

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

CONCENTRATED ANIMAL FEEDING            )  
OPERATIONS (CAFOs): PROPOSED        )  
AMENDMENTS TO 35 ILL. ADM. CODE    )  
501, 502 AND 504                         )  
R 2012-023

**PRE-FILED TESTIMONY OF STACY JAMES, PH.D.**

**Qualifications/Introduction**

My name is Dr. Stacy James and I am a Water Resources Scientist at Prairie Rivers Network. Prairie Rivers Network is Illinois' statewide river conservation organization and the state affiliate of the National Wildlife Federation. I have been employed by Prairie Rivers Network since 2006. Starting in 2008, I began to focus on the threats to water quality posed by concentrated animal feeding operations (CAFOs). My focus has included commenting on NPDES permits issued to CAFOs, evaluating construction applications for new CAFOs, reviewing peer-reviewed scientific literature on CAFOs, and participating in the stakeholder workgroup assembled by Illinois EPA to provide input on the technical standards contained in this proposed rule. I have a B.S. in Biology from Wake Forest University and a Ph.D. in Conservation Biology from University of Missouri-Columbia. During and after graduate school, I spent seven years at the USGS Columbia Environmental Research Center conducting ecotoxicology experiments with aquatic and terrestrial organisms.

I am offering testimony on behalf of the Environmental Groups (Prairie Rivers Network, Environmental Law and Policy Center, Illinois Citizens for Clean Air and Water, and Natural Resources Defense Council). While the proposed rule for CAFOs contains significant improvements relative to the existing rule, the proposed rule could be strengthened in a number of ways to decrease the likelihood of livestock waste being discharged into waters of the state. Therefore, today I will address the following topics contained in the proposed rule: location of new livestock management facilities and waste-handling facilities, land application setbacks, temporary manure stacks, nitrogen-based and phosphorus-based application rates, winter application rates, and the shortfalls of waste management plans required by the Livestock Management Facilities Act.

**Location of new livestock management facilities and waste-handling facilities**

New livestock management facilities and waste-handling facilities (together hereafter referred to as "production areas"), regardless of size or permit status, should have a minimum siting setback from surface waters to minimize the potential for polluted discharges. Existing state regulations regulate siting relative to surface waters as follows: 1) new production areas cannot have surface

waters within their boundaries [35 IAC 501.402(a)], 2) new production areas located within a 10-year flood height must be protected against such floods [35 IAC 501.402(b)], and 3) new production areas may not be constructed within the floodway of 100-year floodplains but can be constructed within the flood fringe outside the floodway provided certain conditions are met [8 IAC 900.502(a)]. While these restrictions offer some buffering of production areas from surface waters, they have not proven sufficient to stop production area discharges to waters of the state. There are multiple lines of evidence supporting a siting setback from surface waters for new production areas.

I have observed several livestock production areas that are located just a few hundred feet from surface waters. This close proximity poses an undue risk to our water resources and downstream users. In some cases the livestock are allowed free access to the streams and may defecate in or near them, resulting in streambank erosion, algae blooms, and pathogen transfer. In other cases, the livestock are confined away from the stream but polluted runoff can discharge from the production area because the area is not covered or otherwise protected from precipitation. There have even been instances where the livestock operator constructed a conveyance from the production area to a drainage or stream so that runoff could be discharged. There are still other cases where the animals are kept indoors, but the waste is stored outside in stacks or ponds. Stacks are not always protected from precipitation as they should be, and waste holding ponds and other structures may overflow if they are not properly maintained. And some livestock operations located in floodplains face the risk of being flooded by nearby streams during heavy rainfall events; receding floodwaters can carry livestock waste into the streams.

The Illinois EPA has documented a number of production area discharges. In Daniel Heacock's pre-filed answer to the Environmental Group's pre-filed question number 1 for the Springfield hearing<sup>1</sup>, he stated that some of the most common production area discharges Illinois EPA has observed include feedlot runoff, pit discharges, and lagoon or holding pond overflows. He also stated that flooding of production areas has occurred. In Bruce Yurdin's pre-filed answer to the Environmental Group's pre-filed question 6 for the Springfield hearing<sup>2</sup>, he said that production areas have discharged livestock waste into surface waters via tile drains.

I have reviewed several of the Illinois EPA Livestock Program Livestock Facility Investigation Annual Reports. In these reports, data are provided on the total number of facilities surveyed, types of facilities observed, and regulatory violations found. The reports indicate that improper waste management and facility operation have led to regulatory violations at hundreds of livestock operations in Illinois. For example, in the 2008 report<sup>3</sup>, 188 facilities were surveyed and 46% were reported as having one or more regulatory violations. Regulatory violations found included the following: water quality standards (49 facilities), effluent standards (30 facilities), runoff control requirements (82 facilities), handling/storage requirements (99 facilities), no NPDES permit (38 facilities). Eighty-two of the 188 facilities were surveyed due to water pollution complaints, and only 21% of the complaints were unsubstantiated. Sources of water pollution problems included "feedlot runoff," "pit discharge," "lagoon overflow," "intentional discharge/dumping," "tile connection," and "manure stack." Enforcement activities conducted

<sup>1</sup> R12-23 Exhibit 8

<sup>2</sup> R12-23 Exhibit 7

<sup>3</sup> R12-23 Exhibit 16

by Illinois EPA included sending Noncompliance Advisory Letters to 30 facilities, Violation Notice Letters to 25 facilities, and referring 15 facilities to the Attorney General's Office. Eight fish kills were attributed to livestock facilities.

I have also reviewed several complaints filed by the Illinois Attorney General's Office, and associated consent orders. These complaints contained numerous instances where production area discharges reached nearby surface waters.

- In *People of the State of Illinois v. Professional Swine Management, LLC et al.*<sup>4</sup>, nine swine operations were cited for discharging into waterways or surface waters. In the count against Wildcat Farms (a large CAFO managed by Professional Swine Management), the complaint states (p. 10) that "A manure stream approximately two feet wide and 200 yards long flowed out of the cleanout, down the field in a northeasterly direction along a drainage channel where it entered an unnamed tributary to Wildcat Creek." An aerial photograph of Wildcat Farms<sup>5</sup> shows its proximity to surface waters.
- In *People of the State of Illinois v. Fragrant 40, LLC*<sup>6</sup>, the complaint states the swine operation's lagoon overflowed into a road ditch that drained into Taylor Creek; the lagoon was located approximately 300 feet from the creek. An aerial photograph of Fragrant 40<sup>7</sup> illustrates the production areas proximity to surface waters.
- In *People of the State of Illinois v. Mike Richter, d/b/a Rich-Lane Farms, and James Richter*<sup>8</sup>, the complaint states that livestock waste was flowing down the exterior berm of the dairy operation's waste holding pond such that the ground surface was over-saturated with manure and waste was flowing into a creek. Years earlier, an Illinois EPA inspector was reported as having observed the facility's holding pond overflowing through a discharge pipe that led to an adjacent creek.
- In *People of the State of Illinois v. J. B. Timmermann Farms, LTD.*<sup>9</sup>, the Illinois EPA received a complaint of livestock waste in Shoal Creek. Inspectors followed the flow of waste for five miles upstream to the Timmermann dairy farm. It was reported that a lagoon had overflowed after rainfall, and that the lagoon was full and discharging at the time of the inspection. The waste flowed into a road ditch, along with leachate from a silage bunker.
- In addition to these cases, there have been many other cases involving production area discharges into Illinois' surface waters.

I have also reviewed numerous peer-reviewed articles from the scientific literature. In one article<sup>10</sup>, the author wrote (p. 442): "Site selection is a key. Construction away from streams and rivers will avoid the problem of immediate stream discharge should a relatively minor problem arise. In addition, by having lagoons out of the flood plane [*sic*], erosion damage to the outside of the dike will be reduced." Several studies found evidence that livestock operations were

<sup>4</sup> Attachment 1 (complaint); Attachment 2 (order for North Fork Pork)

<sup>5</sup> Attachment 3

<sup>6</sup> Attachment 4 (complaint)

<sup>7</sup> Attachment 5

<sup>8</sup> Attachment 6 (complaint); Attachment 7 (order)

<sup>9</sup> Attachment 8 (complaint), Attachment 9 (order)

<sup>10</sup> Miner, 1999 (Attach. 10)

polluting nearby streams<sup>11</sup>. Other studies I reviewed evaluated the pollutant removal efficiency of vegetated filter strips or buffers receiving livestock waste in a manner simulating a production area discharge. A study conducted at the University of Illinois South Farm found that a 113 meter long vegetated filter strip did not remove 100% of the pollutants in the cattle feedlot runoff that was applied to the strip<sup>12</sup>. The study also found that nitrates can be transported off site quickly if the strip has subsurface drainage. Another Illinois study found that pollutant removal in a 564 meter long serpentine vegetated filter strip was about 92%<sup>13</sup>. The authors tested several other strips ranging from 61 to 609 meters long and found that pollutant concentrations approached background levels asymptotically as length increased. They also concluded that even though the strips retained over 90% of the pollutants, the discharge concentrations did not meet water quality standards. Generally speaking, filter strips help reduce pollutants in livestock waste but removal is incomplete<sup>14</sup>.

The above evidence demonstrates that many production areas in Illinois have discharged livestock waste into surface waters, and that vegetated setbacks from surface waters should reduce the chance of water pollution. Complaints from the Illinois Attorney General's Office demonstrate that waste can move at least 600 feet overland from production areas into surface waters. The filter strip studies I reviewed indicate that in some cases, over 1000 feet of buffer may be needed to prevent production area discharges. Therefore, I suggest that the Board consider at least a 750 foot production area siting setback from surface waters and an even greater setback from surface waters used as drinking water supplies. Establishing a siting setback from surface waters would not be without precedent in the Midwest. Minnesota [Minn. R. pt. 7020.0300, Subp. 21], Iowa [Iowa Code Ann. § 459.310 (West)], Ohio [Ohio Admin. Code Ann. § 901:10-2-02(B)(1), 910:10-2-02(B)(2)], and Indiana [327 Ind. Admin. Code 16-8-2] have siting restrictions relative to water resources that vary from 300 to 2500 feet.

Finally, many Illinois residents have expressed great concern about the location of new livestock operations relative to surface waters. I have heard these concerns firsthand in conversations with rural residents and at Illinois Department of Agriculture public informational meetings on proposed livestock operations. People are very worried that livestock waste will enter surface waters and spoil downstream uses. This concern is based in part on the fact that some of these operations are handling millions of gallons of waste. I have also encountered a situation where a proposed dairy operation sought Corps of Engineers permits to fill in the headwaters of a stream so that a large manure holding pond could be constructed. If this had been approved, the manure pond would have become the headwaters of the stream. Neighbors were concerned that the manure pond would seep into the stream or even burst. Therefore, if there was a minimum siting setback of production areas from surface waters, I believe it would ease some public concerns in addition to reducing water pollution.

<sup>11</sup>Campagnolo, 2002 (Attach. 11)

<sup>12</sup>Bhattarai, 2009 (Attach. 12)

<sup>13</sup>Dickey and Vanderholm, 1981 (Attach.13)

<sup>14</sup>Koelsch, 2006 (Attach. 14)

### **Land application setbacks**

Livestock waste may be transported from application fields into surface waters via overland flow and through subsurface tile drainage systems.<sup>15</sup> Overland flow can occur when there is rain or snowmelt and the waste is carried with stormwater runoff off the field. Overland flow can also occur without precipitation if the waste is over-applied and the ground becomes saturated, or if there is an equipment failure such as a burst application hose containing waste. Waste can enter tiles if the soil is dry and there are cracks or fissures that serve as downward conduits to the tiles, and/or if the waste is overapplied.

The proposed rule prohibits the land application of livestock waste within 200 feet of surface water (unless there is adequate diking or the water is upgrade). This prohibition is a vast improvement on the existing regulations in 35 IAC 560.203, which state that application within 200 feet “should not” occur. However, land application area discharges have caused water quality problems in Illinois and a 200 foot setback may not be sufficient in all cases. In particular, pristine waters and drinking water supplies need to be specially protected from land application area discharges.

In Illinois, there have been situations where livestock waste has travelled greater than 200 feet from the land application field to surface waters. Daniel Heacock of Illinois EPA provided evidence of this in his pre-filed answer to the Environmental Group’s pre-filed question number 9 for the Springfield hearing.<sup>16</sup> He wrote that “Overland flow of livestock waste has been observed entering surface waters several hundred feet from the edge of a field where land application occurred.” He also stated that field tiles can “transport livestock waste greater than 200 feet from the point of land application.”

Returning to the “2008 Livestock Facility Investigation Annual Report” (R12-23 Ex 16) referred to in my earlier testimony above, Illinois EPA reported that 13 facilities were in violation of the field application criteria of 35 IAC 560 (though the particular sections violated were not clarified). Sources of water pollution problems observed included “field application” and “irrigation equipment failure.” The annual reports from other years also showed violations of field application criteria.

The Illinois Attorney General’s Office has filed a number of complaints involving land application area discharges. In *People of the State of Illinois v. Mike Richter, d/b/a Rich-Lane Farms, and James Richter* (Attachment 6), the complaint states that inspectors observed a field tile discharging dark liquid into a creek. In addition, a swale was found to be discharging livestock waste from the land application field into a creek; the field was reportedly oversaturated with livestock waste. In *People of the State of Illinois v. Kenneth W. Fehr, d/b/a Fehr Brothers Swine Farm*<sup>17</sup>, a liquid sample taken approximately a quarter mile downstream of the swine waste land application site was turbid and had a swine waste odor. The liquid had very

<sup>15</sup> Attachment 15

<sup>16</sup> R12-23 Exhibit 8

<sup>17</sup> Attachment 16 (complaint)

high concentrations of ammonia, biochemical oxygen demand, and total suspended solids, indicative of animal waste.

There have been several scientific studies that have examined water pollution in areas where livestock waste is land-applied. An Iowa field study found evidence that CAFO density is a prime indicator of nitrate concentration in streams<sup>18</sup>. A Michigan field study concluded that sites approximately 1-2.5 km from CAFOs had poor water quality and high levels of drug-resistant bacteria<sup>19</sup>. An Indiana study examined the water in tile drains and ditches at a livestock operation with tile-drained cropland that receives manure<sup>20</sup>. The study found peak hormone concentrations in ditches following effluent irrigation.

Several states have adopted larger land application setbacks to protect high quality water resources. These recommendations or requirements can vary from 300 feet (Arkansas [014-04 Ark. Code R. 005.406(d) (2010)], Minnesota [Minnesota Pollution Control Agency, Land Application of Manure: Minimum State Requirements document]) to 500 feet or more (Kentucky [Best Management Practices for livestock under the Kentucky Agriculture Water Quality Act, KRS 224.71-100 through 224.71-140]), Iowa [Iowa Code § 459.314(2) (2008); 567 Iowa Admin. Code r. 65.3(3)(g) (2010)], Indiana [327 Ind. Admin. Code 16-8-2]). University of Missouri Extension categorizes land application of waste at a distance greater than 300 feet from surface waters as “low risk”.<sup>21</sup>

The evidence above suggests that some Illinois livestock operators have violated state land application regulations and that waste can be transported long distances from application fields. Pristine surface waters and drinking water supplies should be protected from land application discharges so that they remain high quality and safe. Therefore, I suggest that the land application setback be increased to 500 feet to protect Biologically Significant Streams (classified by Illinois Department of Natural Resources), Outstanding Resource Waters (designated by Illinois Pollution Control Board), and surface drinking water supplies (designated by Illinois EPA).

But note that even 500 feet may not be adequate if waste gets into tiles and those tiles travel some distance (potentially over a mile) before discharging into surface waters. It is estimated that over 30% of Illinois' cropland has subsurface tile drainage. In his pre-filed response to the Environmental Group's pre-filed question 6 for the Springfield hearing<sup>22</sup>, Bruce Yurdin stated that livestock waste applied to fields has reached surface waters via tile drainage. Subsurface drainage can increase the movement of agrichemicals to surface waters, and frequently this increased movement is attributed to cracks and other macropores that serve as downward preferential flow paths. Tillage before liquid waste application is recommended to reduce the chance of waste reaching tiles via macropores<sup>23</sup>; Appendix O in USEPA 2004<sup>24</sup>). Therefore, the rule should also prohibit land application of liquid waste when deep (e.g.,  $\geq 6$  inches)

<sup>18</sup>Weldon and Hornbuckle, 2006 (Attach. 17)

<sup>19</sup> West, 2010 (Attach. 18)

<sup>20</sup> Gall, 2011 (Attach. 19)

<sup>21</sup> Attachment 20

<sup>22</sup> R12-23 Exhibit 7

<sup>23</sup> Hoorman and Shipitalo, 2006 (Attach. 21)

<sup>24</sup> Attachment 22

macropores are present in fields with subsurface tile drainage, unless prior tillage or immediate incorporation occurs.

### **Temporary manure stacks**

Temporary manure stacks can pose a significant threat to both surface and groundwater quality. Manure stacks can be quite large and manure can be stacked for months<sup>25</sup>. Sometimes the manure is placed directly on the ground, unprotected from precipitation or clean stormwater runoff. Placing large volumes of manure on the ground without some sort of pad underneath may result in groundwater contamination, should the manure leach downwards. Likewise, stacks that are not covered and protected from clean stormwater runoff may shed polluted runoff capable of contaminating surface waters.

Since at least 1991, Illinois has had a regulation requiring that temporary manure stacks be established and maintained to prevent runoff and leachate from entering surface or groundwater. However, there have been numerous instances where problems with stockpiles have been cited by the Illinois EPA. For example, in their “2008 Livestock Facility Investigation Annual Report” R12-23 Ex 16), Illinois EPA indicated there were 28 cases of manure stacks as sources of water pollution. Reports from other years likewise show that manure stacks are considered sources of water pollution. The reports also tabulate the types of waste storage structures used by the inspected facilities, and manure stacks are one of the most common forms of storage, and one of the most commonly problematic.

A number of complaints filed by the Illinois Attorney General’s Office have included discharges from manure stacks.

- In *People of the State of Illinois v. Donald Irlam*<sup>26</sup>, a hog operator was unable to land-apply waste because he owns inadequate acreage and was denied permission to land-apply waste on neighboring properties. The confinement building waste pits were full, so he transported some of the waste to a ravine near the hog confinement buildings. It was estimated that 27,000 gallons of waste was stockpiled there, and subsequently ran downgradient into a creek that flowed into a neighbor’s pond and caused a fish kill.
- In *People of the State of Illinois v. Inwood Dairy, LLC*<sup>27</sup>, livestock waste was observed running off a feedlot operated by Inwood Dairy; manure had been stockpiled in the feedlot. The wastewater drained into West Fork Kickapoo Creek.
- In *People of the State of Illinois v. Ed Malone, d/b/a Malone Farms and Feedlot, and Galesburg Livestock Sales, Inc.*<sup>28</sup>, there were no liquid livestock waste collection or containment structures at the cattle feedlot during an inspection. It was reportedly apparent that feedlot runoff would occur during precipitation. The defendant was advised in a Noncompliance Advisory Letter to create covered stacking structures for the storage of solid waste so that it was not subject to precipitation and runoff. Approximately two years later during additional inspections, there was a significant accumulation of

<sup>25</sup> Attachment 23

<sup>26</sup> Attachment 24 (complaint)

<sup>27</sup> Attachment 25 (complaint); Attachment 26 (order)

<sup>28</sup> Attachment 27 (complaint); Attachment 28 (order)

uncontained and uncovered manure on the feedlots. It was apparent from drainage channels that there were contaminated surface runoff discharges from the lots during precipitation, and that some waste drained to an unnamed tributary to a creek.

- In *People of the State of Illinois v. James Fuhler, d/b/a Fuhler Dairy Farm*<sup>29</sup>, an Illinois EPA inspector found a large manure stack approximately 10 feet from a road ditch. Leachate was discharging from the stack into the ditch, which flows into Lake Branch.

There is evidence from the scientific literature that polluted runoff from manure stacks can be managed with vegetated filter strips. In one experiment involving manure stockpiles with 30 meter long vegetated filter strips on a 4% slope, the concentration of nitrate in surface runoff was reduced up to 99%<sup>30</sup>. However, the strips were less effective at reducing coliform bacteria. The authors wrote (p. 190) “Although reductions in coliform counts were relatively acceptable, final concentrations were still greater than the standards of 200 counts per 100 ml (USEPA 1986) established for bathing waters.” Other studies have also found that vegetated filter strips are not as effective at reducing bacteria as they are nutrients<sup>31</sup>.

The scientific literature also shows that manure stacks can leach pollutants into the underlying soil. In one study of a combined manure stack and compost area on a compacted gravel pad built to USDA-NRCS standards, the pad did not prevent the downward leaching of nitrate<sup>32</sup>. The author cited several other studies that found nitrate leaching into the soil underneath stacks containing manure.

As a result of the risks manure stacks pose to water quality, many states recommend that stacks be managed to reduce the chance of leaching and runoff. For example, the North Central Regional Extension Publication 522 “This Land – 50 Ways Farmers Can Protect Their Groundwater” suggests that manure solids should be stacked on a concrete pad that is covered with a roof<sup>33</sup>. The University of Missouri Extension classifies manure stacked short-term in fields as having medium-high to high risk for groundwater contamination, depending on soil type<sup>34</sup>. This same publication states the risk of stacking manure short-term in lots can range from low to high depending on a number of factors, including soil type, water table depth, presence of shallow fractured bedrock, and whether the lot is concrete, has gutters and a settling basin, diverts runoff to an approved structure, and applies effluent to a vegetated filter. Virginia Cooperative Extension states that “Field stacking is not a recommended practice. No matter how it is done, it may pose a contamination threat to surface water and groundwater. If manure is frequently stacked in fields, cover it with plastic sheets or consider constructing a short-term runoff detention pond at the storage site.”<sup>35</sup> The document goes on to state that the minimum separation distance between manure stacks and wells is 150 feet. A number of Midwestern states regulate the siting of manure stacks relative to water resources, karst features, and/or water table depth: Wisconsin [Wisc. Admin. Code NR 243.141(3)], Indiana [327 IAC 19-12-3], Iowa [2011 Merged Iowa Code and Supplement/Title XI Natural Resources/Subtitle 1 Control of

<sup>29</sup> Attachment 29 (complaint); Attachment 30 (order)

<sup>30</sup> Fajardo, 2001 (Attach. 31)

<sup>31</sup> See *supra* note 13

<sup>32</sup> Confesor, 2007 (Attach. 32)

<sup>33</sup> Attachment 33

<sup>34</sup> See *supra* note 21

<sup>35</sup> Attachment 34



Environment Chapter 459/Animal Agriculture Compliance Act], Minnesota [Minn. R 7020.2125].

In summary, there is ample evidence that manure stacks can pose a risk to both surface and groundwater quality, and that manure stacks continue to be sources of water pollution despite Illinois' existing regulations. Pollution from manure stacks can be reduced if stacks are covered and placed on pads that prevent clean stormwater from entering the stack and prevent polluted stormwater from leaving the stack. An alternative to this method is to require vegetated filter strips of adequate size to capture pollutants leaving the stack, and/or setbacks from water resources such as surface waters, wells, and karst features. I believe the proposed rule should offer a setback alternative so that an alternative is available should a cover and pad be infeasible for a livestock operator. But when a shallow water table or highly permeable soils are present, stacks should be prohibited if there is not a cover and pad.

### **Nitrogen-based and phosphorus-based application rates**

Waste from livestock operations is typically applied in liquid or solid form to agricultural cropland or pasture. Nitrogen-based application addresses the nitrogen needs of the crop, whereas phosphorus-based application addresses the phosphorus needs of the crop. Typically, the ratio of nitrogen to phosphorus in animal waste does not match the needs of plants. Subsequently, when applying at a nitrogen-based rate, the plants get an appropriate amount of nitrogen but often an excess of phosphorus. In contrast, applying at a phosphorus-based rate often provides adequate phosphorus but a shortfall of nitrogen (causing the farmer to have to apply a separate source of nitrogen). Applying at a phosphorus-based rate also tends to require more land acreage than applying at the nitrogen-based rate. Phosphorus-based application is the more protective approach with respect to preserving water quality, so that nutrients are not over-applied and more available for leaching and runoff.

The "Illinois Agronomy Handbook" is a product of the University of Illinois and an important reference for agricultural producers. This handbook is also referenced by the proposed rule. The handbook includes phosphorus recommendations in Chapter 8<sup>36</sup>, and states "Near-maximal yields of corn and soybeans are obtained when levels of available P are maintained at 30, 40, and 45 pounds per acre for soils in the high, medium, and low P-supplying regions, respectively" (p. 101). The handbook goes on to say that sometimes no fertilization is needed: "There is no agronomic advantage in applying P when P<sub>1</sub> values are higher than 60, 65, and 70 for soils in the high, medium, and low P-supplying regions, respectively" (p. 102). Therefore, the Handbook establishes that there is no agronomic need to build up the available phosphorus in soil beyond 70 pounds/acre.

