

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 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. )

PCB NO. 10-84  
(Enforcement)

**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 LITTLE TIMBER, LLC'S ANSWER TO

**THIS FILING SUBMITTED ON RECYCLED PAPER**

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

Respectfully submitted,

LITTLE TIMBER, 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 LITTLE TIMBER, LLC'S ANSWER TO COMPLAINANT'S SECOND AMENDED COMPLAINT and RESPONDENT LITTLE TIMBER, 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  
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Springfield, Illinois 62706

Claire A. Manning, Esq.  
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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, LLC, an Illinois limited	)	
liability corporation, LONE HOLLOW,	)	
LLC, an Illinois limited liability corporation,	)	
TIMBERLINE, LLC, an Illinois limited	)	
liability corporation, PRAIRIE STATE	)	
GILTS, LTD, an Illinois corporation,	)	
LITTLE TIMBER, LLC, an Illinois	)	
limited liability corporation,	)	
	)	
Respondents.	)	

**LITTLE TIMBER, LLC'S ANSWER  
TO COMPLAINANT'S SECOND AMENDED COMPLAINT**

NOW COMES Respondent, LITTLE TIMBER, LLC, an Illinois limited liability company (hereinafter referred to as "Little Timber"), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 103.204(d), and hereby submits its Answer and Affirmative Defenses 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, Little Timber 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 Little Timber, Little Timber denies the same.

**COUNT II**

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

**ANSWER:** With respect to paragraphs 1-41 of Count II, Little Timber 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 Little Timber, Little Timber denies the same.

**COUNT III**

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

**ANSWER:** With respect to paragraphs 1-39 of Count III, Little Timber 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 Little Timber, Little Timber denies the same.

**COUNT IV**

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

**ANSWER:** With respect to paragraphs 1-38 of Count IV, Little Timber 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 Little Timber, Little Timber denies the same.



**COUNT V**

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

**ANSWER:** With respect to paragraphs 1-39 of Count V, Little Timber 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 Little Timber, Little Timber denies the same.

**COUNT VI**

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

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

**COUNT VII**

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

**ANSWER:** With respect to paragraphs 1-44 of Count VII, Little Timber 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 Little Timber, Little Timber denies the same.

**COUNT VIII**

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

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

**ANSWER:** Little Timber admits the allegations of 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:** Little Timber admits the allegations of paragraph 2.

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

**ANSWER:** Little Timber admits the allegations of paragraph 3.

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

**ANSWER:** Little Timber admits the allegations in paragraph 4 except the last

sentence. Little Timber has insufficient knowledge to either admit or deny the allegations in the last sentence of paragraph 4, and therefore denies the same.

5. The Little Timber facility farrows approximately 1200 pigs per week. At any given time there are approximately 3000 pigs at the site, of which 2,600 are sows each weighing over 55 pounds. There are four total confinement buildings and an office. The buildings include farrowing, breeding, gestation and gilt development units. The swine buildings are equipped with shallow manure storage pits and a pull plug drain system. Swine waste accumulates in the pits. At some frequency, plugs are removed from the shallow pits and the waste drains by gravity to a single cell anaerobic lagoon.

**ANSWER:** Little Timber admits the allegations of paragraph 5. Little Timber affirmatively states that there are currently five confinement buildings.

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

**ANSWER:** Little Timber admits the allegations of paragraph 6.

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

**ANSWER:** Little Timber admits that, in accordance with an agreement between it and Respondent PSM, PSM provides management services to Little Timber for the Little Timber facility. Little Timber denies the remaining factual allegations of paragraph 7.

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

8. 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 8 speaks for itself and requires no response.

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

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

10. 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 10 speaks for itself and requires no response.

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 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 11 speaks for itself and requires no response.

12. 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 12 speaks for itself and requires no response.

13. 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 13 speaks for itself and requires no response.

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 confined:

\* \* \*

2,500 Swine weighing over 55 pounds

\* \* \*

1,000 Animal units

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

15. 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 15 speaks for itself and requires no response.

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 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 16 speaks for itself and requires no response.

17. 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 17 speaks for itself and requires no response.

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.

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

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 any portion of the lot or facility.

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

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.

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

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.

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

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,

\* \* \*

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

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 with manure or set aside for disposal.

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

24. 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 24 speaks for itself and requires no response.

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

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

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 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 26 speaks for itself and requires no response.

27. 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 27 speaks for itself and requires no response.

28. 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 28 speaks for itself and requires no response.

