

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<b>by KWAME RAOUL, Attorney General</b>	)	
<b>of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No. 2023-123</b>
	)	<b>(Enforcement-Water)</b>
<b>TENNIS DAIRY FARM, LLP,</b>	)	
<b>an Illinois limited liability partnership,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

TO: See attached service list

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
KWAME RAOUL, Attorney General  
of the State of Illinois

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

By: /s/Kevin D. Barnai  
 Kevin D. Barnai, #6329422  
 Assistant Attorney General  
 Environmental Bureau  
 Illinois Attorney General's Office  
 500 South Second Street  
 Springfield, Illinois 62706  
 Office: (217) 782-9035  
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[Kevin.Barnai@ilag.gov](mailto:Kevin.Barnai@ilag.gov)

Dated: July 28, 2023

**Service List**

For the Respondent

Tennis Dairy Farms, LLP  
c/o Lucero Tennis Kieffer, Attorney for Respondent  
Jackson Kelly, PLLC  
P.O. Box 1507  
Evansville, IN 47706  
[lucero.kieffer@jacksonkelly.com](mailto:lucero.kieffer@jacksonkelly.com)  
*(by e-mail)*

Tennis Dairy Farms, LLP  
c/o Louis Michael Tennis, Registered Agent  
3907 N. 1400 Boulevard  
Browns, IL 62818-0000  
*(via certified mail)*

Carol Webb  
Hearing Officer Order  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794  
[Carol.Webb@illinois.gov](mailto:Carol.Webb@illinois.gov)  
*(by e-mail)*



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 (2020).

3. At all times relevant to the Complaint, Respondent was and is an Illinois limited liability partnership that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owns and operates an Animal Feeding Operation (“AFO”) located at 3907 N 1400 Boulevard, Browns, Illinois 62818, which houses approximately 325 dairy cows on 350 acres of land (the “Site”).

5. The Site has a livestock waste containment system, consisting of a 3-stage holding pond with a recirculating alley flush system, for the manure generated onsite.

6. On March 26, 2020, Illinois EPA conducted an inspection of the Site.

7. During the March 26, 2020 inspection, Illinois EPA observed that the pipe from the 3-stage holding pond to the flush tank (“Abandoned Pipe”) had been plugged with manure salts and left in the berm and a temporary pipe had been installed to connect the 3-stage holding pond to the flush tank.

8. On March 26, 2020, the Complaint alleges that Illinois EPA observed that rainfall had raised the wastewater level in the holding pond to the level of the Abandoned Pipe, allowing wastewater to flow through the pipe to the ground (“Release”).

9. Illinois EPA estimated that the wastewater discharge was approximately 6,600 gallons.

10. The Complaint alleges that wastewater discharge flowed overland to an unnamed tributary to Bonpas Creek (“Tributary”). Bonpas Creek is a tributary to the Wabash River.

11. The Complaint alleges that the Tributary downstream from the Site had a dark color and turbidity, and a slight smell of livestock waste.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has 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) (2020)

Count II: WATER POLLUTION HAZARD

Section 12(d) of the Act, 415 ILCS 5/12(d) (2020)

Count III: OFFENSIVE CONDITIONS

Section 12(a) of the Act, 415 ILCS 5/12(a) (2020) and Sections 302.203 and 304.105 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105

**C. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

On or about March 26-27, 2020, the Respondent implemented the following compliance activities, which included the recommendations by the Illinois EPA: capped the abandoned pipe, immediately stopped the discharge, pumped all liquid discharge located in the terrace containment berm, land applied the soil at agronomic rates, and continuously monitored the freeboard levels of the 3-stage lagoon. On May 7, 2021, Illinois EPA conducted a follow-up inspection and observed the above-mentioned remediation measures.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its 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 Respondent 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 (2020).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), 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. The Complaint alleges that human health and the environment were threatened due

to a discharge of wastewater to a water of the State that caused water pollution.

2. There is social and economic benefit to the Site.

3. Operation of the Site was and is suitable for the area in which it is located, so long it is operated in compliance with the Act and Board regulations.

4. Compliance with the Act and Board regulations at the Site was both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board regulations.

**IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2020), 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 Complaint alleges Respondent's discharge of wastewater was discovered by the Illinois EPA during an inspection on March 26, 2020 after an unusually heavy rainfall. Respondent informed Illinois EPA that it cleaned up the discharge and took corrective action immediately after the inspection and finished on or about April 2020. As verified by Illinois EPA's follow-up inspection on May 7, 2021, Respondent had addressed the violations. The Complaint alleges the gravity of the violations was serious because they resulted in a discharge of wastewater to a water of the State that caused water pollution.

2. The Parties agree that Respondent was diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified it of its noncompliance.

3. The civil penalty takes into account any economic benefit realized by the Respondent 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 TWO HUNDRED DOLLARS (\$7,200.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure was 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**

The Respondent shall pay a civil penalty in the sum of SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent 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 Respondent 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:

Kevin D. Barnai  
Assistant Attorney General  
Environmental Bureau South  
Illinois Attorney General's Office  
500 South Second St.  
Springfield, Illinois 62701

**D. Future Compliance**

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

2. The Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondent's 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

**E. Release from Liability**

In consideration of the Respondent's payment of the SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00) penalty, its commitment to cease and desist as contained in Section V.D.1 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent 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 on June 7, 2023. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent 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 Respondent's 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 Respondent.

**F. Enforcement of Stipulation**

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.

**G. 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

AGREED:


FOR THE COMPLAINANT:


PEOPLE OF THE STATE OF ILLINOIS,  
by KWAME RAOUL,  
Attorney General of the  
State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
ANDREW B. ARMSTRONG  
Chief  
Environmental Bureau  
Assistant Attorney General


BY:   
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: 07/24/2023

DATE: 7/18/23

FOR THE RESPONDENT:

TENNIS DAIRY FARMS, LLP.

BY:   
Louis M. Tennis, Sr.  
Managing Partner

DATE: June 15, 2023

ENTERED: \_\_\_\_\_

JUDGE \_\_\_\_\_

DATE: \_\_\_\_\_

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<b>by KWAME RAOUL, Attorney General</b>	)	
<b>of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No. 2023-123</b>
	)	<b>(Enforcement-Water)</b>
<b>TENNIS DAIRY FARM, LLP,</b>	)	
<b>an Illinois limited liability partnership,</b>	)	
	)	
<b>Respondent.</b>	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2022), moves that the Illinois Pollution Control Board (“Board”) grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2022). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2022), and Sections 302.203 and 304.105 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105.
2. On June 7, 2023, Complainant filed its Complaint.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement.

5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2022).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this Motion for Relief from Hearing Requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2022).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by KWAME RAOUL, Attorney General  
of the State of Illinois

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

By: /s/Kevin D. Barnai  
Kevin D. Barnai, #6329422  
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Office: (217) 782-9035  
Cell: (217) 685-4247  
*Kevin.Barnai@ilag.gov*

Dated: July 28, 2023

**CERTIFICATE OF SERVICE**

I, Kevin D. Barnai, an Assistant Attorney General, certify that on 28th of July, 2023, I caused to be served by E-mail and Certified Mail, the foregoing Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 500 South Second Street, Springfield, Illinois 62701.

By: s/ Kevin D. Barnai  
Kevin D. Barnai, #6329422  
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