

FILED
02-08-2021
Clerk of Circuit Court
Manitowoc County, WI
2021CX000002

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY
BRANCH __

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 21-CX-____

Complex Forfeiture: 30109

MAPLE LEAF DAIRY, INC.,

Defendant.

STIPULATION FOR JUDGMENT

Plaintiff State of Wisconsin brought this civil action against Defendant Maple Leaf Dairy, Inc. (Maple Leaf Dairy) for alleged violations of the State's wastewater discharge laws. The State of Wisconsin and Maple Leaf Dairy wish to settle this matter by agreement and avoid further litigation, and therefore, enter into this Stipulation for Judgment (the Stipulation).

IT IS STIPULATED AND AGREED by the State of Wisconsin and Maple Leaf Dairy that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. The parties to this Stipulation are the State of Wisconsin and Maple Leaf Dairy.
2. The Circuit Court of Manitowoc County, Wisconsin (the Court) has jurisdiction over the parties and the subject matter of this action.

3. This Stipulation and the Order for Judgment as approved by the Court shall apply to and be binding on the parties and on the successors and assignees of the parties. No change in ownership, corporate, or partnership status shall in any way alter the responsibilities of Maple Leaf Dairy under this Stipulation.

4. Judgment shall be entered in favor of the State of Wisconsin and against Maple Leaf Dairy in the total amount of \$85,000.00. This sum is comprised of forfeitures, surcharges, costs, and attorney fees as follows: forfeitures of \$52,294.22 pursuant to Wis. Stat. § 283.91(2), a 26 percent penalty surcharge of \$13,596.50 pursuant to Wis. Stat. § 814.75(18), a 20 percent environmental surcharge of \$10,458.84 pursuant to Wis. Stat. § 814.75(12), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2), a 1 percent jail surcharge of \$522.94 pursuant to Wis. Stat. § 814.75(14), a \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15), and attorney fees of \$8,000.00 pursuant to Wis. Stat. § 283.91(5).

5. Maple Leaf Dairy shall pay \$77,000.00 by checks payable to the Manitowoc County Circuit Court and delivered to the Manitowoc County Clerk of Court, Manitowoc County Courthouse, 1010 S. 8th Street, 1st floor,

Room 105, Manitowoc, Wisconsin 54220, along with cover letters identifying the case by name and number. A copy of the cover letters shall be simultaneously mailed as proof of payment to Assistant Attorney General Emily M. Ertel at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payments shall be made in accordance with the following schedule:

- a. \$20,333.34, no later than three (3) months after the date the Order for Judgment is signed by the Court;
- b. \$28,333.33 no later than fifteen (15) months after the date the Order for Judgment is signed by the Court; and
- c. \$28,333.33, no later than twenty-seven (27) months after the date the Order for Judgment is signed by the Court.

6. Maple Leaf Dairy shall pay a total of \$8,000.00 in attorney fees by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Emily M. Ertel, at the address provided in paragraph 5 of this Stipulation, by three months after the date the Order for Judgment is signed by the Court.

7. Maple Leaf Dairy operates a large concentrated animal feeding operation with facilities at two locations relevant to this Stipulation: (1) the “West Farm” located at 7920 County Road X, Cleveland, Manitowoc County,

Wisconsin, and (2) the “K&K Farm” located at 11228 South Union Road, Newton, Manitowoc County, Wisconsin.

8. Maple Leaf Dairy shall complete the following injunctive relief:

a. Feed storage area at the West Farm. Maple Leaf Dairy shall complete construction by December 31, 2021, of the runoff controls on the feed storage area at the West Farm pursuant to the plans and specifications conditionally approved by DNR on April 22, 2020 (DNR reference no. R-2020-0008). Maple Leaf Dairy shall submit post-construction documentation to DNR within 60 days of completing construction as required by Wis. Admin. Code § NR 243.15(10).

b. Feed storage area at the K&K Farm. Maple Leaf Dairy shall submit to DNR by December 31, 2020, a closure or abandonment plan, pursuant to Wis. Admin. Code § NR 243.17(7)(a), for the feed storage area at the K&K Farm. Maple Leaf Dairy shall obtain DNR’s approval of the closure or abandonment plan prior to completing closure or abandonment, as required by Wis. Admin. Code § NR 243.17(7)(a). Maple Leaf Dairy shall complete the closure or abandonment of the feed storage area at the K&K Farm by the later of June 1, 2022, or 60 days after DNR’s approval of the closure or abandonment plan. Maple Leaf Dairy shall submit post-closure documentation to DNR within 30 days of completing closure or abandonment. The post-closure

documentation shall demonstrate that the feed storage area at the K&K Farm was properly closed or abandoned pursuant to the DNR-approved plan.

c. Calf hutch area at the K&K Farm. Maple Leaf Dairy shall complete construction by December 31, 2020, of the manure transfer system and other improvements at the K&K Farm pursuant to the plans and specifications conditionally approved by DNR on April 22, 2020 (DNR reference no. R-2020-0007). Maple Leaf Dairy shall submit post-construction documentation to DNR within 60 days of completing construction as required by Wis. Admin. Code § NR 243.15(10).

