



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 26 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Matthew A. Slaven  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402

Dear Mr. Slaven:

This is to advise you that the U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Richard Millner and The Dairy Dozen – Thief River Falls, LLP, d/b/a Excel Dairy (Millner and Excel Dairy). We find that Millner and Excel Dairy are violating Section 114(a) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7414(a).

We have several enforcement options under Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3). These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

In addition, as you are aware, on July 18, 2008, EPA issued a Notice of Violation (NOV) to Excel Dairy, finding that Excel Dairy was violating the federally enforceable Minnesota State Implementation Plan (SIP) at its Thief River Falls, Minnesota facility. On December 3, 2008, EPA issued an Amended NOV to clarify that Prairie Ridge Management Company, LLC and Richard Millner are also violating the federally enforceable Minnesota SIP as set forth in the July 2008 NOV, and, along with The Dairy Dozen – Thief River Falls, LLP d/b/a Excel Dairy, are responsible for the SIP violations that continued after issuance of the July 2008 NOV. Please be advised that recent ambient air monitoring demonstrates that on numerous days beginning in April 2009, Excel Dairy, Prairie Ridge Management Company, LLC and Richard Millner have continued to violate Minnesota SIP Rule 7009.0080 which regulates hydrogen sulfide emissions.

We are offering you an opportunity to present in writing information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations.

If you have any information that you wish to provide to EPA related to these allegations, please provide this information in writing, within 14 days of receipt of this letter to:

Kevin Vuilleumier  
U.S. EPA, Region 5 (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
77 West Jackson Blvd.  
Chicago, Illinois 60604

The EPA legal contact in this matter is Mary McAuliffe, Associate Regional Counsel. You may contact her at the same address, using the mailcode (C-14J).

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton" with a stylized flourish at the end.

Cheryl L. Newton  
Director  
Air and Radiation Division

cc: Jeff T. Connell, MPCA

Enclosure

**United States Environmental Protection Agency  
Region 5**

IN THE MATTER OF:	)	
	)	
Richard Millner and	)	FINDING OF VIOLATION
The Dairy Dozen – Thief River Falls	)	
LLP d/b/a Excel Dairy	)	EPA-5-09-MN-17
Thief River Falls, Minnesota	)	
	)	
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7401 <u>et seq.</u>	)	

**FINDING OF VIOLATION**

The United States Environmental Protection Agency finds that Richard Millner and The Dairy Dozen – Thief River Falls LLP d/b/a Excel Dairy (Millner and Excel Dairy) are violating Section 114(a) of the Clean Air Act (Act), 42 U.S.C § 7414(a), as follows:

Regulatory Authority

1. Under Section 114(a)(1) of the CAA, the Administrator of EPA "may require any person . . . who the Administrator believes may have information necessary for the purposes set forth in this subsection . . . on a one-time, periodic or continuous basis to -- [among other things] provide such information as the Administrator may reasonably require."  
42 U.S.C. § 7414(a)(1). Under Section 114(a), the "purposes set forth in this subsection" include "determining whether any person is in violation of [the Clean Air Act]."  
42 U.S.C. § 7414(a). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

General Background

2. Excel Dairy owns and/or operates a dairy feedlot near Thief River Falls, Minnesota.
3. Richard Millner of Veblen, South Dakota, operates a dairy feedlot near Thief River Falls, Minnesota.
4. Richard Millner and Excel Dairy are subject to the requirements of Section 114(a) of the Act, 42 U.S.C. § 7414(a).

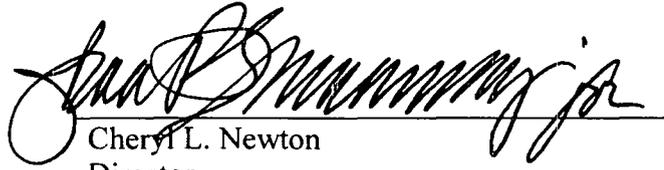
5. On December 18, 2008, EPA issued to Millner and Excel Dairy a request for information pursuant to Section 114(a) of the Act (EPA's information request). EPA's information request required Millner and Excel Dairy to submit information regarding their dairy feedlot near Thief River Falls, Minnesota (Thief River facility) and related facilities.
6. The request required Millner and Excel Dairy to submit certain requested information within 30 calendar days of receipt of the request, and also to begin conducting hydrogen sulfide ambient air monitoring at the Thief River facility in accordance with the timelines and requirements set forth in EPA's information request. Millner and Excel Dairy received EPA's information request on or about December 27, 2008, per the certified mail receipt signed by Larry Amundson.
7. Item Nos. 1 through 34 of EPA's information request required Millner and Excel Dairy to submit certain information related to Millner, Excel Dairy and the Thief River facility.
8. Item Nos. 35 through 53 of EPA's information request required Millner and Excel Dairy to conduct hydrogen sulfide ambient air monitoring and submit documents and reports as set forth in EPA's information request.
9. On February 11, 2009, Millner and Excel Dairy provided a partial response to EPA's December 18, 2008 information request. In EPA's March 11, 2009 letter to Millner and Excel Dairy, EPA identified deficiencies in Millner's and Excel Dairy's response. On March 30, 2009, Millner and Excel Dairy provided a supplemental response. In its April 21, 2009 letter, EPA identified continuing deficiencies in Millner's and Excel Dairy's responses. To date, Millner and Excel Dairy have not responded to EPA's April 21, 2009 letter.

#### Violation

10. To date, Millner and Excel Dairy have not submitted the information described in item Nos. 9, 26, 27 and 33 of EPA's information request, or certified that it has no such information in its control.
11. To date, Millner and Excel Dairy have not submitted any of the information described in item Nos. 35 through 53 of EPA's information request, and have not to EPA's knowledge commenced the required air emissions monitoring and have not submitted the required documents and reports as set forth in EPA's information request.

12. Millner and Excel Dairy have violated and continue to violate Section 114(a) of the Act, 42 U.S.C. § 7414(a), by failing to submit the information required by EPA's December 18, 2008 information request.

6/26/09  
Date

  
Cheryl L. Newton  
Director  
Air and Radiation Division

**CERTIFICATE OF MAILING**

I, Loretta Shaffer, certify that I sent a Finding of Violation, No. EPA-5-09-MN-17, by

Certified Mail, Return Receipt Requested, to:

Matthew A. Slaven  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402

I also certify that I sent copies of the Finding of Violation by first class mail to:

Minnesota Pollution Control Agency  
Attn: Jeff T. Connell, Manager  
Compliance and Enforcement Division  
Industrial Division

on the 29 day of JUNE, 2009.

  
Loretta Shaffer, Secretary  
AECAS,(MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 1727