

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.)
)
RICHARD SUTTON and DAVID)
SUTTON, d/b/a SUTTON FARMS,)
)
Respondents.)

PCB No. 2017-

NOTICE OF FILING

To: See attached service list.

PLEASE TAKE NOTICE that on November 7, 2016, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a Notice of Filing, Motion for Relief from Hearing Requirements, Complaint, and Stipulation and Proposal for Settlement, copies of which are attached herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS, by
LISA MADIGAN, Attorney General of the
State of Illinois,

By: 
 ANDREW B. ARMSTRONG, Chief
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Dated: November 7, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

PCB No. 2017-

RICHARD SUTTON and DAVID)
SUTTON, d/b/a SUTTON FARMS,)

Respondents.)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, Complainant states as follows:

1. Simultaneously with the filing of this motion, Complainant is filing the initial Complaint in this matter as well as a Stipulation and Proposal for Settlement executed between Complainant and Respondents, Richard Sutton and David Sutton d/b/a Sutton Farms.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2)(2014), provides:

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person

files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is scheduled in this matter.

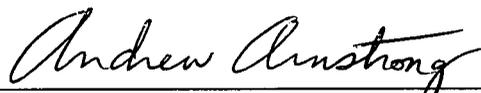
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2014).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By:



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Environmental Bureau
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	PCB No.
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RICHARD SUTTON and DAVID)	
SUTTON, d/b/a SUTTON FARMS,)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complain of Respondents, RICHARD SUTTON and DAVID SUTTON, d/b/a SUTTON FARMS, as follows:

COUNT I
WATER POLLUTION

1. This Count is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2014).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.

3. The Illinois Pollution Control Board ("Board") is an independent board created by the Illinois General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2014), and charged, *inter alia*, with the duty of promulgating standards and regulations under the Act.

4. This Count is brought after providing Respondents, Richard and David Sutton d/b/a Sutton Farms, with notice and the opportunity for a meeting with the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014).

5. Respondents, Richard and David Sutton d/b/a Sutton Farms (hereafter "Respondents"), own and operate Sutton Farms, a Concentrated Animal Feeding Operation (CAFO) located at 557 CR 400E, Norris City, White County, Illinois (the "facility").

6. The facility consists of five confinement buildings with a capacity for 2500 swine (> 55 lbs).

7. Three of the facility's five confinement buildings are shallow pit, pull-plug buildings (buildings #4, #7, and #8).

8. One of the facility's five confinement buildings is a single flush-gutter building (building #3).

9. One of the facility's five confinement buildings is a single underfloor deep pit building (building #2).

10. Two of the shallow pit buildings (buildings #7 and #8) use the same two-cell lagoon for livestock waste management.

11. One of the shallow pit buildings (building #4) and the flush-gutter building (building #3) use the same three-cell lagoon for livestock waste management.

12. Indian Creek is located approximately one-quarter mile to west of the facility's confinement buildings.

13. Indian Creek is a tributary to Bear Creek, which is a tributary to Saline River. The Saline River is a tributary to the Ohio River.

14. A tributary to Indian Creek (the “tributary”) runs along the south border of the facility.

15. A constructed waterway (the “waterway”) runs south from within the facility to the tributary.

16. The Illinois EPA conducted a CAFO inspection at the facility on February 20, 2014, with a follow-up inspection on February 25, 2014 (collectively, “the inspections”).

17. At the time of the inspections, the facility had approximately 1,600 swine greater than 55 pounds.

18. At the time of the inspections, Respondents did not have a National Pollutant Discharge Elimination System (NPDES) permit issued by the Illinois EPA for the facility.

19. At the time of the inspections, Respondents had not submitted to the Illinois EPA an application for coverage under an NPDES permit.

20. At the time of the inspections, Respondents did not have a nutrient management plan for the facility.

21. At the time of the inspections, Respondents did not have a certified livestock manager for the facility.

22. At the time of the February 20, 2014 inspection, the three-cell lagoon had exterior berms that were very steep and severely eroded.

23. At the time of the February 20, 2014 inspection, the first cell of the three-cell lagoon had the appearance that livestock waste had been overtopping the northern lagoon berm and flowing approximately 3 feet down the exterior berm.

24. At the time of the February 20, 2014 inspection, the third cell of the three-cell lagoon had 1 to 2 inches of available freeboard, but its freeboard marker indicated significantly more available freeboard.

25. At the time of the February 20, 2014 inspection, livestock waste in the deep pit of building #2 was actively discharging and overflowing the pit, flowing across a gravel drive outside the building, down a hillside, into a ditch, and then into the waterway.