Scientists from the University of Illinois recently completed a soil survey of 547 randomly-chosen fields throughout Illinois. They found that 59% of soil samples were above the soil phosphorus levels requiring no additional fertilization. The authors stated that many fields with high phosphorus indicate an opportunity for better nutrient management. The study is still in

<sup>36</sup> Attachment 35

press but the abstract is available at

<http://www.tandfonline.com/doi/full/10.1080/00103624.2012.728268>.

Limiting the amount of phosphorus in soil can have water quality benefits. Phosphorus in land application fields may reach surface waters via overland runoff and subsurface tile drainage. A study conducted in Illinois advised that soil test phosphorus levels near the ground surface be kept to below 200 pounds/acre (or 100 mg/kg) to reduce phosphorus losses from agricultural fields<sup>37</sup>. Several researchers have shown that there is a positive correlation between soil test phosphorus and concentration of phosphorus in runoff and subsurface drainage<sup>38</sup> (see also Daverede et al. 2004). Fields with soil phosphorus levels of 200 pounds/acre can produce runoff containing dissolved phosphorus concentrations that exceed 0.2 mg/L. Concentrations of total phosphorus in runoff can be greater than a suggested threshold that would be protective of eutrophication (excess chlorophyll) in Illinois streams (total phosphorus threshold of approximately 0.07 mg/L as reported in Royer et al. 2008<sup>39</sup>).

The proposed rule sets 300 pounds of available phosphorus per acre as one of the thresholds for switching from nitrogen-based to phosphorus-based application of livestock waste. The Illinois EPA Technical Support Document (pp. 24-25) states that when soil phosphorus is 300 pounds per acre, the runoff should contain approximately 0.9 mg/L total phosphorus. Illinois EPA seems to reason that this concentration should be protective of water quality since 1 mg/L dissolved phosphorus is a suggested discharge limit for sewage treatment plants. The suggested effluent limit is not a regulatory effluent limit and no evidence has been provided by Illinois EPA that this limit is protective of water quality. However, there is abundant evidence that total phosphorus concentrations lower than 0.9 mg/L can impact aquatic systems (e.g., Dodds and Welch 2000<sup>40</sup>) and whereas sewage treatment plants often discharge into larger streams where dilution comes into play, in agricultural areas runoff and tile discharges from fields can make up the majority of stream flow. Therefore, it would be prudent for the State to seek lower discharge concentrations from fields where livestock waste is applied.

The control of non-point sources of phosphorus is a major challenge for protecting surface waters from eutrophication. In many areas with high livestock density, the soil test phosphorus builds up in excess of the amount needed for optimal crop yields, which can increase the potential for phosphorus to be lost in runoff and leachate (Sharpley et al. 2001). In an effort to address water quality concerns, many states have decided to limit nutrient applications based on soil phosphorus levels (see Table 1 in Sharpley et al. 2001). For example, Arkansas, Ohio, and Michigan recommend that no phosphorus be applied when concentrations of 300 pounds/acre are reached. Michigan recommends reducing phosphorus additions when concentrations exceed 150 pounds/acre and some states are even more stringent.

In light of the above, I am concerned that the proposed rule does not require phosphorus-based application rates until the soil test phosphorus exceeds 300 pounds/acre. This threshold is far in excess of agronomic needs and in many cases will result in runoff with high concentrations of

<sup>37</sup> Daverede, 2004 (Attach. 36)

<sup>38</sup> Sharpley, 2001(Attach. 37)

<sup>39</sup> Attachment 38

<sup>40</sup> Attachment 39

phosphorus that may contribute to eutrophication in surface waters. Phosphorus pollution is already one of Illinois' top causes of water impairment, so the State should try to solve this problem in part by adopting in this rule a requirement that phosphorus-based application be done at a lower threshold. While the agronomy science suggests that a threshold of approximately 70 pounds/acre would be reasonable, given common constraints faced by livestock operators, I suggest the Board consider a threshold of no more than 200 pounds/acre.

### **Winter application rates**

Current nutrient stewardship efforts emphasize applying nutrients according to the four Rs: right place, right time, right rate, and right source. These are important principles incorporated into the proposed rule. The loss of phosphorus applied as manure to fields is influenced by rate, time, and method of application, in concert with a number of environmental variables. In particular, the loss of phosphorus in runoff tends to increase with greater applications of phosphorus as manure (Sharpley et al. 2001), including during winter disposal<sup>41</sup>. Therefore, managing application rates is an important management practice for reducing the potential for phosphorus loss.

It is also well-established that from a water quality standpoint, winter application of livestock waste is one of the most risky practices. Surface application in winter increases the risk of waste leaving the field during precipitation and thaw events compared to incorporating or injecting the waste under less frigid conditions<sup>42</sup>. Risk may be less on shallower slopes, but some have claimed that when soil is frozen, runoff may occur on any slope<sup>43</sup>. Winter application can contribute a substantial percentage of the total loads of nutrients and pathogens lost to surface waters and subsurface drainage systems in a given year<sup>44, 45</sup>.

Winter application of waste has resulted in discharges to Illinois' surface waters. In his pre-filed response to the Environmental Group's pre-filed question 22 for the Springfield hearing<sup>46</sup>, Bruce Yurdin stated that Illinois EPA has observed several instances of surface water pollution following winter application, and that these incidents were frequently related to runoff from surface application on frozen, snow-covered, or ice-covered ground caused by changes in temperature. In *People of the State of Illinois v. Kenneth W. Fehr, d/b/a Fehr Brothers Swine Farm*<sup>47</sup>, a swine operator was reported as land-applying 65 semi-truck loads (representing 400,000 gallons of waste) on a 92-acre field that was frozen. Within two weeks of land application, the air temperatures rose and the frozen waste thawed and ran off the field into waters of the state. In *People of the State of Illinois v. Fragrant 40, LLC*<sup>48</sup>, during a January inspection Illinois EPA found that the most recently used land application field contained pooled

<sup>41</sup> Klausner, 1976 (Attach. 40)

<sup>42</sup> Phillips, 1981 (Attach. 41)

<sup>43</sup> Srinivasan, 2006 (Attach. 42)

<sup>44</sup> Komiskey, 2011 (Attach. 43)

<sup>45</sup> Coelho, 2012 (Attach. 44)

<sup>46</sup> R12-23 Exhibit 7

<sup>47</sup> See *supra* note 17

<sup>48</sup> See *supra* note 4

liquid (indicating application beyond the infiltration capacity of the soil), and the lagoons were covered with ice and within inches of overflowing.

Given that winter application and increased application rates pose increased risks of pollutant discharge, the Illinois rule should limit the allowable application rates during winter application. The USEPA, in their "Winter Spreading Technical Guidance," even suggests a ban could be appropriate for surface application on snow, ice, and frozen soil (Appendix L in USEPA 2004). The Guidance goes on to suggest limits (in gallons/acre) for the maximum amount of liquid waste to be applied on frozen soil. Another USEPA guidance document suggests applying at no more than the one-year phosphorus rate if the watershed is not impaired by nutrients, and not at all if the watershed is impaired (Appendix O in USEPA 2004, Attachment 22). Several Midwest states (e.g., Indiana [327 IAC 15-15-14(1)(D)], Ohio [NPDES Permit No. OHA000001], Wisconsin [Wisc. Admin. Code NR 243.14]) limit winter application based on gallons or pounds per acre or crop phosphorus needs. As the Illinois proposed rule is written, there does not appear to be a winter application rate limit, and in fact, some may interpret the rule as allowing a higher nitrogen-based application rate because the fields used for winter application are supposed to be fields that pose a relatively low-risk of nutrient transport. However, even these fields should be safeguarded from losses to the extent possible. Limiting winter application rates is all the more merited because most land application fields are without a winter crop, and thus there are few immediate agronomic benefits.

As regards the definition of "frozen ground," the proposed rule (at Section 501.252) suggests that ground be defined as frozen if it is frozen anywhere from ½ inch to 8 inches below the soil surface. The Agricultural Coalition has asked that this definition be changed such that frozen conditions do not start until two inches below the surface. What this change amounts to is less protective management of frozen ground, and more surface application on ground with a shallowly frozen surface. While my search has not been exhaustive, I have not seen research articles that evaluated the potential for livestock waste runoff at different depths of frozen soil, or cited freeze depth as a factor for nutrient transport potential. Therefore, I would caution the Board against making the change from ½ to 2 inches, and even suggest the Board consider defining frozen as starting at the soil surface (0 inches) as USEPA suggests (Appendix O in USEPA 2004).

### **The shortfalls of waste management plans required by the Livestock Management Facilities Act**

The Livestock Management Facilities Act (LMFA) was adopted in 1996 and requires livestock facilities with 1,000 or more animal units to prepare and maintain a waste management plan. However, only the very large facilities exceeding 5,000 animal units (e.g., 5,000 cattle) must actually submit plans to the Department of Agriculture for approval.

The Agricultural Coalition has asked that land application discharges from unpermitted large CAFOs following a waste management plan developed under LMFA be considered agricultural stormwater discharges (i.e., exempt from NPDES permitting requirements). The Coalition is in essence requesting that unpermitted large CAFOs not be subject to the technical standards in Part

502 of the proposed rule. However, the technical standards provide the basis for evaluating whether large CAFOs are land-applying in accordance with practices that ensure appropriate agricultural utilization of the nutrients in livestock waste. Appropriate agricultural utilization is needed to claim the agricultural stormwater exemption. Therefore, the technical standards in this proposed rule should apply to both permitted and unpermitted large CAFOs.

In 2009, the Illinois EPA assembled an advisory stakeholder workgroup to help develop the technical standards. This workgroup consisted of the Agricultural Coalition, members of the Environmental Groups, and others. The recommendations of this workgroup are reflected in the technical standards. In contrast, the workgroup did not create, evaluate, or endorse requirements for the LMFA waste management plans.

The technical standards in the proposed rule contain a number of vast improvements over what is required of LMFA waste management plans (see 510 ILCS 77/20). A quick glance at Sec. 20(f) of the LMFA will daylight the fact that it contains far fewer controls on land application and far fewer practices that protect water quality. For example, the proposed technical standards require land application setbacks from conduits to surface waters, but there is no such setback in LMFA. The technical standards also prohibit application when precipitation is forecasted, but there is no such provision in LMFA. The technical standards prohibit waste application when soil phosphorus reaches 400 pounds/acre, but there is no such prohibition in LMFA. And while the technical standards restrict land application of waste on frozen and snow-covered land and require numerous excellent practices to prevent winter discharges, the LMFA just states that application is limited to land with slopes of 5% or less or where adequate erosion control practices exist. These are just a few of the substantial shortcomings of the LMFA waste management plan requirements.

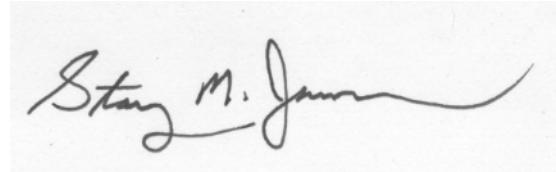
The Illinois EPA's Livestock Facility Investigation Annual Reports demonstrate that many livestock operations are not in compliance with the State's field application criteria. While Illinois EPA apparently only evaluates compliance with 35 IAC 560, this regulation has overlap with the waste application provisions required by LMFA. The reports break out violations by facility size, and show that some of those in violation exceed 1,000 animal units and thus should be following LMFA waste management plans. I do not know whether the Department of Agriculture evaluates facilities for plan compliance, but there is evidence that compliance can be low without active enforcement. For example, 59% of livestock operations in a Pennsylvania watershed were in violation of their nutrient management plans<sup>49</sup>

Based on my experience interacting with members of the public, many people who live near large livestock operations are concerned about the lack of transparency offered by the LMFA. In particular, they do not like the fact that facilities between 1,000 and 5,000 animal units in size do not have to submit their waste management plans to the Department of Agriculture, much less get them approved. Many people question whether these facilities actually develop and fully implement the plans. The proposed rule could ease public concerns by requiring all large CAFOs to submit their nutrient management plans to Illinois EPA. This measure would create greater transparency and accountability. The most protective approach would also require Illinois EPA to approve plans and conduct compliance checks.

<sup>49</sup> Attachment 45 (2004 Case Study of Pennsylvania Regulations on high Density Livestock Farm Pollution)

Dated: October 16, 2012

Respectfully submitted,

A handwritten signature in black ink on a light-colored background. The signature reads "Stacy M. James" in a cursive style. The first name "Stacy" is written in a larger, more prominent script, followed by "M." and "James". The signature ends with a long, sweeping horizontal flourish.

**Stacy James, Ph.D.**  
Water Resources Scientist  
Prairie Rivers Network

**Attachment 1:**

*Complaint, People of the State of Illinois v. Professional Swine Management, LLC et al.*

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

v. )

PCB NO.  
(Enforcement)

PROFESSIONAL SWINE MANAGEMENT, )  
LLC, an Illinois limited liability corporation, )  
HILLTOP VIEW, LLC, an Illinois limited )  
liability corporation, WILDCAT FARMS, LLC, )  
an Illinois limited liability corporation, )  
HIGH-POWER PORK, LLC, an Illinois limited )  
liability corporation, EAGLE POINT, LLC, an )  
Illinois limited liability corporation, LONE )  
HOLLOW, LLC, an Illinois limited liability )  
corporation, TIMBERLINE, LLC, an Illinois )  
limited liability corporation, PRAIRIE STATE )  
GILTS, LTD, an Illinois corporation, NORTH )  
FORK PORK, LLC, an Illinois limited liability )  
corporation, LITTLE TIMBER, LLC, an Illinois )  
limited liability corporation, TWIN VALLEY )  
PUMPING, INC., an Illinois corporation, )

Respondents. )

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on April 15, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT and ENTRY OF APPEARANCE, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.



FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2008), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

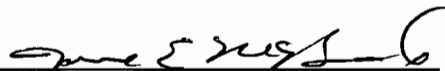
BY:

  
JANE E. McBRIDE  
Sr Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: April 15, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I did on April 15, 2010, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.

  
\_\_\_\_\_  
JANE McBRIDE  
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Mr. Gary Donley, R.A.  
Hilltop View, LLC  
34 West Main Street  
Box 220  
Carthage, IL 62321

Mr. Ed Dwyer, Esq.  
Hodge Dwyer Driver  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705

Mr. Matt Bradshaw  
Twin Valley Pumping, Inc.  
27701 U.S. Highway 54  
Griggsville, IL 62340

Dr. William L. Hollis  
34 W. Main Street  
Box 220  
Carthage, IL 62321

Dr. Joseph F. Connor, R.A.  
Prof. Swine Management  
34 W. Main Street  
Box 220  
Carthage, IL 62321

Mr. John Thomas, R.A.  
Eagle Point, LLC  
6767 Milwaukee Ave., Ste. 201  
Niles, IL 60714

Mr. Robert L. Rhea, R.A.  
North Fork Pork, LLC  
106 E. State Street  
Camp Point, IL 62320





TIMBER, LLC, an Illinois limited liability corporation, TWIN VALLEY PUMPING, INC., an Illinois corporation, as follows:

**COUNT I**

**STORM WATER POLLUTION VIOLATIONS – HILLTOP VIEW, SCHUYLER COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. This count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31, after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent HILLTOP VIEW, LLC ("Hilltop") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Hilltop is Gary Donley, 34 W. Main St. Box 220, Carthage, IL 62321.

5. Respondent Hilltop owns a swine farrowing and gestation facility located along Meadowlark Road several miles east of Littleton and west of the Vermont-Rushville Blacktop, in the Southeast quarter of Section 9, T.4N, R.1W in Oakland Township, Schuyler County, Illinois (the "Hilltop site" and "Hilltop facility"). The site is within the Sugar Creek watershed. The Hilltop facility design capacity is several thousand sows. At all times relevant to this Complaint, construction had yet to commence on the swine confinement buildings and no swine were present at the site.

6. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

7. Respondent PSM manages the site and all aspects of Hilltop's operation.

8. On June 16, 2006, an inspector from the Illinois EPA Field Operations Section, Peoria Regional Office, inspected the facility. No swine were present at the site and no confinement buildings had been constructed, but earthwork had been started. An estimated 15 to 20 acres had been disturbed as a footprint for the swine confinement buildings. A raised entrance/parking area had been constructed. No erosion controls were in place at the site at the time of inspection. Recent excavation had occurred adjacent to Sugar Creek on the north side of the Meadowlark Road bridge and adjacent to the west bank of Sugar Creek. Due to dry conditions, no surface runoff was observed.

9. At the time of the June 16, 2006 inspection, a concrete batch plant was set up at the site. Concrete materials were stockpiled at the site. The inspector noted an eroded channel existed near the stockpile. The channel drained east for a distance of about 400 feet into Sugar Creek. During the inspection, numerous semi trucks arrived with concrete materials, dumped the concrete material and departed.

10. Respondants Hilltop and PSM did not have a National Pollution Discharge Elimination System ("NPDES") Stormwater Permit at the time of the June 16, 2006 inspection.

11. On June 20, 2006, the Illinois EPA issued a Violation Notice ("VN") to the facility for storm water violations and for failure to obtain a NPDES storm water permit prior to construction activity. A copy of the VN was sent to both Hilltop View, LLC and Professional Swine Management, LLC. These VNs were based on the June 16, 2006 storm water

inspection.

12. On June 21, 2006, the Illinois EPA received a completed Notice of Intent for attaining a General Permit to Discharge Storm Water for Construction Site Activities ("NOI"). The Illinois EPA issued NPDES coverage to the site on July 21, 2006.

13. On August 21, 2006, site manager Joseph Connor responded to the VN on behalf of Respondents. In the proposed Compliance Commitment Agreement, Respondents stated that excavation was halted until a NPDES permit was in place and that a NPDES permit was now in place.

14. By letters dated September 7, 2006, the Illinois EPA rejected the Compliance Commitment Agreement proposed by the Respondents, "due to the nature and seriousness of the violations" committed by PSM and Hilltop.

15. Illinois EPA Bureau of Water Field Operations Section inspectors performed a storm water inspection at Hilltop on November 15, 2006. They reported that minimal earthwork was underway and that silt fencing had been installed to minimize storm water erosion. The inspectors suggested that additional silt fence was needed in two areas of the site and that some existing silt fencing needed to be reset.

16. On April 23, 2007, the Illinois EPA sent Respondent PSM a Notice of Intent to Pursue Legal Action ("NIPLA"). On January 14, 2008, the Illinois EPA sent Respondent Hilltop a NIPLA. In response to the NIPLA letters, Hilltop requested a meeting with the Illinois EPA. The NIPLA meeting was held on February 6, 2008.

17. Sugar Creek, and the unnamed tributaries to Sugar Creek are "waters" of the State as that term is defined in Section 3.550 of the Act, 415, ILCS 5/3.550, as follows:

"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.



18. Section 35.545 of the Act, 415 ILCS 5/3.545, 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.

19. Section 12 of the Act, 415 ILCS 5/12, provides the following prohibitions:

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;

\* \* \*

- (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.

20. Section 309.102(a) of the Board's Water Pollution Regulations, 35. Ill. Adm.

Code 309.102(a), provides:

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.

21. By causing, threatening or allowing the discharge of sediments and eroded soils

upon the land and into waters of the State so as to alter the physical or chemical properties of the waters and create or likely create a nuisance, the Respondents have caused or tended to cause water pollution in Illinois.

22. By threatening, causing or allowing storm water run-off and sediment and soil erosion to discharge from the facility construction site without obtaining a construction storm water NPDES permit or otherwise complying with construction storm water requirements, Respondents Hilltop and PSM have caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, and so as to violate the regulations or standards adopted by the Pollution Control Board, and thereby have violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a), (f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Hilltop View, LLC and Respondent Professional Swine Management,

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

B. Finding that Respondents have violated the Act and regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued

thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT II**

**WATER POLLUTION VIOLATIONS – WILDCAT FARMS, HANCOCK COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent WILDCAT FARMS, LLC ("Wildcat") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Wildcat is Gary Donley, 34 W. Main St. Box 220, Carthage, IL 62321.

4. Respondent Wildcat owns a swine farrowing and gestation facility with a design capacity of 6,000 sows located at 2558 North County Road 2150, Dallas City, Hancock County, Illinois 62330 (the "Wildcat site" and "Wildcat facility"). The legal description is Section 28, T7N, R6W of the 4<sup>th</sup> P.M. in Hancock County. The Wildcat site is within the Wildcat Creek watershed.

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and

in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent Professional is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

6. Respondent PSM manages Wildcat's operations and the physical site.

7. The Wildcat facility consists of five buildings that house swine. Most of the buildings have below ground, four-foot-deep waste storage pits. There are two above-ground storage tanks on site reportedly providing a manure storage capacity in excess of 6 million gallons. Underground sewer lines allow for gravity transfer of manure from the buildings to a central pump location. Manure is then pumped from this central pump, or lift station, into the above-ground storage tanks. On the sewer lines, there are "cleanouts", riser pipes that allow access to the lines to facilitate maintenance of the lines.

8. Section 3.545 of the Act, 415 ILCS 5/3.545, provides:

"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 water 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.

9. Section 3.550 of the Act, 415 ILCS 5/3.550, provides:

"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.

10. Section 3.165 of the Act, 415 ILCS 5/3.165, provides:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

11. Section 12 (a) and (d) of the Act, 415 ILCS 5/12(a), (d), provides, in pertinent part, as follows:

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;

\* \* \*

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

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

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.

\* \* \*

13. Section 302.203 of the Board's water pollution regulations, 35 Ill. Adm. Code 302.203, states, 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. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

14. Section 309.102 of the Board's water pollution regulations, 35 Ill. Adm. Code 309.102(a), states, in pertinent part :

**NPDES Permit Required**

- 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

15. An individual mowing the lawn at the Wildcat facility, mowed over the facility's

Gilt Developer barn's northeast cleanout, cutting its elevation to ground level. Sometime after the cleanout pipe was damaged, a boar harness became stuck in the buried PVC drain pipe downstream from the broken cleanout pipe. Swine manure backed up in the plugged line and, on September 18, 2008, flowed out of the pipe where the cleanout had been cut down to ground level. A manure stream approximately two feet wide and 200 yards long flowed out of the cleanout, down the field in a northeasterly direction along a drainage channel where it entered an unnamed tributary to Wildcat Creek.

16. On September 23, 2008, the Illinois EPA conducted an inspection of the Wildcat facility. At the time of the inspection, an accumulation of swine manure remained in various locations along the release drainage path at the facility. The Illinois EPA inspector advised facility personnel to clean-up the remaining swine manure.

17. At the time of the September 23, 2008 inspection, the Illinois EPA inspector collected samples of the discharge and receiving waters. A sample was collected from an accumulation of liquid in the flow path of the manure release. The liquid was turbid, dark-colored and contained a strong swine waste odor. Sample analysis indicated the following parameter levels: ammonia, 1220 mg/l; TSS, 810 mg/l; fecal coliform, 16,000 per 100 ml. A sample was collected from an unnamed tributary to Wildcat Creek 50 yards downstream of the previous sample collection site. It was the receiving water of the release. There were black bottom deposits in the stream. The sample was collected after the bottom deposits were disturbed. The stream contained a swine waste odor. Sample analysis indicated the following parameter levels: ammonia 28.5 mg/l; TSS, 590 mg/l; fecal coliform, 53,000 per 100 ml.

18. This count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31, after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA. On December 16, 2008, the Illinois EPA sent a VN to Respondent Wildcat Farms, LLC and a

VN to Respondent Professional Swine Management for water violations caused by the September 18, 2008 discharge. The Illinois EPA received no response to either VN. On April 9, 2009, the Illinois EPA sent both Respondents a NIPLA. Respondents requested a meeting in response to the NIPLA.

19. Respondents Wildcat and PSM have caused or allowed the discharge of contaminants to waters of the State at the Wildcat site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

20. By causing, allowing or threatening the discharge of contaminants to waters of the State at the Wildcat site so as to cause or tend to cause water pollution in Illinois, Respondents Wildcat and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

21. Respondents Wildcat and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

22. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Wildcat site, Respondents Wildcat and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

23. By causing or allowing the discharge of contaminants that resulted in bottom deposits and turbid, discolored and odor conditions in the waters of an unnamed tributary to Wildcat Creek, Respondents Wildcat and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

24. At the time of September 18, 2008 discharge to Wildcat Creek, Respondents

Wildcat and PSM did not have a National Pollution Discharge Elimination System Permit ("NPDES") for the Wildcat facility, nor had the Respondents applied for one. The discharge from the cleanout at the Wildcat facility is a point source discharge.

25. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents Wildcat and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Wildcat Farms, LLC and Respondent Professional Swine Management, LLC ,

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

B. Finding that Respondents have violated the Act and regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).



**COUNT III**

**WATER POLLUTION VIOLATIONS – HIGH-POWER PORK, ADAMS COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent HIGH-POWER PORK, LLC ("High-Power") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for High-Power is Gary Donley, 34 W. Main St. Box 220, Carthage, IL 62321.