29. Section 302.203 of the Board's water pollution regulations, 35 Ill. Adm.

Code 302.203, states, in pertinent part:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

**ANSWER:** The regulatory section cited in paragraph 29 speaks for itself and requires no response.

30. Section 620.301 of the Board's Groundwater Quality Regulations, 35 Ill.

Adm. Code 620.301, provides in pertinent part:

General Prohibition Against Use Impairment of Resource Groundwater

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

**ANSWER:** The regulatory section cited in paragraph 30 speaks for itself and requires no response.

31. Section 620.405 of the Board's Groundwater Quality Regulations, 35 Ill.

Adm. Code 620.405, provides in pertinent part:

Section 620.405

General Prohibitions Against Violations of Groundwater Quality Standards

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

**ANSWER:** The regulatory section cited in paragraph 31 speaks for itself and



requires no response.

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

Section 620,410

Groundwater Quality Standards for Class I: Potable Resource Groundwater

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

Constituent	Units	Standard
	* * *	
Nitrate as N	mg/L	10.0

**ANSWER:** The regulatory section cited in paragraph 32 speaks for itself and requires no response.

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

and other potential structural damage.

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 33 with regard to what an Illinois EPA inspector “observed” or “advised” during his or her inspection that allegedly occurred on June 1, 2004, and therefore denies these allegations. Little Timber admits the allegations in the last sentence of paragraph 33 with regard to the Complainant’s alleged purposes of regular mowing of the lagoon berms.

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

**ANSWER:** Little Timber admits the allegations in the last sentence of paragraph 34. Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 34 with regard to what an Illinois EPA inspector “observed” during his or her inspection that allegedly occurred on June 1, 2004, and therefore denies these allegations. Moreover, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 34 with regard to the hydrological characteristics and

identifications of the bodies of water described in paragraph 34, and therefore denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 35 with regard to what an Illinois EPA inspector observed or collected during his or her inspection that allegedly occurred on June 1, 2004, and therefore denies these allegations. Moreover, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 35 with regard to the hydrological characteristics and identifications of the bodies of water described in paragraph 35, and

therefore denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 36 with regard to what an Illinois EPA inspector "observed" during his or her inspection that allegedly occurred on June 1, 2004, and therefore denies these allegations. Moreover, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 36 with regard to the wind direction at the time of the inspection, and therefore denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 37 with regard to when Illinois EPA sent a Noncompliance Advisory Letter to PSM, the contents of that letter, or the contents of any response from PSM to the same. Moreover, Little Timber has insufficient knowledge to either admit or

deny the allegations of paragraph 37 with regard to the referenced well data, and therefore denies the same. Finally, the last sentence of paragraph 37 regarding groundwater uses and classification states a legal conclusion that requires no response.

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

**ANSWER:** Little Timber admits the allegations of paragraph 38.

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

**ANSWER:** Little Timber admits that there was an inspection on the date referenced in paragraph 39. Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 39 with regard to what an Illinois EPA inspector observed or advised during his or her inspection on February 21, 2007, and therefore

denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 40 with regard to what an Illinois EPA inspector observed or collected during his or her inspection that allegedly occurred on February 21, 2007, and therefore denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 41 with regard to what an Illinois EPA inspector observed or

collected during his or her inspection that allegedly occurred on August 24, 2007, and therefore denies these allegations. Moreover, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 41 with regard to the hydrological characteristics and identifications of the bodies of water described in paragraph 41, and therefore denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 42 with regard to what an Illinois EPA inspector observed during his or her inspection that allegedly occurred on August 24, 2007, and therefore denies these allegations.

43. At the time of the August 24, 2007 inspection, the Illinois EPA inspector collected a water sample from the waterway downstream of the dead swine burn site which was directly in the waterway downstream from the compost structure. The sample was collected from a low flow of a slightly turbid, light brown colored liquid with slight foam. The analytical results indicated the following parameter levels: TSS, 50 mg/l; fecal coliform, 20,000 per 100 ml. Another sample was collected directly down gradient from the compost structure. It was liquid collected from runoff from the dead swine compost structure. The liquid was turbid and dark colored. The analytical results indicated the following parameter levels: nitrate/nitrite, 51.2 mg/l; BOD, 17 mg/l; TSS, 33 mg/l; fecal coliform, 68,000 per 100 ml.

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the

allegations of paragraph 43 with regard to what an Illinois EPA inspector observed or collected during his or her inspection that allegedly occurred on August 24, 2007, and therefore denies these allegations.

