

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 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 FARMS,)
 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, LITTLE)
 TIMBER, LLC, an Illinois limited liability)
 corporation,)
 Respondents.)

PCB NO. 10-84
(Enforcement)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on December 13, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT and SECOND AMENDED COMPLAINT, copies of which are attached hereto and herewith served upon you.


Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

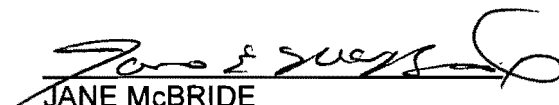
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

500 S. Second St.
Springfield, IL 62706
217/782-9031

BY: 
Jane E. McBride
Sr. Assistant Attorney General
Environmental Bureau

CERTIFICATE OF SERVICE

I hereby certify that I did on December 13, 2012, 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, MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT and SECOND AMENDED COMPLAINT upon the persons listed on the Service List.


JANE McBRIDE
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Edward W. Dwyer
Jennifer M. Martin
Hodge Dwyer Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705

Fred C. Prillaman
Joel A. Benoit
Mohan, Alewelt, Prillaman & Adami
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323

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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

3. On April 7, 2011, the Board accepted and incorporated by reference the stipulation and proposed settlement for North Fork Pork, LLC. This amendment eliminates the count concerning North Fork Pork, LLC.

4. On February 2, 2012, the Board denied the Respondents' motions to dismiss and strike the First Amended Complaint.

5. Final judgment in this matter has not been reached.

6. The parties have attempted settlement negotiations, but said negotiations are currently at an impasse.

7. Discovery has not been initiated in this matter.

8. At the time of the October 10, 2012 status conference with the Hearing Officer assigned to this matter, counsel for the Complainant indicated the Complainant would be seeking leave to amend the First Amended Complaint.

9. With this amendment, the Complainant seeks to specifically plead additional information that exists as the factual basis for the allegation of violation of National Pollution Discharge Elimination System ("NPDES") regulations in each count.

10. Further, with this amendment, Complainant seeks to include additional citations to regulations relevant to the allegations of violation. Specifically these additional citations include the federal storm water regulations implemented by the state of Illinois, the state and federal Confined Animal Feeding Operation ("CAFO") NPDES regulations, the state's private sewage disposal effluent regulations, and additional state groundwater regulations.

WHEREFORE, for the foregoing reasons and on the foregoing grounds, Complainant

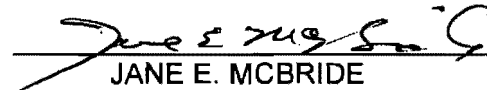
requests that this motion for leave to amend be granted. The Second Amended Complaint is being filed contemporaneously with this motion.

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 Division

BY:


JANE E. MCBRIDE
Sr. Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

STATE OF ILLINOIS)
)
COUNTY OF PEORIA) SS

AFFIDAVIT

I, ERIC ACKERMAN, after being duly sworn and upon oath, state as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as a field inspector and environmental protection engineer.

2. As part of my duties with the Illinois EPA, I perform site investigations to assess whether environmental and/or public health threats exist. Upon formal request, I also review pleadings to be filed by the Attorney General's Office to ensure veracity and accuracy with the records of the Illinois EPA as well as my own personal observations and knowledge.

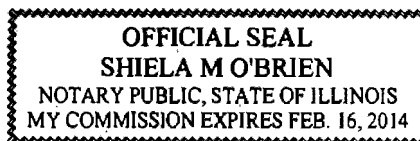
3. I have reviewed the Motion for Leave to Amend the First Amended Complaint and the Second Amended Complaint to which this Affidavit is attached and under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in paragraph 32 of Count II, paragraph 32 of Count IV, paragraph 33 of Count V, and paragraphs 41 and 44 of Count VIII of the Second Amended Complaint that constitute the factual basis for the allegations are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Further affiant sayeth not.

Eric Ackerman
ERIC ACKERMAN

Subscribed and sworn to before me
this 10th day of December, 2012.

Shiela M. O'Brien
NOTARY PUBLIC



STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS

AFFIDAVIT

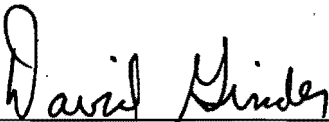
I, DAVID GINDER, after being duly sworn and upon oath, state as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as a field inspector and environmental protection engineer.

