

9-1-2001

## Maple Leaf Farms, Inc. v. Wisconsin Dep't of Natural Res., 633 N.W. 2d 720 (Wis. Ct. App. 2001)

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Colleen M. Cooley, Court Report, Maple Leaf Farms, Inc. v. Wisconsin Dep't of Natural Res., 633 N.W. 2d 720 (Wis. Ct. App. 2001), 5 U. Denv. Water L. Rev. 295 (2001).

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City took the Burg's property by artificially channeling water from its own property onto the bluff and thereby undermining its stability. This court held that this claim failed for the same reasons the negligence claim failed, lack of evidence that the City artificially channeled water onto the bluff.

Finally, the Burgs argued the City had trespassed on their property because the City knew that a landslide was a substantially certain consequence of its failure to take preventive measures. The court did not accept the Burg's argument because they failed to show authority, which stated that an "act," as used in defining the elements of trespass, means a failure to act, and the Burg's negligence and trespass claims were therefore the same.

*Shandra Dobrovolny*

## WISCONSIN

**Maple Leaf Farms, Inc. v. Wisconsin Dep't of Natural Res., 633 N.W.2d 720 (Wis. Ct. App. 2001)** (holding that the Department of Natural Resources has the authority to regulate off-site manure spreading).

Maple Leaf Farms, Inc. ("Maple Leaf") appealed an order upholding the Department of Natural Resources' ("DNR") authority to regulate Maple Leaf's spreading of manure. Maple Leaf is the largest producer and processor of ducks in the state of Wisconsin. The Maple Leaf duck facilities created a significant amount of manure through production. Maple Leaf routinely applied a portion of this manure to the fields located on company property and sold the remaining manure to area farmers for fertilizer. Maple Leaf transported and applied the manure to the farmers' fields. According to expert testimony at the administrative hearing, the spreading of manure on fields resulted in the release of pollutants into both surface and groundwater. The DNR issued wastewater permits to Maple Leaf requiring them to maintain runoff control structures and to implement procedures for the storage and disposal of animal wastes.

Under the Wisconsin Pollution Discharge Elimination System permit program, the DNR asserted that they had the authority to regulate spreading of manure that took place on property that was not owned by Maple Leaf ("off-site"). DNR also asserted that they could condition the issuance of permits on compliance with groundwater protection standards. Maple Leaf claimed that the DNR had no authority to regulate manure spreading off-site because the Clean Water Act ("CWA") does not regulate off-site manure spreading. The CWA prohibits the "discharge" of any pollutant by any person into navigable waters from any point source, but it does not regulate manure spreading once the manure leaves the property where it was

generated. However, the CWA authorizes states to implement their own permit programs as long as the state programs impose standards at least as stringent as those of the federal program. The Wisconsin program, unlike the CWA, includes groundwater as a subject to regulatory protection and allows the DNR to establish more stringent effluent limitations if necessary to meet water quality needs.

The DNR asserted that their authority to regulate the off-site spreading came from section 283.001 of the Wisconsin Statutes and condition the issuance of permits under section 283.310 of the Wisconsin Statutes. The Court of Appeals of Wisconsin found that section 283.001 of the Wisconsin Statutes clearly and unambiguously empowered the DNR to regulate where groundwater may be affected by the discharge of pollutants. Additionally, the court found that even though off-site land was used to dispose of waste from the facility, this disposal was considered a "discharge" from the facility and could be regulated by the DNR under section 243.140 of the Wisconsin Administrative Code. The court reasoned that although there was no distinction made in the Wisconsin statutes or code regarding on-site versus off-site disposal, the purpose behind the legislation was protection of the waters and to prevent the discharge of pollutants into the waters of the state.

*Colleen M. Cooley*