26. At the time of the February 20, 2014 inspection, the two-cell lagoon was actively discharging livestock waste. The livestock waste in the second cell of the two-cell lagoon was overtopping the lagoon berm, flowing down the exterior berm, and entering the waterway. The entrance point of the discharge from the two-cell lagoon to the waterway was downstream of the entrance point of the discharge from building #2.

27. The Illinois EPA collected a sample of liquid (Sample SF-01) from the waterway, downstream of the entrance points of the discharges from building #2 and the two-cell lagoon.

28. Sample SF-01 was dark in color and had a prominent odor of livestock waste.

29. A laboratory analysis by the Illinois EPA yielded the following results of Sample SF-01:

<u>Parameter</u>	<u>Concentration</u>	<u>Units</u>
pH	7.5	----
Total Suspended Solids	355	mg/l
Phosphorus	29.3	mg/l
Total Ammonia - N	318	mg/l
Nitrate & Nitrite	1.45	mg/l
Biochemical Oxygen Demand	959	mg/l

30. At the time of the February 20, 2014 inspection, at the location where the waterway discharges to the tributary, the liquid in the waterway and the tributary was dark in color.

31. The Illinois EPA collected a sample of liquid (Sample SF-02) from the waterway where it discharges to the tributary.

32. Sample SF-02 was dark in color and had a prominent odor of livestock waste.

33. A laboratory analysis by the Illinois EPA yielded the following results of Sample SF-02:

<u>Parameter</u>	<u>Concentration</u>	<u>Units</u>
pH	7.4	----
Total Suspended Solids	515	mg/l
Phosphorus	18.3	mg/l
Total Ammonia - N	180	mg/l
Nitrate & Nitrite	0.880	mg/l
Biochemical Oxygen Demand	365	mg/l

34. At the time of the February 25, 2014 follow-up inspection, the first cell of the three-cell lagoon was sandbagged to prevent waste from overtopping the berms.

35. At the time of the February 25, 2014 follow-up inspection, no waste was actively discharging from building #2 or the two-cell lagoon.

36. At the time of the February 25, 2014 follow-up inspection, the waterway was diked upstream of the point of discharge to the tributary.

37. At the time of the February 25, 2014 follow-up inspection, liquid in the waterway upstream of the dike remained dark in color.

38. At the time of the February 25, 2014 follow-up inspection, the facility's composting area consisted of a concrete floor and a prefabricated roof structure.

39. At the time of the February 25, 2014 follow-up inspection, the composting area did not have curbing or other structures to contain runoff.

40. At the time of the February 25, 2014 follow-up inspection, there was composted material and sawdust on the concrete floor, outside of the roofed area.

41. On information and belief, during a precipitation event at the facility, runoff from the composting area would flow freely away from the composting area, away from the lagoon system, and to waters of the State.

42. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), provides the following prohibition:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this act.

43. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

44. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides the following definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

45. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides the following definition:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts

thereof, which are wholly or partially within, flow through, or border upon this State.

46. Livestock waste is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

47. Runoff from the facility’s composting area is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

48. The waterway is a “water” of the State as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

49. The tributary is a “water” of the State as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

50. Indian Creek is a “water” of the State as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

51. Discharges of livestock waste from the facility’s lagoons and confinement buildings into the waterway and tributary constitute “water pollution” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

52. Runoff from the facility’s composting area into the tributary constitutes “water pollution” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

53. Respondents failed to contain livestock waste in the facility’s two-cell lagoon and the deep pit of building #2, causing or allowing the livestock waste to discharge to the waterway and the tributary.

54. By causing or allowing livestock waste to discharge from the facility’s two-cell lagoon and the deep pit of building #2 to the waterway and the tributary, Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

55. Respondents failed to accurately monitor the available freeboard in the third cell of the facility's three-cell lagoon, threatening discharges of livestock waste to the waterway, the tributary, and Indian Creek.

56. By failing to accurately monitor the available freeboard in the third cell of the facility's three-cell lagoon, threatening discharges of livestock waste to the waterway, the tributary, and Indian Creek, Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

57. Respondents allowed the waste to overtop the northern lagoon berm from the first cell of the facility's three-cell lagoon and thereby threatened discharges of livestock waste and runoff to the waterway, the tributary and Indian Creek.

58. By threatening discharges of livestock waste and runoff from the facility's three-cell lagoon to the waterway, the tributary, and Indian Creek, Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

59. Respondents failed to ensure that runoff from the facility's composting area is contained and prevented from discharging from the composting area by curbing or other system, threatening discharges of composting runoff to the waterway, the tributary, and Indian Creek.