4. Respondent High-Power owns a swine farrowing and gestation facility with a design capacity of 6,000 sows located approximately 4 miles northeast of LaPrairie, in Adams County. The legal description is SE 1/4 of SW 1/4 of Section 12, T2N, R5W, 4<sup>th</sup> P.M., Adams County (the "High-Power site" or "High-Power facility"). The High-Power site is in the Cedar Creek and LaMoine River watershed.

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

6. Respondent PSM manages High-Power's operations and the physical site.

7. The High-Power facility consists of five buildings that house swine. Each building has below ground, two-foot-deep waste storage pits. There are two above-ground

storage tanks on site. Underground sewer lines allow for gravity transfer of manure from the buildings to a central pump location. Manure is then pumped from this central pump, or lift station, into the storage tanks.

8-14. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 14 of Count II as paragraphs 8 through 14 of this Count III.

15. On November 10, 2008, swine waste discharged from the High-Power facility due to a break and/or leak in a six-inch diameter PVC pipeline between the High-Power facility's lift station and one of its approximately 3.5 million gallon capacity, above-ground manure storage tanks. During the incident, approximately 90,000 gallons of liquid swine waste was released from the PVC pipeline that was backfilled the week prior to November 10, 2008. The break and/or leak in the PVC pipeline resulted in swine waste oozing out of the ground and then flowing down a grassed waterway, under the township road into an unnamed tributary of the South Branch of Cedar Creek and then into South Branch Cedar Creek and Cedar Creek, causing a fish kill.

16. At the time of the discharge on November 10, 2008, neighbors observed discoloration and turbidity in Cedar Creek. They traced the contamination to the High Power facility.

17. Respondents High-Power and PSM have caused or allowed the discharge of contaminants to waters of the State at the High-Power site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

18. By causing, allowing or threatening the discharge of contaminants to waters of the State at the High-Power site so as to cause or tend to cause water pollution in Illinois,

Respondents High-Power and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

19. Respondents High-Power and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

20. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the High-Power site, Respondents High-Power and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

21. By causing or allowing the discharge of contaminants that resulted in turbid, discolored and odor conditions in the waters of Cedar Creek, Respondents High-Power and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

22. At the time of November 10, 2008 discharge to Cedar Creek, Respondents High-Power and PSM did not have a NPDES permit for the High-Power facility, nor had the Respondents applied for one. The discharge from the break in the transfer line at the High-Power facility is a point source discharge.

23. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents High-Power and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent High-Power Pork, LLC and Respondent Professional Swine Management, LLC ,

A. Authorizing a hearing in this matter at which time the Respondents will be

required to answer the allegations herein;

B. Finding that Respondents have violated the Act and regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

#### **COUNT IV**

##### **WATER POLLUTION VIOLATIONS – EAGLE POINT, FULTON COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act (“Act”), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent EAGLE POINT, LLC (“Eagle Point”) is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Eagle Point is John R. Thomas, 6767 N. Milwaukee Ave., Suite 201, Niles, IL 60714.

4. Respondent Eagle Point owns a farrow-to-wean facility with a design capacity of 6,500 sows located approximately 2 miles northeast of Vermont, IL and approximately 3 miles southeast of Table Grove, in Vermont Township, Fulton County. The legal description is SW 1/4 of Section 15, T4N, R1E. (The "Eagle Point site" or "Eagle Point facility"). Drainage from the Eagle Point site flows directly through several ravines into final cut strip mine lakes.

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

6. Respondent PSM manages Eagle Point's operations and the physical site.

7. The Eagle Point facility consists of five total confinement buildings that house swine. The isolation building has below ground, two-foot-deep pull-plug waste storage pits. From the isolation building 2 foot pits, waste is diverted to the 10-foot-deep pits below the gilt grow/finish building. The farrowing building has below ground, two-foot-deep pull-plug waste storage pits. From the farrowing building 2 foot pits, waste is diverted to the 10-foot-deep pits below the gestation buildings. The gilt grow/finish building, and north and south gestation buildings have below ground, 10-foot-deep waste storage pits. Waste is agitated in the pits prior to it being pumped for land application.

8-13. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 12 and 14 of Count II as paragraphs 8 through 13 of this Count IV.

14. On May 10, 2007, the Illinois EPA inspected the Eagle Point facility. At the time of the inspection, there was a discharge from the north gestation building perimeter tile onto the land in a manner in which the discharge drained into a strip mine lake. The discharge was slightly cloudy and had a slight livestock waste odor. Analysis of a sample collected from the

discharge indicates a fecal coliform level of 35,000 per 100 milliliters ("ml").

15. At the time of the inspection, the Illinois EPA inspector sampled a discharge from the facility's private sewage disposal system, that being an aerated septic tank that serves the office restrooms and showers. This system discharges through a 4-inch diameter line into a lake located east of the facility structures. At the time of the inspection, the discharge was slightly turbid and had a septic odor. The sample analysis results indicated a fecal coliform level of 56,000 per 100 ml, and ammonia level of 41.8 milligrams per liter ("mg/l"), and a biological oxygen demand level of 48 mg/l.

16. Respondents Eagle Point and PSM have caused or allowed the discharge of contaminants to waters of the State at the Eagle Point site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

17. By causing, allowing or threatening the discharge of contaminants to waters of the State at the Eagle Point site so as to cause or tend to cause water pollution in Illinois, Respondents Eagle Point and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

18. Respondents Eagle Point and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

19. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Eagle Point site, Respondents Eagle Point and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

20. At the time of May 10, 2007 discharge to a strip mine lake, Respondents Eagle

Point and PSM did not have a NPDES permit for the Eagle Point facility, nor had the Respondents applied for one. The discharges from the perimeter tile and the private sewage system at the Eagle Point facility were point source discharges.

21. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents Eagle Point and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Eagle Point, LLC and Respondent Professional Swine Management, LLC ,

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT V**

**WATER POLLUTION VIOLATIONS – LONE HOLLOW, HANCOCK COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent LONE HOLLOW, LLC ("Lone Hollow") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Lone Hollow is Gary Donley, 34 W. Main St. Box 220, Carthage, IL 62321.

4. Respondent Lone Hollow owns a farrow to wean swine operation, that, at the time of a September 25, 2007 Illinois EPA inspection, maintained a sow herd of 5,650 head, located approximately 4 miles northwest of Augusta along Township Road 2600E ("Lone Hollow site" or "Lone Hollow facility"). The facility address is 539 N. County Road 2600, Bowen, IL. The legal description for this facility is in the SW 1/4, Section 5 and SE 1/4, Section 6, T3N, R5W, (Augusta Township) in Hancock County. The Lone Hollow facility is located within the watershed of Panther Creek which is tributary to Bronson Creek which is tributary to the LaMoine River.

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.



6. Respondent PSM manages Lone Hollow's operations and the physical site.

7. The Lone Hollow facility consists of five total confinement buildings that house swine. Waste is stored in pits under the building. Liquid manure from the facility is managed by a contract hauler who land applies manure from the pits to cropland in the immediate vicinity of the site. A 10-bay compost structure is located on the south side of the site for swine mortality. At the time of the September 27, 2007 inspection, the structure was not covered. Leachate from the compost material was observed on the north side of the structure.

8-13. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 12 and 14 of Count II as paragraphs 8 through 13 of this Count V.

14. On September 13, 2007, a swine manure release occurred at the Lone Hollow facility. On that date, in an attempt to unplug a pit drainage pipe, liquid was being added to the pit of the farrowing unit in an attempt to correct the plugging problem. The main farrowing building is equipped with an 8-inch diameter pit access/pump out pipe at the southeast corner of the building. The level of wastewater built up within the shallow pit beneath the farrowing building until it reached an outlet at the 8-inch diameter pipe. Liquid swine manure drained out of the 8-inch pipe at the southeast corner of the farrowing building and flowed southeast across the gravel drive. The manure continued to flow east until it reached the waterway to the east of the swine confinement buildings. Upon discovering the release, facility employees stopped the flow at the point where it had reached the waterway using compost from the mortality area. An earthen dam was also constructed immediate east (downstream) from the release flow. An Illinois EPA inspector advised the facility to recover the released wastewater and compost material from the drainage channel/waterway and apply it to cropland as soon as possible.

15. On September 25, 2007, at the time of a follow-up inspection, the Illinois EPA inspector collected samples at four locations at the facility. A sample was collected from the

wastewater release from the manure pit. The sample was taken from a waterway/drainage channel about 150 yards east of the confinement buildings. The liquid was turbid, light brown in color and odorous. Analytical results of this sample indicate an ammonia level of 54.8 milligrams per liter ("mg/l"); biological oxygen demand of 780 mg/l; total suspended solids of 1130 mg/l and fecal coliform of 5,900,000 per 100 ml. Another sample was taken from a second location at the waterway/drainage channel that received the waste release, 150 yards east of the confinement buildings. The liquid was turbid, light brown in color and odorous. Analytical results of this sample indicate an ammonia level of 934 milligrams per liter ("mg/l"); biological oxygen demand of 8100 mg/l; total suspended solids of 2130 mg/l and fecal coliform of 5,700,000 per 100 ml.

16. At the time of the September 25, 2007 inspection, the Illinois EPA inspector also took samples of discharges that were occurring from building perimeter tiles. A very low flow of clear liquid was discharging from the perimeter tile for the isolation confinement building. The tile outlet is located about 50 yards north of the isolation building. Analytical results of this sample indicate fecal coliform of 5,400 per 100 ml. A second perimeter tile sample was taken from a perimeter tile serving the facility's gestation building #1. The tile outlet is located north of gestation building #1. Analytical results of this sample indicate fecal coliform of 11,700 per 100 ml.

17. Respondents Lone Hollow and PSM have caused or allowed the discharge of contaminants to waters of the State at the Lone Hollow site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

18. By causing, allowing or threatening the discharge of contaminants to waters of

the State at the Lone Hollow site so as to cause or tend to cause water pollution in Illinois, Respondents Lone Hollow and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

19. Respondents Lone Hollow and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

20. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Lone Hollow site, Respondents Lone Hollow and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

21. At the time of September 13, 2007 to the waterway tributary to Panther Creek and the September 25, 2007 perimeter tile discharge, Respondents Lone Hollow and PSM did not have a NPDES permit for the Lone Hollow facility, nor had the Respondents applied for one. The discharges from the confinement building pit, and from the perimeter tiles at the Lone Hollow facility are point source discharges.

22. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents Lone Hollow and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Lone Hollow, LLC and Respondent Professional Swine Management, LLC ,

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

B. Finding that Respondents have violated the Act and regulations as alleged

herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT VI**

**WATER POLLUTION VIOLATIONS – TIMBERLINE, SCHUYLER COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act (“Act”), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent TIMBERLINE, LLC (“Timberline”) is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Timberline is Gary Donley, 34 W. Main St. Box 220, Carthage, IL 62321.

4. Respondent Timberline owns a breed to farrow total confinement swine operation with three buildings. The two gestation buildings are underlain by deep waste pits, and a

shallow waste pit is below the farrowing building. The farrowing building shallow pit drains into the deep pit of the east gestation building. The operation is located east of the intersection of Illinois State Highways 99 and 101, east of Littleton in Schuyler County ("Timberline facility" or "Timberline site"). Timberline is located within the watershed of West Branch Sugar Creek.

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

6. Respondent PSM manages Timberline's operations and the physical site.

7. The Respondent TWIN VALLEY PUMPING, INC. ("Twin Valley") is and was at all times relevant to this Complaint, an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for and president of Respondent Twin Valley is Matt Bradshaw, 27701 U.S. Highway 54, Griggsville, IL 62340. Respondent Twin Valley performed contract livestock waste land application for the Timberline facility.

8-13. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 12 and 14 of Count II as paragraphs 8 through 13 of this Count VI.

14. Section 501.403(a) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.403(a), provides, in pertinent part, as follows:

- a. Existing livestock management facilities and livestock waste-handling facilities shall have adequate diversion dikes, walls or curbs that will prevent excessive outside surface waters from flowing through the animal feeding operation and will direct runoff to an appropriate disposal, holding or storage area. The diversions are required on all aforementioned structures unless there is negligible outside surface water which can flow through the facility or the runoff is tributary to an acceptable disposal area or a livestock waste-handling facility. If inadequate diversions cause or threaten to cause a violation of the Act or applicable regulations, the Agency may require corrective measures.

15. On October 30, 2003, the Illinois EPA conducted an inspection of the Timberline facility in response to a report of a swine manure release. On October 29, 2003, Respondent Twin Valley was land applying waste from the Timberline facility east of the intersection of Illinois State Route 99 and 101, more specifically in a field south of County Road 1900 N. in Schuyler County.

16. Respondent Twin Valley personnel indicated that the application pumps were idling and the tractor with the tool bar was maneuvering in the land application field prior to land application when the hose clamp failed. The pressure gauges were turned off during the maneuvering because the pumps were idling. Twin Valley personnel estimated the amount released by calculating that the pumps were idling approximately 2 minutes at 600 gallons per minute plus 900 gallons contained in each hose. The total release was estimated to be 3,000 gallons. The hose clamp failed near the edge of the land application field and the waste flowed into an intermittent waterway.

17. On September 11, 2008, the Illinois EPA conducted an inspection of the Timberline facility and at the time of the inspection, the Illinois EPA inspector observed a discharge of leachate from the facility's dead animal composting structure. The purple colored liquid was observed exiting the unroofed composting structure and entering a dry dam which discharges to an unnamed tributary of the West Branch of Sugar Creek.

18. The facility's environmental specialist was on site at the time of the September 11, 2008 inspection. She provided the following information. The discharge of leachate from the composting structure occurred during the recent heavy rainfalls. Facility personnel had attempted to build small gravel dams to prevent the leachate from entering the dry dam. As the rain continued, the dams were not adequate to contain the leachate exiting the composting

structure.

19. On April 22, 2009, at approximately 6:30 p.m. to 7:00 p.m., at a time when no one was present at the Timberline facility, a fire broke out. The fire was reported by a passing motorist. An estimated 3,000 sows and 10,000 piglets were killed by the fire. Most if not all of the surviving animals were euthanized due to respiratory distress or trauma and stress due to the fire, including animals housed in the undamaged buildings. The Illinois EPA conducted an inspection of the site the day after the fire, on April 23, 2009, and reviewed Respondents handling of all livestock waste on the site and solid waste remaining after the fire. No livestock waste releases were observed. As of May 28, 2009, Respondent PSM was still evaluating whether to rebuild the facility.

20. At the time of the September 11, 2008 inspection, Respondents Timberline and PSM have caused or allowed the discharge of contaminants to waters of the State at the Timberline as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

21. By causing, allowing or threatening the discharge of contaminants to waters of the State at the Timberline so as to cause or tend to cause water pollution in Illinois, Respondents Timberline and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

22. Respondents Timberline, Twin Valley and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

23. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Timberline site, Respondents Timberline, Twin Valley and PSM

have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

24. By failing to cover and thereby divert precipitation from the compost structures, and instead, allowing precipitation to fall directly on the dead animal compost and drain to the environment through open sides and enter waters of the State, Respondents Timberline and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.403(a).

25. At the time of September 11, 2008 discharge to the water tributary to West Branch Sugar Creek, Respondents Timberline and PSM did not have a NPDES permit for the Timberline facility, nor had the Respondents Timberline and PSM applied for one. The discharges from the compost structure at the Timberline facility was a point source discharge.

26. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents Timberline and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents Timberline, LLC, Respondent Twin Valley Pumping, Inc. and Respondent Professional Swine Management, LLC ,

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

B. Finding that Respondents have violated the Act and regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents for every non-NPDES permit violation a civil



penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT VII**

**WATER POLLUTION VIOLATIONS – PRAIRIE STATE GILTS, SCHUYLER COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent PRAIRIE STATE GILTS, LTD ("Prairie State Gilts") is and was at all times relevant to this Complaint an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Prairie State Gilts is Gary Donley, 34 W. Main St. Box 220, Carthage, IL 62321.

4. Respondent Prairie State Gilts owns a sow breeding and gestation operation. The legal description of the property is NE 1/4 of Section 11 and NW 1/4 of Section 12, T3N, R3W of the 4<sup>th</sup> P.M. in Schuyler County, Illinois. Approximately 2,500 head of swine weighing over 55 pounds and 2,000 head of swine weighing less than 55 pounds are confined at the facility. ("Prairie State Gilts site" or "Prairie State Gilts facility").

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and

was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

6. Respondent PSM manages Prairie State Gilt's operations and the physical site.

7. The Prairie State Gilt facility waste handling system consists of shallow pits with drain pull plugs under each confinement building on the site but one. A deep pit is under the remaining confinement building. Individual drain pull plugs are removed to allow the transfer of livestock waste by gravity to one of two reception pits on the site, which in turn then pump livestock waste to the single-celled lagoon. Float-activated switches on the pumps within the reception pits automatically start pumping operations when preset levels within the reception pits are reached.

8. Two nursery buildings are located on the southwest portion of the Prairie State Gilt site. Livestock waste from the two nursery buildings drains to the south reception pit and is then pumped into the lagoon. The transfer line between the pits under the nursery buildings and the lagoon is under ground. There are vertical clean-out pipes in two locations on this underground transfer line, that extended three feet above ground. A hayfield is located between the reception pit and the lagoon, above the transfer line.

9-15. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 14 of Count II as paragraphs 9 through 15 of this Count VII.

16. One of the vertical clean-out pipes was knocked over or mowed over during hay baling operations on the subject hay field between the reception pit and the lagoon. The vertical clean-out pipes were not protected by bollards, fence posts, gates, fencing or other means of marking and protecting the pipes.

17. On July 7, 2008, with the event of a drain pull plug being removed in one of the

nursery buildings to release waste, livestock waste entered the reception pit to a level that activated the pumps that transfer the contents of the reception pit to the lagoon. Livestock waste exited the pipeline at the decapitated clean-out pipe rather than at the lagoon, and entered a small unnamed tributary of one of the facility's on-site ponds. The pond is used to provide water for the swine in the fall when it is dry and the on-site well does not yield adequate water.

18. The pond that received the swine waste has a surface area of .5 to .75 acres and during periods of high water discharges into an adjacent pond to the east. The east pond ultimately discharges to an unnamed tributary of Honey Branch.

19. On July 24, 2008, the Illinois EPA conducted an inspection of the Prairie State Gilts site in response to a report of the release. A narrow channel of swine waste was observed entering the north end of the receiving pond. The pond was covered with algae and had a septic odor consistent with that of swine waste. The north end of the pond was observed to have a dark gray/black color and to be turbid. An overflow pipe existed on the site, between the receiving pond and adjacent pond to the east.

20. At the time of the inspection, facility personnel indicated the facility intended to pump down the receiving pond and land apply the contents to wheat ground.

21. On October 29, 2008, the Illinois EPA inspector spoke to facility personnel to determine if the contents of the receiving pond had been land applied. On October 30, 2008, the facility responded that nothing had been pumped from the pond. Facility personnel reiterated the that two ponds were interconnected and periods of heavy or frequent rainfall result in a single pond.

22. Respondents Prairie State Gilts and PSM have caused or allowed the discharge of contaminants to waters of the State at the Prairie State Gilts site as will or is likely to create a

nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

23. By causing, allowing or threatening the discharge of contaminants to waters of the State at the Prairie State Gilts site so as to cause or tend to cause water pollution in Illinois, Respondents Prairie State Gilts and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

24. Respondents Prairie State Gilts and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

25. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Prairie State Gilts site, Respondents Prairie State Gilts and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

26. By causing or allowing the discharge of contaminants that resulted in turbid, discolored and odor conditions in the waters of a pond that is in an up gradient drainage to Honey Branch, Respondents Prairie State Gilts and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

27. At the time of July 7, 2008 discharge, Respondents Prairie State Gilts and PSM did not have a NPDES permit for the Prairie State Gilts facility, nor had the Respondents applied for one. The discharge from the clean-out pipe at the Prairie State Gilts facility is a point source discharge.

28. By causing or allowing the discharge of livestock wastewater to waters of the

State without an NPDES permit, Respondents Prairie State Gilts and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Prairie State Gilts, Ltd. and Respondent Professional Swine Management, LLC ,

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

B. Finding that Respondents have violated the Act and regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT VIII**

**WATER POLLUTION VIOLATIONS – NORTH FORK PORK. HANCOCK COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent NORTH FORK PORK, LLC ("North Fork") is and was at all times relevant to this Complaint an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for North Fork Pork is Robert L. Rhea, 106 E. State St., Camp Point, IL 62320.

4. Respondent North Fork Pork owns a 6920 sow, farrow to wean, total confinement swine facility located in St. Albans Township (Section 8), just south of the intersection of 450N and 1400E, approximately 3 miles west of West Point, Hancock County, IL ("North Fork facility" or "North Fork site"). There are a total of 8200 hogs greater than 55 pounds maintained at this facility, and 7700 under 55 pounds. The legal description is SW 1/4, Section 8, T3N, R7W). The mailing address is 450N County Road 1425E, West Point, IL 62380.

5. The North Fork facility consists of two breeding/gestation barns, a farrowing house, and a gilt developer building. Both breeding/gestation barns are underlain by 10 foot deep waste pits. The gilt developer is underlain by an 8 foot deep waste pit. The farrowing house has a 2 foot deep pull plug system that drains to the gestation barn pits.

6. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

7. Respondent PSM manages North Fork's operations and the physical site.

8. The Respondent TWIN VALLEY PUMPING, INC. ("Twin Valley") is and was at

all times relevant to this Complaint, an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for and president of Respondent Twin Valley is Matt Bradshaw, 27701 U.S. Highway 54, Griggsville, IL 62340. Respondent Twin Valley performs contract livestock waste land application for the North Fork facility.

9-14. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 12 and 14 of Count II as paragraphs 9 through 14 of this Count VIII.

15. On December 3, 2003, the Illinois EPA inspected the North Fork facility. At the time of the inspection, there was a discharge from a perimeter tile serving the facility's south gestation building. At the time of the inspection the tile was discharging into a ravine in the terraced field south of the facility.

16. At the time of the inspection, the south gestation building perimeter tile discharge had a strong swine waste odor. Black bottom deposits forming a thin layer of sludge were observed in the tile discharge channel. A sample of the discharge was collected. Analytical results indicated the following parameter levels: ammonia, 45 milligrams per liter ("mg/l"); biochemical oxygen demand ("BOD"), 55 mg/l; total suspended solids ("TSS"), 74 mg/l. In response, the Illinois Department of Agriculture and Illinois Environmental Protection Agency requested that monthly samples be obtained for the subject tile.

17. On May 25, 2004, the Illinois EPA conducted a follow-up inspection at the facility. To address the discharge of swine waste from the south gestation building perimeter tile, Respondents had installed a new lift station along the perimeter tile line to pump the tile discharge back into the building waste pit. At the time of the inspection, the lift station was operational and the discharge to the ravine had been stopped. The area around the old tile outlet was cleaned of the sludge deposits observed at the time of the Illinois EPA's prior

inspection.

18. On August 12, 2004, the Illinois EPA conducted an inspection at the North Fork facility in response to a report of a manure spill. The release occurred through a leak in a 6-inch diameter flexible waste application hose, being used to pump from the gestation pit at the North Fork facility. The manure was released approximately 50 feet north of the intersection of gravel roads 1400 E and 450 N in St Albans Township, Hancock County, just north of the North Fork facility. The wastewater was being pumped from the gestation pit at North Fork to cropland approximately 1.5 miles north of the facility.

19. The cause of the release was described as follows by North Fork and Twin Valley personnel: On the afternoon of August 11, 2004, Twin Valley personnel initiated pumping to the land application field. As pumping operations got underway, an employee left the pump to inspect the hose as it came under pressure. At approximately 1:30 p.m., the employee discovered a leak in the hose at the release site. He returned to the pump and shut it off.

20. At the time of the August 12, 2004 inspection, the Illinois EPA inspector instructed Respondents' personnel to clean up the waste material remaining on the ground and land apply it, and then flush the upper and lower culverts at the intersection with fresh water, capturing the flush water and applying it to cropland.

21. On December 19, 2007, the Illinois EPA conducted an inspection of the site. At the time of the inspection, a flow of liquid was draining in an area between the swine farrowing building and gestation building #2, west to east. The liquid contained a diesel fuel odor and slight oil sheen. The liquid entered a tile inlet located on the south side of a recent addition to the farrowing building. The tile line passed north beneath the farrowing building and drained into a pond located on the north side of the site. Cooling cells are utilized on various swine buildings at the site. During winter months, the cells are winterized with the liquid contents



drained to the ground surface.

