

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No.
)	(Enforcement)
SCOTT DEAN d/b/a SCOTT DEAN SWINE)	
FARM, and HOOLIS SHAFER d/b/a HOLLIS)	
SHAFER SWINE FARM,)	
)	
Respondents.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on December 4, 2017, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, Complaint, Stipulation and Proposal of Settlement and Motion for Relief from Hearing Requirement, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

By: /s/BRIAN J. CLAPPIER
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Dated: December 4, 2017

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Complainant,)	
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v.)	PCB NO.
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SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM, and HOLLIS SHAFER d/b/a HOLLIS SHAFER SWINE FARM,)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM and HOLLIS SHAFER d/b/a HOLLIS SHAFER SWINE FARM, as follows:

COUNT I
WATER POLLUTION FROM DEAN FACILITY BY RESPONDENT DEAN

1. This Count of the Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2016).

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 (2016), and charged, inter alia, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Count of the Complaint is brought against Respondent Scott Dean d/b/a Scott Dean Swine Farm ("Respondent Dean") pursuant to Section 31 of the Act, 415 ILCS 5/31

(2016), after providing Respondent Dean with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent Dean owns a swine wean to finish facility located at 2222 East Highway 24, Astoria, Fulton County, Illinois, 61501 ("Dean Facility"). The legal description of the Dean Facility is NW ¼ Section 28, T3N, R1E (Astoria Township). Respondent Dean does business under the name Scott Dean Swine Farm, which is an unincorporated entity.

5. At the time of the subject violations of the Act in this Complaint, the Dean Facility was composed of two total confinement swine buildings: the North and South Confinement Buildings. At the time of the subject violations of the Act in this Complaint, the South Building's capacity was 1,000 hogs and the North Building's capacity was 550 hogs. The livestock waste handling system consisted of 6-foot deep manure storage pits located directly beneath both buildings. The livestock waste was surface applied to crop fields on property Respondent Dean owns surrounding the Dean Facility.

6. On dates prior to August 13, 2012, Hollis Shafer d/b/a Hollis Shafer Swine Farm ("Respondent Shafer") owned the swine at the Dean Facility. Respondent Shafer leased the North and South Confinement Buildings from Respondent Dean, beginning on January 1, 2011 and ending December 31, 2014. At the time of the subject violations of the Act in this Complaint, Respondent Shafer did business under the name Hollis Shafer Swine Farm, which was an unincorporated entity.

7. Win Production, LLC ("Win Production") is an Illinois limited liability company in good standing. Its registered agent is Brian Bradshaw and the principal office is 46619 County Highway 2, P.O. Box 3, Griggsville, Illinois, 62340.

8. The managers of Win Production are Brian Bradshaw, Todd Bradshaw, Hollis Shafer, and Eric Kunzeman.

9. On a date or dates better known to Respondents, Respondent Dean transferred the lease for the North and South Confinement Buildings at the Dean Facility from Hollis Shafer to Win Production. Upon information and belief, Win Production currently utilizes the South Building as an isolation barn, and allegedly maintains a 600-head maximum population consisting of a variety of animal sizes.

10. Section 3.165 of the Act, 415 ILCS 5/3.165 (2016), contains the following definition:

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

11. Section 3.545 of the Act, 415 ILCS 5/3.545 (2016), contains 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 water 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.

12. Section 3.550 of the Act, 415 ILCS 5/3.550 (2016), contains 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.

13. Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), provides, in pertinent part, as follows:

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;

14. On March 30, 2011, the Illinois EPA conducted an inspection at the Dean Facility in response to a citizen complaint regarding land application of liquid swine manure.

15. During the March 30, 2011 Illinois EPA inspection, Respondent Dean admitted that the Dean Facility was limited in its ability to store manure. The size of the manure storage pits did not allow for adequate storage capacity.

16. At the time of the March 30, 2011 inspection, Respondent Dean had recently surface land applied liquid swine manure on fields Respondent Dean owned, surrounding the Dean Facility.

Application in Field 1

17. On a date or dates better known to Respondents, Respondent Dean surface land applied swine manure to a field that Respondent Dean owned, located in the SW ¼, Section 29, T3N, R1E (Astoria Township) in Fulton County ("Field 1").

