BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS Petitioner, v. PROFESSIONAL SWINE MANAGEMENT, LLC; HILLTOP VIEW, LLC; WILDCAT FARMS, LLC; HIGH-POWER PORK, LLC; EAGLE POINT, LLC; LONE HOLLOW, LLC; TIMBERLINE, LLC; PRAIRIE STATE GILTS, LTD; NORTH FORK PORK, LLC; LITTLE TIMBER, LLC, Respondents.	)	PCB 10-084 (Enforcement – Land)

NOTICE OF FILING

TO: 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)

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9276
(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, Lone Hollow, LLC's, ANSWER TO SECOND AMENDED COMPLAINT & AFFIRMATIVE DEFENSES, and MOTION TO SEVER, a copy of which is herewith served upon you.

Respectfully submitted,

LONE HOLLOW, LLC, Respondent

Dated: June 17, 2013

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon:

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

Ms. Carol Webb
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Griggsville, IL 62340

Robert L. Rhea
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Camp Point, IL 62320

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Mitchell, LLP
525 Jersey Street
P.O. Box 1069
Quincy, IL 62306

by enclosing the same in an envelope addressed to such party at the above address, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mailbox in Springfield, Illinois, at 5:00 p.m. on this 17th day of June, 2013.

Claire A. Manning

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	PCB NO. 10-84
	)	Enforcement
PROFESSIONAL SWINE MANAGEMENT, LLC, HILLTOP VIEW, LLC, WILDCAT FARMS, LLC , LONE HOLLOW, LLC, EAGLE POINT, LCC, LONE HOLLOW, LLC, TIMBERLINE, LLC, PRAIRIE STATE GILTS, Ltd, AND LITTLE TIMBER, LLC,	)	
Respondents.	)	

RESPONDENT LONE HOLLOW, LLC'S ANSWER TO SECOND AMENDED COMPLAINT & AFFIRMATIVE DEFENSES

NOW COMES Respondents, Lone Hollow, LLC ("Lone Hollow"), by and through its attorneys, Brown, Hay & Stephens, LLP, and as for its Answer to the Second Amended Complaint filed by Complainant, the People of the State of Illinois ("the State"), states as follows:

COUNT I

1. The allegations contained in Count I are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

COUNT II

1. The allegations contained in Count II are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

COUNT III

1. The allegations contained in Count III are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

COUNT IV

1. The allegations contained in Count IV are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

COUNT V
WATER POLLUTION VIOLATIONS – LONE HOLLOW, HANCOCK COUNTY

1. This Count is brought on half 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 Section 42(d) and (e) of the Illinois Environmental Act ("Act"), 415 ILCS 5/42(d) and (e).

RESPONSE: Respondent Lone Hollow generally admits the allegations contained in Paragraph 1, Count V.

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.

RESPONSE: Respondent Lone Hollow generally admits the allegations contained in Paragraph 2, Count V.

3. The Respondent LONE HOLLOW, LLC ("Lone Hollow") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Lone Hollow is Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

RESPONSE: Respondent Lone Hollow generally admits the allegations contained in Paragraph 3, Count V.

4. Respondent Lone Hollow owns a farrow to wean swine operation, that at the time of 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, (August Township) in Hancock County. The Lone Hollow facility is located with the watershed of Panther Creek which is tributary to Bronson Creek which is tributary to the LaMoine River.

RESPONSE: Respondent Lone Hollow has insufficient knowledge to either admit or deny the factual allegation related to watersheds and tributaries. Respondent Lone Hollow otherwise admits the remaining allegations contained in Paragraph 4, Count V.

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.

RESPONSE: Respondent Lone Hollow generally admits the allegation contained in Paragraph 5, Count V.

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

RESPONSE: Respondent Lone Hollow admits that PSM performs operational services at the site, pursuant to contract with Lone Hollow.

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.

RESPONSE: Respondent Lone Hollow generally admits the allegation contained in Paragraph 7, Count V as to facility description and manure hauling, and admits that a

September 25, 2007 IEPA inspection occurred. Respondent Lone Hollow lacks the specific information or knowledge with which to admit or deny the allegations of the specific observations of the Illinois EPA, and as such neither admits or denies the remaining allegations of Paragraph 7, Count V.

8. Section 3.165 of the Act, 415 ILCS 5/3.125 provides:

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

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

9. 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 livestock, wild animals, birds, fish or other aquatic life.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

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

> "WATERS" means all public 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

11. 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 as to violation 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 regulations adopted by the Board or 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

12. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) provides:

Except as in complaint 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

13. Section 502.101 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.101, provides:

No person specified in Section 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 of livestock waste-handling facility without a National Pollutant

Discharge elimination System ("NPDES") permit. Facility expansions, production increase, and process modification 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

14. 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 confided:

* * *

2,500 Swine weighing over 55 pounds

* * *

1,000 Animal Units

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no responsc thereto.