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

**ANSWER:** Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 44 with regard to the hydrological characteristics and identifications of the bodies of water described in paragraph 44, and therefore denies these allegations. The final portion of paragraph 44 regarding discharges to waters of the United States is a legal conclusion that requires no response. To the extent that this final portion of paragraph 44 states any allegations of fact, Little Timber denies the same.

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

**ANSWER:** The allegations of paragraph 45 state legal conclusions that require no response. To the extent that paragraph 45 states any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 45 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 45 as to PSM.



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

**ANSWER:** The allegations of paragraph 46 state legal conclusions that require no response. To the extent that paragraph 46 states any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 46 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 46 as to PSM.

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

**ANSWER:** The allegations of paragraph 47 state legal conclusions that require no response. To the extent that paragraph 47 states any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 47 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 47 as to PSM.

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

**ANSWER:** The allegations of paragraph 48 state legal conclusions that require no response. To the extent that paragraph 48 states any allegations of fact, Little Timber

denies the same. To the extent that the allegations of paragraph 48 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 48 as to PSM.

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

**ANSWER:** The allegations of paragraph 49 state legal conclusions that require no response. To the extent that paragraph 49 states any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 49 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 49 as to PSM.

50. By causing or allowing the discharge of contaminants that resulted in turbid, discolored and odor conditions in the surface waters tributary to Middle Creek which flows into the LaMoine River, Respondents Little Timber and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

**ANSWER:** The allegations of paragraph 50 state legal conclusions that require no response. To the extent that paragraph 50 states any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 50 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 50 as to PSM.

51. At the time of June 1, 2004, February 23, 2007 and August 24, 2007

discharges to surface waters tributary to Middle Creek, Respondents Little Timber and PSM did not have a NPDES permit for the High-Power facility, nor had the Respondents applied for one. The discharges from clean-out pipe, compost structure and burn site are point source discharges.

**ANSWER:** Little Timber admits the allegations of paragraph 51 solely with regard to the allegation that Little Timber did not have a NPDES permit for the High-Power facility. Little Timber affirmatively states that it is not required to have an NPDES permit for the High-Power facility, a facility that is neither owned nor operated by Little Timber. Furthermore, to the extent that any allegations of paragraph 51 could be construed as to alleging that Little Timber did not have an NPDES permit for its own Little Timber facility, Little Timber affirmatively states that it does not believe it was required to have an NPDES permit on any of the dates alleged in paragraph 51. The remaining allegations of paragraph 51 state legal conclusions that require no response. To the extent that the remaining allegations of paragraph 51 state any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 51 are directed toward PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 51 as to PSM.

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

**ANSWER:** The allegations of paragraph 52 state legal conclusions that require no response. To the extent that paragraph 52 states any allegations of fact, Little Timber denies the same. To the extent that the allegations of paragraph 52 are directed toward

PSM, Little Timber has insufficient knowledge to either admit or deny the allegations of paragraph 52 as to PSM.

**PRAYER FOR RELIEF**

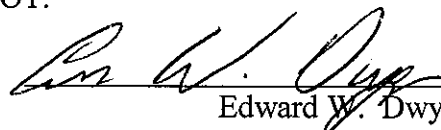
WHEREFORE, Respondent, LITTLE TIMBER, LLC, asserts that Complainant is not entitled to the relief sought by Count VIII of its Complaint, and prays that Complainant take nothing by Count VIII of its Complaint, that the Board enter judgment in favor of LITTLE TIMBER, LLC as to Count VIII of Complainant's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

STATE OF ILLINOIS                    )  
                                                  ) SS  
COUNTY OF SANGAMON            )

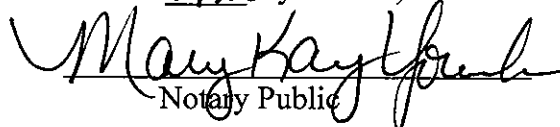
Edward W. Dwyer on oath, deposes and states as follows:

1.       That I am one of the attorneys representing the party on whose behalf this Answer was prepared.
  
2.       That the Answer to Count VIII in paragraphs 4, 33-37, and 39-52 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 17<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Notary Public



**LITTLE TIMBER, LLC 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 VIII is merely brought pursuant to Sections 42(d) and (e) of the Act. Accordingly, Count VIII fails and must be dismissed due to the Complainant's failure to comply with Section 31 of the Act.
2. Count VIII fails to allege facts sufficient to support a finding that Little Timber is discharging, and thus, required to obtain an NPDES permit. The Complainant's allegations in Count VIII that Little Timber is required to apply for an NPDES permit is based solely upon isolated events. Because these isolated events are insufficient to establish that Little Timber is discharging in a manner sufficient to require an NPDES permit, Little Timber is not required to apply for an NPDES permit.
3. Little Timber 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, LITTLE TIMBER, LLC, by its attorneys, HODGE DWYER & DRIVER, prays that Complainant take nothing by way of its Complaint, and that the Board award LITTLE TIMBER, LLC all relief just and proper in the premises.