22. At the time of the December 19, 2007 inspection, the Illinois EPA inspector observed leachate and runoff draining from the contents of the facility's uncovered mortality compost structure to a small pond on the site. A sample of the leachate that was flowing away from the structure was collected. Analysis results indicate the following parameters levels for the leachate sample: ammonia, 2050 milligrams per liter ("mg/l"); nitrate/nitrite, 29.9 mg/l; biochemical oxygen demand ("BOD"), 15,500 mg/l; total suspended solids ("TSS") 1160 mg/l; fecal coliform, 5,900,000 per 100 ml.

23. Respondents North Fork and PSM have caused or allowed the discharge of contaminants to waters of the State at the North Fork site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

24. By causing, allowing or threatening the discharge of contaminants to waters of the State at the North Fork site so as to cause or tend to cause water pollution in Illinois, Respondents North Fork and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

25. Respondents North Fork, PSM and Twin Valley have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

26. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the North Fork site, Respondents North Fork, PSM and Twin Valley have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

27. At the time of December 3, 2003 discharge, Respondents North Fork and PSM did not have a NPDES permit for the North Fork facility, nor had the Respondents applied for

one. On June 28, 2004, the Illinois EPA received an NPDES permit application from Respondent PSM for the North Fork facility. The discharges from the mortality compost structure, from the perimeter tile, and from the land application hose at the North Fork facility are point source discharges.

28. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents North Fork and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent North Fork Pork, LLC, Respondent Twin Valley Pumping, Inc. and Respondent Professional Swine Management, LLC

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT IX**

**WATER POLLUTION VIOLATIONS – LITTLE TIMBER, HANCOCK COUNTY**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Act (“Act”), 415 ILCS 5/42(d) and (e).

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent LITTLE TIMBER, LLC (“Little Timber”) is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Little Timber is William L. Hollis, 34 W. Main St. Box 220, Carthage, IL 62321.

4. Respondent Little Timber owns a 2600 sow, farrow-to-wean, total confinement swine operation located southeast of Carthage, IL in the SE 1/4, Section 26 and NE 1/4, Section 35 of T5N, R6W (Carthage Township) in Hancock County (“Little Timber facility” or “Little Timber site”). The facility is located within the watershed of Middle Creek, which is tributary to the LaMoine River.

5. The Little Timber facility farrows approximately 1200 pigs per week. At any given time there are approximately 3000 pigs at the site. There are four total confinement buildings and an office. The buildings include farrowing, breeding, gestation and gilt development units. The swine buildings are equipped with shallow manure storage pits and a pull plug drain system. Swine waste accumulates in the pits. At some frequency, plugs are removed from the shallow pits and the waste drains by gravity to a single cell anaerobic lagoon.

6. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC (“PSM”) is and

was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Joseph F. Connor, 34 W. Main St. Box 220, Carthage, IL 62321.

7. Respondent PSM manages Little Timber's operations and the physical site.

8-14. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 14 of Count II as paragraphs 8 through 14 of this Count IX.

15. Section 620.301 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.301, provides in pertinent part:

General Prohibition Against Use Impairment of Resource Groundwater

- a) No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that:
  - 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or
  - 2) An existing or potential use of such groundwater is precluded.

16. On June 1, 2004, the Illinois EPA conducted an inspection of the Little Timber site. At the time of the inspection, the lagoon had freeboard of approximately three to four feet. At the time of the inspection, the Illinois EPA inspector advised the general manager for Respondent PSM, who was on site at the time, that there was a need to irrigate from the lagoon relatively soon so as not to place any additional hydraulic pressure on the lagoon. The levels indicated that there was 15 ½ feet depth of waste in the lagoon at the time of the inspection. Also, at the time of the inspection, tall weed growth was observed on the lagoon berms. Vegetation was about three feet tall. The inspector was advised that the berms should be mowed and that only short growth be maintained in order to facilitate the ability to maintain the integrity of the berms. The purpose of regular mowing of the lagoon berms is to allow for easy access and inspection for rodent activity and other potential structural damage.

17. At the time of the June 1, 2004 inspection, the inspector observed dark colored, turbid, odorous leachate and surface runoff draining west from the mortality compost unit at the Little Timber facility. The runoff drains west in a ditch of the gravel access lane, then flows into a north/south waterway. The waterway drains southeast and passes under the gravel road, and is tributary to Middle Creek. At the time of the inspection, there was a significant amount of skeletal remains, bones and other mortality material in the compost structure, and the inspector observed that there were bones, bone fragments and various skeletal remains exterior of the compost building where the back of the building had been damaged. The compost area, at the time of the June 1, 2004 inspection was fenced on three sides and not protected from precipitation.

18. At the time of the June 1, 2004 inspection, the Illinois EPA inspector collected samples from the drainage channel leading from the dead swine compost unit. A sample collected 20 yards downstream from the compost unit consisted of liquid that was dark colored, very turbid with a strong, offensive, nauseating odor. The analytical results indicated the following parameter levels: ammonia, 1340 mg/l; BOD, 3500 mg/l; TSS, 8550 mg/l; fecal coliform, 130,000 per 100 ml. Another sample was collected from a waterway at a point downstream of the dead swine compost unit. At the location at which the sample was collected, the liquid in the waterway was slightly turbid. The analytical results indicated the following parameter levels: nitrate/nitrite, 33.1 mg/l; fecal coliform, 520 per 100 ml. Another sample was collected from a small, unnamed tributary to Middle Creek. The stream is located southeast of Little Timber and is downstream from the dead swine compost area. The collection point is located on the south side of the gravel road. At the collection location the stream was slightly turbid with a dark color. The analytical results indicated the following parameter levels: BOD, 22 mg/l; TSS, 145 mg/l; fecal coliform, 7,500 per 100 ml.

19. At the time of the June 1, 2004 inspection, odors were observed from the swine confinement buildings, lagoon and dead livestock compost unit. The odor in the vicinity of the compost pile was very strong and offensive. Swine waste odors were observed off-site at County Road 2450 E. About 1 mile northeast of the facility. Wind direction was from the southwest.

20. On June 23, 2004, the Illinois EPA sent a Noncompliance Advisory Letter to Professional Swine Management regarding observations made at the time of the June 1, 2004 inspection. In the letter, the Illinois EPA requested additional information including lagoon monitoring well data. Well data indicate that nitrate levels rose in the southeast monitoring well downgradient of the lagoon from 1.14 and .91 milligrams per liter ("mg/l") in 1997 to 10 mg/l in 2002. Upon information and belief, the impacted groundwater is used for potable purposes and is Class I groundwater.

21. On February 6, 2007 and then again on February 8, 2007, the Respondents reported the release of waste from their wastewater handling structures at the Little Timber facility. The release was caused when an 8-inch inlet line entering the wastewater lagoon froze. Wastewater was discharged from a pipe clean-out into a ditch on the north side of the lagoon. The Respondents constricted the spill with an earthen dike and applied sawdust to the spilled waste. The waste/sawdust slurry was then collected and land applied.

22. On February 21, 2007, the Illinois EPA conducted an inspection in response to the release report. At the time of the inspection, the Illinois EPA inspector observed running water, comprised primarily of snowmelt, along the drainage path north of the lagoon and in the downstream waterway. A brown manure residual was observed in the grass on this drainage path. Also, some snow containing brown frozen wastewater was observed along the path. The Respondents were advised to pump this snow and frozen wastewater into the lagoon. Also, the

stormwater runoff, contaminated by the residual, was to be pumped into the lagoon.

23. At the time of the February 21, 2007 inspection, the flow in the drainage ditch located north of the lagoon was brown and slightly turbid. The ditch was discharging into the waterway in the adjacent field. The waterway was overflowing the sawdust dam due to the volume of snowmelt. The inspector observed a swine waste odor coming from the waterway downstream of the release site. A sample was collected from the waterway. The analytical results indicated the following parameter levels: ammonia, 34.5 mg/l; BOD, 120 mg/l; TSS, 104 mg/l.

24. On August 24, 2007, the Illinois EPA conducted an inspection of the Little Timber facility. At the time of the inspection, the Illinois EPA inspector observed that several swine had been burned in a fire near the gravel road at the facility. The inspector observed skulls and various bones of swine in a burn area adjacent to a large stump. Surface water flows through this area and drains to the southeast. This waterway is tributary to Middle Creek which flows into the LaMoine River. Surface water samples were collected.

25. At the time of the August 24, 2007 inspection, the Illinois EPA inspector also observed the mortality compost structure at the site, which was in use. The inspector observed surface runoff draining west from the mortality compost structure.

26. At the time of the August 24, 2007 inspection, the Illinois EPA inspector collected a water sample from the waterway downstream of the dead swine burn site which was directly in the waterway downstream from the compost structure. The sample was collected from a low flow of a slightly turbid, light brown colored liquid with slight foam. The analytical results indicated the following parameter levels: TSS, 50 mg/l; fecal coliform, 20,000 per 100 ml. Another sample was collected directly down gradient from the compost structure. It was liquid collected from runoff from the dead swine compost structure. The liquid was turbid and dark

colored. The analytical results indicated the following parameter levels: nitrate/nitrite, 51.2 mg/l; BOD, 17 mg/l; TSS, 33 mg/l; fecal coliform, 68,000 per 100 ml.

27. Respondents Little Timber and PSM have caused or allowed the discharge of contaminants to waters of the State at the Little Timber site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

28. By causing, allowing or threatening the discharge of contaminants to waters of the State at the Little Timber site so as to cause or tend to cause water pollution in Illinois, Respondents Little Timber and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

29. Respondents Little Timber and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

30. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Little Timber site, Respondents Little Timber and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

31. By causing or allowing the discharge of contaminants from the facility's livestock waste lagoon so as to cause increasing levels of nitrate in the groundwater, Respondents have violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Admin. Code 620.301.

32. By causing or allowing the discharge of contaminants that resulted in turbid, discolored and odor conditions in the surface waters tributary to Middle Creek which flows into the LaMoine River, Respondents Little Timber and PSM have violated Section 12(a) of the Act,



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

33. At the time of June 1, 2004, February 23, 2007 and August 24, 2007 discharges to surface waters tributary to Middle Creek, Respondents Little Timber and PSM did not have a NPDES permit for the High-Power facility, nor had the Respondents applied for one. The discharges from clean-out pipe, compost structure and burn site are point source discharges.

34. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents Little Timber and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Little Timber, LLC and Respondent Professional Swine Management, LLC ,

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

B. Finding that Respondents have violated the Act and regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

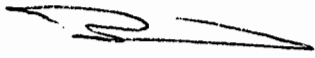
D. Assessing against Respondents for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the

Respondents for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN,  
Attorney General of the State of Illinois

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

BY:   
THOMAS DAVIS, Bureau Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel

JANE E. MCBRIDE  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

Dated: 4/14/10

**Attachment 2:**

*Order, People of the State of Illinois v. Professional Swine Management, LLC et al.*



miles west of West Point, Hancock County. The People allege that North Fork violated these provisions by (1) causing, allowing, or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution, (2) depositing contaminants upon the land in such place and manner as to create a water pollution hazard, and (3) causing or allowing the discharge of livestock wastewater to waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit.

On January 27, 2011, the People and North Fork filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in *Hancock County Journal-Pilot* on February 23, 2011. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of North Fork Pork's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. North Fork does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. North Fork agrees to pay a civil penalty of \$4,500. The People and North Fork have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. North Fork Pork, LLC (North Fork) must pay a civil penalty of \$4,500 no later than May 9, 2011, which is the first business day following the 30th day after the date of this order. North Fork Pork must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and North Fork's federal tax identification number must appear on the face of the certified check or money order.
3. North Fork must submit payment of the civil penalty to:

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

North Fork must send a copy of the certified check or money order and any transmittal letter to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. North Fork must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 7, 2011, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board



the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## **I. STATEMENT OF FACTS**

### **A. Parties to the Stipulation**

1. On July 13, 2010, an Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondent.

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 (2006).

3. The Respondent NORTH FORK PORK, LLC ("Respondent") is and was at all times relevant to this Complaint an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to the Complaint, Respondent owned and had ultimate responsibility for the operation of a sow farrow-to-wean total confinement swine facility located in St. Albans Township (Section 8), just south of the intersection of 450N and 1400E, approximately 3 miles west of West Point, Hancock County, IL ("facility" or "site"). There are a total of 8200 hogs greater than 55 pounds maintained at this facility, and 7700 under 55 pounds.

### **B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

1. On December 3, 2003, an Illinois EPA inspector observed a discharge from the perimeter tile serving the facility's south gestation barn. The tile discharged to a field that drains to a field tile that enters a stream adjacent to the facility property. The discharge had a strong swine waste odor and black bottom deposits.



2. On December 19, 2007, an Illinois EPA inspector observed a discharge of diesel product draining into a tile inlet. The tile went beneath the farrowing building and discharged into a pond on the north side of the building. On December 19, 2007, an Illinois EPA inspector observed leachate runoff coming from the facility's uncovered mortality compost structure draining to a small pond on the facility property.

3. By causing, allowing or threatening the discharge of contaminants to waters of the State at the North Fork site so as to cause or tend to cause water pollution in Illinois, Respondents North Fork and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

4. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the North Fork site, Respondents North Fork and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

5. By causing or allowing the discharge of livestock wastewater to waters of the State and navigable waters of the United States on December 3, 2007 without an NPDES permit, Respondents North Fork and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**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**

1. As of October 2008, Pike Pig Systems Inc. took over the management services of Respondent North Fork's facility.

2. Respondent North Fork installed a sump at the south end of the compost

structure to collect from and return leachate runoff to the facility's mortality compost structure. An earthen berm was placed around the sump. A terrace was placed above the compost structure along with a riser pipe to keep surface water from running near the compost structure. The Respondent North Fork has acquired additional copies of the University of Missouri guide to compost management and has made sure all employees involved with management of deads and the compost structure are trained on proper procedures.

3. Respondent North Fork has completed construction of a cover over its mortality compost structure.
4. Respondent North Fork has applied for NPDES permit coverage for the facility.
5. Respondent North Fork installed a lift station to direct the south gestation building perimeter tile discharge back to the facility's waste storage structures.
6. Respondent North Fork installed new pads in the cooling cells to prevent the cells from leaking. Any cooling cell pads that were faulty have been replaced, and the Respondent is maintaining a supply of pads on site. Respondent North Fork has inspected the two above-ground diesel tanks on site and determined neither is leaking.
7. Respondent North Fork excavated east of the facility's grow/finish building to locate the perimeter tile outlet for that building. Respondent has commenced monitoring this tile.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c), 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 this Stipulation state the following:

1. The environment was threatened by the discharge and release of livestock waste, mortality compost leachate runoff as well as diesel product runoff from the facility.
2. There is social and economic benefit to the facility when it operates on compliance with environmental regulations.
3. Operation of the facility was suitable for the area in which it occurred.
4. It is technically practicable and economically reasonable for this facility to operate without discharges of livestock waste, mortality compost leachate and diesel production to the environment.
5. Upon adherence to the terms and conditions of this settlement agreement,

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), 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; and
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.

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

1. The Respondent had an unpermitted discharge from one of the facility's perimeter tiles in December 2003, and then subsequently had discharges from its mortality compost structure and a diesel product in December 2007. The facility installed a lift station to pump the tile discharge back to the building waste storage pits, which was in place at the time of a May 2004 Illinois EPA inspection. The facility had not adequately modified its mortality

compost structure to prevent leachate runoff until this action was brought with the filing of the original complaint on April 29, 2010. At some time after December 2008, Respondent modified and repaired the facility's cooling cells to prevent the accumulation and discharge of diesel product.

2. Respondent was diligent in installing a lift station to address the December 2003 perimeter tile discharge. However, the Respondent did not adequately modify the mortality compost structure until three years after the December 2007 runoff observation.

3. The new management entity that took control of the subject facility in October 2008 immediately initiated activity to correct all outstanding violations. Since the time that this action was initiated, the new management entity and Respondent North Fork Pork, LLC have taken immediate action to implement all additional compliance recommendations communicated by the Illinois EPA and Illinois Attorney General's Office in the course of settlement negotiations.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Four Thousand Five Hundred Dollars (\$4,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

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

6. Self-disclosure was not an issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Four Thousand Five Hundred Dollars (\$4,500.00) within thirty (30) days from the date the Board adopts and accepts

this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$25.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. 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.

3. 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**

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, IL 62794-9276

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Monitoring results for the west tile servicing the breeding building indicate levels of nitrate of 92.4 mg/l on July 28, 2010, and 62.9 mg/l on September 8, 2010. Respondent agrees to install a lift station to pump the tile discharge back into the building waste storage pits. The lift station shall be installed and operating by April 15, 2011.

2. Respondent shall submit quarterly monitoring results for the east perimeter tile serving the grow/finish building to the Illinois IEPA and Illinois Attorney General's Office at the addresses stated in Section V.G of this Stipulation.

3. Respondent agrees that if nitrate levels exceeding 20 mg/l occur over two consecutive quarterly monitoring periods for the east perimeter tile serving the grow/finish building, Respondent shall install a lift station to pump the east perimeter tile discharge back to a waste storage structure. This lift station shall be installed within 60 days of receipt of the second consecutive sample result showing nitrate exceeding 20 mg/l.

4. On December 28, 2010, Respondent's NPDES permit was posted for public notice. Once the permit is issued, Respondent shall comply with all permit conditions.

5. 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 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, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

6. 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.

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

**E. Release from Liability**

In consideration of the Respondent's payment of the \$ 4,500.00 penalty, 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 July 13, 2010. 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 or the Illinois EPA 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. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

Jane E. McBride  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706

Chad Kruse  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Eric Ackerman  
Bureau of Water  
Peoria Regional Office  
5415 North University  
Peoria, IL 61614

As to Respondent

Claire A. Manning  
Brown, Hay & Stephens, LLP  
205 S. Fifth St - Suite 700  
P O Box 2459  
Springfield, IL 62705-2459

**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 Complainant, in consultation with the Illinois EPA, and the Respondent 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.G. 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 each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

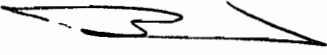
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:



THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE:

1/27/11

BY:



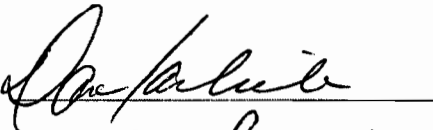
John J. Kim  
Chief Legal Counsel

DATE:

1/14/11

NORTH FORK PORK, LLC

BY:



Name: Dan Carliste

Title: Manager

DATE:

1/24/11

**Attachment 3:**

Aerial photograph of Wildcat Farms



Co Hwy 3

N Co Rd 2150



© 2012 Google  
Image USDA Farm Service Agency

Google earth

**Attachment 4:**

*Complaint, People of the State of Illinois v. Fragrant 40, LLC*

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
MACOUPIN COUNTY, ILLINOIS

**FILED**

AUG 31 2011

*Lisa Madigan*  
Clerk of the Circuit Court  
Macoupin County, Illinois

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FRAGRANT 40, LLC, an Illinois )  
limited liability corporation )  
 )  
Defendant )

No. 2011 CH 137

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, complain of Defendant FRAGRANT 40, LLC, as follows:

COUNT 1

WATER POLLUTION

1. This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e).

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4, and which is charged, inter alia, with the duty of enforcing the Act.

3. Defendant Fragrant 40, LLC ("Fragrant 40"), is and was at all times relevant to this Complaint in the business of swine production. The operation is a 4,500 head swine finishing operation with shallow manure pits underneath the buildings. There is a two stage



lagoon system on site, consisting of a primary cell and secondary cell. It is estimated that each of the two cells has a capacity of approximately 5 million gallons. The Fragrant 40 swine facility is located southwest of Palmyra in the SE 1/4 of Section 8, T11N, R9W of the 3<sup>rd</sup> P.M. in Macoupin County, Illinois. The address of the facility is 1682 Barr Road, Greenfield, IL 62044 (the "facility" or "site"). The registered agent for Fragrant 40, LLC is Ronald Seabaugh, 4239 Woodfield Place, Belleville, IL 62226. At all times relevant to this Complaint, Jeff Seabaugh, Ronald's brother, has been the operator and manager of the facility.

4. The facility was purchased in a condition requiring repair. It was originally built in 1968. The primary and secondary lagoon cells were full at the time of purchase, as were the building manure storage pits. When the facility came under control of the current operator in 2008, the operator indicated his intent to close out the second cell of the lagoon system. There is a gravity pipe between the two cells, with a valve. The primary cell's lowest point is at approximately the center of the berm it shares with the secondary cell. The secondary cell has not been closed out. No significant modification has been conducted at the site such that would trigger oversight by the Illinois Department of Agriculture pursuant to its jurisdiction under the Illinois Livestock Management Facilities Act, 510 ILCS 77/1 *et seq.*

5. The facility has a limited number of acres suitable for the land application of waste from the lagoon system under its sole control. Additionally, the facility has verbal agreements with two local farmers who allow the facility to land apply waste on 380 acres and an additional 600 acres. The facility applies manure according to the specifications provided by the crop farmer. The manure is land applied by using a tractor wagon and knifed in, by an umbilical hose or by a reel gun.

6. The Fragrant 40 facility has a total of seven confinement buildings on site. They are tunnel ventilation buildings. Two of the buildings have remained empty. All of the buildings



have pits and slatted floors. There is a fresh water pond on the north portion of the site, which collects clean storm water.

7. The facility's seven confinement buildings are aligned with east-to-west configurations on the eastern portion of the production area. The primary lagoon cell is located immediately west of the confinement buildings. The secondary cell is located immediately west of and shares a common berm with the primary cell. Swine have been confined in five of the seven buildings under the current ownership ("active buildings").

8. Active Building 1 is the southernmost building. Active Building 2 is the second building from the south. The next two buildings progressing north are inactive. Active Building 3 is the third building from the north. Active Building 4 is the second building from the north and Active Building 5 is the northernmost building. Active Buildings 1 through 4 are finishing buildings. Active Building 5 is a former nursery that has been used to house weaner pigs when initially brought on site prior to placement in Active Buildings 1 through 4.

9. Active Buildings 3 and 4 have two manure pits each that are connected to an outdoor manure reception pit with a common pipe which, provided blockages within the pipe do not occur, equalizes the manure levels in all four pits. Active Building 5 has one full pit which is pumped via a manually activated pump into one of the manure pits in Active Building 4. Active Building 2 has three manure pits that are interconnected with a common pipe which, provided blockages within the pipe do not occur, equalizes the manure levels in all three pits. The manure pits in Active Building 2 are pumped via a manually activated pump into one of the manure pits in Active Building 3. The manure reception pit is pumped via a manually activated pump to the primary cell. Active Building 1 has three manure pits which are not interconnected and are pumped via a manually activated pump into one of the manure pits in Active Building 3.

10. Since purchasing the facility in 2008, the current operators have had a difficult

time maintaining sufficient available freeboard in the two lagoon cells and the building pits at the facility. This is at least partially due to the fact the operators have sole control of an insufficient amount of land upon which to land apply waste from the lagoon cells. With regard to the building pits, the Illinois EPA inspector identified multiple locations at the bases of the buildings that are open, exposing the pits under the buildings to precipitation and increasing the levels of waste within the pits which resulted in additional contaminated liquid in the pits that the facility must manage.

11. During inspections in the spring of 2010, inspectors observed evidence that the building pits were overflowing into drainage pathways between the buildings. These conditions are the result of the fact that all pits under the buildings have consistently been full. The waste handling system in operation at the facility calls for the pits to be pumped to the primary lagoon cell, however, from the time of purchase until August 2010, the primary lagoon cell had very little freeboard, which meant it had no capacity to receive waste from the building pits.

12. There is a drainage ditch west of the buildings that runs south to north and drains into the storm water pond. There is a drainage ditch east of the buildings that flows south to north and drains into a stand pipe that outlets to the storm water pond. Drainage between the buildings flows into these ditches that flow into the fresh water pond at the facility. Any contaminated liquid coming from the buildings drains to the fresh water pond.

13. The facility is in the watershed of Taylor Creek, a water of the State, which flows north of the facility and into Macoupin Creek that flows into the Illinois River. The west end of the facility's lagoons are approximately 300 feet from Taylor Creek.

14. Section 3.165 of the Act, 415 ILCS 5/3.165, contains the following definition:

'CONTAMINANT' is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

15. Section 3.545 of the Act, 415 ILCS 5/3.545, contains 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 water 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.

16. Section 3.550 of the Act, 415 ILCS 5/3.550, contains 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.

17. Section 12(a) of the Act, 415 ILCS 5/12(a), provides, in pertinent part, as follows:

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;

18. Section 506.204(g)(4) of regulations promulgated under the Illinois Livestock Facilities Management Act, 35 Ill. Adm. Code 506.204 (g) (4), requires that two (2) foot of freeboard be maintained in livestock waste lagoons, as provided in pertinent part as follows:

- 4) In addition to the lagoon's total design volume, a freeboard shall be provided as follows:
- A) For lagoons service a livestock management facility with a maximum design capacity of less than 300 animal units and not collecting runoff from areas of than the exposed surface fo the lagoon (including associated interior berm slopes and flat berm

top areas), the top of the settled embankment shall be not less than 1 foot above the fluid surface level of the lagoon total design volume, or

- B) For all other lagoons, the top of the settled embankment shall be not less than 2 feet above the fluid surface level of the lagoon total design volume.