18. At the time of the March 30, 2011 inspection, there was a strong swine manure odor at Field 1 near Timothy Lane just south of U.S. Route 24. Respondent Dean had recently applied liquid swine manure to the surface of the Field 1.

19. At the time of the March 30, 2011 inspection, there was a thick accumulation of manure on the surface of the northwest corner of Field 1. A significant portion of Field 1 drains to the northwest corner. A severely eroded channel existed at the northwest corner of Field 1.

20. On a date or dates prior to the March 30, 2011 inspection, Respondent Dean had surface land applied liquid swine manure to the surface of Field 1 within 100 yards of a residence located on Timothy Lane.

21. At the severely eroded channel that existed at the northwest corner of Field 1, drainage moves first to an unnamed tributary of the Gaines Branch of Sugar Creek. The water then flows to the Gaines Branch of Sugar Creek, and then to Sugar Creek. Sugar Creek is a tributary of the Illinois River.

22. The unnamed tributary of the Gaines Branch of Sugar Creek is identified as an intermittent stream on the USGS topographical map. The Gaines Branch of Sugar Creek is identified as an intermittent creek on the USGS topographical map. Sugar Creek is identified as a perennial stream on the USGS topographical map. There is a surface hydrological connection between the unnamed tributary of the Gaines Branch and Sugar Creek.

23. The existence of the severely eroded channel is evidence that surface runoff had moved off Field 1 and into the unnamed tributary of the Gaines Branch of Sugar Creek.

24. Respondent Dean's surface land application of liquid swine manure to Field 1 impacted or threatened to impact the unnamed tributary of the Gaines Branch of Sugar Creek. The unnamed tributary of the Gaines Branch, the Gaines Branch of Sugar Creek, and Sugar Creek are all "waters" of the State of Illinois within the meaning of Section 3.550 of the Act, 415 ILCS 5/3.550 (2016), and Board Regulations promulgated thereunder, and also are all "waters of the United States" within the meaning of the Clean Water Act, 33 U.S.C. § 1251, and Board Agriculture Related Pollution Regulations, 35 Ill. Adm. Code, Subtitle E. A discharge to the unnamed tributary of the Gaines Branch, which flowed into Sugar Creek, is a discharge to waters of the United States.

Application in Field 2

25. On a date or dates better known to Respondents, Respondent Dean surface land applied liquid swine manure on a field located in the NW ¼, Section 28, T3N, R1E (Astoria Township) in Fulton County (“Field 2”).

26. At the time of the March 30, 2011 inspection, Respondent Dean had recently applied liquid swine manure to the surface of Field 2. There was an established waterway, in an eroded condition, in Field 2 draining from north to south. Liquid swine manure had been applied to the established waterway channel in Field 2.

27. From the established waterway in Field 2, drainage moves into a ravine and at the base of the ravine is an unnamed tributary of the Harris Branch of Sugar Creek. The water flows from the unnamed tributary of Harris Branch into the Harris Branch of Sugar Creek. The Harris Branch of Sugar Creek flows south into Sugar Creek, which is a tributary of the Illinois River.

28. The surface land application of liquid swine manure over an established waterway that exists in Field 2 in an eroded condition is evidence that surface runoff, including surface applied waste, has moved off the field and into the Harris Branch of Sugar Creek.

29. Respondent Dean’s application of liquid swine manure to Field 2 impacted or threatened to impact the unnamed tributary of the Harris Branch of Sugar Creek. The unnamed tributary of the Harris Branch, the Harris Branch of Sugar Creek, and Sugar Creek are all “waters” of the State of Illinois within the meaning of Section 3.550 of the Act, 415 ILCS 5/3.550 (2016), and Board Regulations promulgated thereunder, and also are all “waters of the United States” within the meaning of the Clean Water Act, 33 U.S.C. § 1251, and Board Agriculture Related Pollution Regulations, 35 Ill. Adm. Code, Subtitle E. A discharge to the

unnamed tributary of the Harris Branch, which flowed into Sugar Creek, is a discharge to waters of the United States.