60. By failing to ensure that runoff from the facility's composting area is contained and prevented from discharging from the composting area by curbing or other system, threatening discharges of composting runoff to the waterway, the tributary, and Indian Creek, Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondents, RICHARD SUTTON and DAVID SUTTON, d/b/a SUTTON FARMS:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations that are the subject of this Complaint;

D. Imposing upon Respondents for violating a provision of the Act a civil penalty of fifty thousand dollars (\$50,000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which the violation continues, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II
WATER POLLUTION HAZARD

1-60. Complainant adopts and incorporates by reference herein paragraphs 1 through 60 of Count I as paragraphs 1 through 60 of this Count II.

61. Section 12(d) of the Act, 415 ILCS 5/12(d) (2014), provides:

No person shall:

* * *

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

62. Respondents created a water pollution hazard by depositing livestock waste onto the ground from the facility's two-cell lagoon and deep pit of building #2, uncontained, such that it was able to discharge from these structures and enter the waterway, the tributary, and Indian Creek.

63. By creating a water pollution hazard by depositing livestock waste at the facility's two-cell lagoon and deep pit of building #2, uncontained, such that it was able to discharge from these structures and enter the waterway, the tributary, and Indian Creek, Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

64. Respondents allowed the waste to overtop the northern lagoon berm from the first cell of the facility's three-cell lagoon and thereby created a water pollution hazard to the waterway, the tributary and Indian Creek.

65. By depositing livestock waste adjacent to the facility's three-cell lagoon, Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondents, RICHARD SUTTON and DAVID SUTTON, d/b/a SUTTON FARMS:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014);

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations that are the subject of this Complaint;

D. Imposing upon Respondents for violating a provision of the Act a civil penalty of fifty thousand dollars (\$50,000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which the violation continues, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT III
DISCHARGE WITHOUT AN NPDES PERMIT

1-60. Complainant adopts and incorporates by reference herein paragraphs 1 through 60 of Count I as paragraphs 1 through 60 of this Count III.

61. Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), provides, in pertinent part:

No person shall:

* * *

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

62. Section 309.102(a) of the Board regulations, 35 Ill. Adm. Code 309.102(a), provides:

- (a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

63. Respondents caused or allowed discharges of livestock waste from the facility's two-cell lagoon and deep pit of building #2 to the waterway and the tributary, without an NPDES permit issued by the Illinois EPA.

64. By causing or allowing discharges of livestock waste from the facility's two-cell lagoon and deep pit of building #2 to the waterway and the tributary, without an NPDES permit issued by the Illinois EPA, Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Board regulations, 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondents, RICHARD SUTTON and DAVID SUTTON, d/b/a SUTTON FARMS:

- A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(a) (2014), and Section 309.102(a) of the Board regulations, 35 Ill. Adm. Code 309.102(a);
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations that are the subject of this Complaint;
- D. Imposing upon Respondents for violating Section 12(f) of the Act or any NPDES permit or term or condition thereof, or any filing requirement, regulation or order relating to the

NPDES permit program, a civil penalty of not to exceed \$10,000 per day of violation, pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2014);

- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT IV
OFFENSIVE CONDITIONS

1-60. Complainant adopts and incorporates by reference herein paragraphs 1 through 60 of Count I as paragraphs 1 through 60 of this Count IV.

61. Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

* * *

62. Respondents caused or allowed livestock waste to be discharged from the facility's two-cell lagoon and deep pit of building #2 to the waterway, which then discharged to the tributary.

63. Liquid in the waterway immediately downstream of the lagoon and building #2 discharges and immediately upstream of the waterway's discharge to the tributary was dark in color and had a prominent odor of livestock waste.

64. Liquid in the tributary immediately downstream of the waterway was dark in color.

65. By causing or allowing discharges of livestock waste from the facility's two-cell lagoon and deep pit of building #2 to the waterway, such that liquid in the waterway downstream of the discharges and upstream of the tributary was dark in color and had a prominent odor of

livestock waste, Respondents violated Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203, and, thereby, Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

66. By causing or allowing discharges of livestock waste from the facility's two-cell lagoon and deep pit of building #2 to the waterway, such that liquid in the tributary immediately downstream of the waterway was dark in color, Respondents violated Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203, and, thereby, Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondents, RICHARD SUTTON and DAVID SUTTON, d/b/a SUTTON FARMS:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents have violated Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203, and, thereby, Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations that are the subject of this Complaint;

D. Imposing upon Respondents for violating a provision of the Act and a Board regulation a civil penalty of fifty thousand dollars (\$50,000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation continues, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT V
LIVESTOCK MANAGEMENT FACILITY STORAGE CAPACITY

1-60. Complainant adopts and incorporates by reference herein paragraphs 1 through 60 of Count I as paragraphs 1 through 60 of this Count V.

