

OSHA Violations Cited as Clear Horizons Defies Dane County's Default Notice

by Jim Eichstadt

Clear Horizon Dane LLC, the disaster-prone manure digester near Waunakee, Wisconsin, keeps digging its already-deep hole deeper, this time defying Dane County's notice of default of its ground and equipment lease agreements.

Dane County's February 20, 2015 notice of default cited dozens of serious air and water quality violations. The County's legal staff further revealed in a March 3 follow-up letter that Clear Horizons was cited in early February for serious workplace safety violations by OSHA, the federal Occupational Safety and Health Administration.

Meanwhile, as the standoff continued, Clear Horizons fell deeper into the penalty box by missing the January 31, 2015 deadline for payment of real estate taxes owed to Dane County and the Town of Vienna.

As reported in the March 2015 issue of *The Milkweed*, Dane County legal counsel on February 20 sent a notice demanding that Clear Horizons comply with its equipment lease and ground lease within 30 days. The letter stated: "Failure to do so, will leave the County no choice but to consider that Clear Horizons Dane, LLC is in default of both leases ... The County would then elect to invoke a number of the contractual remedies set forth in each lease, including but not limited to bringing an action to enforce the leases, recovering any damages caused by the default, and potentially taking possession of the County's equipment."

Environmental & political disaster

Clear Horizons has been an environmental and political disaster for Dane County politicians, who opened the taxpayer-funded facility with great fanfare in December 2010. The County Executive invested \$3.5 million in public funds on land, equipment, and related services at the site, located at 6307 Cuba Valley Road in the Town of Vienna. Clear Horizons was built with the express purpose of removing 60% of the phosphorus from manure generated by three large dairy farms located in the Lake Mendota watershed in northern Dane County.

The manure digester was hailed as the solution – locally and nationally – to the growing problem of nutrient runoff from the expansion of large dairy operations. "That was before everything went Fourth of July at Clear Horizons," stated one industry observer.

Dane County's ribbon-cutting came shortly after USDA launched AgSTAR, an ambitious federal grant program encouraging the construction of potentially thousands of on-farm manure digesters nationwide.

Rather than reducing the agricultural nutrient runoff responsible for fouling Madison's lakes with thick algae – An August 6, 2014 fire and explosion literally blew the lid off one of the facility's three 1.25 million gallon digesters. Broken pipes resulted in three separate liquid manure spills totaling 430,000 gallons between November 2013 and March 2014. Even worse, critics charge Clear Horizons has fallen far short of its contractual 60% phosphorus removal requirement (and sole reason for being built), removing only 44% of the phosphorus in 2013 and 33% in 2014.

County's charges disputed

While acknowledging the many violations cited by Wisconsin Department of Natural Resources officials, Clear Horizons responded defiantly to Dane County's ultimatum. Norman R. Doll, Clear Horizons chief operating officer, responded in a February 23 letter to the county: "We dispute that Clear Horizons Dane LLC is facing numerous violations of its Air and Water permits or violations of State law, as all issues have been addressed and either are resolved or in progress pursuant to ongoing discussions. Please provide specifics of what your allegations pertain to. As soon as we receive this information we will respond accordingly."

Dane County was not impressed. County Assistant Corporation Counsel Carlos A. Pabellon fired back in March 3 reply letter: "Clear Horizons claims

that 'nearly all issues have been addressed either by current compliance, clarification of reporting or application for permit modifications.' (Clear Horizons Letter, p. 1.) Unfortunately, Dane County is not in possession of any actual evidence demonstrating that such a claim is accurate.

"To the best of our understanding, the Department of Justice remains poised to bring suit against Clear Horizons for violations of the aforementioned WPDES [Wisconsin Pollution Discharge Elimination System] permit, and no formal resolution has been reached. Moreover, Dane County has learned that despite Clear Horizons' claim, the DNR has recently referred the violations related to Clear Horizons' air permit to the Department of Justice," Pabellon said, including 25 pages of cited violations in the County's response.

"Finally, Dane County has also learned that the Occupational Safety and Health Administration Office of the U.S. Department of Labor ("OSHA") has issued a citation stemming from serious violations of federal regulations that require abatement," Pabellon said.

"Serious" OSHA violations

The February 3, 2015 OSHA violations citation noted three "serious" violations related to the August 6, 2014 fire and explosion resulting from the buildup of methane gas in Digester 1. The cited violations include lack of a written procedure for isolating hazardous methane gas, failure to verify that the methane pipe had been isolated prior to clean-out of the digester, and the use of unsafe, unapproved equipment ("an employee was using a leaf blower that was not intrinsically safe in a hazardous atmosphere"). The OSHA notice set a February 25, 2015 deadline for abatement of the unsafe conditions and a \$2,000 proposed penalty for each violation.

