland, Wisconsin, 53015.

By this letter, Centerville CARES is providing Maple Leaf Dairy, Inc. with notice of its intent to file a lawsuit against Maple Leaf Dairy, Inc. after 60 days from the postmarked date of this letter in the United States District Court for the Eastern District of Wisconsin for committing what Centerville CARES reasonably believes to be violations of Wisconsin's State Implementation Plan (SIP) approved by the federal Environmental Protection Agency (EPA) pursuant to the Clean Air Act. *See* 42 U.S.C. 7604(a)(1) and (f) (2003).

This notice is provided in accordance with 42 U.S.C. §7604(b)(1)(A) and 40 C.F.R. §§54.2-3 (2003). Members of Centerville CARES reasonably fear that they have been and will continue to be harmed by Maple Leaf Dairy, Inc.'s repeated violations of air quality regulations contained in Wisconsin's SIP.

Centerville CARES reasonably believes that Maple Leaf Dairy, Inc. has violated Wis. Stat. § 285.60(1)(a) and (b), Wis. Admin. Code § NR 406.03 and § NR 407.01 contained in Wisconsin's SIP in the following respects:

**I. FAILURE TO APPLY FOR AND OBTAIN A CONSTRUCTION PERMIT AS A STATIONARY SOURCE OF AIR POLLUTANTS UNDER WIS. STAT. § 285.60(1)(A) AND § NR 406.03.**

Wisconsin law prohibits persons from commencing construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the Wisconsin Department of Natural Resources (DNR) or unless the person is exempt from the requirement to obtain a permit. Wis. Stat. § 285.60(1)(a); § NR 406.03.

Maple Leaf Dairy, Inc. is a "person" because it is an "owner, operator, corporation, limited liability company" or otherwise falls within the definition of "person" contained in Wis. Stat. § 285.01(33).

Maple Leaf Dairy, Inc. is a "stationary source" of air pollution because it is a "facility, building, structure, or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location." Wis. Stat. § 285.01(41). Maple Leaf Dairy, Inc. currently houses approximately 3,358 head of cattle, or 3,572 animal units, in freestall barns at several locations in the Town of Centerville, Wisconsin. Maple Leaf Dairy stores the waste of those animal units in animal waste storage facilities known as lagoons, manure pits, slurry stores, and manure stockpiles. Maple Leaf Dairy, Inc.'s animal waste storage facilities and freestall barns consist of facilities, buildings, structures or installations that emit air pollutants derived from the decomposition of animal waste contained in those facilities, buildings, structures or installations within the definition of "stationary source" contained in Wis. Stat. § 285.01(41). Moreover,

because they are immobile, Maple Leaf Dairy, Inc.'s animal waste storage facilities and freestall barns are "fixed locations" within the definition of "stationary source" in Wis. Stat. § 285.01(41).

Centerville CARES reasonably believes that Maple Leaf Dairy, Inc. currently emits ammonia from its animal waste storage facilities and freestall barns. Ammonia is a toxic gas that is associated with odor generated from animal waste and can cause eye, nose, and throat irritation and general discomfort in those persons exposed to the gas. Ammonia emissions also interact with the atmosphere to form chemical variants of the gas that deposit on land and water, causing water pollution and excessive algal growth through nutrient overloading to nearby waters. Members of Centerville CARES reasonably fear that failure to control ammonia emissions can cause both air and water pollution, affecting the health and well-being of members of Centerville CARES as well as their interests in protecting nearby Point Creek, Fischer Creek, and Lake Michigan.

Sometime between 1997 and the present date, Maple Leaf Dairy, Inc. commenced construction, reconstruction, replacement or modification of its facilities, buildings, structures or installations that caused an increase in the direct or indirect emissions of ammonia from Maple Leaf Dairy, Inc. Maple Leaf Dairy, Inc. did not obtain a construction permit from the DNR pursuant to Wis. Stat. § 285.60(1)(a) or § NR 406.03 authorizing this activity. Both Wis. Stat. § 285.60 and Chapter NR 406 are included in Wisconsin's EPA approved SIP. All requirements contained in Wisconsin's SIP are enforceable by citizens pursuant to 42 U.S.C. § 7604(a)(1) and (f)(4).

Maple Leaf Dairy has the burden of proving that it is exempt from the requirement to obtain a construction permit under § NR 406.03. Nevertheless, Centerville CARES has conducted an air quality modeling analysis of Maple Leaf Dairy, Inc.'s ammonia emissions and has determined that Maple Leaf Dairy is not exempt from the requirement to obtain a construction permit. Maple Leaf Dairy, Inc. is only exempt from the requirement to control and monitor its ammonia emissions if it emits less than the threshold level contained in § NR 406.04(2)(f)1. and 3m. Centerville CARES has determined, based on the results of its air quality modeling analysis, that Maple Leaf Dairy, Inc.'s current ammonia emissions exceed those threshold levels.

Because Maple Leaf Dairy, Inc. is not exempt from the requirement to apply for and obtain a construction permit, Maple Leaf Dairy is required to obtain that permit in accordance with Wis. Stat. § 285.60(1)(a) and § NR 406.03.

If Maple Leaf Dairy, Inc. fails to apply for its required construction permit within 60 days from the postmarked date of this letter, Centerville CARES will file suit in United States District Court for the Eastern District of Wisconsin, seeking injunctive relief and civil penalties of up to \$27,500 per day of violation for each violation enumerated in this letter. *See* 42 U.S.C. §7413(b); 40 C.F.R. §19.4 (2003). Centerville CARES will also request that up to \$100,000 in civil penalties be used for a "beneficial mitigation project" that is consistent with the Clean Air Act and with protecting public health and the environment. *See* 42 U.S.C. §7604(g). Centerville

CARES will also seek costs, attorney and expert witness fees, and such other relief as may be appropriate. *See* 42 U.S.C. §7604(d).

