BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant, vs. 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; and TWIN VALLEY PUMPING, INC., Respondents.	)	PCB No. 2010-084 (Enforcement)

NOTICE OF FILING

To:

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board via electronic mail a Joint Motion to Strike Unsupported and/or Untrue Factual Assertions in Complainant's Combined Response to Respondents' Motion to Sever, a copy of which is herewith served upon the hearing officer and upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of the Joint Motion to Strike Unsupported and/or Untrue Factual Assertions in Complainant's Combined Response to Respondents' Motion to Sever were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys and to said hearing officer with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 27th day of August, 2013.

PROFESSIONAL SWINE MANAGEMENT, LLC.
One of the Respondents

By: MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Joel A. Benoit
Joel A. Benoit

Date: August 27. 2013

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THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
vs.	)	PCB No. 2010-084
	)	(Enforcement)
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; and TWIN VALLEY PUMPING, INC., Respondents.	)	

Joint Motion to Strike Unsupported and/or Untrue Factual Assertions in Complainant's Combined Response to Respondents' Motion to Sever

NOW COME Respondents Professional Swine Management, LLC , Hilltop View, LLC, High-Power Pork, LLC, Eagle Point Farms, LLC, Lone Hollow, LLC, Timberline, LLC, Prairie State Gilts, LTD, and Little Timber, LLC, by and through their undersigned attorneys, and for their Joint Motion to Strike Unsupported and/or Untrue Factual Assertions in Complainant's Combined Response to Respondents' Motion to Sever, state as follows:

I. Introduction

The pending Motions to Sever were filed by the Respondents who own the respective farms that are the subject of this enforcement action. Respondent Professional Swine Management, LLC (PSM) filed a response to the pending motions stating that it did not oppose the pending motions and that it believes, based on applicable law and facts, that the Board should grant the motions.

Despite PSM not having filed a motion to sever, Complainant's Response appears to suggest a Board finding that PSM's exercise of control over the farms is somehow sufficient to overcome any prejudice asserted by the individual farms as to their own right to be heard in a separate proceeding. In asserting such position, Complainant purports to require a Board finding that the farms are each part of a large, PSM organization whose purpose is to raise PSM owned swine and whose role is to exercise unfettered management and operational control over the individual farms. Yet, such is simply not the case, and facts leading to any such conclusion have not been set forth in any complaint filed in this proceeding.

As Complainant's Response attempts to set forth new facts which have not been subject to answer by the Respondents and which, quite simply, are either not true or have no evidentiary support, through this Motion, Respondents request that they be stricken from Complainant's Response.

II. Evidentiary Standard

Respondents have located no rule specifically stating that facts presented to an Illinois tribunal concerning a motion to sever must be supported by any particular evidence. Surely something more than the expediency of the bare assertions of facts, which is what Complainant's Response attempts, and which constitutes no evidence, is necessary. Rules regarding evidence necessary to support factual assertions in other types of motions are instructive.

In regard to motions for summary judgment, the undisputed, supporting facts relied upon must be established via the pleadings, deposition transcripts, admissions, and affidavits. 735 ILCS 5/2-1005. Illinois Supreme Court Rule 191(a) sets forth the requirements for affidavits supporting motions for summary judgment and further provides that these same requirements apply to affidavits filed in regard to Section 2-619 motions to dismiss based on affirmative matter and to motions contesting jurisdiction over the person.

Respondents believe that it is common practice before the Board and Illinois circuit courts that facts, if they are to be considered in regard to motions to sever, must be supported by competent evidence in the same manner as facts relied upon to support motions for summary judgment. Respondents request that the Board declare that this is the standard.

III. Unsupported Facts Asserted in Complainant's Response Should Be Stricken.

Insofar as the relationship between PSM and any of the farms are concerned, the Second Amended Complaint contains only a few, vague, factual allegations. Count I alleges that "PSM manages the site and all aspects of Hilltop's operation." Counts II-VIII allege that "PSM manages [the farm's] operations and the physical site." The words "manage" and "operations" can have many meanings: some broad, some narrow, and some nuanced. In its Answer, PSM admits that, pursuant to a contract with each farm, it provided certain services for the farm relative to the farm's operations. The individual farm's Answers are in accord with PSM's Answer. Essentially, each acknowledge that, pursuant to contract, PSM provides services to the farms.

