

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2010

PEOPLE OF THE STATE OF ILLINOIS,            )  
  )  
Complainant,    )  
  )  
v.   )     PCB 10-84  
  )     (Enforcement - Water)  
PROFESSIONAL SWINE MANAGEMENT,         )  
LLC, HILLTOP VIEW LLC, WILDCAT            )  
FARMS, LLC, HIGH-POWER PORK, LLC,        )  
EAGLE POINT, LLC, LONE HOLLOW,            )  
LLC, TIMBERLINE, LLC, PRAIRIE STATE       )  
GILTS, LTD., NORTH FORK PORK, LLC,        )  
LITTLE TIMBER, LLC, and TWIN VALLEY       )  
PUMPING, INC.,                                    )  
  )  
Respondents.                                        )

ORDER OF THE BOARD (by G.L. Blankenship):

On April 15, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a nine-count complaint against Professional Swine Management, LLC, Hilltop View, LLC, Wildcat Farms, LLC, High-Power Pork, LLC, Eagle Point, LLC, Lone Hollow, LLC, Timberline, LLC, Prairie State Gilts, Ltd, North Fork Pork, LLC, Little Timber, LLC, Twin Valley Pumping, Inc. On May 6, 2010, the Board issued an order accepting the complaint for hearing. On July 13, 2010, the People filed a motion for leave to file a nine-count first amended complaint (Mot.), attaching the first amended complaint (Am. Comp.). For the reasons below, the Board grants the People’s motion for leave and accepts the first amended complaint for hearing.

In the motion for leave to file, the People note that the case has not reached final judgment and the respondents have not yet answered or otherwise responded to the original complaint. Mot. at 1. The People explain that through the first amended complaint, they seek to voluntarily dismiss respondent Twin Valley Pumping, Inc. (Twin Valley) without prejudice and add allegations against other respondents already named in the original complaint. *Id.* at 2. According to the motion, dismissal of Twin Valley “eliminates allegations of violation pertinent to the Timberline facility (Count VI) and North Fork facility (Count VIII).” *Id.* Further, the People maintain that since the original complaint was filed, additional violations have occurred at the Hilltop View facility. It would be most efficient and economical, the People continue, “to address all outstanding violations concerning the named Respondents in a single enforcement action,” and the People therefore seek to add corresponding allegations. *Id.*

In the nine-count first amended complaint, the People allege violations at livestock facilities located in several counties. Specifically, the People allege violations of Sections 12(a),

12(d), and 12(f) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), 12(d), 12(f) (2008)) and Sections 302.203, 309.102(a), 501.403(a), and 620.301 of the Board's regulations (35 Ill. Adm. Code 302.203, 309.102(a), 501.403(a), 620.301) and the manner in which these provisions were violated.<sup>1</sup> The People seek an order requiring that respondents cease and desist from any further violations and pay the maximum statutory civil penalties.

The first amended complaint meets the applicable content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 103.204(c). A non-movant has 14 days to respond to a motion. *See* 35 Ill. Adm. Code 101.500(d). The Board has received no responses to the People's motion for leave to file the first amended complaint. Therefore, any objection to granting the motion is deemed waived. *Id.* This case has not been to hearing and no answer to or motion attacking the original complaint has been filed. The added allegations concern a facility and respondents already included in the original complaint. The Board grants the People's unopposed motion for leave to file the first amended complaint, dismissing Twin Valley and adding allegations. *See* 35 Ill. Adm. Code 103.206(d), (e). The Board accepts the first amended complaint for hearing. The caption on future filings in this case must exclude Twin Valley.

In an order of July 21, 2010, the hearing officer granted a motion, made on behalf of all parties to the proceeding, to give respondents 30 days from the date of this Board order to file any motion attacking the first amended complaint. *See* 35 Ill. Adm. Code 101.506. Accordingly, any such motion is due by September 7, 2010, which is the first business day following the 30th day after the date of today's order. *See* 35 Ill. Adm. Code 101.300(a).

In light of the rulings described above, answers to the first amended complaint are due by October 4, 2010, which is the 60th day after the date of today's order. *See* 35 Ill. Adm. Code 103.204(d). A respondent's failure to file an answer to a complaint within this 60-day period may have severe consequences. Generally, if a respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). A timely filed motion attacking the first amended complaint will stay the movant's 60-day period to file an answer until the Board disposes of the motion. *See* 35 Ill. Adm. Code 101.506, 103.204(e). The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 5, 2010, by a vote of 5-0.




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<sup>1</sup> The Board views as mere scrivener's error the first amended complaint's reference to Twin Valley in count VI's prayer for relief. Am. Comp. at 26.

John Therriault, Assistant Clerk  
Illinois Pollution Control Board