61. Section 501.404(c)(3) of the Board regulations, 35 Ill. Adm. Code 501.404(c)(3), provides:

(c) Livestock Waste-Holding Facilities

* * *

- (3) For livestock management facilities and livestock waste handling facilities that are not required to obtain an NPDES permit, the contents of livestock waste-handling facilities shall be kept at levels such that there is adequate storage capacity so that an overflow does not occur except in the case of precipitation in excess of a 25-year 24-hour storm.

62. Section 501.404(c)(4)(A) of the Board regulations, 35 Ill. Adm. Code 501.404(c)(4)(A), provides, in pertinent part:

(4) Liquid Livestock Waste

- (A) Existing livestock management facilities that handle the waste in a liquid form shall have adequate storage capacity in a liquid manure-holding tank, lagoon, holding pond, or any combination thereof so as not to cause air or water pollution as defined in the Act or applicable regulations.

* * *

63. Upon information and belief, no precipitation that qualified as a 24-hour, 25-year storm event occurred at the facility at the time of the subject discharges.

64. Respondents failed to ensure that the facility's lagoons and deep pit of building #2 had adequate storage capacity so that an overflow did not occur.

65. By failing to ensure that the facility's lagoons and deep pit of building #2 had adequate storage capacity so that an overflow did not occur, Respondents violated Section

501.404(c)(3) of the Board regulations, 35 Ill. Adm. Code 501.404(c)(3), and, thereby, Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

66. Respondents failed to ensure that the facility's lagoons and deep pit of building #2 had adequate storage capacity so as to not cause water pollution.

67. By failing to ensure that the facility's lagoons and deep pit of building #2 had adequate storage capacity so as to not cause water pollution, Respondents violated Section 501.404(c)(4)(A) of the Board regulations, 35 Ill. Adm. Code 501.404(c)(4)(A), and, thereby, Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondents, RICHARD SUTTON and DAVID SUTTON d/b/a SUTTON FARMS:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents have violated Section 501.404(c)(3) of the Board regulations, 35 Ill. Adm. Code 501.404(c)(3), and, thereby, Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations that are the subject of this Complaint;

D. Imposing upon Respondents for violating a provision of the Act and a Board regulation a civil penalty of fifty thousand dollars (\$50,000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation continues, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
ANDREW B. ARMSTRONG, Chief
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Assistant Attorney General

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Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2014).

3. At all times relevant to the Complaint, Respondents owned and operated Sutton Farms, a Concentrated Animal Feeding Operation located at 557 CR 400E, Norris City, White County, Illinois ("Facility" or "Site.")

4. The Illinois EPA conducted inspections of the Site on February 20, 2014 and February 25, 2014. At the time of the inspections, the facility consisted of five confinement buildings with a capacity for 2500 swine. Three of the confinement buildings had shallow pit, pull-plug waste containment (buildings #4, #7, and #8), the fourth building had a single flush-gutter (building #3), and the fifth building had a single underfloor deep pit (building #2). Two of the shallow pit buildings (buildings #7 and #8) used a two-cell lagoon for livestock waste management. The third shallow pit building (building #4), and the flush-gutter building (building #3) used a three-cell lagoon for livestock waste management.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: **Water Pollution**
Section 12(a) of the Act, 415 ILCS 5/12(a) (2014)

Count II: **Water Pollution Hazard**
Section 12(d) of the Act, 415 ILCS 5/12(d) (2014)

Count III: **Discharge Without an NPDES Permit**
Section 12(f) of the Act, 415 ILCS 5/12(f) (2014); Section 309.102(a) of the Board regulations, 35 Ill. Adm. Code 309.102(a)

Count IV: Offensive Conditions

Section 12(a) of the Act, 415 ILCS 5/12(a) (2014); Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203

Count V: Livestock Management Facility Storage Capacity

Section 12(a) of the Act, 415 ILCS 5/12(a) (2014); Sections 501.404(c)(3) and 501.404(c)(4)(A) of the Board regulations, 35 Ill. Adm. Code 501.404(c)(3) and 501.404(c)(4)(A).

C. Admission of Violations

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

The Respondents have removed all swine from the facility and have land applied the majority of waste remaining in the lagoons. All livestock waste in the underfloor pit in building #2 has been removed and land applied. The Respondents retained Frank and West Engineering to prepare a Comprehensive Nutrient Management Plan (CNMP) to govern the land application of the waste. In addition, the Respondents submitted a Livestock Waste Lagoon Closure Plan to the Illinois Department of Agriculture and obtained an approval on June 11, 2015.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2012).

Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents.