**II. FAILURE TO APPLY FOR AND OBTAIN AN OPERATION PERMIT AS A STATIONARY SOURCE OF AIR POLLUTANTS UNDER WIS. STAT. § 285.60(1)(B)1. AND § NR 407.01.**

In addition to and distinct from Maple Leaf Dairy, Inc.'s failure to obtain a construction permit from the DNR for its current emissions of air pollutants under Wis. Stat. § 285.60(1)(a), Maple Leaf Dairy, Inc. has also failed to obtain an operation permit under Wis. Stat. § 285.60(1)(b). A person who is required to obtain a construction permit is also required to submit an application for an operation permit with its application for a construction permit. Wis. Stat. § 285.62(11)(a)2.

Maple Leaf Dairy, Inc. has not submitted an application for an operation permit, as it is required to do under Wis. Stat. § 285.60(1)(b)1. and Wis. Stat. § 285.62(11)(a)2. The burden is on Maple Leaf Dairy, Inc. to show that it is exempt from the requirement to obtain an operation permit. Wis. Stat. § 285.60(1)(b). Nevertheless, an air quality modeling analysis conducted by Centerville CARES shows that Maple Leaf Dairy is not exempt from the requirement to obtain an operation permit because Maple Leaf Dairy, Inc. emits ammonia beyond threshold levels referenced in § NR 407.03(2)(d).

Because the requirement to obtain an operation permit is contained within Wisconsin's SIP, Centerville CARES may enforce the requirement in federal court. 42 U.S.C. § 7604(a)(1) and (f). If Maple Leaf Dairy, Inc. fails to apply for its required operation permit, in conjunction with its application for a construction permit, within 60 days from the postmarked date of this letter, Centerville CARES will file suit in United States Federal District Court for the Eastern District of Wisconsin, seeking injunctive relief and civil penalties of up to \$27,500 per day of violation for each violation enumerated in this letter. *See* 42 U.S.C. §7413(b); 40 C.F.R. §19.4 (2003). Centerville CARES will also request that up to \$100,000 in civil penalties be used for a "beneficial mitigation project" which is consistent with the Clean Air Act and with protecting public health and the environment. *See* 42 U.S.C. §7604(g). Centerville CARES will also seek costs, attorney and expert witness fees, and such other relief as may be appropriate. *See* 42 U.S.C. §7604(d).

**III. MAPLE LEAF DAIRY, INC.'S PROPOSED EXPANSION TO 9,400 ANIMAL UNITS WILL CAUSE IT TO BECOME A "MAJOR SOURCE" OF AIR POLLUTANTS UNDER § NR 407.02(4).**

Based on records in the public domain, Centerville CARES understands that Maple Leaf Dairy plans to expand to 9,400 animal units. By this letter, Centerville CARES is giving notice to Maple Leaf Dairy, Inc. that, if it expands to house and confine 9,400 animal units, it will be

required to obtain an additional construction permit from the DNR prior to commencing that modification in accordance with Wis. Stat. § 285.60(1)(a) and § NR 406.03.

Maple Leaf Dairy will also become a “major source” of air pollutants under Wisconsin law if it modifies its facility by confining up to 9,400 animal units. A “major source” of air pollutants is any stationary source:

that is located on one or more contiguous or adjacent properties, is under the common control of the same person or persons under common control, belongs to a single major industrial grouping and that is described in par. (a), (b) or (c). For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at the source or group of sources have the same 2-digit code as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in s. NR 484.05.

§ NR 407.02(4). “Major source” is further defined to include:

A stationary source that directly emits, or has the potential to emit, 100 [tons per year] or more of any air contaminant other than particulate matter emissions.

§ NR 407.02(4)(b).

Maple Leaf Dairy, Inc. is a stationary source. Moreover, Maple Leaf Dairy, Inc.’s buildings, structures, or installations will be located on one or more contiguous properties and are under the common control of Maple Leaf Dairy, Inc. Maple Leaf Dairy, Inc. belongs to the two digit Standard Industrial Classification (SIC) code 02.

Centerville CARES’ air quality modeling analysis reveals that Maple Leaf Dairy, Inc., if it expands to 9,400 animal units without implementing any ammonia emissions control technology, may emit at or above the threshold of 100 tons per year according to the definition of “major source” established in § NR 407.02(4)(b). As a result, Maple Leaf Dairy, Inc. may be a “major source,” requiring additional controls on its ammonia emissions under Wis. Stat. § 285.63(1), (2) and (3).


If Maple Leaf Dairy, Inc. fails to apply for and obtain construction and operation permits under Wis. Stat. §§ 285.60, 285.62, 285.63 and §§ NR 406.03, 407.01 prior to further modifying its facilities and becoming a major source of air pollution, Centerville CARES will pursue all legal avenues available to it to enforce those requirements. This will include, but not be limited to, the initiation of citizen litigation under the federal Clean Air Act.

#### IV. CONCLUSION

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.

Sincerely,

**MIDWEST ENVIRONMENTAL ADVOCATES, INC.**



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

cc: Thomas Skinner, Administrator, U.S. EPA Region V  
Governor James Doyle, State of Wisconsin  
Secretary Scott Hassett, Wisconsin Department of Natural Resources