Two Discharges from the Manure Application Wagon at the Dean Facility

30. At the time of the March 30, 2011 inspection, there were two manure discharges of dried swine manure near the Dean Facility's North and South Confinement Buildings.

31. At the time of the March 30, 2011 inspection at the west side of the North Confinement Building, there was a manure discharge of dried swine manure which flowed into the ravine. There was a darkened path of dried swine manure beginning at the top of the ravine and leading down the embankment of the ravine and into the unnamed tributary of the Harris Branch of Sugar Creek.

32. At the time of the March 30, 2011 inspection, Respondent Dean's employee admitted to having cleaned out the manure application wagon at the top of the ravine on the west side of the North Confinement Building.

33. At the time of the March 30, 2011 inspection, the Illinois EPA inspector took a manure sample from the location of the discharge at the North Confinement Building. Analytical results indicated the following parameter levels: ammonia, 614 mg/L; Biochemical Oxygen Demand ("BOD"), 5,200 mg/l; Total Suspended Solids ("TSS") 11,200 mg/l.

34. At the time of the March 30, 2011 inspection, at the southwest side of the South Confinement Building, there was a manure discharge of dried swine manure which ran into the ravine. There was a darkened path of dried swine manure beginning at the top of the ravine and leading down the embankment of the ravine and into the unnamed tributary of the Harris Branch of Sugar Creek.

35. Following the inspection, Respondent Dean informed the Illinois EPA inspector that the discharge of manure at the southwest side of the South Confinement Building resulted from an employee that drained the manure application wagon at this location.

36. Drainage from the two manure application wagon discharge sites moves down the embankment of the ravine and into the unnamed tributary of the Harris Branch of Sugar Creek. The water flows from the unnamed tributary into the Harris Branch of Sugar Creek. The Harris Branch of Sugar Creek flows south into Sugar Creek, which is a tributary of the Illinois River.

37. Respondent Dean's drainage from the two manure application wagon discharge sites impacted or threatened to impact the unnamed tributary of the Harris Branch of Sugar Creek. A discharge to the unnamed tributary of the Harris Branch, which flowed into Sugar Creek, is a discharge to waters of the United States.

38. Swine manure is a contaminant, as defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2016).

39. Respondent Dean has caused, allowed or threatened the discharge of contaminants into waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards by land applying liquid swine manure onto Field 1 in a quantity and manner such that it caused or threatened to cause a discharge into the unnamed tributary of the Gaines Branch of Sugar Creek.

40. Respondent Dean has caused, allowed or threatened the discharge of contaminants into waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards by surface land applying liquid swine manure onto Field 2 in a quantity and manner such that it caused or threatened to cause discharges into the unnamed tributary of the Harris Branch of Sugar Creek.

41. By causing, allowing or threatening the surface land applications of liquid swine manure into waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, Respondent Dean has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

42. Respondent Dean has caused, allowed or threatened the discharge of contaminants into waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the discharges of liquid swine manure from the manure application wagon down the ravine embankment and into the unnamed tributary of the Harris Branch of Sugar Creek.

43. By causing, allowing or threatening the discharge of liquid swine manure from a manure application wagon into waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, Respondent Dean has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondent, SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM:

A. Authorizing a hearing in this matter at which time Respondent Dean will be required to answer the allegations herein;

B. Finding that Respondent Dean has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), as alleged herein;

C. Ordering Respondent Dean to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent Dean for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter; and pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2016), imposing upon Respondent Dean for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation;

E. Awarding to Complainant all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II
WATER POLLUTION FROM DEAN FACILITY BY RESPONDENT SHAFER

1. This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion.

2-38. Complainant re-alleges and incorporates by reference herein paragraphs 2 and 4 through 39 of Count I as paragraphs 2 through 38 of this Count II.

39. On dates including the time of the March 30, 2011 inspection, Respondent Shafer owned the swine housed in the North and South Confinement Buildings of the Dean Facility. Therefore, Respondent Shafer owned and controlled a portion of the operation that caused or allowed the discharge of swine manure, the source of which were Respondent Shafer's swine, and thereby Respondent Shafer caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards.