Clear Horizons pushes back

Clear Horizons responded with a March 12, 2015 letter from David A. Crass, an attorney notorious for his over-zealous defense of industrial-scale dairy operations in Wisconsin and northern Illinois. Crass denied that Clear Horizons is in default of its contracts with Dane County and challenged every one of the "alleged" air and water quality violations charged by DNR. He also disputed Dane County's citation of pending legal enforcement action by the Wisconsin Department of Justice.

Among the many excuses offered, Crass blamed Clear Horizons' failure to meet the contracted 60% phosphorus removal rate on the manure solids content

and the sand bedding material used by one of the three dairy farms connected to the digester.

"Clear Horizons has not defaulted on the Leases because it has not yet been found, after due process of law, to be in violation of any law or permits provisions. Nevertheless, the efforts described herein – of which County staff have been previously and fully informed – illustrate Clear Horizons' determination to rectify any alleged violations. Clear Horizons' efforts to cure the breach alleged by the County are underway and ongoing. If Clear Horizons has not cured the alleged breach by the 30-day timeline asserted in the County's letters, then Clear Horizons is entitled to an additional 60-day period beyond the original 30-day deadline to 'prosecute the cure to completion' according to Section 25.1(g) of the Ground Lease because, as outlined herein, Clear Horizons has 'commenced reasonable efforts' to cure the alleged default," Crass said.

Property tax payment deadline missed

Clear Horizons, meanwhile, failed to make a required real estate tax payment to Dane County and the Town of Vienna by the January 31, 2015 deadline. The missed deadline came as the manure digester's troubled operation was negotiating an agreement with the Town to make payments in lieu of taxes for road maintenance and other local public services to the facility. The late check was returned to Clear Horizons with instructions to contact Dane County regarding payment of its share, according to Town Clerk Shawn Haney.

The Town finally did receive payment for the negotiated amount from Clear Horizons, two months late. "The check for \$36,502.54 arrived on Monday, March 30, 2015," according to the minutes of the Town's April 6 board meeting.

Jim Eichstadt, a dairy consultant from DeForest, Wisconsin, represented U.S. dairy farmers at WTO ministerial meetings in Singapore, Geneva, and Seattle. He was a founding member of the Dairy Trade Coalition.

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February 2015 Milk Production

February 2015 Milk Cows and Milk Production, by States							
State	Milk Cows ¹		Milk per Cow ²		Milk Production ²		Change from 2014
	2014	2015	2014	2015	2014	2015	
	(thousands)		(pounds)		(million pounds)		(percent)
AZ	192	195	1,965	1,990	377	388	2.9
CA	1,780	1,778	1,910	1,840	3,400	3,272	-3.8
CO	140	145	1,885	1,960	264	284	7.6
FL	123	124	1,715	1,775	211	220	4.3
ID	567	580	1,820	1,805	1,032	1,047	1.5
IL	95	95	1,545	1,580	147	150	2.0
IN	176	181	1,660	1,705	292	309	5.8
IA	205	210	1,725	1,765	354	371	4.8
KS	137	143	1,695	1,730	232	247	6.5
MI	381	403	1,880	1,915	716	772	7.8
MN	460	460	1,530	1,595	704	734	4.3
NM	323	323	1,950	1,880	630	607	-3.7
NY	615	616	1,690	1,725	1,039	1,063	2.3
OH	266	268	1,545	1,570	411	421	2.4
OR	124	125	1,595	1,590	198	199	0.5
PA	531	530	1,565	1,600	831	848	2.0
SD	95	101	1,650	1,700	157	172	9.6
TX	447	470	1,745	1,730	780	813	4.2
UT	95	97	1,685	1,765	160	171	6.9
VT	132	132	1,545	1,545	204	204	---
VA	93	93	1,500	1,500	140	140	---
WA	269	277	1,850	1,840	498	510	2.4
WI	1,270	1,276	1,665	1,730	2,115	2,207	4.3
23 State Total	8,516	8,622	1,749	1,757	14,892	15,149	1.7

¹ Includes dry cows. Excludes heifers not yet fresh.

² Excludes milk sucked by calves.

--- represents zero.

Source: U.S. Department of Agriculture. National Agricultural Statistics Service. Agricultural Statistics Board. *Milk Production, March 2015.*