

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE)	
MANAGEMENT, LLC, an Illinois limited)	
liability corporation, and 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)	
HALLOW, 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.)	

NOTICE OF FILING

TO: Mr. John T. Therriault	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9276
(VIA ELECTRONIC MAIL)	(VIA U.S. MAIL)

(PLEASE SEE ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board TIMBERLINE, LLC'S ANSWER TO

THIS FILING SUBMITTED ON RECYCLED PAPER

COMPLAINANT'S SECOND AMENDED COMPLAINT and RESPONDENT
TIMBERLINE, LLC'S MOTION TO SEVER, copies of which are herewith served upon
you.

Respectfully submitted,

TIMBERLINE, LLC,

Respondents,

Dated: June 17, 2013

By: /s/ Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer, #6197577
Jennifer M. Martin, #6210218
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached TIMBERLINE, LLC'S ANSWER TO COMPLAINANT'S SECOND AMENDED COMPLAINT and RESPONDENT TIMBERLINE, LLC'S MOTION TO SEVER upon:

Mr. John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on June 17, 2013; and upon:

Ms. Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Jane E. McBride, Esq.
Assistant Attorney General
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

Claire A. Manning, Esq.
Brown, Hay & Stephens LLP
205 South Fifth Street, Suite 700
Post Office Box 2459
Springfield Illinois 62705-2459

Joel A. Benoit
Fred C. Prillaman
Mohan, Alewelt, Prillaman & Adami
#1 North Old State Capital Plaza
Suite 325
Springfield, Illinois 62701-1323

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on June 17, 2013.

/s/Edward W. Dwyer
Edward W. Dwyer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE)	
MANAGEMENT, LLC, an Illinois limited)	
liability corporation, and 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)	
HALLOW, 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.)	

**TIMBERLINE, LLC'S ANWER
TO COMPLAINANT'S SECOND AMENDED COMPLAINT**

NOW COMES Respondent, TIMBERLINE, LLC, an Illinois Corporation (hereinafter referred to as "Timberline") by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 103.204(d), and hereby submits its Response to Complainant's Second Amended Complaint ("Complaint") as follows:

COUNT I

WATER POLLUTION VIOLATIONS – HILLTOP VIEW, SCHUYLER COUNTY

ANSWER: With respect to paragraphs 1-46 of Count I, Timberline provides no response because the allegations of Count I are directed toward another party. To the extent that Count I contains any allegations directed toward Timberline, Timberline denies the same.

COUNT II

WATER POLLUTION VIOLATIONS – WILDCAT FARMS, HANCOCK COUNTY

ANSWER: With respect to paragraphs 1-41 of Count II, Timberline provides no response because the allegations of Count II are directed toward another party. To the extent that Count II contains any allegations directed toward Timberline, Timberline denies the same.

COUNT III

WATER POLLUTION VIOLATIONS – HIGH-POWER PORK, ADAMS COUNTY

ANSWER: With respect to paragraphs 1-39 of Count III, Timberline provides no response because the allegations of Count III are directed toward another party. To the extent that Count III contains any allegations directed toward Timberline, Timberline denies the same.

COUNT IV

WATER POLLUTION VIOLATIONS – EAGLE POINT FARMS, FULTON COUNTY

ANSWER: With respect to paragraphs 1-38 of Count IV, Timberline provides no response because the allegations of Count IV are directed toward another party. To the extent that Count IV contains any allegations directed toward Timberline, Timberline denies the same.

COUNT V

WATER POLLUTION VIOLATIONS – LONE HOLLOW, HANCOCK COUNTY

ANSWER: With respect to paragraphs 1-39 of Count V, Timberline provides no response because the allegations of Count V are directed toward another party. To the extent that Count V contains any allegations directed toward Timberline, Timberline denies the same.

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).

ANSWER: Timberline admits the allegations in paragraph 1.

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.

ANSWER: Timberline admits the allegations in paragraph 2.

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.

ANSWER: Timberline admits the allegations in paragraph 3.

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.

ANSWER: Timberline admits that it owns the facility; the alleged location and general description of the facility is accurate; admits that two gestation buildings are underlain by deep waste pits, and the farrowing building has a 2' pit that drains into the deep pit of the east gestation building. Timberline has insufficient knowledge to form a belief regarding the watershed the facility is located in and, therefore, denies this allegation; denies that the facility consists of three buildings and affirmatively states that it consists of four buildings; and denies that the facility maintains approximately 3,000 sows weighing over 55 pounds each.

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.

ANSWER: Timberline admits the allegations of paragraph 5.