40. By causing, allowing or threatening the discharge of contaminants into waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, Respondent Shafer has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondent HOLLIS SHAFER d/b/a HOLLIS SHAFER SWINE FARM:

A. Authorizing a hearing in this matter at which time Respondent Shafer will be required to answer the allegations herein;

B. Finding that Respondent Shafer has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), as alleged herein;

C. Ordering Respondent Shafer to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent Shafer for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter; and pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2016), imposing upon Respondent Shafer for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT III
WATER POLLUTION HAZARD AT DEAN FACILITY BY RESPONDENT DEAN

1-39. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 39 of Count I as paragraphs 1 through 39 of this Count III.

40. Section 12(d) of the Act, 415 ILCS 5/12(d) (2016), provides, in pertinent part, as follows:

No person shall:

* * * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

41. Respondent Dean has caused or allowed liquid swine manure to be deposited upon the land through the surface application of manure in such a place and manner as to create a water pollution hazard through its proximity to the unnamed tributaries to the Harris Branch of Sugar Creek and the Gaines Branch of Sugar Creek.

42. By depositing liquid swine manure upon the land through the surface application of manure in such a place and manner as to create a water pollution hazard, Respondent Dean has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016).

43. Respondent Dean has caused or allowed liquid swine manure to be deposited upon the land through discharges from manure application wagons in such a place and manner as to create a water pollution hazard through their proximity to the unnamed tributary of the Harris Branch of Sugar Creek.

44. By depositing liquid swine manure upon the land through discharges from manure application wagon in such a place and manner as to create a water pollution hazard, Respondent Dean has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondent SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM:

- A. Authorizing a hearing in this matter at which time Respondent Dean will be required to answer the allegations herein;
- B. Finding that Respondent Dean has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016), as alleged herein;
- C. Ordering Respondent Dean to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2016);
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent Dean for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter; and pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2016), imposing upon Respondent Dean for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT IV
NPDES VIOLATIONS AT DEAN FACILITY BY RESPONDENT DEAN

1-39. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 39 of Count I as paragraphs 1 through 39 of this Count IV.

40. Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), provides as follows:

No person shall:

* * * *

- (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 discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

41. At the time of the March 30, 2011 inspection, Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provided¹ as follows:

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.

42. At the time of the March 30, 2011 inspection, Section 502.104 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.104, provided² as follows:

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:

Number of Animals

Kind of Animals

* * *

* * *

750

Swine weighing over 55 pounds

¹ On August 11, 2014, Section 309.102 of the Board's Agricultural Related Pollution Regulations was amended.

² On August 11, 2014, Section 502.104 of the Board's Agricultural Related Pollution Regulations was amended.

* * *

* * *

300

Animal Units

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

43. At the time of the March 30, 2011 inspection, Section 502.106 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.106, provided³ as follows:

- (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 device; or
 - (2) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

³ On August 11, 2014, Section 502.106 of the Board's Agricultural Related Pollution Regulations was amended.

44. As set forth in Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), the state CAFO NPDES program is to be based on the requirements of the federal program. Thus, the underlying federal regulations are set forth herein to establish that the allegations are based on both the existing state and federal regulations.

45. 40 C.F.R. § 122.23(a) provides, in pertinent part, as follows:

§122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

- (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.

46. 40 C.F.R. § 122.23(b)(1) and (2) provide, in pertinent part, as follows:

(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.
- (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 . . .

* * * *

47. 40 C.F.R. § 122.23(b)(5) provides, in pertinent part, as follows:

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

48. 40 C.F.R. § 122.23(b)(6) provides, in pertinent part, as follows:

- (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)(i) 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 device; or

49. 40 C.F.R. 122.23(c) provides, in pertinent part, as follows:

- (c) How may an AFO be designated as a CAFO? The appropriate authority (i.e. State Director or Regional Administrator, or both, as specified in paragraph (c) (1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.