2. As part of my duties with the Illinois EPA, I perform site investigations to assess whether environmental and/or public health threats exist. Upon formal request, I also review pleadings to be filed by the Attorney General's Office to ensure veracity and accuracy with the records of the Illinois EPA as well as my own personal observations and knowledge.

3. I have reviewed the Motion for Leave to Amend the First Amended Complaint and the Second Amended Complaint to which this Affidavit is attached and under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in paragraph 17 of Count I; paragraph 31 of Count III, paragraph 30 of Count VI, paragraph 34 of Count VII of the Second Amended Complaint that constitute the factual basis for the allegations are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Further affiant sayeth not.



DAVID GINDER

Subscribed and sworn to before me
this 10th day of December, 2012.



NOTARY PUBLIC



COUNT.I

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 pursuant to Sections 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

2. The Illinois Environmental Protection Agency ("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 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 L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

4. 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.

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 Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

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

7. 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.

8. 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 observed that an eroded channel existed near the stockpile. The channel drained east for a distance of about 400 feet into Sugar Creek. Sugar Creek is a water of the state and a water of the United States. During the inspection, numerous semi trucks arrived with concrete materials, dumped the concrete material and departed.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 indicated the silt fencing present on site was inadequate to meet the requirements of the regulations and additional silt fence was needed in two areas of the site and that some existing silt fencing needed to be reset. The storm water construction regulations require that controls be maintained.

15. 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.

16. On June 18, 2007, the Illinois EPA conducted an inspection at the Hilltop facility. The June 18, 2007 inspection is documented in an Illinois EPA report dated August 31, 2007. At the time of the June 18, 2007 inspection, the Hilltop facility consisted of five confinement buildings and a dead animal composting structure. Starting on the west side of the facility and progressing eastward are a breeding/gestation building, a farrowing building, another breeding/gestation building, a grower-finisher building and an isolation nursery. The facility houses a total of 7,800 swine weighing over 55 pounds.

17. On May 28, 2009, an Illinois EPA inspector observed runoff containing livestock waste from a land application field associated with the Hilltop swine facility in the north ditch of Meadowlark Lane approximately one-eighth mile west of the Hilltop swine facility. The north ditch of Meadowlark Lane drains to an unnamed tributary of the West Branch of Sugar Creek. The unnamed tributary of the West Branch of Sugar Creek is identified as an intermittent creek on the USGS topographic map. The West Branch of Sugar Creek is identified as a perennial creek on the USGS topographic map, that is, flow is maintained throughout the year. The roadside ditch has a surface hydrological connection to the unnamed tributary and the West Branch of Sugar Creek. The discharge to the roadside ditch was a discharge to waters of the United States and, as such, it was a discharge in violation of the State and federal NPDES regulations.

18. On May 28, 2009, the Hilltop facility did not have an NPDES permit for point source discharges.

19. A discharge from a facility with more than 2,500 swine over 55 pounds must be covered by an NPDES permit. Land application discharges from a Confined Animal Feeding Operation ("CAFO") are subject to NPDES requirements, cited below (40 CFR 122.23(e)). Respondents failed to obtain coverage for the discharge prior to the event of the discharge.

20. 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.

21. Section 3.545 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.

22. Section 3.550 of the Act, 415 ILCS 5/3.550, provides the following definition:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

23. 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;

* * *

- (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.

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

24. 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.

25. The USEPA has authorized the State of Illinois to issue storm water NPDES

permits through the Illinois EPA in compliance with federal regulations (40 CFR 122.25). Storm water discharges are regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a storm water pollution prevention plan for construction activity including clearing, grading and excavation:

(a) Permit requirement.

- (1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * *

- (ii) A discharge associated with industrial activity . . .

* * *

(b) Definitions.

* * *

- (14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. . . . The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * *

- (x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

* * *

- (15) Storm water discharge associated with small construction activity means the discharge of storm water from:

- (l) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one

and less than five acres.

* * *

26. 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.