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

ANSWER: Timberline admits that, in accordance with an agreement between it and Respondent PSM, PSM provides management services to Timberline for the Timberline facility. Little Timber denies the remaining factual allegations of paragraph 6.

7. 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.

ANSWER: The statutory section cited in paragraph 7 speaks for itself and requires no response.

8. 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.

ANSWER: The statutory section cited in paragraph 8 speaks for itself and requires no response.

9. 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.

ANSWER: The statutory section cited in paragraph 9 speaks for itself and requires no response.

10. 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.

ANSWER: The statutory section cited in paragraph 10 speaks for itself and requires no response.

11. 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.

ANSWER: The regulatory section cited in paragraph 11 speaks for itself and requires no response.

12. 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.

ANSWER: The regulatory section cited in paragraph 12 speaks for itself and requires no response.

13. 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

ANSWER: The regulatory section cited in paragraph 13 speaks for itself and requires no response.

14. 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.

ANSWER: The regulatory section cited in paragraph 14 speaks for itself and requires no response.

15. 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 relative 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.

ANSWER: The regulatory section cited in paragraph 15 speaks for itself and requires no response.

16. 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).

ANSWER: The regulatory section cited in paragraph 16 speaks for itself and requires no response.

17. 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.

ANSWER: The regulatory section cited in paragraph 17 speaks for itself and requires no response.

18. 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.

ANSWER: The regulatory section cited in paragraph 18 speaks for itself and requires no response.

19. 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.

ANSWER: The regulatory section cited in paragraph 19 speaks for itself and requires no response.

20. 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.

ANSWER: The regulatory section cited in paragraph 20 speaks for itself and requires no response.

21. 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,

* * *

ANSWER: The regulatory section cited in paragraph 21 speaks for itself and requires no response.

22. 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.

ANSWER: The regulatory section cited in paragraph 22 speaks for itself and requires no response.

23. 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.

ANSWER: The regulatory section cited in paragraph 23 speaks for itself and requires no response.

- 24. 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

ANSWER: The regulatory section cited in paragraph 24 speaks for itself and requires no response.

- 25. 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 eff washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

ANSWER: The regulatory section cited in paragraph 25 speaks for itself and requires no response.

26. 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 onsite 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.

ANSWER: The regulatory section cited in paragraph 26 speaks for itself and requires no response.

27. 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.

ANSWER: The regulatory section cited in paragraph 27 speaks for itself and requires no response.

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.

ANSWER: The regulatory section cited in paragraph 28 speaks for itself and requires no response.

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.

ANSWER: Timberline admits that the inspection occurred. Timberline has insufficient knowledge to admit or deny the remaining allegations and therefore denies them.

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.

ANSWER: Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 30, and therefore denies these allegations. Further the last sentence of paragraph 30 states a legal conclusion that requires no response. To the extent that paragraph 30 states any other allegations of fact, Timberline denies the same.

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.

ANSWER: Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 31, and therefore denies these allegations.

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.

ANSWER: Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 32, and therefore denies these allegations. Further, paragraph 30 states legal conclusions that require no response. To the extent that the allegations of

paragraph 32 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 32 as to PSM and therefore denies these allegations.

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).

ANSWER: The allegations of paragraph 33 state legal conclusions that require no response. To the extent that paragraph 33 states any allegations of fact, Timberline denies the same. To the extent that the allegations of paragraph 33 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 33 as to PSM and therefore denies these allegations.

34. Respondents Timberline and PSM have caused or allowed contaminants to be deposited upon the (and 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.

ANSWER: The allegations of paragraph 34 state legal conclusions that require no response. To the extent that paragraph 34 states any allegations of fact, Timberline denies the same. To the extent that the allegations of paragraph 34 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 34 as to PSM and therefore denies these allegations.

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).

ANSWER: The allegations of paragraph 35 state legal conclusions that require no response. To the extent that paragraph 35 states any allegations of fact, Timberline denies the same. To the extent that the allegations of paragraph 35 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 35 as to PSM and therefore denies these allegations.

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).

ANSWER: The allegations of paragraph 36 state legal conclusions that require no response. To the extent that paragraph 36 states any allegations of fact, Timberline denies the same. To the extent that the allegations of paragraph 36 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 36 as to PSM and therefore denies these allegations.

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.

ANSWER: Timberline admits the allegations of paragraph 37 solely with regard to the allegation that it did not have a NPDES permit on September 11, 2008. Timberline

affirmatively states that it was not and is not required to have an NPDES permit. The remaining allegations of paragraph 37 state legal conclusions that require no response. To the extent that the remaining allegations of paragraph 37 state any allegations of fact, Timberline denies the same. To the extent that the allegations of paragraph 37 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 37 as to PSM.