19. Section 18 of the Illinois Livestock Management Facilities Act, 510 ILCS 77/18, and Part 580 of regulations promulgated under both the Illinois Livestock Management Facilities Act and Illinois Environmental Protection Act, 35 Ill. Adm. Code Part 580, requires that operators report any release of livestock waste of 25 gallons or more within 24 hours, and provides in pertinent part:

Section 18 (510 ILCS 77/18) Reporting release of waste

- (a) An owner or operator of a livestock waste handling facility shall report to the Agency any release of livestock waste from a livestock waste handling facility or from the transport of livestock waste within 24 hours after discovery of the release. Reporting shall not be required in the case of a release of less than 25 gallons that is not released to the waters of the State or from a controlled and recovered release during field application . . .

Section 580.105 (35 Ill. Adm. Code 580.105) Method of Reporting a Release

- a) An owner or operator of a livestock waste lagoon shall report any release of livestock waste from the livestock waste handling facility or from the transport of livestock waste by means of transportation equipment within 24 hours after the discovery of the release. Reports of releases to surface waters, including to sinkholes, drain inlets, broken subsurface drains or other conduits to groundwater or surface waters, shall be made upon discovery of the release, except when such immediate notification will impeded the owner's or operator's response to correct the cause of the release or to contain the livestock waste, in which case the report shall be made as soon as possible but no later than 24 hours after discovery.
- b) Reporting shall not be required in the case of a release of less than 25 gallons that is not released to the waters of the State or from a controlled and recovered release during field application.

20. On November 2, 2009, the Illinois EPA conducted an inspection of the facility in response to citizen complaints. At the time of the November 2, 2009 inspection, the Illinois EPA inspector observed turbid reddish-orange liquid overtopping the facility's secondary livestock waste lagoon cell's west berm at several locations. The liquid had a swine waste odor. The inspector observed the discharge to flow into the east ditch of White Oak Road, a distance of approximately 20 yards. The road ditch flowed approximately 100 yards north where it entered Taylor Creek. At the time of the inspection, facility employees were pumping waste from the secondary cell to the primary lagoon cell, to lower the contents of the secondary cell and thus stop the cell from discharging. Water samples collected from the east ditch of White Oak Road approximately 80 yards upstream of the confluence of Taylor Creek were turbid with a reddish-orange color. Water samples collected at the confluence of the ditch and Taylor Creek were turbid with a reddish-orange color.

21. On November 18, 2009, the Illinois EPA conducted an inspection at the facility in response to citizen complaints. At the time of the inspection, the Illinois EPA inspector observed a turbid, reddish-orange liquid overtopping the secondary lagoon cell's west berm at several locations. The livestock waste was discharging from the secondary lagoon cell's west berm to the east ditch of White Oak Road and entered Taylor Creek at the confluence of the road ditch and Taylor Creek. At the time of the inspection, there was 1 inch of freeboard in the primary lagoon. Water samples collected from the east ditch of White Oak Road approximately 80 yards upstream of the confluence of Taylor Creek were turbid with a reddish-orange color. Water samples collected at the confluence of the ditch and Taylor Creek were turbid.

22. On November 23, 2009, the Illinois EPA conducted an inspection at the facility in response to citizen complaints. At the time of the inspection, the Illinois EPA inspector observed a moderately heavy flow of turbid liquid in the south road ditch of Barr Road along the

northern border of the facility's land application field. The inspector observed that the flow volume appeared to be abnormally high given the weather and ground conditions at the time.

23. Jeff Seabaugh, the facility operator, indicated that at approximately 5:00 A.M. on November 23, 2009, there had been a blowout in the hose located between the facility lagoon and the land application equipment reel cart. The blowout occurred when Mr. Seabaugh was visually inspecting the land application system and he was covered with livestock waste. In response to the blowout, Mr. Seabaugh shut down the lagoon pump. The blowout occurred at a location near two tile risers in the northeast corner of the land application field. A large volume of rain water was pooled at the tile risers. Livestock waste from the damaged hose entered the pooled storm water. Mr. Seabaugh indicated that the two tile risers in the harvested soybean field are connected to one tile that discharges in the south ditch of Barr Road near the east driveway entrance of the facility.

24. At the time of the November 23, 2009 discharge, the facility did not have equipment available that would have allowed them to recover the discharged waste from the road ditch. The Illinois EPA inspector followed the turbid liquid discharging from the tile to the south ditch of Barr Road approximately 200 yards to the west where the liquid traveled through a culvert to the north ditch of Barr Road near the facility's west driveway entrance and entered an unnamed tributary to Taylor Creek. The unnamed tributary heads in a northwest direction from the culvert on Barr Road and then passes through a culvert on White Oak Road located southwest of the secondary lagoon cell and then reaches Taylor Creek. The distance from the headwaters of the unnamed tributary at the culvert on Barr Road and Taylor Creek is approximately 300 yards. The unnamed tributary was observed at the culvert on White Oak Road located southwest to the secondary lagoon cell. Turbid liquid was observed flowing through the culvert. The confluence of the unnamed tributary and Taylor Creek was observed.

Turbid liquid was observed entering Taylor Creek from the unnamed tributary. Water samples collected from the south ditch of Barr Road was turbid with a reddish-orange color. Water samples collected from the unnamed tributary to Taylor Creek, approximately 10 yards upstream of its confluence with Taylor Creek was turbid.

25. At the time of the November 23, 2009 inspection, the facility's primary lagoon cells was observed to have approximately 1 to 2 inches of freeboard. The secondary lagoon cell had approximately 8 inches of freeboard.

26. At the time of the November 2, November 18 and November 23, 2009 inspections, the Illinois EPA inspector advised Jeff Seabaugh of the requirement to report releases of livestock waste within 24 hours of the release and of the need for him to do so. Mr. Seabaugh failed to report the November 2 and November 18 releases. He reported the November 23, 2009 release on November 28, 2009.

27. On December 24, 2009, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint. At the time of the inspection, the secondary lagoon cell had approximately 4 to 6 inches of available freeboard, and the primary cell had 1 to 2 inches of available freeboard. At the time of the inspection, the Illinois EPA inspector observed a hose and wood trough discharging liquid manure from Active Building 1 to the primary lagoon cell. The Illinois EPA inspector questioned why more waste was being pumped into the primary cell given the lack of available freeboard.

28. At the time of the December 24, 2009 inspection, facility employees indicated that the facility had not land applied waste from the cells since late November. They were scheduled to land apply waste the week of December 28, 2009.

29. At the time of the December 24, 2009 inspection, the Illinois EPA inspector reviewed the operation of the facility in an attempt to determine why the building pits filled so

rapidly. The inspector observed that damaged manure pit fan ventilation boxes and damaged manure pit pump-out ports existed at the buildings and were serving as potential conduits for clean storm water to be entering the building manure storage pits. Once clean water enters the pits, it becomes contaminated due to contact with the stored manure and reduces the amount of storage capacity in the pits. The Illinois EPA inspector told facility employees and Jeff Seabaugh that temporary measures should be installed immediately, such as covering the manure pit fan ventilation boxes with plywood and installing small earthen berms and covering the constructed berms at the damaged manure pit pump-out ports until weather allowed for more permanent measures to be installed. The Illinois EPA inspector had advised Mr. Seabaugh of the need to prevent stormwater access into the pits on multiple occasions in the past.

30. On January 20, 2010, the Illinois EPA inspector contacted Jeff Seabaugh in response to a citizen complaint. Mr. Seabaugh indicated that the facility was depopulated and would remain unpopulated until February 1, 2010. The facility was in the process of land applying livestock waste. Mr. Seabaugh informed the inspector that they also previously land applied on frozen ground for two days.

31. At the time of the January 20, 2010 interview with the operator, the operator indicated that the center manure pit of Active Building 1 had been observed to fill more rapidly than the other pits in the building. A damaged, shallow field tile was suspected to be causing the rapid filling. The operator expected to be able to investigate the cause of the infiltration when conditions allowed in the summer of 2010.

32. On January 22, 2010, the Illinois EPA conducted a reconnaissance inspection at the facility. The primary lagoon cells had approximately three inches of freeboard and was covered with ice and the secondary cell had approximately six inches of freeboard and was ice



covered. The most recently used application field was observed by the Illinois EPA inspector. Pooled liquid was observed on the surface of the field. There was no evidence of runoff leaving the application field.

33. At the time of the January 22, 2010 inspection, the Illinois EPA inspector observed manure was being pumped from confinement Active Building 3 into the primary cell. A hose was observed near the building that discharged into a section of irrigation pipe which discharged into the primary cell. In the course of the inspection, the Illinois EPA inspector observed that the hose and section of irrigation pipe used to pump manure was allowing manure to flow back toward the building. The operator investigated and determined the pump had just become plugged, causing back-flowing from the pipe. The volume of liquid discharged was below the quantity required to be reported. The operator explained that this manner of pumping was being utilized because the pipe draining the building's pit to the reception pit was apparently plugged. The facility had been unsuccessful in its attempts to unplug the pipe.

34. At the time of the January 22, 2010 inspection, a pool of liquid swine manure was observed along the west wall of the manure pit associated with Active Building 3. It appeared as though a crack in the manure pit wall or in a concrete block mortar joint was allowing the liquid manure to exit the pit. At the time of the inspection, the operator could not definitively determine the cause of the release. He indicated that once he got the pit pumped down, he would observe the pit wall to determine the cause of the pooled liquid.

35. At the time of the January 22, 2010 inspection, the Illinois EPA inspector observed that the facility has installed temporary measures at damaged manure pit fan ventilation boxes and at most other locations where surface runoff had the potential to enter the manure pits associated with the facility's confinement buildings. There remained areas where surface water could still get into the pits. At the time of the inspection, the facility operator

indicated he was aware of the locations and would make the corrections, and had plans to make permanent repairs and corrections to all locations where surface water has the potential to enter building waste storage pits.

36. At the time of the January 22, 2010 inspection, the operator indicated he spoke with the facility's former owner and learned that a concrete structure located north of Active Building 2 was a cistern that was supplied by a six inch diameter line from a well located near the pump house north of the buildings. Some locations where it appeared that there were damaged manure pit pump-out ports were actually screened inlets to the cistern that were used to allow surface runoff to enter the cistern. Apparently the well and water reservoir could not provide adequate water for the growing pigs during dry periods. The cistern has a line to the hallway near the northwest corner of Active Building 2. The operator indicated his plan was to allow the cistern to remain but permanently cap the inlets. There also existed an open pit pump-out on the north side of what is considered the facility's future nursery building (Active Building 5). The operator identified this location to be a cistern inlet. He indicated the facility had missed it when they were capping other locations and would now cap it.

37. At the time of the January 22, 2010 inspection, the Illinois EPA inspector discussed the permanent repair/replacement of some of the pump-out ports with the operator, to extend the ports above the top of the manure pit walls so that manure is not discharged from the damaged ports before the manure pits are full. This would allow the entire manure pit volume to be used. The inspector also discussed completing some additional grade work with the operator, to assure that uncontaminated storm water is directed away from the confinement buildings and does not stand near the buildings. The operator agreed to perform this work when the weather was warmer and drier.

38. At the time of the January 22, 2010 inspection, the manure reception pit located

adjacent to Active Building 3 still lacked a cover and fencing to prevent accidental entry into the pit. At the time of the inspection, the operator indicated he was unsure of the arrangement of pipes that drain the manure pits to the reception pit. He indicated he desired to get all of the manure pits to drain to the reception pit to eliminate the above ground pumping lines the facility currently had to use. With regard to Active Building 1, the operator indicated that the manure from the three building manure pits were currently pumped directly to the primary lagoon cell. The operator wants to place a recharge line from the primary cell into Active Building 1 that can be used in any of the three pits to soften and flush the manure as the manure is getting too thick to pump. The facility intends to install three drops per pit so they can flush towards the pumping location that will transfer the flushed manure to the reception pit. The operator indicated that the thick manure may be part of the plugging problem that was experienced in the northwest pit in Active Building 3.

39. On February 2, 2010, the Illinois EPA sent the facility a Violation Notice concerning the discharges documented on November 2, November 18 and November 23, 2009. The violation notice included a requirement that the facility install freeboard markers in all livestock waste handling and storage structures and that the amount of available freeboard be recorded weekly. The notice also required that the facility cease and desist discharges of livestock waste to waters of the State; apply for and obtain an NPDES permit, which was to include a comprehensive nutrient management plan; secure and maintain adequate land application acreage; maintain adequate capacity and available freeboard in all waste storage pits and lagoon cells and report livestock waste releases. The notice was sent to Jeff Seabaugh at the Fragrant 40 facility by certified mail. A signed receipt was received by the Illinois EPA. On March 12, 2010, Mr. Seabaugh responded to the notice in writing.

40. On February 22, 2010, the Illinois EPA conducted an inspection of the facility in

response to a citizen complaint. At the time of the inspection, the Illinois EPA inspector observed the primary lagoon cell to have approximately 8 inches of available freeboard and the secondary lagoon cell had approximately 2 to 3 inches of freeboard. One of the Defendant's employees indicated that, that day, the facility had pumped from the secondary cell to the primary cell for three hours and added 1 inch of freeboard in the secondary cell. Prior to February 22, 2010, the last time the freeboard levels were checked was February 19, 2010. The employee indicated that on that date the primary cell had approximately 2 feet of available freeboard. The three employees on site at the time of the inspection speculated that the rapid loss of freeboard was possibly due to ice melt within the cells, snow melt along the berms that entered the cells, a recent rainfall and possibly frost leaving the ground. The inspector observed no discharges at the time of the inspection. He collected water samples in potential receiving waters.

41. On March 19, 2010, the Illinois EPA conducted a joint inspection with the U.S. EPA at the facility. At the time of the inspection, the Illinois EPA inspector observed that the primary cell had approximately 2 inches of available freeboard and the secondary cell had approximately 8 inches of available freeboard.

42. At the time of the March 19, 2010 inspection, the Illinois EPA inspector observed a blower line pipe (former manure pit ventilation system component) at Active Building 3 that had allowed manure to exit the manure pit when the pit was full at the time of the January 22, 2010 Illinois EPA inspection. At the time of the March 19, 2010 inspection, the blower line pipe had still not been plugged. The Illinois EPA inspector again told Jeff Seabaugh, facility manager, that the pipe needed to be plugged.

43. At the time of the March 19, 2010 inspection, Jeff Seabaugh again discussed his plans to eliminate above ground lines to the primary lagoon cell. He indicated that the

unused buildings on site would be razed. A concrete pit will be installed in the southwest corner of the east half of Active Building 3 and manure will be pumped from Active Buildings 1 and 2 to this pit. The manure from Active Building 3 drains into an existing reception pit located near Active Building 3.

44. On April 14, 2010, the Illinois EPA conducted an inspection at the facility in response to citizen complaints. At the time of the inspection, the Illinois EPA inspector observed that the primary lagoon cell had approximately ½ to 1 inch of freeboard available. It appeared that in an area approximately 35 feet south of the northwest corner of the primary cell it had overtopped and discharged into the second cell. A facility employee confirmed that on April 6, 2010, the primary cell overtopped and discharged down the west berm of the primary cell into the secondary cell. There were no discharges out of the lagoon system. At the time of the April 14, 2010 inspection, the Illinois EPA inspector advised the facility to build earthen berms on either side of the location where the overtopping occurred to create a channel to convey and contain any future overtopping between the two cells. The operator was also advised to place a freeboard marker near this channel as this is the lowest point of the primary cell. At the time of the April 14, 2010 inspection, the secondary cell had approximately 10 inches of freeboard available.

45. At the time of the April 14, 2010 inspection, between 4,400 and 4,500 head of swine over 120 pounds were being confined at the facility. The pit associated with Active Building 2 was full. The facility intended to land apply from the primary cell, and then pump the Active Building 2 pit into the primary lagoon cell. On April 18, 2010, the facility started to land apply from the primary lagoon cell.

46. On April 20, 2010, Jeff Seabaugh informed the Illinois EPA that land application had been conducted continuously since the evening of April 18, 2010 and that at the time of his

call to the agency, 30 inches of available freeboard in the primary lagoon cell. Mr. Seabaugh reported that all of the facility confinement building pits had been pumped into the primary lagoon cell.

47. On April 23, 2010, the Illinois EPA conducted an inspection of the facility's land application field. At the time of the inspection, Jeff Seabaugh told the inspector that analysis results for samples taken from the secondary lagoon cell showed low nitrate levels. The facility was going to begin to use the secondary cell to provide water for the pigs to drink and to flush manure pits. At the time of the April 23, 2010 inspection, the Illinois EPA inspector observed that there was 5 feet of freeboard available in the primary lagoon cell, and approximately 10 to 12 inches of available freeboard in the secondary cell.

48. At the time of the April 23, 2010 inspection, Jeff Seabaugh told the Illinois EPA inspector that the storm water run-in repairs at the former pit fan ventilation boxes and the cistern at the buildings were to begin the following week. The Illinois EPA had repeatedly pointed out the need for these repairs since the time of the December 24, 2009 and at that time noted that Mr. Seabaugh had previously, repeatedly been advised of the need for such repairs.

49. On June 24, 2010, the Illinois EPA conducted an inspection of the facility to observe the status of repairs to prevent storm water run-in to the building pits as well as to check on the available freeboard in the lagoon cells. At the time of the inspection, Ron Seabaugh informed the Illinois EPA inspector that between 1.7 and 1.8 million gallons were land applied from the primary cell the past spring.

50. At the time of the June 24, 2010 inspection, the primary cell had approximately 12 inches of available freeboard. The secondary cell had approximately 6 inches of available freeboard. Ron Seabaugh told the Illinois EPA inspector that they pump from the secondary cell to the primary cell as needed.

51. At the time of the June 24, 2010 inspection, the berms of the lagoons were in need of mowing and freeboard markers had not been installed in the primary and secondary lagoon cells.

52. At the time of the June 24, 2010 inspection, the Illinois EPA inspector advised Ron Seabaugh that he should, at that time, be looking for and acquiring access to additional land application ground, such as pasture, hay field or wheat fields that would be harvested within the next month rather than waiting until both of the cells and the manure pits were full. Mr. Seabaugh indicated that they had looked and were unable to identify additional ground. The facility had recently received 4 inches of rain.

53. At the time of the June 24, 2010 inspection, the Illinois EPA inspector again advised Ron Seabaugh to install an earthen berm from the northwest corner of the primary cell down to the northeast corner of the secondary cell to assure that if the primary cell overtops, the discharging liquid will be directed into the secondary cell.

54. At the time of the June 24, 2010 inspection, the former ventilation boxes that had been a location that allowed storm water run-in to the building pits, were observed. New concrete blocks has been placed and the holes in the blocks had been filled with mortar. The overflow elevations of the repaired boxes were installed at elevations such that manure will backup into the slats within the buildings before exiting the boxes. The repaired boxes were installed at elevations above the surrounding grade to prevent surface runoff from entering the boxes. Metal covers had been constructed and installed to prevent storm water from entering the boxes. All but one of the former ventilation fan boxes had been repaired in this manner. The remaining box was located at the northwest corner of Active Building 5 which was not currently in use. The box needed some additional sheet metal installed to prevent precipitation from entering the ventilation fan box opening.

55. At the time of the June 24, 2010 inspection, most of the manure pit pump-out ports were observed to be covered with caps and/or extended and covered with caps or buckets to prevent surface runoff and precipitation from entering the ports. Not all of the manure pit pump-pit ports that needed work had been repaired or capped/covered. At the time of the June 24, 2010 inspection, the Illinois EPA inspector advised the Seabaughs to get all of the ports extended about the level of the slats over the manure pits and covered.

56. At the time of the June 24, 2010 inspection, the cistern inlet located between Active Building 3 and Active Building 4 was observed to have been backfilled with soil. A surface inlet associated with the cistern located north of Active Building 5 did not have a cover or cap. The Seabaughs indicated that this was an oversight and that they would get this inlet capped or backfilled to prevent surface runoff and/or precipitation from entering the inlet.

57. Another source of potential clean water infiltration are the former gooseneck manure pit ventilation system pipes. The ventilation system has not been in use at the facility for a number of years and had fallen into disrepair. Portions of the system had been repaired. At the time of the June 24, 2010 inspection, some of the system continued to need capping, plugging or elimination of pipes.

58. At the conclusion of the June 24, 2010 inspection, the Illinois EPA inspector told the Seabaughs that the biggest concern he observed was the limited freeboard available within both lagoon cells. He advised that the Illinois EPA recommends that a minimum of 2 feet of available freeboard be maintained at all times. The Illinois EPA inspector again advised that the Seabaughs needed to acquire access to additional land application ground.

59. On July 27, 2010, the Illinois EPA conducted an inspection of the facility. At the time of the inspection, there were between 2,500 and 2,800 head of swine at the facility. These animals were scheduled to be shipped soon.



60. At the time of the July 27, 2010 inspection, the second cell had 12 inches of available freeboard. The primary lagoon cell was observed to have 6 to 8 inches of available freeboard.

61. At the time of the July 27, 2010 inspection, it was apparent a pipe had been installed from the secondary cell to facilitate use of the secondary cell contents as drinking water for the pigs. At the time of the July 27, 2010 inspection, it was apparent soil had been added to the northwest corner of the primary cell and continued south along the common berm between the cells to direct potential discharges from the northwest corner of the primary cell into the secondary cell. A trench containing a white PVC pipe was observed on the east berm of the primary cell. It appeared that this pipeline would be used to provide water into Active Building 3 to flush the manure pit and help loosen manure solids in the manure pit.

62. At the time of the July 27, 2010 inspection, facility employees informed the Illinois EPA inspector that work to extend the manure pump-out ports was planned for the following day.

63. As of July 27, 2010, the facility had repaired former ventilation fan boxes to keep them from allowing surface water into the pits, except for the ventilation box at Active Building 5, covered the reception pit with a roof and extended and repaired some of the manure pit pump-out ports to divert and prevent surface runoff from entering building pits. The surface inlets associated with the former cistern system had been backfilled and/or repaired to prevent surface runoff from entering the cistern system. Pipelines had been installed to pump liquid from the primary cell to flush the manure pits within the confinement buildings. New permanent pipelines had been installed, mostly underground, to eliminate the need for above-ground, temporary lines and hoses that are more readily damaged and can result in leakage or releases of livestock waste.

64. As of July 27, 2010, facility personnel had removed all blockages within the manure pits and the livestock waste handling system. The new flushing operations coupled with removal of the blockages resulted in the free flow of manure within the manure pits and livestock waste handling system providing easier manure transfer when needed rather than relying on temporary pumping system which are more prone to failure. The re-use of liquid from the primary cell eliminated the need to add water to the manure pits to soften the manure and had reduced the waste volume generated that needs to be stored within the lagoon cells.

65. As of July 27, 2010, the facility planned to sew the seven acre field on the facility property and some of the area to the south of Active Building 1 and the primary lagoon cell in clover to allow liquid from the secondary cell to be irrigated onto the clover ground multiple times each summer after the clover is harvested to provide additional freeboard in the cell.

66. As of July 27, 2010, the facility had lined up sufficient acreage to land apply 1.9 million gallons of waste from the lagoon cells in the fall. Over the years, manure solids had built up in the primary cell. Agitating the primary cell during manure pumping operations has removed some of the solids within the cell and was planned for the fall application as well. The use of a track hoe was planned for the coming fall to be used around the perimeter of the primary cell to remove the manure solids buildup from the cell berm toward the center of the cell as far as the track hoe arm could reach. The solids would be land applied. Once completed, this manure solids removal would provide additional freeboard within the primary cell heading into winter months.

67. On October 28, 2010, the Illinois EPA conducted an inspection of the facility's production area and the land application fields associated with the facility. At the time of the inspection, the primary lagoon cell had 14 inches of available freeboard and the secondary lagoon cell had approximately 26 inches of freeboard. A freeboard marker was not observed in

either cell. The facility had not been populated since early August, 2010.

68. At the time of the October 28, 2010 inspection, it was Defendant's intent to land apply 3 million gallons or more from the lagoon cells and empty the confinement building pits into the primary cell. The facility intended to repopulate the facility in January 2011, and they intended to empty the pits prior to repopulating.

69. At the time of the October 28, 2010 inspection, each of the confinement buildings had at least one, and in general multiple, pit pump-out ports or pit gooseneck ventilation system piping that were yet to be capped, plugged or eliminated to prevent potential precipitation and/or surface runoff from entering the pits. Jeff Seabaugh was advised that these areas needed to be repaired and capped.

70. On December 23, 2010, the Illinois EPA conducted an inspection of the facility. The facility was not populated with swine at the time of the inspection. The primary lagoon cell had approximately 24 inches of freeboard and the secondary lagoon cell had approximately 27 inches of freeboard. A freeboard marker was not observed in either of the lagoon cells.