27. Section 502.103 of the Board's Agriculture Related Regulations, 35 Ill. Adm.

Code 501.103, provides:

Very Large Operations

An NPDES permit is required if more than the numbers of animals specified in any of the following categories are confined:

* * *

2,500 Swine weighing over 55 pounds

* * *

1,000 Animal units

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

Adm. Code 502.104, provides:

Large Operations

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:

* * *

750 Swine weighing over 55 pounds

* * *

- b) Pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar man-made devices; or
- c) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

29. 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.
- (b) The Agency, however, may not require a permit under paragraph a) for any animal feeding operation with less than the number of animal units (300) set forth in Section 502.104 above, unless it meets either of the following conditions:
 - 1) Pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar man-made devices; or
 - 2) Pollutants are discharged directly into navigable waters which

originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

30. Section 122.21, 40 CFR 122.21, provides, in pertinent part, as follows:

Application for a permit (applicable to State programs see Section 123.25)

(a) *Duty to apply.*

- (1) Any person who discharges . . . pollutants . . . must submit a complete application to the Director in accordance with this section and part 124 of this chapter. The requirements for concentrated animal feeding operations are described in Section 122.23.(d).

31. 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.

32. 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.

33. Section 122.23(b)(2), 40 CFR 122.23(b)(2), provided, in pertinent part:

- (2) *Concentrated animal feeding operation* ("CAFO") means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

34. Section 122.23 (b)(3), 40 CFR 122.23(b)(5), provides, in pertinent part:

- (3) The term *land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production are is or may be applied.

35. Section 122.23 (b)(4), 40 CFR 122.23(b)(4), provides, in pertinent part:

- (4) *Large concentrated animal feeding operation* ("Large CAFO"). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

* * *

- (iv) 2,500 swine each weighing 55 pounds or more,

* * *

36. Section 122.23 (b)(5), 40 CFR 122.23(b)(5), provides, in pertinent part:

- (5) The term *manure* is defined to include manure, bedding, compost and raw materials or other materials comingled with manure or set aside for disposal.

37. Section 122.23 (b)(6), 40 CFR 122.23(b)(6), provides, in pertinent part:

- (6) *Medium concentrated animal feeding operation* ("Medium CAFO"). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(1) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- (i) The type and number of animals that it stables or confines falls within any of the following ranges:

* * *

- (D) 750 to 2,499 swine each weighing 55 pounds or more,

* * *

- (ii) Either one of the following conditions are met:
 - (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made devices; or
 - (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

38. Section 122.23 (b)(7), 40 CFR 122.23(b)(1), provides, in pertinent part:

- (7) *Process wastewater* means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding

39. 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. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

40. Section 122.23 (c), 40 CFR 122.23(c), provides, in pertinent part:

- (c) *How may an AFO be designated as a CAFO?* The appropriate authority (i.e. State Director or Regional Administrator, or both, as specified in paragraph (c) (1) of this section) may designate any AFO as a CAFO

upon determining that it is a significant contributor of pollutants to waters of the United States.

* * *

- (2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:
 - i) The size of the AFO and the amount of wastes reaching waters of the United States;
 - ii) The location of the AFO relative to waters of the United States;
 - iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;
 - iv) The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
 - v) Other relevant factors.

- (3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:
 - (i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made devices; or
 - (ii) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

- (d) *NPDES permit authorization*
 - (1) *Permit requirement.* A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain

authorization under an NPDES permit, 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.

42. Section 122.23(e), 40 CFR 122.23(e), provides, in pertinent part:

- e) Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C.1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 122.42(e)(1)(vi-ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

43. 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.

44. 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).

45. By causing or allowing the discharge of livestock waste runoff from a land application field into a roadside ditch in such a manner as to threaten water pollution,

Respondents Hilltop and PSM have violated Sections 12(a) and 12(d) of the Act, 415 ILCS 5/12(a), (d).

46. By causing or allowing the discharge of livestock waste runoff from a land application field into a ditch that is a surface hydrological connection to waters of the United States without CAFO NPDES permit coverage, Respondents Hilltop and PSM have violated Section 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 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 Respondent to cease and desist from any further violations of the Act and associated regulations, such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 L. Donley, 303 N. Second St., POB 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 4th P.M. in Hancock County. The Wildcat site is within the Wildcat Creek watershed. Wildcat Farms houses 6000 sows weighing more than 55 pounds

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 Gary L. Donley, 303 N. Second St., POB 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.

8-28. Plaintiff re-alleges and incorporates by reference herein paragraphs 20 through 24 and 26 through 41 of Count I as paragraphs 8 through 28 of this Count II.

29. 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.

30. 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.