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).

ANSWER: The allegations of paragraph 38 state legal conclusions that require no response. To the extent that the remaining allegations of paragraph 38 state any allegations of fact, Timberline denies the same. To the extent that the allegations of paragraph 38 are directed toward PSM, Timberline has insufficient knowledge to either admit or deny the allegations of paragraph 37 as to PSM.

PRAYER FOR RELIEF

WHEREFORE, Respondent, TIMBERLINE, LLC, asserts that Complainant is not entitled to the relief sought by Count VI of its Complaint, and prays that Complainant take nothing by Count VI of its Complaint, that the Board enter judgment in favor of TIMBERLINE, LLC, as to Count VI of Complainant's Complaint, and that the Board award TIMBERLINE, LLC its costs and all other relief just and proper in the premises.

COUNT VII

WATER POLLUTION VIOLATIONS – PRAIRIE STATE GILTS, SCHUYLER COUNTY

ANSWER: With respect to paragraphs 1-44 of Count VII, Timberline provides no response because the allegations of Count VII are directed toward another party. To the extent that Count VII contains any allegations directed toward Timberline, Timberline denies the same.

COUNT VIII

WATER POLLUTION VIOLATIONS – LITTLE TIMBER. HANCOCK COUNTY


ANSWER: With respect to paragraphs 1-52 of Count VIII, Timberline provides no response because the allegations of Count VIII are directed toward another party. To the extent that Count VIII contains any allegations directed toward Timberline, Timberline denies the same.

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

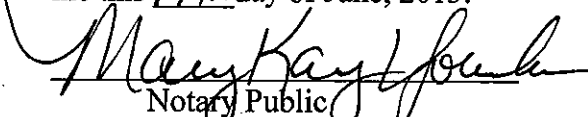
Edward W. Dwyer on oath, deposes and states as follows:

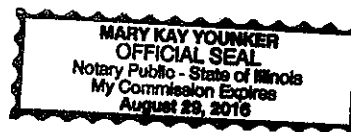
1. That I am one of the attorneys representing the party on whose behalf this Answer was prepared.
2. That the Answer to Count VI in paragraphs 4 and 29-38 contains certain statements claiming insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations contained in the Complaint.
3. That said allegations of insufficient knowledge are true and correct to the best of his information, knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


Edward W. Dwyer

Subscribed and sworn to before
me this 17th day of June, 2013.


Notary Public



TIMBERLINE AFFIRMATIVE DEFENSES

1. Preceding the filing of its Complaint, the Complainant failed to comply with Section 31 of the Act's required enforcement procedures. Instead of Section 31, Complainant states that Count VI is merely brought pursuant to Sections 42(d) and (e) of the Act. Accordingly, Count VI fails and must be dismissed due to the Complainant's failure to comply with Section 31 of the Act.

2. Count VI fails to allege facts sufficient to support a finding that Timberline is discharging, and thus, required to obtain an NPDES permit. The Complainant's allegations in Count VI that Timberline is required to apply for an NPDES permit is based solely upon one isolated event. Because this isolated event is insufficient to establish that Timberline is discharging in a manner sufficient to require an NPDES permit, Timberline is not required to apply for an NPDES permit.

3. Timberline reserves the right to amend its Answer to allege any additional defenses which discovery may reveal to be appropriate.

4. The Complaint does not allege with specificity whether the federal and/or state statutes and regulations cited therein were in effect at the time of the alleged violations.

CONCLUSION

WHEREFORE, Respondent, TIMBERLINE, LLC, by its attorneys, HODGE DWYER & DRIVER, prays that Complainant take nothing by way of its Complaint, and that the Board award TIMBERLINE, LLC all relief just and proper in the premises.

Respectfully submitted,

TIMBERLINE, LLC,

Respondent,

Dated: June 17, 2013

By: /s/ Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer, #6197577
Jennifer M. Martin, #6210218
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

HOGS:004/Individual Farm Failings/Timberline/Timberline Answer to 2 Amend Compl

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE)	
MANAGEMENT, LLC, an Illinois limited)	
liability corporation, and 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)	
HALLOW, 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.)	