15. Section 502.104 of the Board's Agricultural Regulated Regulations, 35 Ill. Adm. Code 501.104, 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) is met:

* * *

750 Swine weighing over 55 pounds

* * *

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

c) Pollutants are discharges directly into navigable waters which originate outside of pass over, across, or through the facility or otherwise come into direct contact with the animal in the operation.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

16. 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 Section 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 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 502.105 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

17. Section 122.21, 40 CFR 1221.1, provides in pertinent part, as follows:

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

(a) *Duty of apply.*

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

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

18. 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

19. 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 portion of the lot or facility.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

20. 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

21. 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

22. 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,
>
> * * *

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

23. 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 wit manure or set aside for disposal.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

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

(3) *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 shich (sic) 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

25. 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

26. 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 (sic) washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

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

(1) *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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

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

(c) 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.

RESPONSE: Complainant makes no factual allegation against Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

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 immediately 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.

RESPONSE: Respondent Lone Hollow generally admits that a swine manure release occurred on September 13, 2007 and that facility personnel constructed a compost and earthen damn to contain the release. Respondent Lone Hollow denies all remaining allegations including that manure discharged to a waterway.

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.

RESPONSE: Respondent Lone Hollow admits to the allegation contained in Paragraph 30, Count V that Illinois EPA conducted an inspection on September 25, 2007, but Respondent lacks the specific information or knowledge with which to admit or deny the allegations of the specific behavior, observations, or sampling performed by the Illinois EPA, and, as such, neither admits or denies the remaining allegations of Paragraph 30, Count V.

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.

RESPONSE: Respondent Lone Hollow admits to the allegation contained in Paragraph 31, Count V that Illinois EPA conducted an inspection on September 25, 2007, but Respondent lacks the specific information or knowledge with which to admit or deny the allegations of the specific behavior, observations, or sampling performed by the Illinois EPA, and, as such, neither admits or denies the remaining allegations of Paragraph 31, Count V.

32. The September 12, 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.

RESPONSE: Respondent Lone Hollow denies the allegations contained in Paragraph 32, Count V, and demands strict proof thereof.

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

RESPONSE: Respondent Lone Hollow lacks the specific information or knowledge with which to admit or deny the factual allegations of Paragraph 33, Count V and affirmatively states that no response is required as to the legal conclusions alleged therein.

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.

RESPONSE: Respondent Lone Hollow denies each and every allegation contained in Paragraph 34, Count V and demands strict proof thereof.

35. By causing, allowing, or threatening the discharges of contaminants to waters of the Sate at 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).

RESPONSE: Respondent Lone Hollow denies each and every allegation contained in Paragraph 35, Count V and demands strict proof thereof.

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.

RESPONSE: Respondent Lone Hollow denies each and every allegation contained in Paragraph 36, Count V and demands strict proof thereof.

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).

RESPONSE: Respondent Lone Hollow denies each and every allegation contained in Paragraph 37, Count V and demands strict proof thereof.

38. At the time of September 13, 2007 to the waterway tributary to Panther Creek at the September 25, 2006 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.

RESPONSE: Respondent Lone Hollow generally admits that it did not have an NPDES permit prior to the incident, but denies any remaining allegations contained in Paragraph 38, Count V and any legal conclusion contained therein.

39. By causing or allowing discharges 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).

RESPONSE: Respondent Lone Hollow denies each and every allegation contained in Paragraph 39, Count V and demands strict proof thereof.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint, which alleges a discrete discharge which occurred in 2007, is defective in that it has not been properly filed or processed pursuant to the Act's relevant enforcement mechanism, contained in Title VII of the Act. Count V is filed pursuant to Section 21 (d) and (e) of the Act, not Section 31, where the Board derives its enforcement authority. Any references to Title VII and Section 31 are noticeably absent from Count V, and as Section 31 is expressly relevant to the

Board's enforcement authority, the failure to properly plead and meet the requirements of Section 31 is a fatal flaw that requires dismissal.

Second Affirmative Defense

The alleged discharge described in Count III occurred because of a discrete incident that occurred in 2008. There have been no discharges from the facility following this singular incident; thus there is no duty to apply for an NPDES permit.

WHEREFORE, Respondent, Lone Hollow, LLC, requests that Count V of the Complainant's Second Amended Complaint be dismissed and that the specific relief requested in the Prayer for Relief be denied. In the alternative, Respondent Lone Hollow, LLC, denies that the Complainant is entitled to the relief requested in the Prayer for Relief and requests that the Complainant be made to prove the allegations contained therein.