31. 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.

32. At the time of the September 23, 2008 inspection, the drainage path which flows into the unnamed tributary had been dammed by Wildcat facility personnel at a location prior to entry into the unnamed tributary. Prior to the damming of the waterway, manure had entered the unnamed tributary. The unnamed tributary flows into Wildcat Creek, a perennial stream. Although no dead fish were observed, the inspector experienced the odor of dead fish in the unnamed tributary of Wildcat Creek 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 the 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.

33. The discharge resulted in a pollution impact on the unnamed tributary of Wildcat Creek. Given the analytical results of the samples collected in the unnamed tributary and evidence of dead fish, there was physical, chemical and biological impact to the unnamed tributary. The discharge to the unnamed tributary that flowed into Wildcat Creek was a discharge to waters of the United States.

34. 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.

35. 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.

36. 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).

37. 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.

38. 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).

39. 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.

40. 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.

41. By causing or allowing the discharge of livestock wastewater to waters of the State with a surface hydrological connection to waters of the United States 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, such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 L. Donley, 303 N. Second St., POB 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, 4th 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 Gary L. Donley, 303 N. Second St., POB 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.

8-29. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 29 of Count II as paragraphs 8 through 29 of this Count III.

30. 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.

31. The High-Power facility houses 6,000 sows weighing more than 55 pounds. Cedar Creek is a water of the United States. In that the discharge caused a fish kill in Cedar Creek, there was a significant nexus between the discharge and biological, chemical and physical impact to a water of the United States.

32. 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.

33. 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.

34. 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).

35. 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.

36. 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).

37. 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.

38. 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.

39. By causing or allowing the discharge of livestock wastewater to waters of the United States 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; such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 FARMS, 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 FARMS, 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 Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

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"). Breeding stock, i.e. sows, weigh over 55 pounds. 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 Gary L. Donley, 303 N. Second St., POB 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.

8-28. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 28 of Count II as paragraphs 8 through 28 of this Count IV.

29. Section 905.100 of the Illinois Private Sewage Disposal Code, 77 Ill. Adm. Code 905.100, states in pertinent part:

Effluent Discharges

a) General. Buried sand filters, recirculating sand filters, waste stabilization ponds, and aerobic treatment plants listed by NSF for Class I effluent (See Section 905.100 (a) and ©) may be discharged to any one of the following 3 options:

1) A receiving stream, river, lake, or pond which provides greater than a 5 to 1 dilution of the effluent, based on the 7 day, 10 year low flow rate. A discharge within 10 feet of the above shall be considered to be a discharge to the receiving body of water. . . .

* * *

D) Effluent Standards

1) All surface discharges from private sewage disposal systems shall comply with United States Environmental Protection Agency Secondary Treatment Guidelines for BOD₅ and Suspended Solids:

A) BOD₅

i) Arithmetic mean of all effluent samples collected in a period of 30 consecutive days; 30 mg/l and 85 percent removal;

- ii) Arithmetic means of all effluent samples collected in a period of 7 consecutive days; 45 mg/l

- F) A fecal coliform bacteria concentration not exceeding 400 organisms per 100 ml except where chlorination is not required.

30. 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").

31. 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 mg/l, and a biological oxygen demand level of 48 mg/l. The septic tank discharge was through a pipe into a lake.

32. The strip mine lake that was the receiving water of the discharges is tributary to Otter Creek, a perennial stream that flows into the Illinois River. As such, the May 10, 2007 discharges were discharges to waters of the United States.

33. 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.

34. 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).

35. 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.

36. 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).

37. 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 discharge from the perimeter tile at the Eagle Point facility was a point source discharge.

38. By causing or allowing the discharge of livestock wastewater to waters of the United States 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; such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 G Gary L. Donley, 303 N. Second St., POB 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"). As such, Lone Hollow houses 5,650 swine each weighing over 55 pounds. 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 Gary L. Donley, 303 N. Second St., POB 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 a September 25, 2007 Illinois EPA inspection, the structure was not covered. Leachate from the compost material was observed on the north side of the structure.

8-28. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 28 of Count II as paragraphs 8 through 28 of this Count V.

29. 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.

30. 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.

31. 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.