RESPONDENT TIMBERLINE, LLC'S MOTION TO SEVER

NOW COMES Respondent, TIMBERLINE, LLC ("Respondent" or "Timberline"), by and through its attorneys, HODGE DWYER & DRIVER, and hereby moves the Illinois Pollution Control Board ("Board") to sever the claims in Count VI of the Complaint filed in the above enforcement matter. In support of its Motion, Timberline states as follows:

A. Procedural History

1. The State of Illinois (hereinafter the "State") filed its original Complaint in the instant matter on April 15, 2010.

2. Subsequently, a series of motions challenging the sufficiency of the pleadings were filed by multiple Respondents, which resulted in the State amending its Complaint, most recently with its Second Amended Complaint filed on December 13, 2012 (hereinafter "Complaint").

3. On February 11, 2013, all Respondents filed a Joint Motion for Extension of Time to Respond to the Complaint and a Joint Motion to Strike Part of the Complaint's Prayer for Relief.

4. On May 2, 2013, the Board denied Respondents' Joint Motion to Strike Part of the Complaint's Prayer for Relief and directed Respondents to answer the Complaint by June 17, 2013.

5. In light of the Board's decisions regarding the factual and legal arguments raised in the Respondents' motions, as well as the Board's procedural rules, Timberline has determined that the filing of this Motion to Sever is necessary.

B. Count VI Against Timberline Should Be Severed from the Remaining Counts

6. The Complaint filed by the State in the instant matter contains eight separate counts. Each count alleges violations of the Illinois Environmental Protection Act ("Act") and Board regulations at a different concentrated animal feeding operation ("CAFO") in Illinois.

7. The CAFOs which are the subjects of the separate counts of the Complaint are owned by separate entities. Timberline is the owner of the Timberline CAFO, which is located in Schuyler County, Illinois.

8. Two other CAFOs which are subjects to this Complaint are located in Schuyler County (Counts I and VII); three of the CAFOs are located in Hancock County

(Counts II, V, and VIII); one CAFO is located in Fulton County (Count IV); and one CAFO is located in Adams County (Count III).

9. Moreover, the CAFOs which are the subject of the Complaint are located in two different appellate districts, the Third (Fulton, Hancock) and the Fourth (Adams, Schuyler).

10. The allegations against Timberline relate only to the Timberline CAFO and are found in Count VI of the Complaint. The allegations against Timberline are based on an inspection by the Illinois Environmental Protection Agency ("IEPA") on September 11, 2008. Complaint at 35-37. The Complaint does not allege, and Timberline has never received, a Violation Notice regarding the alleged violations.

11. The facts alleged in Count VI of the Complaint do not pertain to, or in any way involve, the seven CAFOs which are the subjects of Counts I through V and VII through VIII of the Complaint and are unrelated to the factual allegations in the remaining seven counts of the Complaint. Moreover, Timberline is not a respondent with respect to the alleged violations in Counts I through V and VII through VIII of the Complaint.

12. The only common issue between Count VI and the other counts of the Complaint is the allegation that Respondent, Professional Swine Management, LLC, manages the Timberline CAFO as well as the CAFOs which are the subjects of Counts I through V and VII through VIII of the Complaint.

13. Pursuant to Section 41 of the Act, judicial review of enforcement decisions of the Board "shall be afforded directly in the Appellate Court for the District in which the cause of action arose" 415 ILCS 5/41(a).

14. Because the Complaint contains separate counts and allegations, involving CAFOs located in two different appellate districts in Illinois, it will be impossible for any judicial review of the Board's enforcement decisions to comply with the Act's mandate that judicial review be afforded in the appellate district where the "cause of action arose" for each CAFO.

15. The Board's procedural rules provide that hearings in enforcement proceedings "are generally held in the county in which the source or facility is located. ..." 35 Ill. Admin. Code § 101.600.

16. Because the Complaint contains separate counts and allegations, involving CAFOs located in four different counties in Illinois, any hearing held on the Complaint will not comply with the Board's procedural rule regarding venue for the majority of the CAFOs which are the subject of the Complaint.

17. Section 2-405 of the Illinois Code of Civil Procedure permits the joinder of defendants who are alleged to have, or claim an interest "in the transaction or series of transactions out of which the controversy arose," and further provides as follow:

(b) It is not necessary that each defendant be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him or her; but the court may make any order that may be just to prevent any defendant from being embarrassed or put to expense by requiring to attend any proceedings in which such defendant may have no interest.

735 ILCS 5/2-405(b).

18. The Board's procedural rules address joinder of parties (35 Ill. Admin. Code § 101.403), but do not specifically address the joinder of defendants. Therefore, it is appropriate for the Board to look to Section 2-405(b) of the Illinois Code of Civil Procedure (735 ILCS 5/2-405(b)) and cases interpreting the same for guidance in the

issue presented by the State's joinder of its claim against Timberline with its claims against the multiple, unrelated Respondents named in Counts I through V and VII through VIII of the Complaint. 35 Ill. Admin. Code § 101.100(b).