COUNT VI

1. The allegations contained in Count VI are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

COUNT VII

1. The allegations contained in Count VII are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

COUNT VIII

1. The allegations contained in Count VIII are not directed at Respondent Lone Hollow and therefore Respondent Lone Hollow makes no response thereto.

Respectfully submitted,

LONE HOLLOW, LLC, Respondents,

By: _____
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP
Claire A. Manning
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STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

Claire A. Manning 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 certain Answers contain 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 her information, knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Claire A. Manning

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

Notary Public

OFFICIAL SEAL
JENNIFER L. POWERS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 3-28-2015

Dated: June 17, 2013

Respectfully submitted,

LONE HOLLOW, LLC.,

Respondent,

By: _____
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	PCB NO. 10-84
	)	Enforcement
PROFESSIONAL SWINE MANAGEMENT, LLC, HILLTOP VIEW, LLC, WILDCAT FARMS, LLC , HIGH-POWER PORK, LLC, EAGLE POINT, LCC, LONE HOLLOW, LLC, TIMBERLINE, LLC, PRAIRIE STATE GILTS, Ltd, AND LITTLE TIMBER, LLC,	)	
Respondents.	)	

RESPONDENT LONE HOLLOW, LLC'S MOTION TO SEVER

NOW COMES Respondent, LONE HOLLOW, LLC ("Lone Hollow"), by and through its attorneys, BROWN, HAY & STEPHENS, LLP, and as and for its Motion to Sever, pursuant to 35 Ill. Adm. Code 101.408, states as follows:

I. Facts

The State of Illinois (the "State") filed its original Complaint on April 15, 2010. Following various motions filed by the Respondents, the State filed its Second Amended Complaint on December 13, 2012 (the "Complaint"). On February 11, 2013, the 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.

The Respondents' Joint Motion to Strike Part of the Complaint's Prayer for Relief was denied by the Board on May 2, 2013, and Respondents were directed to answer the Complaint by June 17, 2013. Lone Hollow now moves the Illinois Pollution Control Board (the "Board") to

sever the claims in Count V of the Complaint. The Complaint contains eight separate counts alleging violations of the Illinois Environmental Protection Act (the "Act") and Board regulations at different livestock operations (all swine) in Illinois.

The eight livestock operations at issue are owned by separate entities and are located in four different counties. Three livestock operations are located in Schuyler County (Counts I, VI, and VII); three livestock operations, including Lone Hollow, are located in Hancock County (Counts II, V, and VIII); one livestock operation is located in Fulton County (Count IV); and one livestock operation is located in Adams County (Count III). Furthermore, the livestock operations at issue are located in two different appellate districts because Fulton and Hancock counties are under the jurisdiction of the Third Appellate District while Adams and Schuyler counties are under the jurisdiction of the Fourth Appellate District.

The Respondent, Professional Swine Management, LLC ("PSM"), provides certain operational services at the site, pursuant to contract with Lone Hollow.

The sole portion of the Complaint relative to Lone Hollow is Count V.

II. The Board should sever Count V from the Complaint because Count V only involves Lone Hollow and is distinct from the other Respondents.

Under Section 101.408 of the Board's procedural rules, the Board may sever claims involving numerous parties "in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused." 35 Ill. Adm. Code § 101.408. Conversely, the Board only will consolidate claims if "consolidation would *not* cause material prejudice to any party." 35 Ill. Adm. Code § 101.406 (emphasis added).

Here, the facts alleged in Count V of the Complaint apply only to Lone Hollow. Further, Lone Hollow is not a respondent with respect to Counts I-IV and Counts VI-VIII and said Counts involve factual allegations unrelated to Lone Hollow.

The Board should sever Count V from this action because severance: (A) allows for a complete and proper determination of the claims; (B) avoids material prejudice; and (C) saves time and resources.

A. Severing the claim against Lone Hollow allows for complete and proper determination of claims.

Where there is an express grant of authority, the Board must act "in furtherance of the intention of the legislature as stated within the four corners of the statute." *See Chemetco Inc. v. Ill. Pollution Control Bd.*, 140 Ill. App. 3d 283, 286 (5th Dist. 1986). The legislature has granted the Board clear and express authority to "conduct proceedings upon complaints charging violations" of the Act. 415 ILCS 5/5(d). That express authority, however, is not without limitation or restraint. The legislature has provided that enforcement decisions of the Board may be directly appealed to the appellate court, but the Act also provides that such appeal would be to the district where the cause of action arose. 415 ILCS 5/41(a). Further, the Board's procedural rules provide that hearings in enforcement proceedings "are generally held in the county in which the source of facility is located . . . ." 35 Ill. Adm. Code 101.600.