Despite the limited nature of the alleged and admitted facts in the pleadings, the Complainant's Response contains the following litany of unsupported factual assertions:

(1) The farms are on PSM's organization chart (page 4);

(2) The farms house swine owned by PSM (page 4);

(3) A PSM employee is tasked with environmental concerns at all of the farms (page 4);

(4) All IEPA involvement with the farms is through PSM (page 4);

(5) PSM owns the hogs at the farms (page 4);

(6) The farms exist as the form and function of PSM (page 4);

(7) There are repeat violations between the facilities (page 5);

(8) All farms were considered part of PSM's organizational structure (page 6);

(9) The farms are PSM's facility LLCs (page 7);

(10) PSM has created a convoluted business organization in the integration of the farms into its swine operation (page 7-8);

(11) The farms are part of an overall PSM business organization (page 9);

(12) The farms are included in the organizational structure of PSM (page 9);

(13) The farms house hogs belonging to PSM (page 9);

(14) The farms are not independent (page 9);

(15) All of the farms are part of PSM's umbrella swine production operation (page 11);

(16) PSM houses hogs in the facilities and includes them (the facilities and the hogs) in its organizational chart (page 11);

(17) PSM places its hog in the farms' facilities (page 11); and

(18) The factual basis of the alleged violations are the same (page 14).

Additionally, as to the Complainant's Response repeatedly asserting that the farms are under the operation, management, and control of PSM, as noted earlier, these allegations are only supported to the extent that PSM and the farms have admitted that PSM provides certain services to the farms pursuant to separate contracts between PSM and each farm.

Accordingly, because all of these unsupported facts are not properly before the Board, Respondents request that they be stricken from Complainant's Response.

IV. Core Facts Also Subject To Striking Because Untrue.

Core facts relied upon by the Complainant in its Response should not only be stricken because they are not supported by any evidence before the Board, but also because they are simply untrue. As shown by the attached Affidavit of William Hollis, the true facts regarding the relationships between PSM and each farm during all times relevant to any complaint filed in this enforcement proceeding action are as follows:

(1) PSM did not own any of the swine raised at the farms;

(2) PSM did not have any ownership interest in any of the farms;

(3) PSM did not have an ownership interest in the farms' assets, real or personal;

(4) Each of the farms is a legally constituted business under Illinois law; and

(5) All services PSM provided to the farms relative to raising swine have been pursuant to a separate contract entered into with each farm.

Because these facts are properly supported by affidavit, the Respondents request that they be considered during the Board's resolution of the pending motions to sever, and that any contrary and unsupported facts in Complainant's Response be stricken by the Board and disregarded.

V. Conclusion

For the reasons stated herein, Respondents pray that the Board grant this Motion and strike and disregard all unsupported and/or untrue factual allegations identified herein from Complainant's Combined Response to Respondents' Motions to Sever.

Respectfully submitted.

PROFESSIONAL SWINE MANAGEMENT, LLC,

By: MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Joel A. Benoit
Joel A. Benoit

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HILLTOP VIEW, LLC, EAGLE POINT FARMS, LLC, WILDCAT FARMS, LLC, TIMBERLINE, LLC, and LITTLE TIMBER, LLC,

By: HODGE DWYER & DRIVER

By: /s/ Edward W. Dwyer
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PRAIRIE STATE GILTS, LTD, LONE HOLLOW, LLC, and HIGH POWER PORK, LLC

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By: /s/ Claire A. Manning
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AFFIDAVIT

I, William Hollis, an adult resident of Hancock County, State of Illinois, if sworn as a witness, am competent to testify to the following facts:

1. I am one of the owners of Professional Swine Management, LLC, (PSM) and the vice president of its board.

2. I have read all of the complaints filed in the Illinois Pollution Control Board enforcement proceeding PCB No. 10-84.

3. I have knowledge spanning all time periods mentioned in the complaints filed in PCB No. 10-84 and up to and including the present day (herein "the relevant time period") regarding PSM's assets and its business dealings with all of the farms which have ever been named as a respondent in PCB No. 10-84 (herein the "respondent farms").

4. During the relevant time period, PSM has never owned any interest in any of the respondent farms; this includes no ownership in the farm LLCs themselves and no ownership in the respondent farms' real or personal property.

5. During the relevant time period, PSM has never owned any of the swine housed at any of the respondent farms.

6. During the relevant time period, all services PSM has provided to the respondent farms relative to raising livestock have been pursuant to a separate contract entered into with each respondent farm.

7. During the relevant time period, all of the respondent farms have been legally constituted business entities under Illinois law.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: August 26, 2013

William Hollis

\\Terry\Mapa\Professional Swine Management\Hollis Affidavit.wpd