

June 14, 2001

PATRICK J. LARKIN  
214.651.2132  
Direct Fax: 214.659.4075  
patrick.larkin@strasburger.com

Ms. Suzanne Dickey  
Supervising Attorney  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70018

**Re: Brown's Dairy, 1300 Baronne St., New Orleans, Louisiana; Notice of Intent to Sue under Clean Water Act Section 505(b)(1)**

Dear Ms. Dickey,

I am writing on behalf of Suiza Foods ("Suiza") in response to your letter dated April 12, 2001 giving notice to Suiza of your clients' intent to file a law suit relating to alleged violations of the Clean Water Act ("the Notice") at the Brown's Dairy, 1300 Baronne St., New Orleans, Louisiana ("Browns Dairy"). The purpose of this letter is to inform you of the actions that Suiza has taken in response to the allegations made in the Notice, and to invite you to meet with me and other representatives of Suiza and the Browns Dairy facility. We believe that the information provided herein and the information which we would provide in a face to face meeting demonstrate that (1) as of today's date, there are no violations of the Clean Water Act that are in existence at the Browns Dairy facility, and (2) that the actions taken by Suiza to enhance the Browns Dairy Storm Water Pollution Prevention Plan (SWPPP) have removed any potential for future violations of the Clean Water Act at the facility.

In the Notice, you have alleged that Suiza has violated the Clean Water Act and Louisiana laws by past and ongoing discharge of "leftover biological materials from the Brown's Dairy plant . . . into the storm sewer system" and thus into US and Louisiana state waters. Upon receipt of the Notice, Suiza implemented a program to identify and correct all current and potential sources of pollutant discharge into the storm sewer system at the Browns Dairy facility. The study consisted of a comprehensive site investigation to identify all points of entry into the storm drain system, as well as potential pollutant sources that could contribute pollutants to storm water at the facility.

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Strasburger & Price, LLP

901 Main Street, Suite 4300 • Dallas, Texas 75202.3794 • 214.651.4300 tel • 214.651.4330 fax • www.strasburger.com  
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Following is a summary of the site study and resulting actions taken to prevent pollutant discharge into the Browns Dairy facility storm water:

### **Site Investigation/Areas of Concern (“AOCs”)**

Terra Mar, Inc. (TMI) personnel, Suiza Foods personnel, and Brown’s Dairy personnel inspected the above-referenced site on May 8, 2001 and June 6, 2001. These inspections, which occurred during rainfall events, were conducted to identify actual or potential storm water discharge concerns at the facility. The areas of concern identified in the site inspection consist of the following:

- Storm water from the loading dock area could potentially runoff to the storm sewer drains in Thalia Street adjacent to the west end of the loading dock.
- Liquids from washout of trailer interiors near the Thalia Street loading dock could potentially run off to the storm drains on Thalia Street.
- Three floor drains were located in the garage. TMI conducted a dye study which indicated that the flow from these drains enters the storm sewer system on Erato Street.
- Runoff from roof leaks in the maintenance shop would drain across the maintenance shop floor, exit the shop into Erato Street and could ultimately enter the storm sewer network.

### **AOC Corrective Actions**

On June 6, 2001, a follow up inspection was performed by TMI, Suiza and Browns Dairy personnel to confirm the actions taken at the Browns Dairy facility to address the above areas of concern. The following best management practices (BMPs) have been implemented at Brown’s Velvet Dairy to ensure storm water permit compliance:

- Two storm drains located in Thalia Street, west of the loading dock, have been permanently sealed to prevent the introduction of any liquid or solid waste into the municipal storm sewer system from outdoor loading activities. Seal integrity has been confirmed using a dye tracer test.