This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened by the discharge of contaminants from Respondents' livestock waste storage lagoons.
2. There is social and economic benefit to livestock production. However, the Respondents have decided to close the swine operation.
3. Operation of the Facility was not suitable for the area in which it was located as it was operated at the time of the violations.
4. Reducing or eliminating discharges at the Site is technically practicable and economically reasonable. However, Respondents have chosen to close the Site.

5. On March 12, 2014, Respondents reported that levees had been repaired, manure application at agronomic rates was being conducted and that they had engaged a contractor to assist with the CNMP. On June 11, 2015, the Respondents obtained approval of a Livestock Waste Lagoon Closure Plan from the Illinois Department of Agriculture.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2012), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. The violations occurred on February 20, 2014 and February 25, 2014, and were individually resolved over the subsequent six-month period.
2. Respondents were diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified them of their noncompliance.
3. The civil penalty takes into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.
8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents shall jointly and severally pay a civil penalty in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or

before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Rachel R. Medina
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 S. Second Street
Springfield, IL 62706

D. Future Compliance

1. Within three hundred sixty-five (365) calendar days of the Board's approval of this Stipulation, Respondents shall complete all activities required under the Livestock Waste Lagoon Closure Plan and associated approval issued by the Illinois Department of Agriculture on June 11, 2015.

2. Respondents shall cease and desist from any operation of a concentrated animal feeding operation at the Site, in accordance with the Livestock Waste Lagoon Closure Plan.

3. Effective immediately upon the Board's approval of this Stipulation, Respondents shall submit quarterly progress reports by the fifteenth (15th) business day of the month in March, June, September and December. All progress reports shall be submitted to the individuals listed in Section V.F of this Stipulation, and comply with the following:

a. The progress reports shall discuss all significant activities that have been undertaken with respect to the implementation of the Livestock Waste Lagoon Closure Plan during the previous reporting period.

b. Respondents shall continue to submit quarterly reports until such time as all activities under the Livestock Waste Lagoon Closure Plan have been completed.

4. Respondents shall notify the individuals listed in Section V.F of this Stipulation prior to the commencement of any closure activities, to allow for a potential inspection by the Illinois EPA during the closure process.

5. Respondents shall notify Illinois EPA upon completion of all activities required under the Livestock Waste Lagoon Closure Plan, in accordance with Paragraph V.D.1.

Respondents shall further notify Illinois EPA when it receives a written notification of closure

completion from the Illinois Department of Agriculture (“IDOA”), or when it receives any other correspondence from IDOA relating to closure of the Site.

6. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondents’ facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

7. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

8. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents’ payment of the \$7,500.00 penalty, their commitment to cease and desist as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board’s approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant’s Complaint filed contemporaneously with the filing of this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of

Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Rachel R. Medina
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 S. Second Street
Springfield, IL 62706

Michael Roubitchek
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Joseph Stitely
Illinois Environmental Protection Agency
2309 W. Main Street, Suite 116
Marion, Illinois 62959

As to the Respondents

Richard Sutton
David Sutton
d/b/a Sutton Farms
119 Washington Ave.
P.O. Box 98
Omaha, IL 62871

G. Enforcement and Modification of Stipulation

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

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H. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

ALEC MESSINA, Acting Director
Illinois Environmental Protection Agency

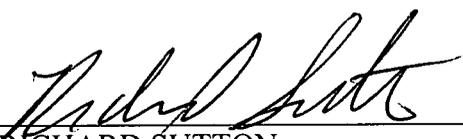
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

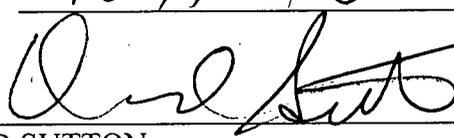
BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 11/02/2016

DATE: 10/27/16


RICHARD SUTTON

DATE: 10-14-16


DAVID SUTTON

DATE: 10-14-16

CERTIFICATE OF SERVICE

I hereby certify that I did on November 7, 2016, caused to be served by electronic and certified U.S. mail, a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENTS, COMPLAINT, and STIPULATION AND PROPOSAL FOR SETTLEMENT, upon the following persons:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
(Via Electronic Filing)

Richard and David Sutton
Sutton Farms
119 Washington Avenue
P.O. Box 98
Omaha, IL 62871
(Via Certified Mail)



ANDREW B. ARMSTRONG, Chief
Assistant Attorney General
aarmstrong@atg.state.il
ebs@atg.state.il.us

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



ANDREW B. ARMSTRONG, Chief
Assistant Attorney General
aarmstrong@atg.state.il.us
ebs@atg.state.il.us