9. In the event that compliance with the obligations in paragraph 8.c. of this Stipulation is delayed based on events (referred to as “force majeure events”) beyond Maple Leaf Dairy’s reasonable control and outside Maple Leaf Dairy’s reasonable anticipation and despite Maple Leaf Dairy’s best efforts to fulfill the obligations, Maple Leaf Dairy shall not be deemed to be in default of this Stipulation. “Best efforts to fulfill the obligations” include using best efforts to anticipate any potential force majeure events and to address the effects of any such event (a) before it occurs, (b) as it is occurring, and (c) after it has occurred, such that the delay is minimized to the greatest extent possible.

a. Force majeure events are limited to the following, and only to the extent such events make performance commercially impracticable,

illegal, or impossible: unforeseeable construction, labor or equipment delays; abnormally severe weather; pandemics; acts of God; acts of war; failures of governmental agencies or third parties to act; and changes in statutes, regulations, ordinances, or government-issued orders occurring after this Stipulation is signed that preclude Maple Leaf Dairy from acting. Force majeure events do not include economic hardship and unanticipated or increased costs or expenses associated with performance of Maple Leaf Dairy's obligations under this Stipulation.

b. Maple Leaf Dairy shall remedy any noncompliance caused by a force majeure event as soon as reasonably possible, and Maple Leaf Dairy shall comply with the obligations under paragraph 8.c. of this Stipulation as soon as reasonably possible. During the delay in complying with paragraph 8.c. of this Stipulation, Maple Leaf Dairy shall propose for DNR approval and then construct and maintain DNR-approved interim runoff controls on the calf hutch area at the K&K Farm that prevent a discharge from reaching waters of the state. Maple Leaf Dairy shall submit a plan for interim runoff controls to DNR for approval along with its notice of the force majeure event required in subparagraph c. After DNR approval of the plan, Maple Leaf Dairy shall construct the interim runoff controls within thirty (30) days unless the parties agree in writing to a different length of time based on the nature, effects, or impacts of the force majeure event.

c. Maple Leaf Dairy shall notify the State in writing as soon as practicable but in no event later than fourteen (14) days following the date Maple Leaf Dairy first knew, or by the exercise of due diligence, should have known that a force majeure event occurred and may cause a delay in complying with paragraph 8.c. of this Stipulation. In this notice, Maple Leaf Dairy shall describe the anticipated length of time that the delay may persist; the cause or causes of the delay; all measures taken or to be taken by Maple Leaf Dairy to prevent or minimize the delay; the schedule by which Maple Leaf Dairy proposes to implement those measures; Maple Leaf Dairy's rationale for attributing a delay to a force majeure event; and a plan for interim runoff controls that Maple Leaf Dairy will construct and maintain for the duration of the delay in complying with paragraph 8.c. of this Stipulation. If Maple Leaf Dairy fails to comply with this notice requirement, Maple Leaf Dairy forfeits its claim of a force majeure event as to the specific event for which Maple Leaf Dairy has failed to comply with the notice requirement.

d. For purposes of this paragraph, it is presumed that any delay in compliance with the obligations under paragraph 8.c. of this Stipulation is Maple Leaf Dairy's fault and not the result of a force majeure event. In any dispute regarding the existence of a force majeure event, Maple Leaf Dairy bears the burden of proving that any delay in performance of its obligations in paragraph 8.c. of this Stipulation was caused by a force majeure

event and that Maple Leaf Dairy timely gave notice of the force majeure event as required by subparagraph c. to the State.

10. Maple Leaf Dairy waives the requirement for formal service of an authenticated Summons and Complaint.

11. The parties acknowledge that this Stipulation and the Order for Judgment sets forth the entire understanding of the parties with respect to resolution of the violations alleged in the Complaint.

12. Compliance by Maple Leaf Dairy with its obligations under this Stipulation and the Order for Judgment shall constitute full release of its civil liability, and the civil liability of its officers, directors, and employees, for the violations alleged in the Complaint.

13. Nothing contained in this Stipulation shall be construed as an admission of liability by Maple Leaf Dairy, or as a concession by the State regarding the veracity of the State's allegations.

14. The Order for Judgment will be a final and appealable Order. However, the parties hereby waive their right to appeal the Order.

15. The Order for Judgment and Judgment may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

Dated this 22nd day of October, 2020.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
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Dated this 27th day of October, 2020.

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