Respectfully submitted,

LITTLE TIMBER, LLC

Respondent,

Dated: June 17, 2013

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

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HOGS:004/Individual Farm Filings/Little Timber/Little Timber Answer and Affirmative Defenses to Second Amended Complaint - 6 15 13

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 LITTLE TIMBER, LLC'S MOTION TO SEVER**

NOW COMES Respondent, LITTLE TIMBER, LLC ("Respondent" or "Little Timber"), by and through its attorneys, HODGE DWYER & DRIVER, and hereby moves the Illinois Pollution Control Board ("Board") to sever the claims in Count VIII of the Complaint filed in the above enforcement matter. In support of its Motion, Little Timber 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, Little Timber has determined that the filing of this Motion to Sever is necessary.

**B. Count VIII Against Little Timber 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. Little Timber is the owner of the Little Timber CAFO, which is located in Hancock County, Illinois.

8. Two other CAFOs which are subjects of the Complaint are located in Hancock County (Counts II and V); three other CAFOs are located in Schuyler County (Counts I, VI, and VII); 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 Little Timber relate only to the Little Timber CAFO and are found in Count VIII of the Complaint. The allegations against Little Timber are based on a June 1, 2004 inspection by the Illinois Environmental Protection Agency ("IEPA"). Complaint at 46-47. On June 23, 2004, IEPA issued a non-compliance advisory letter to Respondent Professional Swine Management regarding observations made at the time of the June 1, 2004 inspection. Complaint at 47. The additional allegations against Little Timber are based on inspections conducted on February 21, 2007 and August 24, 2007. Complaint at 48-49. The Complaint does not allege, and Little Timber has never received, a Violation Notice regarding the alleged violations.

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

12. The only common issue between Count VIII and the other counts of the Complaint is the allegation that Respondent, Professional Swine Management, LLC, manages the Little Timber CAFO as well as the CAFOs which are the subjects of Counts I through VII 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 Little Timber with its claims against the multiple, unrelated Respondents named in Counts I through VII 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 Little Timber arises from an entirely separate and distinct transaction and set of facts than the causes of action set forth in Counts I through VII 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 Little Timber to participate in the proceedings and hearing on Counts I through VII of the Complaint, in which Little Timber has no interest, will substantially prejudice Little Timber. In particular, Little Timber will be forced to devote significant time and resources, including litigation costs, to the proceedings involving Counts I through VII, which do not, in any way, involve either Little Timber or the Little Timber CAFO. For example, if Count VIII is not severed from the remaining counts, Little Timber could be forced to participate in depositions, discovery, and hearings that are completely unrelated to the allegations of Count VIII.<sup>1</sup>

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

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<sup>1</sup> Indeed, the State has already served discovery requests that are very broad in nature and not tailored to the claims in Count VIII against Little Timber.

23. The joinder of Little Timber with the multiple, unrelated Respondents named in Counts I through VII of the Complaint violates the rules governing joinder of defendants set forth in the Illinois Code of Civil Procedure (735 ILCS 5/2-405).<sup>2</sup>

24. Severing Count VIII from the remaining counts of the Complaint, and requiring the State to include the allegations of Count VIII in a separate complaint will expedite the resolution of claims involving Little Timber and the Little Timber CAFO, and will prevent the inconvenience and prejudice to Little Timber that will result from requiring it to participate in the discovery, proceedings, and hearing on Counts I through VII 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 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 VIII from the remaining counts of the Complaint, and requiring the State to include the allegations of Count VIII in a separate complaint will allow the Board to hold any hearing involving the allegations of Count VIII in Hancock 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 Little Timber and any other Respondent are not circumscribed by being improperly joined in this case.

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<sup>2</sup> 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.

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

Respectfully submitted,

LITTLE TIMBER, LLC,

Respondent,

Dated: June 17, 2013

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

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