This "site of the cause of action requirement" also drives the Board's Notice and Hearing requirements, which are set forth in the Board's procedural rules, and which have been developed pursuant to the Act. *See* 35 Ill. Adm. Code 101.602 ("The Clerk will provide notice of all hearings . . . in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred."). *See also* 35 Ill. Adm. Code 101.600 ("The hearings are generally held in the county in which the source or facility is located unless otherwise ordered by the hearing officer.")

While the above language does not apply to regulatory proceedings, which often concern state-wide issues of general regulatory import, enforcement actions are necessarily different

procedural creatures, which require procedural due process in the context of an adjudicatory proceeding. The State's filing here is antithetical to the entire concept of "cause of action" since such terminology generally refers to an event or incident that arises out of the same transaction or series of transactions, and the existence of a common question of law or fact. *See* 735 ILCS 5/2-405.

Here, the Complaint alleges violations of the Act at eight separate facilities, owned by eight separate companies and located in three distinct counties and two different appellate districts. The sole commonality is the fact that the respondents are all owners or operators of livestock operations and have contracted with PSM to perform certain operational services. It is not unlike a complaint that would be filed against various landfills (or chemical companies or utilities) in Illinois, located throughout the state, alleging separate and distinct facts and violations of the Act.

Such litigation involving multiple respondents at multiple sites charging discreet pollution incidents in various counties of multiple judicial districts, is simply not contemplated by the Act or the Board's rules, as the statutory enabling language is not consistent with this type of industry-driven, industry-specific enforcement. Moreover, 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 livestock operation. Thus, severance of Count V will be in furtherance of the intention of the legislature and will allow for complete and proper determination of the claims.

B. Severing the claim against Lone Hollow avoids material prejudice.

The courts have recognized there is inherent prejudice in requiring parties to try unrelated sets of facts in the same consolidated action, which results in reversible error. *See Mount v.*

Dusing, 414 Ill. 361, 367-68 (1953); *Rogala v. Silva,* 16 Ill. App. 3d 63, 64-65, 68 (1st Dist. 1973) (affirming severance of counts with one common defendant when counts involve entirely separate transactions, different parties, and different theories); *Sommers v. Korona*, 54 Ill. App. 2d 425, 435 (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).

Lone Hollow will be prejudiced by the alleged violations of the other Respondents. The Complaint improperly consolidates claims arising from eight separate and unrelated events which, based on the face of the Complaint, took place at different times and on different facilities owned by different companies. Requiring Lone Hollow to defend the claims against it in a single action would be in error, because a finding of a violation against one of the other Respondents would create an impermissible negative inference toward Lone Hollow on the claims alleged against it. In addition, Lone Hollow will be forced to spend time and resources to the proceedings involving Count I-IV and Counts VI-VIII, even though Lone Hollow is in no way involved or implicated in said Counts. Severance of Count V will protect Lone Hollow from being materially prejudiced in this matter.

C. Severing the claim against Lone Hollow saves time and resources.

The Board does not sever claims when severing results in multiple hearings on the same violations concerning the same parties and the same facility. *See People v. Cmty. Landfill Co., Inc.*, PCB 03-191 (Mar. 15, 2007). However, the Board generally allows claims to be severed when severing does not require duplicitous effort on the part of the parties involved. *See People v. Clark Oil & Refining Corp.*, PCB 93-250 (Feb. 3, 1994). Courts recognize that cases should be

severed when "disparate issues would make a joint trial overly complicated." *Cook v. Gen. Elec. Co.*, 144 Ill. 2d 548, 555 (1992).

Severance will avoid confusion of the record and serve the convenient, expeditious and complete determination of the issues, in a manner that protects the rights of the livestock operation in defending itself and the obligation of the State in proving evidence sufficient to find a violation of the Act. The State should have filed each of these claims separately in the first instance, as prosecutorial discretion cannot obfuscate due process.

As stated above, the Complaint alleges violations of the Act at eight separate facilities, owned by eight separate companies. Each count in the Complaint contains allegations of wholly separate and distinct violations that occurred at eight separate facilities – all at different times. The creation of a separate docket for each Respondent does not require duplicitous effort on the part of the Attorney General and the Board. Each count of the Complaint contains facts alleging different violations concerning different parties at different facilities. Allowing severance is beneficial because it will narrow the disputed issues before the Board. Severance also gives the parties the incentive and opportunity to settle each of their claims individually.

Thus, the Board should sever Count V so that a facility-specific determination can appropriately be made.

WHEREFORE, Respondent, LONE HOLLOW, LLC, prays for the Board to grant its Motion and sever Count V of the State's Complaint from the remaining counts, and requiring the State to bring Count V as a separate action, and for any other and further relief that the Board deems just and proper.

LONE HOLLOW, LLC, Respondent,

By: _____
One of Its Attorneys

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