71. At the time of the December 23, 2010 inspection, each of the five recently active confinement buildings had at least one, and in general multiple, manure pit pump-outports or manure pit ventilation system pipes in need of being repaired/replaced or having caps installed to prevent potential precipitations and/or surface runoff from entering the pits.

72. At the time of the December 23, 2010 inspection, the manure pits associated with the five most recently active confinement buildings were observed to have available freeboard ranging from 2 inches to 12 inches. Thus, Defendants either had not emptied the pits in November and early December as originally intended, or due to clean water infiltration, the pits were filling with wastewater even while the facility was out of production.

73. On March 1, 2011, the Illinois EPA conducted an inspection at the facility in

response to a citizen complaint. At the time of the March 1, 2011 inspection, the facility had yet to be populated with swine.

74. At the time of the March 1, 2011 inspection, the Illinois EPA inspector observed a release of manure from a crack near the northwest corner of the northern manure pit associated with Active Building 3. The inspector observed the discharge to travel approximately eighty-five (85) yards to the north, pass through a culvert under a facility access road and enter the facility's fresh water pond. The freshwater pond has a continuous outfall to an unnamed tributary of Taylor Creek.

75. At the time of the March 1, 2011 inspection, pooled manure was observed near a former pit ventilation pipe in the west wall of one of the manure pits associated with Active Building 4. The Illinois EPA inspector had previously observed a discharge of manure from this location. Subsequently, the pipe has been plugged with concrete. At the time of the inspection, the Illinois EPA inspector observed that it appeared that manure seeping from the plugged pipe in the west wall of Active Building 4 had the potential to reach the channel of manure being released from Active Building 3, and thus contribute to the discharge to the freshwater reservoir.

76. At the time of the March 1, 2011 inspection, the Illinois EPA inspector observed that there were no readily identifiable freeboard marker in either cell of the two-stage lagoons. The Illinois EPA inspector estimated that the secondary cell had 22 inches of freeboard and the primary cell had 16 inches of freeboard.

77. On July 14, 2011, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint and to check the status of the facility and its livestock waste storage structures.

78. Prior to conducting the inspection, the Illinois EPA inspector called the site

manager, Jeff Seabaugh. Mr. Seabaugh informed the inspector that 3000 weaned pigs had been brought to the site and housed in Active Buildings 3 and 4 the previous week. Mr. Seabaugh indicated he had received email correspondence from a neighbor of the facility and, in response to this odor complaint, he was practicing "natural ventilation" of the facility buildings in an attempt to address the odor complaint. He was leaving the large ventilation fans at the west ends of the two buildings off. Side curtains were fully open. Several fans inside or on the sides of the building were on to provide air movement in the building. On hot days, he sprinkled the pigs with water.

79. At the time of the July 14, 2011 inspection, the Illinois EPA inspector observed livestock waste seepage and discharge from the west end of Active Building 4 livestock waste storage pit. The discharge was continuing. The discharge pooled at the west end of the building. The Illinois EPA inspector followed the flow path of the discolored and odorous wastewater north through tall grass and weeds toward the site's fresh water pond. The discharge flowed into a steel pipe culvert under a site access road about 120 feet north of Active Building 4. It discharged from the culvert and flowed through another 60 feet of tall grass discharging into the southwest arm of the site's fresh water pond. The fresh water pond's overflow pipe discharge forms an unnamed tributary which joins Taylor Creek about 250 feet north of the pond. The overflow pipe intake is approximately 330 feet from the southwest arm of the pond where the livestock waste discharge was entering the pond. The pond's surface area is approximately 4.5 acres.

80. At the time of the July 14, 2011 inspection, the Illinois EPA inspector collected samples. He collected a sample at the west end of the culvert where the livestock waste discharge was flowing toward the fresh water pond. The free discharge from the culvert was flowing at approximately one gallon per minute. The collected water was gray/brown in color,

turbid and smelled like swine waste. He also collected a sample from the fresh water pond overflow pipe's discharge, that released pond water into an unnamed tributary of Taylor Creek.

81. At the time of the July 14, 2011 inspection, there were no freeboard markers in the two lagoon cells to aide in determining available freeboard. The Illinois EPA inspector estimated the primary cell had 14 inches of available freeboard and the secondary cell had 3 feet of available freeboard. Estimation of freeboard was made difficult by the tall vegetation present on the lagoon cell berms. Site manager Jeff Seabaugh told the Illinois EPA inspector that the freeboard observed in the secondary cell was obtained in late spring by land application to a field across the road. At the time of the July 14, 2011 inspection, the valve in the overflow pipe between the primary and secondary cell was open.

82. At the time of the July 14, 2011 inspection, the Illinois EPA inspector observed that the facility water supply pump was at the southeast corner of the secondary lagoon cell and was running continuously at the time of an initial observation and also a half an hour later. This suggested a broken water line and/or loss of prime. A broken water line may be the source of additional liquid in the storage pit, causing it to discharge. On July 19, 2011, in a follow-up phone call with Jeff Seabaugh, Mr. Seabaugh told the inspector that there had been a break in a 3/4-inch water line and that this likely led to the loss of prime by the water supply pump. On July 21, 2011, during another follow-up phone call, Jeff Seabaugh told the Illinois EPA inspector that when present at the facility, facility personnel flushed building pits every 3 to 4 hours in an attempt to soften and remove old, solidified manure in the pits.

83. At the time of the July 14, 2011 inspection, the seven acre field on the facility property and some of the area to the south of Active Building 1 and the primary lagoon cell was planted in soybeans. At the time of the July 27, 2010 inspection, the facility reported its intent to sew this area in clover to allow liquid from the secondary cell to be irrigated onto the clover

ground multiple times each summer after the clover is harvested to provide additional freeboard in the cell.

84. The Defendant has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharge of livestock waste from its facility to Taylor Creek.

85. The discharges of contaminants from the Defendant's facility have caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

86. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

87. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant Fragrant 40, LLC has violated Section 12(a) of the Act, 415 ILCS 5/12(a);

- B. Permanently enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendant a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and
- E. Grant such other and further relief as the Court deems appropriate.

**COUNT II**

**WATER POLLUTION HAZARD**

1-85. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 85 of Count I as paragraphs 1 through 85 of this Count II.

86. Section 12(d) of the Act, 415 ILCS 5/12(d), provides, in pertinent part, as follows:

No person shall:

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

87. The Defendant has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to Taylor Creek.

88. By depositing contaminants upon the land in such a place and manner as to create a water pollution hazard, the Defendant has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

89. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue



unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

- A. Find that the Defendant Fragrant 40, LLC has violated Sections 12(d) of the Act, 415 ILCS 5/12(d);
- B. Permanently enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendant a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and
- E. Grant such other and further relief as the Court deems appropriate.

**COUNT III**

**NPDES PERMIT VIOLATION**

1-86. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 86 of Count I as paragraphs 1 through 86 of this Count III.

87. At the times of the November 2, 18 and 23, 2009 and March 1 and July 14, 2011 discharges, the Defendant did not have a National Pollution Elimination System Discharge ("NPDES") permit from the Illinois EPA for the facility. The facility was instructed to obtain an NPDES permit in a Violation Notice from the Illinois EPA dated February 2, 2010. As of August 11, 2011, the facility had not applied for an NPDES permit.

88. The facility's confinement operation, waste storage structures, lagoon system

and land application fields are point sources of discharge, pursuant to the provisions of the NPDES regulations.

89 Section 12(f) of the Act, 415 ILCS 5/12(f), provides, in pertinent part, as follows:

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.

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No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

90. Section 309.102(a) of the Board's water pollution regulations, 35 Ill. Adm. Code

309.102(a), states, in pertinent part:

**NPDES Permit Required**

- 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.

91. Section 502.101 of the Board's Agriculture Related Pollution Regulations, 35 Ill.

Adm. Code 502.101, provides:

No person specified in Sections 502.102, 502.103 or 502.104 or required to have a permit under the conditions of Section 502.106 shall cause or allow the operation of any new livestock management facility or livestock waste-handling facility, or cause or allow the modification of any livestock management facility or livestock waste-handling facility, or cause or allow the operation of any existing livestock management facility or livestock waste-handling facility without a National Pollutant Discharge elimination System ("NPDES") permit. Facility expansions, production increases, and process modifications which significantly

increase the amount of livestock waste over the level authorized by the NPDES permit must be reported by submission of a new NPDES application.

92. Section 502.104 of the Board's Agriculture Related Pollution Regulations, 35 Ill.

Adm. Code 502.104, provides:

- a) An NPDES permit is required if more than the following numbers and types of animals are confined and either condition (b) or (c) below is met:

<u>Number of Animals</u>	<u>Kind of Animals</u>
*** 750	*** Swine weighing over 55 pounds
*** 300	*** Animal Units

- b) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

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93. Section 502.106 of the Board's Agriculture Related Pollution Regulations, 35 Ill.

Adm. Code 502.106, provides:

- a) Notwithstanding any other provision of this Part, the Agency may require any animal feeding operation not falling within Sections 502.201, 502.103 or 502.104 to obtain a permit. In making such designation the Agency shall consider the following facts:
- 1) The size of the animal feeding operation and the amount of wastes reaching navigable waters;
  - 2) The location of the animal feeding operation relatives to navigable waters;
  - 3) The means of conveyance of animal wastes and process wastewaters into navigable waters;

- 4) The slope, vegetation, rainfall and other factors relative to the likelihood or frequency of discharge of animal wastes and process wastewaters into navigable waters; and
- 5) Other such factors bearing on the significance of the pollution problem sought to be regulated.

94. Section 122.23, 40 CFR 122.23, provides, in pertinent part, as follows

Concentrated animal feeding operations

(A) *Scope*. Concentrated animal feeding operations ("CAFOs"), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

95. Section 122.23 (b)(1), 40 CFR 122.23(b)(1), provides, in pertinent part:

(b) Definitions applicable to this section:

- (1) *Animal feeding operation* ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
  - (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
  - (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

96. Section 122.23 (b)(8), 40 CFR 122.23(b)(1), provides, in pertinent part:

- (8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.

97. Section 122.23(d) (1), 40 CFR 122.23(d)(1), provides, in pertinent part:

(d) *Who must seek coverage under an NPDES permit?*

(1) *Permit requirement.* The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges . . . . Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.

98. By causing or allowing the discharge of a contaminant into waters of the State from a point source without an NPDES permit, the Defendant has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

99. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant Fragrant 40, LLC has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a);

B. Permanently enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendant a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and

- E. Grant such other and further relief as the Court deems appropriate.

COUNT IV

OFFENSIVE CONDITIONS

1-26 Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count V.

27. Section 302.203 of the Board's water pollution regulations, 35 Ill. Adm. Code 302.203, states, 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. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

\* \* \*

28. At the time of inspections conducted by the Illinois EPA on November 2, 18 and 23, 2009, discharges from Defendant's facility resulted in turbid, discolored and odor conditions in receiving waters of Taylor Creek.

29. By causing or allowing the discharge of contaminants that resulted in turbid, discolored and odor conditions in the waters of Taylor Creek, the Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, People of the State of Illinois, respectfully requests that the Court grant the following relief:

- A. Find that the Defendant Fragrant 40, LLC, has violated Sections 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. 302.203;
- B. Permanently enjoin the Defendant from further violations of the Act and

associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendant a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and

E. Grant such other and further relief as the Court deems appropriate.

### COUNT V

#### AGRICULTURAL RELATED POLLUTION

1-86. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 86 of Count I as paragraphs 1 through 86 of this Count V.

87. Section 501.403(a) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.403(a), provides:

Section 501.403      Protection of Livestock Management Facilities and Livestock Waste-Handling Facilities

- a) Existing livestock management facilities and livestock waste-handling facilities shall have adequate diversion dikes, walls or curbs that will prevent excessive outside surface waters from flowing through the animal feeding operation and will direct runoff to an appropriate disposal holding or storage area. The diversions are required on all aforementioned structures unless there is negligible outside surface water which can flow through the facility or the runoff is tributary to an acceptable disposal area or a livestock waste-handling facility. If inadequate diversions cause or threaten to cause a violation to the Act or applicable regulations, the Agency may require corrective measures.

88. Section 501.404(c)(1) and (2) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(1), (2), provides:

501.404 Handling and Storage of Livestock Waste

\* \* \*

c) Livestock Waste-Holding Facilities

\* \* \*

- 1) Liquid manure holding tanks shall be impermeable and capable of withstanding pressures and loadings to which such a tank may be subjected.
- 2) Holding ponds and lagoons shall be impermeable or so sealed as to prevent groundwater or surface water pollution.

89. Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3), provides:

Section 501.404 Handling and Storage of Livestock Waste

\* \* \*

c) Livestock Waste-Holding Facilities

\* \* \*

- 3) 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.

90. Section 501.404(c)(4)(A) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(4)(A), provides:

Section 501.404 Handling and Storage of Livestock Waste

\* \* \*

c) Livestock Waste-Holding Facilities

4) Liquid Livestock Waste

- A) Existing livestock management facilities which 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. If inadequate storage time causes or threatens to cause a violation of the Act or applicable



regulations, the Agency may require that additional storage time be provided. In such cases, interim pollution prevention measures may be required by the Agency.

91. By failing to take adequate measures to divert clean water from entering livestock waste storage structures, the Defendant violated Section 12(a) of the Act and 35 Ill. Adm. Code 501.403(a).

92. By failing to maintain building waste storage pits appropriately and adequately sealed to prevent seepages and discharges of livestock waste, the Defendant has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 501.404(c)(1) and (2).

93. By failing to provide appropriate and adequate waste storage and maintain waste levels so as to prevent a discharge, the Defendant has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), 35 Ill. Adm. Code 501.404(c)(3) and 35 Ill. Adm. Code 501.404(c)(4)(A).

94. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant Fragrant 40, LLC has violated Section 12(a) and 12(d) of the Act, 415 ILCS 5/12(a),(d), 35 Ill. Adm. Code 501.403(A), 35 Ill. Adm. Code 501.402(c)(1), (2) and (3), 35 Ill. Adm. Code 501.404(c)(3) and 35 Ill. Adm. Code 501.404(c)(4)(A);

B. Permanently enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendant a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and
- E. Grant such other and further relief as the Court deems appropriate.

**COUNT VI**

**AIR POLLUTION**

1. This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e).

2-13. Plaintiff re-alleges and incorporates by reference herein paragraphs 2 through 13 of Count I as paragraphs 2 through 13 of this Count II.

14. Section 3.115 of the Act, 415 ILCS 5/3.115, provides the following definition:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

15. Section 3.165 of the Act, 415 ILCS 5/3.165, provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

16. Section 9(a) of the Act, 415 ILCS 5/9(a), provides, in pertinent part, as follows:  
No person shall

- a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

\* \* \*

17. Section 501.402 ( c ) (3) of the Board's Agriculture Related Pollution

Regulations, 35 Ill. Adm. Code 501.402 ( c )(3), provides, in pertinent part, as follows:

Location of New Livestock Management Facilities and  
New Livestock Waste-Handling Facilities

- c) 3) Adequate odor control methods and technology shall be practiced by operators of new and existing livestock management facilities and livestock waste-handling facilities so as not to cause air pollution.

18-81. Plaintiff re-alleges and incorporates by reference herein paragraphs 20 through 83 of Count I as paragraphs 18 through 81 of this Count VI.

82. Joe and Megan Clark live less than one half mile northwest of the facility. Mr. Clark maintains his business at his property, as well as his home. In April of 2010, the Clarks were impacted at their home by strong, offensive odors from the facility on 20 of the 30 days of the month. Due to the odors coming from the facility to their property, the Clarks could not open their windows and had to run their air conditioning. They did not go for walks, walk their dogs, garden, mow the lawn, cook or eat outdoors, entertain friends and family at their home, or work in out buildings, due to the odor on their property coming from the facility. The odors penetrated their home, and assimilated into furnishings consisting of fabric. The Clarks have had to repeatedly shampoo carpets to relieve odor in their home. The odors irritated their eyes and caused headaches. Once they would drive away from their home, and enter non-odorous conditions, their symptoms would subside. Mr. Clark was often forced to allow his employee to leave work due to the odors. At times the odors were so strong at the property the Clarks had to cover their faces to retrieve mail or do other chores outdoors.

83. In May of 2010, Joe and Megan Clark were impacted at their home by strong,

offensive odors from the facility on 10 out of 31 days. They had to close their windows, they experienced odors penetrating their home, they were forced to run their air conditioner to ventilate odors, avoid outdoor activities, and repeatedly wash "soft" surfaces in the home to remove odors. On Mother's Day, Mr. Clark's mother became ill due to the odors and had to leave early. During her visit, they were unable to walk outdoors, as she wished to do, to see the garden and visit with the outside dogs. At times in May, Mr. Clark was forced to allow his employee to leave work early due to the odors. On May 23, 2010, the odors were so strong indoors, the Clarks covered their noses and mouths with cloth inside the house. The Clarks have set up a basement bedroom that has an air filter. On May 23, 2010, the Clarks were forced to sleep in the basement due the odors in the rest of the home.

84. In June of 2010, Joe and Megan Clark were impacted at their home by strong, offensive odors from the facility on 14 out of 30 days. On June 2, 2010, Joe Clark experienced headache, nausea, irritated eyes and gagging in response to the offensive odors from the facility. On June 20, 2010, Joe Clark and his employee had to jump start a car on the property during a time of offensive odors. The employee had to leave and go inside to get out of the odor. On that same date, Mr. Clark developed a headache and nausea in response to the odors that had penetrated the home despite the windows being closed and air filters in operation. On June 22, 2010, Megan Clark developed a headache, tearing eyes and vomited several times in response to offensive odors on the Clarks' property from the facility. On that date, Mr. Clark started to take Mrs. Clark to the local hospital's emergency room, but as they came into non-odorous air conditions away from the property, the symptoms dissipated. On June 24, 2010, the Clarks invited neighbors to a cook out at the Clarks' property. At 9:15, the odors from the facility came up at the Clarks' property, causing the guests to leave.

85. As of July 14, 2010, Joe and Megan Clark had been impacted at their home by

strong, offensive odors from the facility on 7 days in the month of July. On July 2, 2010, at 1:10 P.M. the wind direction suddenly shifted from east to south east, resulting in strong offensive hog odors, both of dead hogs and hog waste, coming into the home. Mr. Clark literally ran through the house to close the windows. The Clarks had invited friends to their home for a July 3, 2010 Fourth of July party. The Clarks considered cancelling it, due to the threat of odors, but decided not to cancel. At the time of the guests arrival at the Clarks' home on July 3, 2010, dead hog and swine waste odors were strong at the Clarks' property. The party was confined to indoors. The Clarks requested that their guests provide written statements of the odor experienced at the home at the time of the party. Five of the guests provided written statements. Most all of the guests left earlier than they originally intended. On July 5, 2010, the Clarks experienced strong, offensive odors from the facility intermittently all day. They would start outdoor activities when the odor subsided, only to have to stop and go indoors a short period later. On July 11, 2010, the Clarks again experienced strong, offensive odors from the facility, intermittently. Ms. Clark had wanted to trim tree branches and garden in the evening, but could not due to the odor. On July 13, 2010, the Clarks experienced a very strong offensive odor from the facility at 11 p.m. On July 14, 201, the Clarks experienced very strong offensive odors from the facility, inside and outside of their home.

86. The number of days impacted by odor per month by the Clarks at their home and business has increased in 2010. The Clarks have maintained a log documenting days upon which odors have caused them to alter their activities on their property since March 2009. For those months for which the Clarks generated documentation, from March 2009 through July 2010, they were impacted by odor on average 10 to 15 days per month. For the months of April through July, 2010, they were impacted on average 15 to 20 days per month.

87. Robyn and Jim McClelland live directly north of Joe and Megan Clark. The

McClellands indicate that they have lived at their current location since 1985. The facility site has been a hog operation since at least 1985. It went out of business at one point, and then was sold and put back into operation. The McClellands said historically the facility was never as odorous as it is now. They indicate that in the past the odor impacted their property in the evenings, however recently it has come up at no specific time during the day. The McClellands indicate the odors cause them to abandon outdoor activities and go inside, close windows, and keep the air conditioning on when they would not otherwise do so. Mr. McClelland indicates he and his wife are impacted at their property by unreasonably offensive odors coming from the facility 20 out of 30 days each month, year round.

88. Becky McClelland owns and lives on adjacent property north of Robyn and Jim McClelland. She and her husband have lived on their current farm property for 20 years. Ms. McClelland indicates that the current operation at the subject facility seems to produce worse odor than previous operators. In March, April, May and June of 2010, they experienced offensive odors from the facility that unreasonably interfered with the use of their property on 6 to 9 occurrences per month. Ms. McClelland indicates that when the offensive odors from the facility are on the McClelland's property, they cannot remain outside and are prevented from undertaking outdoor activities. During odor episodes, they have retreated indoors, and despite running the air conditioner, the odors have penetrated the home. During the odor episodes, Ms. McClelland is prevented from hanging laundry outdoors due to the odor.

89. On March 9, 2010, Mr. Clark submitted a complaint to the Illinois EPA indicating the odor at his home from the facility was as bad as it had been for a long time. A next closest neighbor called and indicated the odor from the facility was making the individual nauseous. Mr. Clark was allowing his employee to go home because the employee was miserable and his eyes were watering due to the odor from the facility. Mr. Clark was evacuating his business

and home for the day due to the odor from the facility. The odor was first detected at Mr. Clark's property at 3 a.m. in the morning and according to Mr. Clark "was paralyzing".

90. On March 8, 2010, the Illinois EPA had been in contact with the facility and had been told that the operator was agitating the lagoon cell from which they were pumping, to remove solids to provide additional storage volume. On March 9, 2010, the Illinois EPA inspector spoke to the facility operator and was told the facility was slowly stirring the primary cell to help remove solids from the primary cell. The facility was also land applying waste.

91. The odor emanating from Defendant's site is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165.

92. By causing or allowing strong, persistent and unreasonably offensive livestock odors to emanate from their site and to interfere with the use and enjoyment of the neighbors' property, the Defendant has caused air pollution and an odor nuisance, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a).

93. By failing to take into consideration and incorporate adequate odor control methods and technology at their livestock management facility and livestock waste-handling facility, thereby causing air pollution, the Defendant has violated Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 501.402(c)(3).

94. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant Fragrant 40, LLC has violated Section 9(a) of the Act, 415 ILCS 5/9(a) and 35 Ill. Adm. Code 501.402(c)(3);

B. Permanently enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendants a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its



costs in this matter, including reasonable attorney's fees and costs; and

- E. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: 

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

OFCOUNSEL

JANE E. MCBRIDE

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: August 29, 2011

**Attachment 5:**

Aerial photograph of Fragrant 40





White Oak Rd

Barr Rd

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Image USDA Farm Service Agency

Google earth



**Attachment 6:**

*Complaint, People of the State of Illinois v. Mike Richter, d/b/a Rich-Lane Farms, and James Richter*

COPY

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT

CLINTON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois, )

Plaintiff, )

vs. )

MIKE RICHTER, d/b/a )  
RICH-LANE FARMS, and )  
JAMES RICHTER )

Defendants. )

No. 04-CH-65

FILED  
APR 27 2006  
CLERK OF THE CIRCUIT COURT  
CLINTON COUNTY, ILLINOIS

RECEIVED  
ATTORNEY GENERAL

APR 27 2006

SPRINGFIELD  
ASSIGNED TO \_\_\_\_\_

**SECOND AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), complains of the Defendants, MIKE RICHTER, d/b/a RICH-LANE FARMS, and JAMES RICHTER, as follows:

**COUNT I**

**WATER POLLUTION, NOVEMBER 2004 DISCHARGE**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e), and 43(a) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e), 43(a) (2004).

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and which is charged, inter alia, with the duty of enforcing the Act.

3. The Defendant, MIKE RICHTER, operates Rich-Lane Farms, a dairy operation (the "facility"). At the time of the filing of the original complaint in this matter, Defendant's dairy operation included 750 milking cows and 550 heifers. Defendant Mike Richter owns and operates the main farm located on St. Rose Road, northwest of St. Rose, Clinton County, Illinois (the "main farm of the facility"). Mr. Richter's address is 22600 St. Rose Road, Highland, Illinois 62249.

4. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), contains the following definition:

'CONTAMINANT' is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

5. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), contains 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 water 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.

6. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), contains 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.

7. Section 12 of the Act, 415 ILCS 5/12 (2004), provides, in pertinent part, as follows:

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;

\* \* \*

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;
8. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code

302.203, prohibits offensive conditions in waters of the State:

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

9. Defendant Mike Richter, d/b/a Rich-Lane Farms has applied for a National Pollution Elimination System Discharge ("NPDES") permit from the Illinois EPA for the facility. The NPDES permit application is under review by the Illinois EPA. No NPDES permit has as yet been issued by the Illinois EPA for the facility.