19. The State's Complaint violates the joinder rules set forth in Section 2-405 of the Illinois Code of Civil Procedure because the cause of action against Timberline arises from an entirely separate and distinct transaction and set of facts than the causes of action set forth in Counts I through V and VII through VIII of the Complaint. *Rogala v. Silva*, 16 Ill. App. 3d 63, 305 N.E.2d 571, 575 (1st Dist. 1973) (affirming severance of counts with one common defendant because counts involved entirely separate transactions, different parties, and different theories); *Sommers v. Korona*, 54 Ill. App. 2d 425, 203 N.E.2d 768, 774 (1st Dist. 1964) (appellate court affirmed dismissal of count in suit against multiple defendants for injuries arising out of separate and unrelated car accidents, noting that plaintiff would not be prejudiced by having to file separate suits); *Preferred Personnel v. Meltzer*, 387 Ill. App. 3d 933, 902 N.E.2d 146, 150 (1st Dist. 2009) (a cause of action against multiple defendants must arise from the same transactions in order to permit joinder of the defendants).

20. The Board's procedural rules provide that:

Upon motion of any party or on the Board's own motion, in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused, the Board may sever claims involving any number of parties.

35 Ill. Admin. Code § 101.408.

21. Requiring Timberline to participate in the proceedings and hearing on Counts I through V and VII through VIII of the Complaint, in which Timberline has no interest, will substantially prejudice Timberline. In particular, Timberline will be forced

to devote significant time and resources, including litigation costs, to the proceedings involving Counts I through V and VII through VIII, which do not, in any way, involve either Timberline or the Timberline CAFO. For example, if Count VI is not severed from the remaining counts, Timberline could be forced to participate in depositions, discovery, and hearings that are completely unrelated to the allegations of Count VI.¹

22. Moreover, as noted above, there is a strong likelihood that any hearing involving the allegations of Count VI of the Complaint will not be held in Schuyler County, in contravention of the Board's procedural rules.

23. The joinder of Timberline with the multiple, unrelated Respondents named in Counts I through V and VII through VIII of the Complaint violates the rules governing joinder of defendants set forth in the Code of Civil Procedure (735 ILCS 5/2-405).²

24. Severing Count VI from the remaining counts of the Complaint, and requiring the State to include the allegations of Count VI in a separate complaint will expedite the resolution of claims involving Timberline and the Timberline CAFO, and will prevent the inconvenience and prejudice to Timberline that will result from requiring it to participate in the discovery, proceedings, and hearing on Counts I through V and VII through VIII of the Complaint, in which it has no interest. *See City of Kankakee v.*

County of Kankakee, et al., PCB Nos. 03-125, 03-133, 03-134, 03-135, 03-144

(Consolidated) (Ill.Pol.Control.Bd., April 17, 2003) (Board granted severance of claims against Waste Management, Inc. based on Waste Management, Inc.'s assertion that "the

¹ Indeed, the State has already served discovery requests that are very broad in nature and not tailored to the claims in Count VI against Timberline.

² It may well be that the State selected the Board as its forum to seek to file a single complaint against 9 corporations located in 4 different counties, since such filing in a lone Circuit Court would not be possible under the Illinois Code of Civil Procedure's rules regarding venue, *i.e.*, 735 ILCS 5/2-101,102.

consolidation of the cases does materially prejudice Waste Management, Inc. because of discovery deadlines and potential briefing schedules in the other cases.).

25. Severing Count VI from the remaining counts of the Complaint, and requiring the State to include the allegations of Count VI in a separate complaint will allow the Board to hold any hearing involving the allegations of Count VI in Schuyler County, in accordance with the Board's procedural rule governing venue. 35 Ill. Admin. Code § 101.600. Further, it will ensure that the appellate rights of Timberline and any other Respondent are not circumscribed by being improperly joined in this case.

WHEREFORE, for the reasons stated above, Respondent Timberline respectfully moves the Board to enter an order severing Count VI of the State's Complaint from the remaining counts, and requiring the State to bring Count VI as a separate action, and providing such other relief as the Board deems appropriate.

Respectfully submitted,

TIMBERLINE, LLC,

Respondent,

Dated: June 17, 2013

By: /s/ Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer, #6197577
Jennifer M. Martin, #6210218
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900