* * * *

- (2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:
 - (i) The size of the AFO and the amount of wastes reaching waters of the United States;
 - (ii) The location of the AFO relative to waters of the United States;
 - (iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

- (iv) The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
 - (v) Other relevant factors.
- (3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:
- (i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or
 - (ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

50. At the time of the March 30, 2011 inspection, 40 C.F.R. § 122.23(d)(1) provided, in pertinent part, as follows:

- (d) NPDES permit authorization.--
 - (1) Permit Requirement. The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Specifically, 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. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.

51. 40 C.F.R. § 122.23(e) provides, in pertinent part, as follows:

- (e) Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, litter or process

wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements....

52. At the time of the March 30, 2011 inspection and at times better known to Respondent Dean, the Dean Facility was a Medium CAFO, as defined by 40 C.F.R. § 122.23(b)(6).

53. The land application of liquid swine manure onto agricultural land in such a place and manner that it is allowed to runoff through eroded channels is a point source of discharge.

54. The discharge of liquid swine manure from the manure application wagon is a point source of discharge.

55. At no time prior to the discharges observed by the Illinois EPA inspector on March 30, 2011 did Respondent Dean have or apply for NPDES permit coverage for point source discharges from the Dean Facility.

56. The land application of livestock waste on Fields 1 and 2 observed by the Illinois EPA inspector on March 30, 2011 occurred on land in areas at the Dean Facility that drained to the unnamed tributary of Harris Branch of Sugar Creek and the unnamed tributary of Gaines Branch of Sugar Creek. Sugar Creek is a perennial stream tributary of the Illinois River. The unnamed tributary of Harris Branch of Sugar Creek, the unnamed tributary of Gaines Branch of Sugar Creek, Harris Branch of Sugar Creek, Gaines Branch of Sugar Creek, and Sugar Creek are waters of the United States. As such, the land application of livestock waste existed on land that discharged to waters of the United States.

57. The two discharges and deposits of livestock waste from the manure application wagon observed by the Illinois EPA inspector on March 30, 2011 occurred on the land in areas at the Dean Facility that drained to the unnamed tributary of Harris Branch of Sugar Creek. As

such, the two discharges and deposits of livestock waste from the manure application wagon existed on the land that discharged to waters of the United States.

58. By causing or allowing the discharge of livestock waste as a result of the land application of manure without NPDES permit coverage, Respondent Dean has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), and 35 Ill. Adm. Code 309.102(a).

59. By causing or allowing the discharge of livestock waste as a result of the discharge of the manure application wagon without NPDES permit coverage, Respondent Dean violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), and 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondent, SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM:

A. Authorizing a hearing in this matter at which time Respondent Dean will be required to answer the allegations herein;

B. Finding that Respondent Dean has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), and Section 309.102 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), as alleged herein;

C. Ordering Respondent Dean to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent Dean for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars

(\$10,000) for each day during which each such violation has continued thereafter; and pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2016), imposing upon Respondent Dean for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation;

- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT V
AGRICULTURE RELATED POLLUTION FROM DEAN FACILITY BY
RESPONDENT DEAN

1-39. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 39 of Count I as paragraphs 1 through 39 of this Count V.

40. At the time of the March 30, 2011 inspection, Section 501.405(a) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405(a), provided, in pertinent part, as follows⁴:

- a) The quantity of livestock waste applied on soils shall not exceed a practical limit as determined by soil type, especially its permeability, the condition (frozen or unfrozen) of the soil, the percent slope of the land, cover mulch, proximity to surface waters and likelihood of reaching groundwater, and other relevant considerations. . . .

41. Section 560.203 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 560.203, provides, in pertinent part, as follows:

Livestock waste should not be applied within 200 feet of surface water unless the water is upgrade or there is adequate diking. There should be a vegetative strip between the application area and any surface water. . . .

42. Section 560.205 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 560.205, provides, in pertinent part, as follows:

Livestock waste should not be applied in waterways.

⁴ On August 11, 2014, Section 501.405 of the Board's Agricultural Related Pollution Regulations was amended.

43. At the time of the March 30, 2011 inspection, Respondents surface applied liquid swine manure in Field 1 within 200 feet of the Highway 24 roadside ditch, a surface water, in such a manner that it caused or threatened to cause runoff to a severely eroded channel in the northwest corner of Field 1 and resulted in the threat of runoff of the swine manure into an unnamed tributary of the Gaines Branch of Sugar Creek.