10. The facility's livestock waste holding ponds are point sources of discharge, pursuant to the provisions of the NPDES regulations. Pursuant to NPDES regulations, a discharge from the facility's land application fields is a regulated discharge under the NPDES program.

11. On November 3, 2004, the Illinois EPA conducted an inspection at the main farm of the facility in response to a citizen complaint that livestock waste was discharging from the Rich-Lane Farms facility into the Spanker Branch of Sugar Creek, which flows into the Kaskaskia River. At the time of the November 3, 2004 inspection, Illinois EPA inspectors observed that the creek downstream from the facility was dark in color. At the time of the November 3, 2004 inspection, the inspectors observed that there was little or no freeboard in

the facility's second stage livestock waste holding pond and the berm of the second stage holding pond was eroded and livestock waste was discharging out of the pond and flowing down the exterior berm of the pond. The ground surface between the pond and the creek was over-saturated with liquid manure. The inspectors observed livestock waste flowing into the creek. The discharge and the receiving creek had a livestock odor. The inspectors observed that the creek was clear in color upstream from the discharge from the facility. The creek was dark and turbid downstream of the discharge from the facility. The inspectors collected samples of the creek upstream of the discharge, of the creek downstream of the discharge, and of the discharged waste existing on the ground between the pond and the creek at the facility.

12. The Defendant, MIKE RICHTER, has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharge of livestock waste from his facility to the Spanker Branch of Sugar Creek, which flows into the Kaskaskia River.

13. The Defendant, MIKE RICHTER, has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to the Spanker Branch of Sugar Creek.

14. The discharges of contaminants from the Defendant Mike Richter's facility have caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

15. The discharge of livestock waste from the Defendant Mike Richter's facility has caused offensive conditions in the Spanker Branch of Sugar Creek in that the waters were



discolored, malodorous, or turbid. The Defendant has thereby violated 35 Ill. Adm. Code 302.203.

16. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Defendant Mike Richter has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

17. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Defendant Mike Richter has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

18. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant, MIKE RICHTER, d/b/a RICH-LANE FARMS, has violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 302.203;

B. Enjoin the Defendant, MIKE RICHTER, from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon Defendant Mike Richter a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and

E. Grant such other and further relief as the Court deems appropriate.

**COUNT II**

**WATER POLLUTION, ARRIL 2004 DISCHARGE**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-9. Complainant realleges and incorporates by reference herein paragraphs 3 through 10 Count I as paragraphs 2 through 9 of this Count II.

10. On or about April 8, 2004, the Illinois EPA conducted an inspection at the main farm of the facility in response to a citizen complaint reporting a discharge. At the time of the April 8, 2004 inspection, the Illinois EPA inspector observed a large buildup of manure solids on the east side of the first-stage holding pond on the ground surface between the first-stage holding pond and the creek at the facility. The creek adjacent to the holding pond was dark in color and contained a large build up of semi-solid manure. A portion of the east berm of the second stage holding pond showed signs of erosion. At the eastern edge of the farm field adjust to the creek, a swale was discharging large quantities of livestock waste into the creek. The swale was draining livestock waste from the facility's land application field into the creek. The field was in a condition of oversaturation with livestock waste. Water in the creek immediately upstream of the swale discharge point was clear. The discharge from the swale was the source of the semi-solid manure in the creek.

11. At the time of the April 8, 2004 inspection, the Illinois EPA inspector found and observed Defendant Mike Richter working on tearing down old silos at the main farm of the facility. No corrective action was being taken to stop the discharge from the waste handling system and the land application site, and clean-up the creek. At the time of the April 8, 2004 inspection, the Illinois EPA inspector told Defendant Mike Richter to remove the manure from the creek and take action to prevent further discharges.

12. At the time of the April 8, 2004 inspection, the Illinois EPA inspector observed that the first-stage holding pond of the main farm's waste handling system continued to have a large build-up of manure solids that minimized the storage capacity of the holding pond system. This large build-up of solids had been observed at the time of previous inspections and Defendant Mike Richter had been advised at the time of previous inspections and in inspection reports, to remove solids so as to properly manage the capacity of the system.

13. On April 12, 2004, the Illinois EPA conducted a compliance inspection at the facility. At the time of the April 12, 2004 inspection, the Illinois EPA inspector observed that the creek was still very dark in color and appeared to contain a large build-up of semi-solid manure.

14. At the time of the April 12, 2004 inspection, the Illinois EPA inspector observed that Defendant Mike Richter had removed manure solids from the ground near the creek and was in the process of scraping manure from the creek. At the time of the April 12, 2004 inspection, Defendant Mike Richter was adding fresh earth to the berm of the holding pond.

15. On April 20 and 26, 2004, the Illinois EPA conducted compliance inspections at the main farm of the facility. At the time of the April 20, 2004 inspection, the Illinois EPA observed the creek to be very dark in color, similar to the observations made at the time of the April 12, 2004 inspection, and the creek continued to contain a large build-up of semi-solid

manure. TSS levels in a sample collected on April 20, 2004 immediately downstream of the facility was 82,400 mg/L. Pursuant to 35 Ill. Adm. Code 304.201(a), the highest allowable concentration of TSS for an effluent discharge is 37 mg/L. No discharges are allowed from livestock facilities, unless in the event of a 25 year, 24 hour storm event. The April 8, 2004 discharge from the main farm of the facility was not the result of a 25 year, 24 hour storm event. BOD levels in the sample collected on April 20, 2004 immediately downstream of the facility was 6,100 mg/L. Pursuant to 35 Ill. Adm. Code 304.201(a), the highest allowable BOD concentration for an effluent discharge is 30 mg/L. As stated above, no discharges are allowed from livestock facilities, unless in the event of a 25 year, 24 hour storm event. At the time of the April 20, 2004 inspection, Defendant Mike Richter was advised by the Illinois EPA inspectors to continue his efforts to remove manure solids from the creek.

16. At the time of the April 26, 2004 inspection, Defendant Mike Richter and farmhands were in the process of laying out piping to pump livestock waste out of the adjacent impacted creek and into the main farm's second-stage holding pond. While the inspectors were still on site, the facility completed laying out the piping and initiated pumping from the creek into the holding pond.

17. The April 8, 2004 livestock waste discharge at the main farm of the facility and the associated allegation of violation was the subject of notification pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004). Defendant Mike Richter failed to respond to both of two notices sent to him under the provisions of Section 31.

18. The Defendant, MIKE RICHTER, has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharge of livestock

waste from his facility to the Spanker Branch of Sugar Creek, which flows into the Kaskaskia River.

19. The Defendant, MIKE RICHTER, has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to the Spanker Branch of Sugar Creek.

20. The discharges of contaminants from the Defendant Mike Richter's facility have caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

21. The discharge of livestock waste from the Defendant Mike Richter's facility has caused offensive conditions in the Spanker Branch of Sugar Creek in that the waters were discolored, malodorous, or turbid. Defendant Mike Richter has thereby violated 35 Ill. Adm. Code 302.203.

22. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Defendant Mike Richter has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

23. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Defendant Mike Richter has violated Section 12(d) of the Act, 415 ILCS-5/12(d) (2004).

24. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations,

and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

- A. Find that the Defendant, MIKE RICHTER, d/b/a RICH-LANE FARMS, has violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 302.203;
- B. Enjoin the Defendant, MIKE RICHTER, from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon Defendant Mike Richter a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and
- E. Grant such other and further relief as the Court deems appropriate.

**COUNT III**

**WATER POLLUTION, DISCHARGES PRIOR TO ARRIL 2004**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-9. Complainant realleges and incorporates by reference herein paragraphs 3 through 10 Count I as paragraphs 2 through 9 of this Count III.

10. On April 23, 2003, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint reporting a discharge. At the time of the April 23, 2003 inspection, the Illinois EPA inspectors observed that the facility's first-stage waste holding pond had no freeboard. On the east side of the first-stage holding pond, the inspectors observed a large buildup of manure solids on the top of the eastern berm and down the exterior berm leading toward the creek. The inspectors observed liquid manure flowing from the holding pond toward the southeast and entering the creek just north of the culvert on St. Rose Road. Also in proximity to the pond, tractor ruts had been allowed to form that contained pooled, un-contained liquid manure.

11. At the time of the April 23, 2003 inspection, the Illinois EPA inspectors observed that the facility's second-stage holding pond had no freeboard capacity. The inspectors observed a large buildup of solid and liquid manure on the top of the eastern berm and down the eastern exterior berm of the second-stage holding pond. At the time of the April 23, 2003 inspection, the inspector's observed a large buildup of manure extending down the exterior berm of the second-stage lagoon continuing to the creek. At the point of discharge to the creek, the waster was very dark in color and foamy.

12. At the time of the April 23, 2003 inspection, the Illinois EPA inspectors observed that the first-stage holding pond contained a large build-up of solids that minimized the storage structure's capacity. Several of the wooden pickets separating the earthen settling basin and the first-stage holding pond were broken. There continued to exist a bypass on the north side of the settling basin's picket setup. The bypass prevented proper settling of manure solids/sand bedding prior to discharge to the first-stage holding pond.

13. At the time of the April 23, 2003 inspection, Defendant Mike Richter could not be located and contacted by the Illinois EPA inspectors. The inspectors spoke with Defendant

Mike Richter's wife and asked that she have Mike Richter call the inspectors. Defendant Mike Richter failed to call the inspectors following the April 23, 2003 inspection.

14. On May 22, 2003, the Illinois EPA sent Defendant Mike Richter a Violation Notice regarding the apparent violations observed by inspectors on April 23, 2003. On September 30, 2003, the Illinois EPA received a response to the Violation Notice from Defendant Mike Richter, dated September 23, 2003. The response was deemed acceptable in a letter dated November 12, 2003 from the Illinois EPA to Defendant Mike Richter, but the Illinois EPA letter included a condition that the matter remained open to formal enforcement should the facility fail to maintain compliance as proposed.

15. On March 14, 2003, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint reporting a discharge. At the time of the March 14, 2003 inspection, the Illinois EPA inspector observed evidence that the first-stage waste holding pond at the facility had recently overflowed. Based upon the March 14, 2003 inspection, a Non-Compliance Advisory Letter ("NCA") dated March 31, 2003, was sent to Defendant Mike Richter to advise him of the violations and inform him of recommended corrective action. Included in the NCA was the recommendation that the facility immediately cease all discharges from the first-stage holding pond.

16. On March 8, 2001, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint reporting a discharge. At the time of the March 8, 2001 inspection, the Illinois EPA inspectors observed that the receiving creek downstream of the facility was dark in color and appeared to contain livestock wastes. A sample was collected from the creek. Analysis of the sample resulted in the following parameter levels: CBOD: 223 mg/L; total nitrogen: 172 mg/L; ammonia: 86.8 mg/L. The sample itself was dark in color and



had a detectable livestock waste odor. At the time of the inspection, the first-stage holding pond had one foot of freeboard and the second-stage holding pond had no freeboard.

17. On March 9, 2001, the Illinois EPA conducted a compliance inspection. At the time of the March 9, 2001 inspection, Defendant Mike Richter told the inspectors that he had had some erosion problems with the second-stage holding pond, and that he had repaired the eastern berm the previous night. He also said that during the winter ice storms, a pipe which diverted stormwater away from the waste handling system froze up. The frozen pipe allowed excess stormwater to enter the waste handling system via the concrete settling basin. The stormwater, in turn, minimized the capacity of the waste holding pond system. Defendant Mike Richter further indicated that farm ground in the area had been too saturated for land apply waste.

18. At the time of the March 9, 2001 inspection, the Illinois EPA inspectors observed that the second-stage holding pond had little or no freeboard. The inspectors observed that fresh earth had been placed on the easternmost exterior berm of the second-stage holding pond in order to temporarily repair the erosion problem. At the time of the inspection, the discharge from the lagoon to the creek had been stopped. At the time of the inspection, Defendant Mike Richter indicated the depth of the second-stage holding pond was approximately 12.5 to 13 feet deep.

19. At the time of the March 9, 2001 inspection, Defendant Mike Richter had not obtained his livestock manager certification.

20. At the time of the March 9, 2001 inspection, Defendant Mike Richter did not have a holding pond staff gauge installed in the second-stage holding pond so as to be able to measure the elevation of the pond's contents and determine available freeboard.

21. At the time of the March 9, 2001 inspection, Defendant Mike Richter told the inspectors he did not have a waste management plan for the facility.

22. At the time of the March 9, 2001 inspection, Defendant Mike Richter had not reported the release of livestock waste from the holding pond, as he was required to do pursuant to the Livestock Management Facilities Act. The Illinois EPA inspectors advised Mr. Richter to report the release. On March 15, 2001, the Illinois EPA inspectors checked to see if Defendant Mike Richter had reported the release and were informed that he had not reported the release despite being advised of the law and told to do so.

23. On April 2, 2001, the Illinois EPA issued a Violation Notice to Defendant Mike Richter based on the apparent violations observed at the time of the March 8, 2001 inspection. On June 15, 2001, Defendant Mike Richter sent a proposed compliance action plan to the Illinois EPA. On June 22, 2001, the Illinois EPA accepted the plan, but included the notification with the acceptance that the matter remain open should the Mike Richter fail to achieve compliance.

24. On May 16, 1996, the Illinois EPA conducted an inspection at the facility in response to a complaint reporting a discharge. At the beginning of the site visit, the Illinois EPA inspector contacted Defendant Mike Richter, told him that the Illinois EPA had received a complaint that the facility's holding pond system was discharging into the adjacent creek, and asked Defendant Richter if the holding pond was discharging. Defendant Mick Richter told the inspector that he was not aware of the holding pond recently discharging. At the time of the May 16, 1996 inspection, the Illinois EPA inspector observed that the facility's single-stage waste holding pond was overflowing through a discharge pipe. At the time of the inspection, a steady flow of livestock waste was discharging through an overflow pipe in the northeast corner

of the holding pond to the adjacent creek. Contamination in the creek from the holding pond was readily apparent.

25. At the time of the May 16, 1996, after observing the discharge from the pipe, the Illinois EPA inspector asked Defendant Mike Richter about the discharge. Defendant Richter responded that a couple of weeks prior to the inspection, Clinton County received about an eight inch rain. The inspector told Defendant Mike Richter that he was aware of the amount of rainfall, but that Defendant Mike Richter had had sufficient time to pump the wastes from the holding pond system and land apply the waste. The Illinois EPA inspector also talked to Defendant Mike Richter about various options available to increase the capacity of the waste storage system.

26. On June 17, 1996, the Illinois EPA issued a Compliance Inquiry Letter ("CIL") to Defendant Mike Richter, informing him of the violations of the Illinois Environmental Protection Act observed by the inspector at the time of the May 16, 1996 inspection.

27. In a letter dated July 15, 1996, Defendant Mike Richter responded to the CIL. In the July 15, 1996 letter, Defendant Mike Richter indicated that the solids settling area of his waste system had been emptied and the solids had been land applied, that the liquid waste in the holding pond had been transferred to the settling area which provided additional freeboard in the holding pond, and the overflow pipe had been temporarily capped which also provided additional freeboard.

28. On September 5, 1996, the Illinois EPA conducted a compliance inspection at the main farm of the facility. At the time of the September 5, 1996 inspection, the Illinois EPA inspector observed construction of a second -stage holding pond that was being constructed to provide additional waste storage capacity. The first-stage holding pond was to discharge directly into the second-stage pond.

29. The Defendant, MIKE RICHTER, has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharge of livestock waste from his facility to the Spanker Branch of Sugar Creek, which flows into the Kaskaskia River.

30. The Defendant, MIKE RICHTER, has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to the Spanker Branch of Sugar Creek.

31. The discharges of contaminants from the Defendant Mike Richter's facility have caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

32. The discharge of livestock waste from the Defendant Mike Richter's facility has caused offensive conditions in the Spanker Branch of Sugar Creek in that the waters were discolored, malodorous, or turbid. Defendant Mike Richter has thereby violated 35 Ill. Adm. Code 302.203.

33. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, Defendant Mike Richter has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

34. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, Defendant Mike Richter has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant, MIKE RICHTER, d/b/a RICH-LANE FARMS, has violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 302.203;

B. Enjoin the Defendant, MIKE RICHTER, from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon Defendant Mike Richter a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and

E. Grant such other and further relief as the Court deems appropriate.

**COUNT IV**

**WATER POLLUTION VIOLATIONS, FEBRUARY 23, 2005, DEFENDANT MIKE RICHTER**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-9. Complainant realleges and incorporates by reference herein paragraphs 3 through 10 of Count I as paragraphs 2 through 9 of this Count IV.

10. The Defendant, JAMES RICHTER, owns the farm upon which Rich-Lane Farms has a heifer operation, located at 6627 Keyesport Road, Highland, Illinois 62249 (the "heifer operation"). Defendant James Richter is Defendant Mike Richter's father. Defendant Mike Richter leases Defendant James Richter's farm for the purpose of using it for the Rich-Lane Farms' heifer operation.

11. The Illinois EPA conducted a compliance inspection at the main farm and land application fields on February 23, 2005. The heifer operation is located across Keyesport Road, directly across from the land application fields. The heifer operation has "Rich-Lane Farms" painted on the side of one of the structures at the operation.

12. At the time of the February 23, 2005 inspection, the heifer operation's waste containment system consisted of earthen and concrete feedlot areas and a concrete manure stacking area. At the time of the inspection, the Illinois EPA inspectors observed that the south wall of the concrete stacking area had three PVC discharge ports poured into the bottom of the concrete wall to allow liquid manure to discharge to the north roadside ditch along Keyesport Road. At the time of the inspection, the ground surface immediately south of the ports, in between the wall and the roadside ditch, was stained with manure runoff. Liquid manure was pooled on the ground surface south of the easternmost port. A sample of the liquid which had discharged through the discharge port and pooled was collected by the Illinois EPA inspectors. The sample was very turbid and emanated an odor of livestock waste. The analytical results of the sample indicated the following parameter levels: total suspended solids, 3,190 mg/L; total ammonia - N, 1,790 mg/L; BOD, 6,700 mg/L.

13. At the time of the February 23, 2005 inspection, liquid manure from the concrete feedlot at the heifer operation flowed off the concrete feedlot area onto an earthen feedlot area. The earthen feedlot gradually slopes to the north roadside ditch on Keyesport Road.

Runoff from both the concrete and earthen feedlots eventually discharge to the roadside ditch. At the time of the February 23, 2005 inspection, the Illinois EPA inspectors observed that most of the buildings at the heifer operation that surround the concrete feedlot area were equipped with guttering. However, several of the gutters did not have downspouts and those that did have downspouts discharged back onto the concrete feedlot area.

14. At the time of the February 23, 2005 compliance inspection at the main farm, the Illinois EPA inspectors observed leachate from the north and south silage bunker area at the main farm discharge into a swale via poured concrete and concrete culverts. The liquid in the earthen swale was very dark in color. The swale discharged to the roadside ditch on the north side of St. Rose Road. The Illinois EPA inspectors also observed a pooled area west of the swale. The liquid in the pooled area appeared to be from a failed septic system.

15. At the time of the February 23, 2005 inspection, Defendant Mike Richter indicated that the heifer operation property and structures belonged to his father, James Richter, but that he leased the property for the Rich-Lane Farms heifer operation. When asked about the facility's concrete stacking area discharge ports that allow livestock waste to discharge to the roadside ditch, Defendant Mike Richter said that the facility was designed that way 25 years ago. The inspectors told Defendant Mike Richter that the ports needed to be grouted to stop the discharge to the ditch. The Illinois EPA inspectors also explained to Defendant Mike Richter that the silage leachate from the main farm's silage bunkers was discharging to the roadside ditch. Mr. Richter indicated that the discolored liquid in the swale was from his septic system and stated the liquid was not from the bunker. The Illinois EPA inspector pointed out that the swale was dark upstream of the pooled septic waste. The Illinois EPA inspectors told Defendant Mike Richter that the silage leachate from the main farm's bunker must be contained at the facility.

16. At the time of the February 23, 2005 inspection of the main farm, the inspectors observed a large buildup of sand and manure solids in the settling basin. The Illinois EPA inspectors also observed the bypass area on the north side of the picket fence which separates the settling basin from the first-stage holding pond continued to exist. This bypass allows large quantities of sand and manure solids to enter the first-stage holding pond.

17. The Defendant, MIKE RICHTER, has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharge of livestock waste from the heifer operation and the main farm to roadside ditches along Keyesport Road and St. Rose Road respectively, that are tributary to Spanker Branch of Sugar Creek, which flows into the Kaskaskia River.

18. The Defendant, MIKE RICHTER, has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard at the heifer operation and the main farm through its proximity to roadside ditches along Keyesport Road and St. Rose Road respectively, that are tributary to Spanker Branch of Sugar Creek.

19. The discharges of contaminants from the Defendant's heifer operation and main farm have caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

22. The discharge of livestock waste from the Defendant's heifer operation and main farm have caused offensive conditions in roadside ditches along Keyesport Road and St. Rose Road, that are tributary to Spanker Branch of Sugar Creek, which flows into the Kaskaskia



River, in that the waters were discolored, malodorous, or turbid. The Defendants have thereby violated 35 Ill. Adm. Code 302.203.

23. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

24. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Defendant has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

25. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant, MIKE RICHTER, d/b/a RICH-LANE FARMS, has violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 302.203;

B. Enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendants a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and

E. Grant such other and further relief as the Court deems appropriate.

**COUNT V**

**WATER POLLUTION VIOLATIONS, FEBRUARY 23, 2005, DEFENDANT JAMES RICHTER**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-14. Complainant realleges and incorporates by reference herein paragraphs 2 through 13 and 15 of Count IV as paragraphs 2 through 14 of this Count V.

15. The Defendant, JAMES RICHTER, has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharge of livestock waste from the heifer operation to a roadside ditch along Keyesport Road that is tributary to Spanker Branch of Sugar Creek, which flows into the Kaskaskia River.

16. The Defendant, JAMES RICHTER, has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to a roadside ditch along Keyesport Road that is tributary to Spanker Branch of Sugar Creek.

17. The discharge of livestock waste from the heifer operation has caused offensive conditions in a roadside ditch along Keyesport Road, that is tributary to Spanker Branch of

Sugar Creek, which flows into the Kaskaskia River, in that the waters were discolored, malodorous, or turbid. The Defendant has thereby violated 35 Ill. Adm. Code 302.203.

18. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

19. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Defendant has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

20. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

A. Find that the Defendant JAMES RICHTER, has violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 302.203;

B. Enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendants a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and

E. Grant such other and further relief as the Court deems appropriate.

**COUNT VI**

**AGRICULTURE RELATED POLLUTION VIOLATIONS DEFENDANT MIKE RICHTER**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-13. Complainant realleges and incorporates by reference herein paragraphs 3 through 14 of Count I as paragraphs 2 through 13 of this Count VI.

14-24. Complainant realleges and incorporates by reference herein paragraphs 10, through 20 of Count II as paragraphs 14 through 24 of this Count VI.

25-46. Complainant realleges and incorporates by reference herein paragraphs 10 through 31 of Count III as paragraphs 24 through 45 of this Count VI.

47-58. Complainant realleges and incorporates by reference herein paragraphs 10 through 21 of Count IV as paragraphs 47 through 58 of this Count VI.

59. Sections 501.404(c)(2), (c)(3) and (c)(4)(A) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(2), (c)(3), (c)(4)(A), provide:

Section 501.404 Handling and Storage of Livestock Waste

\* \* \*

c) Livestock Waste-Holding Facilities

\* \* \*

2) Holding ponds and lagoons shall be impermeable or so sealed as to prevent groundwater or surface water pollution.

- 3) 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.
- 4) Liquid Livestock Waste
  - A) Existing livestock management facilities which 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. If inadequate storage time causes or threatens to cause a violation of the Act or applicable regulations, the Agency may require that additional storage time be provided. In such cases, interim pollution prevention measures may be required by the Agency.

60. By causing or allowing the berm of the facility's livestock waste storage holding ponds to erode or be otherwise breached, and by causing or allowing the holding ponds to exist at the facility with little or no freeboard so that livestock waste overflowed the berms or discharged through an eroded portion of a berm, thereby failing to ensure that the facility's holding pond is impermeable or so sealed as to prevent water pollution, the Defendant Mike Richter has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.404(c)(2).

61. By causing or allowing waste storage holding ponds to exist at the facility with little or no freeboard, and thereby failing to keep levels in the holding ponds such that there is adequate storage capacity to prevent an overflow except in the case of precipitation in excess of a 25-year, 24-hour storm, the Defendant Mike Richter has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.404(c)(3).

62. By failing to provide adequate storage capacity at the facility so as not to cause water pollution, the Defendant Mike Richter has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.404(c)(4)(A).

63. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

- A. Find that the Defendant MIKE RICHTER, d/b/a RICH-LANE FARMS, has violated Section 12(a) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 501.404(c)(2), 35 Ill. Adm. Code 501.404(c)(3), and 35 Ill. Adm. Code 501.404(c)(4)(A);
- B. Enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendants a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and
- E. Grant such other and further relief as the Court deems appropriate.

**COUNT VII**

**NPDES VIOLATION**

1-58. Complainant realleges and incorporates by reference herein paragraphs 1 through 58 of Count VI as paragraphs 1 through 58 of this Count VII.

59. Section 12(f) of the Act, 415 ILCS 5/12(f), provides, in pertinent part, as follows:

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 National Pollution Elimination System Discharge ("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.

60. Section 501.404(c)(2) of the Illinois Pollution Control Board's Agriculture-Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(2), provides as follows:

Holding ponds and lagoons shall be impermeable or so sealed as to prevent groundwater or surface water pollution.

61. Section 501.404(c)(3) of the Illinois Pollution Control Board Agriculture-Related Pollution Regulations, provides, in pertinent part:

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. Sections 502.101 through 502.106 of the Illinois Pollution Control Board's Agriculture-Related Pollution Regulations, 35 Ill. Adm. Code 502.101 through 502.106, set forth regulations which prohibit discharges from livestock operations except in the event of a 25-year, 24-hour storm event.

63. The facility's livestock waste holding ponds are point sources of discharge, pursuant to the provisions of the NPDES regulations. Pursuant to NPDES regulations, a discharge from the facility's land application fields is a regulated discharge under the NPDES program.

64. Prior to September 2003, Defendant Mike Richter, d/b/a Rich-Lane Farms, had not applied for a NPDES permit from the Illinois EPA for the facility. On September 25, 2003,

the Illinois EPA received an application for a NPDES Permit from Defendant Mike Richter for the Rich-Lane Farms facility. On October 7, 2004, the Illinois EPA issued a Notice of Incomplete Submission with regard to Defendant Richter's application. The Defendant's application was lacking a topographic map of the facility, including the various waste handling structures; was lacking a stormwater management plan, was lacking a spill response plan; and the application was lacking a nutrient management plan. On August 3, 2005, Defendant Mike Richter submitted a second draft of a proposed nutrient management plan pursuant to an agreed order entered in this enforcement action. The second draft was submitted to the Illinois EPA permit reviewers for comment and found to be inadequate and thus fails to meet the requirements of the NPDES program.

65. By causing or allowing the discharge of a contaminant into waters of the State from a point source without an NPDES permit, the Defendant Mike Richter has violated Section 12(f) of the Act, 415 ILCS 5/12(f).

66. These violations have been committed wilfully, knowingly and repeatedly, and have created a substantial danger to the environment or to the public health. These violations, and the discharges and other activity causing or contributing to the danger, will continue unabated unless and until enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

- A. Find that the Defendant, MIKE RICHTER, d/b/a RICH-LANE FARMS, has violated Section 12(f) of the Act, 415 ILCS 5/12(f);
- B. Enjoin the Defendant from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e);



- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a), impose upon the Defendant a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs; and
- E. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: \_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

JANE E. MCBRIDE  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: April 7, 2006

**Attachment 7:**

*Order, People of the State of Illinois v. Mike Richter, d/b/a Rich-Lane Farms, and James Richter*

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT

CLINTON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois, )

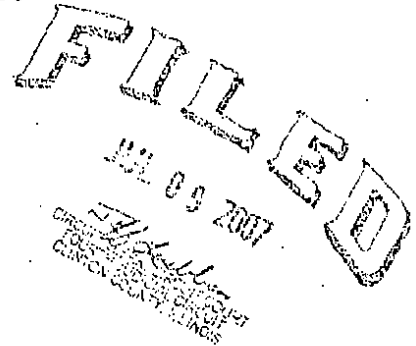
Plaintiff, )

vs. )

No. 04 CH 65

MIKE RICHTER, d/b/a )  
RICH-LANE FARMS, and )  
JAMES RICHTER )

Defendant. )



AGREED ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendants Mike Richter, d/b/a Rich-Lane Farms, and James Richter, have agreed to the making of this Agreed Order and submit it to this Court for approval. It is the intent of the parties to this Agreed Order that- it be a final judgment on the merits of this matter.

**Parties**

1. On November 16, 2004, a Verified Complaint for Injunctive Relief was filed against Defendant Mike Richter, d/b/a Rich-Lane Farms on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2004), against the Defendant Mike Richter, d/b/a Rich-Lane Farms.

2. On January 13, 2006, a First Amended and Supplemental Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of

Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/43(d), (e) (2004), against the Defendant Mike Richter, d/b/a Rich-Lane Farms, and James Richter.

3. On April 24, 2006, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/43(d), (e) (2004), against the Defendant Mike Richter, d/b/a Rich-Lane Farms, and James Richter.

4. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

5. At all times relevant to the Second Amended Complaint, Defendant Mike Richter was an individual engaged in the business of dairy farming as Rich-Lane Farms. At all times relevant to Second Amended Complaint, Defendant James Richter was an individual engaged in leasing property to Mike Richter for use in the operation of Rich-Lane Farms and the owner of a farm property located at 6627 Keyesport Road.

#### **Site Description**

1. At all times relevant to the Second Amended Complaint, Defendant Mike Richter owned and operated Rich-Lane Farms, a dairy operation (the "facility"). At the time of the filing of the original complaint in this matter, Defendant's dairy operation included 750 milking cows and 550 heifers. Defendant Mike Richter owns and operates the main farm located on St. Rose Road, northwest of St. Rose, Clinton County, Illinois (the "main farm"). Defendant Mike Richter's address is 22600 St. Rose Road, Highland, Illinois 62249.

2. At all times relevant to the Second Amended Complaint, Defendant James Richter owned the farm upon which Rich-Lane Farms maintained heifers, located at 6627

Keyesport Road, Highland, Illinois 62249 (the "James Richter facility"). Defendant James Richter is Defendant Mike Richter's father. Defendant Mike Richter leases Defendant James Richter's farm for the purpose of using it for the Rich-Lane Farms' operation.

**Judgement Order**

This Court, having jurisdiction over the parties and subject matter, the parties having appeared, due notice having been given, the Court being advised in the premises, this Court finds the following relief appropriate:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Effective immediately, the Defendants shall not allow any overflows or discharges of livestock waste and wastewater to waters of the State from the main farm and James Richter facility.
2. Effective immediately, all land application conducted in association with the main farm and James Richter facility shall be done at agronomic rates consistent with Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12, and Parts 560 and 570 of Subtitle E, Agriculture Related Pollution Regulations, 35 Ill. Adm. Code Parts 560 and 570. Said land application is to include solids removed from the feedlots and the settling basin at the James Richter facility, which shall be land applied consistent with Section 12 of the Act and 35 Ill. Admin. Code Part 560.
3. As of October 1, 2007, Defendants Mike Richter and James Richter shall complete construction and installation and put into operation a runoff field application system at the James Richter facility consistent with the requirements of 35 Ill. Adm. Code Part 570 to address liquid manure runoff from the concrete and earthen feedlot areas at the facility. The field application system shall be operated and maintained consistent with 35 Ill. Adm. Code Part 570.

*Electronic Filing - Received, Clerk's Office, 10/16/2012*

4. Effective immediately, the waste handling systems at the main farm and James Richter facility shall be managed to maintain adequate capacity and divert stormwater so that an overflow or discharge does not occur. No overflow or discharge shall be allowed to occur in any precipitation event other than in the case of precipitation in excess of a 25-year, 24-hour storm, consistent with 35 Ill. Adm. Code Part 501.

5. a. The Defendant Mike Richter has asserted a claim of financial hardship. The Defendant submitted financial documentation to support and substantiate the claim. The civil penalty agreed to in this matter reflects Defendant Mike Richter's substantiated claim of hardship. The Defendants Mike Richter and James Richter shall pay, jointly and severally, a civil penalty of Eight Thousand Dollars (\$8,000.00). Payment shall be in installments as follows: \$1,500.00 on July 20, 2007, and a payment of \$1,300.00 on each of the following dates: August 20, 2007, September 20, 2007, October 20, 2007, November 20, 2007, and December 20, 2007.

b. Payment shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and 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, IL 62794-9276

c. The name and case number shall appear on the face of the certified check or money order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Jane E. McBride  
Sr. Assistant Attorney General  
Environmental Bureau  
500 South Second Street

Springfield, Illinois 62706

d. If the Defendants fail to make the civil penalty payment specified in this paragraph on or before the date upon which the payment is due, the Defendants shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately.

e. For purposes of payment and collection, Defendant may be reached at the following address:

Mike Richter  
22600 St. Rose Road  
Highland, Illinois 62249

James Richter  
6627 Keyesport Road  
Highland, Illinois 62249

f. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

AGREED TO:  
MIKE RICHTER  
d/b/a RICH-LANE FARMS

BY: Mike Richter  
MIKE RICHTER

JAMES RICHTER

BY: James Richter  
JAMES RICHTER

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

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY: [Signature]  
THOMAS DAVIS, Chief  
Environmental Enforcement Bureau

ENTERED: 11-9-07

[Signature]  
Kathleen Moran (CP)  
JUDGE

**Attachment 8:**

*Complaint, People of the State of Illinois v. J. B. Timmermann Farms, LTD.*



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 29 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 J. B. TIMMERMANN FARMS, LTD., )  
 an Illinois corporation, )  
 )  
 Respondent. )

PCB No. **07-70**  
(Enforcement - Water)

NOTICE OF FILING

To: David A. Oldfield, R.A.  
J. B. Timmermann Farms, Ltd.  
303 S. 7<sup>th</sup> Street  
Vandalia, IL 62471

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:

  
JENNIFER BONKOWSKI  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 25, 2007

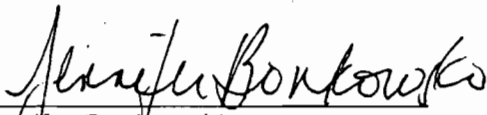
**CERTIFICATE OF SERVICE**

I hereby certify that I did on January 25, 2007, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: David A. Oldfield, R.A.  
J. B. Timmermann Farms, Ltd.  
303 S. 7<sup>th</sup> Street  
Vandalia, IL 62471

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

  
Jennifer Bonkowski  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 29 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 J. B. TIMMERMANN FARMS, LTD., )  
 an Illinois corporation, )  
 )  
 Respondent. )

PCB No. **07-70**  
(Enforcement - Water)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

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

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

BY: Jennifer Bonkowski  
JENNIFER BONKOWSKI  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 25, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 29 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 J. B. TIMMERMANN FARMS, LTD. )  
 an Illinois corporation, )  
 )  
 Respondent. )

PCB No. **07-70**  
(Water-Enforcement)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complain of the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois corporation, as follows:

COUNT I  
WATER POLLUTION

1. This Complaint 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 (2004).
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 (2002), and charged *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").
3. J. B. Timmermann Farms, LTD. ("Timmermann Farms") is an Illinois corporation in good standing. Timmermann Farms owns and operates a dairy operation ("site") that houses approximately 675 milking cows, located on the north side of Highline Road, in Section 28 of

Breese Township, Clinton County, Illinois. David Timmermann is the corporate president of Timmermann Farms.

4. Section 12 of the Act, 415 ILCS 5/12 (2004), provides, in pertinent part, as follows:

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.

\* \* \*

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

\* \* \*

- (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.

\* \* \*

5. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), 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.

6. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

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

7. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

8. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, prohibits offensive conditions in waters of the State:

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

9. Section 302.206 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.206, provides as follows:

Dissolved oxygen (STORET number 00300) shall not be less than 6.0 mg/l during at least 16 hours of any 24 hour period, nor less than 5.0 mg/l at any time.

10. On August 30, 2004, the Illinois EPA received a complaint regarding livestock waste discharging into Shoal Creek. In response to that complaint, the Illinois EPA followed the flow of livestock waste for five miles, to a culvert at the intersection of Highline Road and Drive-In Road in Section 28 of Breese Township in Clinton County. Dissolved oxygen readings taken along the five-mile stretch of creek containing the livestock waste were below 5 mg/l.

11. On September 1, 2004, the Illinois EPA conducted an inspection at the site to determine whether the livestock wastes were originating from the site. On that day, at the intersection of Highline and Drive-In Roads, water was very dark in color discharging through the roadway culvert. The water coming from the roadside ditch on the north side of Highline road was also dark in color. The flow of livestock waste was traced back to the Timmerman Farms site.

12. On or before September 1, 2004, a lagoon on site had overflowed subsequent to rainfall.

13. On September 1, 2004, livestock building roofs on site did not have guttering. Curbing to divert stormwater away from the feedlot areas was not present.

14. On September 1, 2004, the single-stage lagoon on site had no freeboard, and livestock wastes were still discharging from the northwest corner of the lagoon. The adjacent farm field was saturated with livestock wastes, and the wastes were flowing into a ditch along the access road. The ditch was discharging into the earthen swale, that discharges into a roadside ditch on Drive-In Road.

15. On September 1, 2004, discolored water in the ditch upstream of the lagoon was present. The flow of discolored water could be traced to the east. Leachate from a silage bunker was also discharging into the ditch along the access road. Curbing along the silage bunker to prevent runoff was not present.

16. On September 2, 2004, Timmerman Farms submitted an incident report concerning a lagoon overflow to Illinois EPA.

17. On September 2, 2004, the Illinois EPA inspected the site. Brown to black discolorations and turbidity were present in the Grassy Branch of Shoal Creek. Dissolved oxygen readings taken by the Illinois EPA found levels below 5 mg/l at five locations.

18. On September 14, 2004, the Illinois EPA again inspected Grassy Branch. Again, black colorations and turbidity were present. Dissolved oxygen readings taken by the Illinois EPA demonstrated levels below 5 mg/l at five locations.

19. On October 27, 2004, the Illinois EPA issued a Violation Notice ("VN") letter to Timmermann Farms, noting the violations. Timmermann Farms did not respond to the VN.

20. On February 14, 2005, the Illinois EPA issued a Notice of Intent to Pursue Legal



Action ("NITPLA") letter to Timmermann Farms. The Illinois EPA then held a NITPLA meeting with Mr. Timmermann on March 2, 2005. At that time, Timmerman Farms did not have an NPDES permit for the site.

21. Shoal Creek is a water of the State.

22. Lagoon waste is a contaminant.

23. Commencing on some date on or before September 1, 2004, and continuing until a date better known to Respondent, the Respondent caused or allowed the discharge of lagoon waste into waters of the State so as to cause or tend to cause water pollution by creating a nuisance.

24. By so causing and threatening to cause water pollution, and by violating the water quality standard of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and the dissolved oxygen level standard of Section 302.206 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.206, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois limited liability company:

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

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

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

**COUNT II**  
**DISCHARGING WITHOUT AN NPDES PERMIT**

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), requires an NPDES permit:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], 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.

24. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), provides that no person shall cause, threaten, or allow the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Illinois EPA.

25. On or before September 1, 2004, through at least March 2, 2005, Timmerman Farms did not have an NPDES permit for the site.

26. By causing or allowing or threatening the discharge of contaminants into waters of the State without an NPDES permit, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) (2004).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois limited liability company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of up to ten thousand dollars (\$10,000) per day of violation; and
- E. Granting such other relief as the Board may deem appropriate.

**COUNT III**

**WATER POLLUTION HAZARD**

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count III.

23. The Respondent caused or allowed lagoon waste to remain on the property adjacent to the facility, in close proximity to the Grassy Branch of Shoal Creek, for a period of several days beginning on or before September 1, 2004, through a date better known to Respondent. In so doing, the Respondent caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to the Grassy Branch of Shoal Creek.

24. Section 501.403(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 501.403(a), provides as follows:

- a) Existing livestock management facilities and livestock waste-handling facilities shall have adequate diversion dikes, walls or curbs that will prevent excessive outside surface waters from flowing through the animal feeding operation and will direct runoff to an appropriate disposal, holding or storage area. The diversions are required on all aforementioned structures unless there is negligible outside surface water which can flow through the facility or the runoff is tributary to an acceptable disposal area or a livestock waste-handling facility. If inadequate diversions cause or threaten to cause a violation of the Act or applicable regulations, the Agency may require corrective measures.

25. Section 501.404(c)(3) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3), provides as follows:

- (c)(3) 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.

26. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard via its failure to keep livestock waste levels at its facility such that there is adequate storage capacity, and through its failure to have adequate dikes, walls, or curbs to prevent excessive outside surface water flow, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois limited liability company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN,  
Attorney General  
of the State of Illinois

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

BY: \_\_\_\_\_

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel  
JENNIFER BONKOWSKI  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: 1/25/07

**Attachment 9:**

*Order, People of the State of Illinois v. J. B. Timmermann Farms, LTD.*

ILLINOIS POLLUTION CONTROL BOARD

December 3, 2009

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 07-70
	)	(Enforcement - Water)
J. B. TIMMERMANN FARMS, LTD.,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On January 29, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against J.B. Timmermann Farms, LTD (respondent). The complaint concerns respondent's dairy operation that houses approximately 675 milking cows, located on the north side of Highline Road, in Section 28 of Breese Township, Clinton County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)),<sup>1</sup> the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that respondent's violated Sections 12(a), 12(d) and 12 (f) of the Act and Sections 302.203, 302.206, 309.102(a) of the Board's water pollution regulations (35 Ill. Adm. Code 302.203 and 309.102(a)) and Sections 501.404(c)(3) and 501.403(a) of the Board's agricultural regulations (35 Ill. Adm. Code 501.404(c)(3) and 501.403(a)). The complaint alleges that respondent violated these provisions by allowing a livestock waste lagoon to overflow into Shoal Creek without a National Pollutant Discharge Elimination System (NPDES) permit for the site and by depositing contaminants on land in a manner that created a water pollution hazard.

On October 30, 2009, the People and respondent filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in *Breese Journal* on November 12, 2009. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b).

<sup>1</sup> All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent neither admits nor denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. Respondent agrees to pay a civil penalty of \$15,000. The People and respondent have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

**ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. J.B. Timmermann Farms, LTD must pay a civil penalty of \$15,000 no later than January 4, 2010, which is the first business day following the 30th day after the date of this order. J.B. Timmermann Farms, LTD must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and J.B. Timmermann Farms, LTD's federal tax identification number must appear on the face of the certified check or money order.

3. J.B. Timmermann Farms, LTD must submit payment of the civil penalty to:

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

J.B. Timmermann Farms, LTD must send a copy of the certified check or money order, and any transmittal letter to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate




set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

5. J.B. Timmermann Farms, LTD must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 3, 2009, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

OCT 30 2009

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
J. B. TIMMERMANN FARMS, LTD., )  
an Illinois corporation )  
Respondent. )

PCB NO. 07-70  
(Enforcement - Water)

07/10/12

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and J.B. TIMMERMANN FARMS, LTD. ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties to the Stipulation**

1. On January 29, 2007, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and

upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondent.

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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a dairy operation consisting of approximately 675 milking cows, located on the north side of Highline Road, in Section 28 of Breese Township, Clinton County, Illinois (“facility” or “site”).

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I

1. By causing and threatening to cause water pollution, and by violating the water quality standard of Section 302.203 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and the dissolved oxygen standard of Section 302.206 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 302.206, the Respondent has violated Section 21(a) of the Act, 415 ILCS 5/12(a).

Count II

2. By causing, allowing or threatening the discharge of contaminants into waters of the State without an NPDES permit, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and Section 309.102(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm.

Code 309.102(a).

Count III

3. By failing to properly maintain the facility livestock waste lagoon to ensure adequate storage capacity so that an overflow does not occur, Respondent has violated Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3).

4. By failing to adequately divert clean water from the facility waste handling system and storage, Respondent has violated Section 501.403(a) of the Boards Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.403(a).

5. By causing or allowing the deposit of contaminants on the land in such a place and manner as to create a water pollution hazard, Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

**C. Non-Admission of Violations**

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

**D. Compliance Activities to Date**

1. The Respondent has retained the services of a consulting engineer to conduct a site study and provide an engineering plan to install and implement livestock waste and silage handling corrective measures. Said study and plan was approved by the Illinois EPA in April 2009.

2. The Respondent has submitted an NPDES permit application and, as part of that application, a Comprehensive Nutrient Management Plan for the Illinois EPA's approval.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. 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 (2006).

The Respondent 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 Respondent 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 Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant and the Illinois EPA 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 Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant and the Illinois EPA, in their 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 Respondent. This provision does not relieve the Respondent 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)(2006), 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 this Stipulation state the following:

1. Documented discharges from both the livestock waste lagoon and the silage storage area resulted in a violation of water quality standards, including a violation of the dissolved oxygen standard. The discharges of contaminants from the Defendants' facility have caused, threatened or allowed water pollution in that such discharges have rendered the waters of the State harmful, detrimental and/or injurious to public health, safety and/welfare, and to recreational and other legitimate uses, including the support of wild animals, birds, fish and/or other aquatic life and the discharges created a nuisance.

2. There is social and economic benefit to the facility when it is operated in compliance with the state's environmental regulations.

3. Operation of the facility, in compliance with the state's environmental regulation, is suitable for the area in which it occurred.

4. Operating the subject dairy facility in compliance with the state's environmental regulations is both technically practicable and economically reasonable.

5. Respondent is in the process of bringing this facility into compliance 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)(2006), 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; and
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.

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

1. The discharge violations were first reported August 30, 2004 and were observed by the Illinois EPA on August 31. As of September 14, 2004, the receiving stream water was still discolored. Dissolved oxygen was still low as of September 14, 2004. Respondent submitted an acceptable engineering report in early 2009, and submitted a Comprehensive Nutrient Management Plan to complete the facility's NPDES application in June 2009.
2. Respondent has agreed to bring his facility into compliance.



3. The subject facility lacked appropriate clean water diversion structures and practices appropriate to keep storm water out of the waste handling system, thereby failing to preserve storage capacity. Further, the subject facility failed to properly manage silage storage and leachate runoff. The estimated cost of the engineering study, plan development and implementation of corrective measures is \$70,000 to \$100,000. Using a conservative compliance cost estimate of \$70,000, and a compliance date of June 1, 2009, yields an economic benefit amount of \$10,379.00.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

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

6. Pursuant to 35 Ill. Adm. Code 580.105(a), Respondent was under the obligation to report the discharges and he failed to do so until instructed to by the Illinois EPA who responded to the discharges.

7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$ 15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$ 25.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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**

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, IL 62794-9276

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. The Respondent shall cooperate in a timely fashion with Illinois EPA regarding any requests for additional information necessary to allow the Illinois EPA to complete its review of the Defendant's NPDES Permit application. The Defendant shall, within twenty-one (21) business days of receipt of any such request for additional information from the Illinois EPA, provide the requested information to the Illinois EPA. Upon issuance of an NPDES Permit, the Defendant shall comply with all requirements contained therein.
2. By October 1, 2009, the Respondent shall fully implement, complete construction and bring all installation and practices called for in the facility's approved engineering plan and Comprehensive Nutrient Management Plan into operation.

3. Respondent shall weekly record the freeboard level of the facility's livestock waste lagoon, and shall maintain records of all land application events, including amounts of waste applied and the location at which the waste was applied, and submit both the freeboard and land applications records to the Illinois EPA on a monthly basis. Respondent shall submit these records on the first of each month. Respondent shall initiate this practice immediately and continue it until all installments, construction and practices called for in the facility's approved engineering plan have been implemented and are operational.

4. 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 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, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

4. 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.

5. The Respondent 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 Respondent's payment of the \$15,000.00 penalty, 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 January 29, 2007. 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 or the Illinois EPA 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. 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

Jane E. McBride  
Sr. Assistant Attorney General  
Illinois Attorney General's Office  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

As to the Illinois EPA

Joey Logan Wilkey  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Joseph D. Stitely  
Bureau of Water  
Illinois EPA  
2309 W. Main St.  
Marion, Illinois 62794-9276

As to the Respondent

Mr. James R. Meyers, Esq.  
LEFEVRE OLDFIELD MYERS APKE & PAYNE LAW GROUP, LTD  
303 S. Seventh Street  
PO Box 399  
Vandalia, IL 62471

David Timmermann  
J.B. Timmermann Dairy Farm  
11601 South Germantown Rd.  
Breese, Illinois 62230

**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 Complainant, in consultation with the Illinois EPA, and the Respondent 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.G. 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 each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

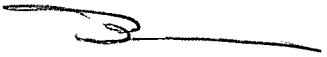
PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois


DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:

  
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:

  
\_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE:

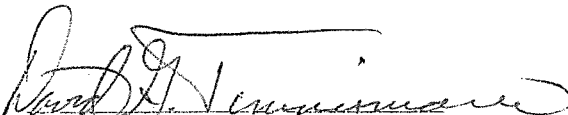
10/27/09

DATE:

10/21/09

J.B. TIMMERMANN FARMS, LTD

BY:

  
\_\_\_\_\_  
DAVID TIMMERMANN

DATE:

10-6-09