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- Truck and trailer exterior washing activities on site have been terminated. This directive will prevent runoff into the municipal storm sewer system from washing of truck exteriors. Water sources previously used for washing of truck exteriors have either been disconnected or placed under lock and key. A dedicated onsite truck wash location which will be connected to the sanitary sewer system will be operational in the next 30 days.
- Washing of truck and trailer interiors is now limited to designated areas which drain directly into the sanitary sewer system. This directive will prevent runoff into the municipal storm sewer system from truck wash activities. Water sources in areas where trucks could be washed and which would runoff to storm sewers have either been disconnected or placed under lock and key.
- A drive-over barrier has been installed on Thalia Street, at the northern end of the loading dock. This barrier will prevent the runoff of any liquid waste from the outdoor loading area into the municipal storm sewer drains located at the corner of Thalia and Baronne Streets.
- A concrete curb barrier has been installed under the length of the loading dock to channel any loading dock spillage into sanitary sewer drains and to prevent runoff into the loading dock parking area of any liquid from spills during product loading activities.
- Three floor drains in the garage which were determined to have connected to the storm water system have been sealed to prevent the introduction of any waste into the municipal storm sewer system generated by vehicle maintenance activities.
- A drive-over barrier has been installed along the eastern entrance to the garage, along Erato Street, to prevent storm water from entering the garage area. This barrier will also prevent the runoff of any liquid from the garage area into the storm sewer system.
- The drive-over barrier installed along Erato Street at the eastern entrance to the maintenance shop will also prevent the introduction of any liquid waste into the municipal storm sewer system from maintenance shop roof leaks. The maintenance shop roof is also currently being renovated, thus eliminating this source of storm water runoff.

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### **Storm Water Pollution Prevention Plan Updates**

The above site modifications and Best Management Practices (BMPs) will be added to the Storm Water Pollution Prevention Plan (SWPPP) for the facility, which is currently being modified. To further enhance permit compliance, several existing standard operating procedures have been documented in the SWPPP:

- Liquid spills in the maintenance and garage areas are removed utilizing dry absorbent material;
- Product waste dumpster is located under a covered area to prevent storm water contact;
- Drip pans are used to collect fluids in the garage and maintenance areas;
- Bulk chemical storage containers are kept in secondary containment devices.

We believe that the storm water site investigation and subsequent improvements to the Browns Dairy facility's storm water management program described above have conclusively addressed any existing items of non-compliance and will prevent all potential violations of the Clean Water Act and Louisiana statutes related to storm water discharges.

### **Meeting and Site Tour Invitation**

We anticipate that your clients would like to confirm that the above improvements have been fully implemented and to document full compliance with the Clean Water Act at the Browns Dairy facility. Accordingly, we would propose to supplement this narrative description of improvements with a face to face meeting and a tour of the portions of the Browns Dairy facility which are covered by the storm water permit and SWPPP. So that we do not unreasonably interfere with the operation of the facility, our proposed meeting and offer to provide a facility tour is limited to one representative of the proposed plaintiffs together with one legal representative. Additionally, we do not currently view this proposed meeting and tour as a negotiation session or venue for airing unrelated complaints, concerns or grievances. If such a meeting is desired by your clients, we would prefer to address such an agenda at a separate time and place. Assuming that you would be interested in meeting to discuss Suiza and Browns Dairy's response to the allegations in the Notice, attached is a draft agenda for the meeting and site visit that we would propose.

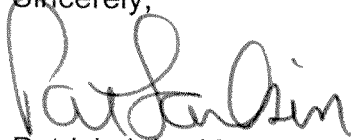
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Please contact me at your first convenience to discuss any questions you may have regarding this letter and to identify a mutually convenient date for our meeting.

I look forward to hearing from you in the near future.

Sincerely,



Patrick J. Larkin

PJL/kmg

cc: Kennon Davis  
Gregg Jones  
Paul Penney

## Meeting Agenda

### Browns Dairy Storm Water Pollution Prevention Program

- A. Introduction  
(Pat Larkin, Counsel for Browns Dairy and Suiza Foods)
  - 1. Introduction of representatives of Suiza Foods, Browns Dairy, proposed citizen suit plaintiffs.
  - 2. Overview of Meeting Agenda and Site Tour Schedule
- B. Overview of Storm Water Discharges at Browns Dairy facility.  
(Bud Wildeweiler, Browns Dairy [title/sp?])
- C. Review of Notice of Citizen Suit and Alleged Violations of Clean Water Act.  
(Pat Larkin)
- D. Improvements to Browns Dairy Storm Water Program.  
(Janis Franklin, Terra Mar, Inc., Gregg Jones, Suiza Foods, Environmental Dept.)
- E. Tour of Storm Water Related Portions of Browns Dairy facility.  
(Kennon Davis, General Manager, Browns Dairy)
- F. Conclusion/Review of Plaintiffs Concerns as to Ongoing or Repeatable Clean Water Act violations. (Pat Larkin & Representative/Counsel for Plaintiffs)