32. The September 13, 2007 discharge was to a waterway east of the swine confinement buildings. Despite the Illinois EPA's instructions to recover the released wastewater issued on September 13, 2007, there remained wastewater in the waterway when the Illinois EPA inspector returned on September 25, 2007. At the time of the September 25, 2007 inspection, there were also discharges from perimeter tiles

33. The waterways at Lone Hollow drain to an unnamed tributary of Panther Creek. The unnamed tributary is identified as an intermittent creek on the USGS topographic map. Panther Creek is a perennial stream. Panther Creek is tributary to Bronson Creek which is tributary to the LaMoine River. The September 2007 discharges at Lone Hollow, described above, were discharges to waters of the United States.

34. 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.

35. 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).

36. 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.

37. 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).

38. 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.

39. By causing or allowing the discharge of livestock wastewater to waters of the United States 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; such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

4. Respondent Timberline owns a breed to farrow total confinement swine operation with three buildings. The facility maintains approximately 3,000 sows each weighing over 55 pounds on site. 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 Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

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

7-27. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 28 of Count II as paragraphs 7 through 27 of this Count VI.

28. 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.

29. 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. The leachate from the compost structure was observed to be entering a dry dam that has a surface connection to an unnamed tributary of the West Branch of Sugar Creek.

30. At the point at which the unnamed tributary entered the West Branch of Sugar Creek, the West Branch of Sugar Creek is identified as an intermittent stream on the USGS topographical map. Within approximately 4 miles downstream, the West Branch of Sugar Creek is identified on the USGS topographical map as a perennial stream, that is, flow is maintained throughout the year. The dry dam and tributary to the West Branch of Sugar Creek are a surface hydrological connection to waters of the United States, and, as such, the subject discharge was a discharge to waters of the United States.

31. 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.

32. 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.

33. 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).

34. Respondents Timberline 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.

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

36. 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).

37. 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.

38. By causing or allowing the discharge of livestock wastewater to waters of the United States 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, such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 L. Donley, 303 N. Second St., POB 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 4th 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 Gary L. Donley, 303 N. Second St., POB 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.

9-30. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 29 of Count II as paragraphs 9 through 30 of this Count VII.

31. 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.

32. 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.

33. 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 Horney Branch.

34. The unnamed tributary of Horney Branch is identified as an intermittent creek on the USGS topographic map. Horney Branch is identified as a perennial creek on the USGS topographic map and therefore water flow exists in the creek all year. The unnamed tributary to the facility ponds and the facility ponds were conveyances, that is, surface hydrological connections, that discharge to waters of the United States.

35. 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.

36. 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.

37. 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 that two ponds were interconnected and periods of heavy or frequent rainfall result in a single pond.

38. 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.

39. 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).

40. 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.

41. 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).

42. 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 Horney 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.

43. 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.

44. By causing or allowing the discharge of livestock wastewater to conveyances that discharge to waters of the United States 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, such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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 – 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 Gary L. Donley, 303 N. Second St., POB 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, of which 2,600 are sows each weighing over 55 pounds. 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 Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

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

8-29. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 29 of Count II as paragraphs 8 through 29 of this Count VIII.

30. 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.

31. Section 620.405 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405, provides in pertinent part:

Section 620.405

General Prohibitions Against Violations of Groundwater Quality Standards

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

32. Section 620.410 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, provides in pertinent part:

Section 620.410

Groundwater Quality Standards for Class I: Potable Resource Groundwater

- a) **Inorganic Chemical Constituents**
Except due to natural causes or as provided in Section 620.450, concentrations of the following chemical constituents must not be exceeded in Class I groundwater:

Constituent	Units	Standard

Nitrate as N	mg/L	10.0

* * *

33. 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 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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. Both tributaries to Middle Creek that exist at the Little Timber facility are identified as an intermittent creek on the USGS topographic map. Middle Creek is a perennial stream. Surface water samples were collected.

42. 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.

43. 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.

44. All of the Little Timber discharges drained to the waterways on the property which are tributary to the two unnamed tributaries of Middle Creek that exist on the property and flow into Middle Creek. As such, all of the described discharges were discharges to waters of the United States.

45. 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.

46. 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).

47. 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.

48. 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).

49. 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.

50. 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.

51. 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.

52. By causing or allowing the discharge of livestock wastewater to waters of the United States 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; such order to include the requirement to immediately apply to obtain CAFO NPDES permit coverage for the subject facility; 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: December 13, 2012