44. At the time of the March 30, 2011 inspection, Respondents had surface applied liquid swine manure to the established waterway in Field 2 and within 200 feet of the Highway 24 roadside ditch, a surface water, in such a manner that it caused or threatened to cause runoff of the swine manure into an unnamed tributary of the Harris Branch of Sugar Creek.

45. By surface applying liquid swine manure, in a quantity and manner such that it caused or threatened to cause the runoff of waste to waters of the State and exceeded a practical limit as determined by soil type, Respondent Dean has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2016), and 35 Ill. Adm. Code 501.405(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondent, SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM:

A. Authorizing a hearing in this matter at which time Respondent Dean will be required to answer the allegations herein;

B. Finding that Respondent Dean has violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2016), and Section 501.405(a) of the Board's Agriculture Related Regulations, 35 Ill. Adm. Code 501.405(a), as alleged herein;

C. Ordering Respondent Dean to cease and desist from any further violations of Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2016), and Section 501.405(a) of the Board's Agriculture Related Regulations, 35 Ill. Adm. Code 501.405(a);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent Dean for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter; and pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2016), imposing upon Respondent Dean for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT VI
AIR POLLUTION-ODOR VIOLATIONS FROM DEAN FACILITY
BY RESPONDENT DEAN

1-39. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 39 of Count I as paragraphs 1 through 39 of this Count VI.

40. Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), provides, in pertinent part, as follows:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

41. At the time of the March 30, 2011 inspection, Section 501.402(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.402(c)(3), provided⁵, in pertinent part, as follows:

- 3) Adequate odor control methods and technology shall be practiced by operators of new and existing livestock management facilities and livestock waste-handling facilities so as not to cause air pollution.

42. At the time of the March 30, 2011 inspection, Section 501.405(b) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405(b), provided⁶, in pertinent part, as follows:

Field Application of Livestock Waste

* * * *

- b) Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application so as not to affect a neighboring farm or non-farm residence or populated area by causing air pollution as described in Section 501.102(d).

* * * *

43. Respondent Dean caused or allowed the emission of offensive swine waste odor from the land application of livestock manure. The Illinois EPA received multiple citizen reports complaining of unreasonably offensive odor from Respondents' land application of waste on his application fields. The reports indicated that the odor impacted the citizen complainants' use and enjoyment of their property including, but not limited to, a citizen complainant's inability to use the outdoor areas of his property due to unreasonably offensive odor from the application fields.

44. During the March 30, 2011, inspection, the Illinois EPA inspector observed, within 100 yards of a residence, an odor that was strong and offensive caused by Respondents'

⁵ On August 11, 2014, Section 501.402(c) of the Board's Agricultural Related Pollution Regulations was amended.

⁶ On August 11, 2014, Section 501.405(b) of the Board's Agricultural Related Pollution Regulations was amended.

land application of liquid swine manure. Respondents failed to practice adequate odor control methods during this inspection. Respondents had made no attempt to incorporate the manure into the soils of the field.

45. By failing to practice adequate odor control methods and technology at its livestock facility, thereby causing air pollution, Respondent Dean has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), and Section 501.402(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.402(c)(3).

46. By failing to practice odor control methods during the field application of livestock waste, thereby causing air pollution, Respondent Dean has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), and Section 501.405(b) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405(b).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against Respondent, SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM:

A. Authorizing a hearing in this matter at which time Respondent Dean will be required to answer the allegations herein;

B. Finding that Respondent Dean has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), and Sections 501.402(c)(3) and 501.405(b) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.402(c)(3) and 501.405(b);

C. Ordering Respondent Dean to cease and desist from any further violations of the Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), and Sections 501.402(c)(3) and 501.405(b) of

the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.402(c)(3) and 501.405(b);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent Dean for every non-NPDES permit violation a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each such violation has continued thereafter; and pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2016), imposing upon Respondent Dean for every NPDES permit violation a civil penalty of ten thousand dollars (\$10,000) per day of violation;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield

Of Counsel
BRIAN CLAPPIER
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9034
bclappier@atg.state.il.us
ebs@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
SCOTT DEAN d/b/a)	
SCOTT DEAN SWINE FARM, and)	
HOLLIS SHAFER d/b/a)	
HOLLIS SHAFER SWINE FARM,)	
)	
Respondents.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), SCOTT DEAN d/b/a SCOTT DEAN SWINE FARM (“Respondent Dean”), and HOLLIS SHAFER d/b/a HOLLIS SHAFER SWINE FARM (“Respondent Shafer”), (collectively “Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1, et seq. (2016), and the Board's regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. Simultaneously with the filing of this Stipulation, a Complaint was filed on behalf

of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2016), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2016).

3. At all times relevant to the Complaint, Respondents Dean and Shafer (collectively "Respondents") were and are individuals residing in the State of Illinois.

4. At all times relevant to the Complaint, Respondent Dean owned and operated a swine wean to finish facility located at 2222 East Highway 24, Astoria, Fulton County, Illinois ("Facility").

5. At the time of the subject violations of the Act in the Complaint, the Facility was composed of two total confinement swine buildings: the North and South Confinement Buildings. At the time of the subject violations of the Act in the Complaint, the South Building's capacity was 1,000 hogs and the North Building's capacity was 550 hogs. The livestock waste handling system consisted of 6-foot deep manure storage pits located directly beneath both buildings. At the time of the subject violations of the Act and associated Board regulations in the Complaint, Respondent Dean was responsible for the livestock waste management and livestock waste land application at the Facility. The livestock waste was surface applied to crop fields on property Respondent Dean owns surrounding the Facility.

6. On dates prior to August 13, 2012, Respondent Shafer owned the swine at the Facility. Respondent Shafer maintained feeder hogs at the North and South Confinement Buildings, beginning on January 1, 2011 and ending December 31, 2014. At the time of the subject violations of the Act in the Complaint, Respondent Shafer did business under the name

Hollis Shafer Swine Farm, which was an unincorporated entity.

B. Allegations of Non-Compliance by Respondent Dean

Complainant contends that Respondent Dean has violated the following provisions of the Act and Board regulations:

- Count I: Water Pollution From Dean Facility by Respondent Dean
415 ILCS 5/12(a) (2016).
- Count III: Water Pollution Hazard at Dean Facility by Respondent Dean
415 ILCS 5/12(d) (2016).
- Count IV: NPDES Violations at Dean Facility by Respondent Dean
415 ILCS 5/12(f) (2016); 35 Ill. Adm. Code 309.102(a).
- Count V: Agriculture Related Pollution From Dean Facility by Respondent Dean
415 ILCS 5/12(a) and (d) (2016); 35 Ill. Adm. Code 501.405(a).
- Count VI: Air Pollution-Odor Violations From Dean Facility by Respondent Dean
415 ILCS 5/9(a) (2016); 35 Ill. Adm. Code 501.402(c)(3) and 501.405(b).

C. Allegations of Non-Compliance by Respondent Shafer

Complainant contends that Respondent Shafer has violated the following provision of the Act:

- Count II: Water Pollution From Dean Facility by Respondent Shafer
415 ILCS 5/12(a) (2016).

D. Admission of Violations

Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Sections I.B and I.C herein.

D. Compliance Activities to Date

Respondent Dean has undertaken building reconfiguration and operational measures at the Facility to prevent future violations of the Act and associated Board regulations.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2016).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2016), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened by Respondents' violations.

2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located, so long as the Facility is operated in compliance with the Act and the Board regulations.
4. Eliminating discharges and deposits of liquid manure such as those cited in the Complaint is both technically practicable and economically reasonable.
5. Respondents subsequently complied with the Act and the Board regulations at the Facility.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2016), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an

enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Violations of the Act existed on dates better known to Respondents, up to and including March 30, 2011. The practice of surface applying liquid manure was reportedly ceased on March 30, 2011 and the previously applied manure was reportedly tilled into the soil on April 13, 2011.
2. Respondents were diligent in attempting to come back into compliance with the Act and Board regulations once the Illinois EPA notified them of their noncompliance.
3. The civil penalties take into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.
4. Complainant has determined that, based upon the specific facts of this matter, a penalty of ten thousand dollars (\$10,000.00) from Respondent Dean and five thousand dollars (\$5,000.00) from Respondent Shafer will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.
6. Respondents did not voluntarily self-disclose the violations cited in the Complaint to the Illinois EPA.
7. Settlement of this matter does not include a supplemental environmental project.
8. A Compliance Commitment Agreement was proposed by Respondent Dean, but rejected by the Illinois EPA.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent Dean shall pay a civil penalty in the sum of ten thousand dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. Respondent Shafer shall pay a civil penalty in the sum of five thousand dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If either Respondent Dean or Respondent Shafer fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent who failed to make such payment shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by either Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order with the case name and case number appearing on the face of the certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. A copy of the certified check or money order and any transmittal letter shall be sent to:

Brian Clappier
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62704

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of Respondent Dean's payment of the \$10,000.00 penalty and any

specified costs and accrued interest, and Respondent Shafer's payment of the \$5,000.00 penalty and any specified costs and accrued interest, the Respondents' commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondents from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed simultaneously with this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Respondents.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Brian Clappier
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62704

Roberto Durango
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Todd Bennett
Illinois Environmental Protection Agency, Bureau of Water
Peoria Regional Office
412 SW Washington Street, Suite D
Peoria, Illinois 61602

As to the Respondents

Scott Dean d/b/a Scott Dean Swine Farm
2222 East Highway 24
Astoria, Illinois 61501
scottadea@gmail.com

Hollis Shafer d/b/a Hollis Shafer Swine Farm
785 North Taylor Lane
Astoria, Illinois 61501
hollisshafer@hughes.net

G. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

H. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are

fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: _____
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau, Springfield

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

RESPONDENT SCOTT DEAN d/b/a
SCOTT DEAN SWINE FARM

RESPONDENT HOLLIS SHAFER d/b/a HOLLIS
SHAFER SWINE FARM

Scott A Dean (owner)
Title: _____

Title: _____

DATE: 11/7/17

DATE: _____

fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: _____
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau, Springfield

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

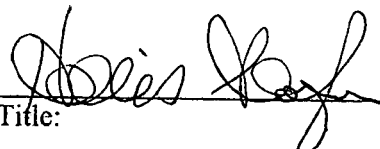
DATE: _____

RESPONDENT SCOTT DEAN d/b/a
SCOTT DEAN SWINE FARM

RESPONDENT HOLLIS SHAFER d/b/a HOLLIS
SHAFER SWINE FARM

Title:

Title:



DATE: _____

DATE: 11/16/2017

fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau, Springfield

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 11/28/2017

DATE: 11/27/17

RESPONDENT SCOTT DEAN d/b/a
SCOTT DEAN SWINE FARM

RESPONDENT HOLLIS SHAFER d/b/a HOLLIS
SHAFER SWINE FARM

Title:

Title:

DATE: _____

DATE: _____

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
SCOTT DEAN d/b/a)	
SCOTT DEAN SWINE FARM, and)	
HOLLIS SHAFER d/b/a)	
HOLLIS SHAFER SWINE FARM,)	
)	
Respondents.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant filed on December 4, 2017 the initial Complaint in this matter and a Stipulation and Proposal for Settlement executed between Complainant and Respondents, Scott Dean d/b/a Scott Dean Swine Farm, and Hollis Shafer d/b/a Hollis Shafer Swine Farm.

2. Section 31 of the Act, 415 ILCS 5/31 (2016), provides, in pertinent part, as follows:

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to

subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

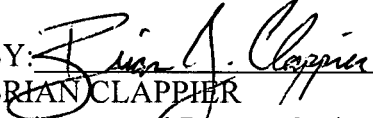
* * *

3. No hearing is scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2016).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
BRIAN CLAPPIER
Environmental Bureau, Springfield
Assistant Attorney General

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bclappier@atg.state.il.us
ebs@atg.state.il.us

Dated: November 28, 2017

CERTIFICATE OF SERVICE

I hereby certify that I did on December 4, 2017, cause to be served by electronic mail or regular mail as indicated, a true and correct copy of the following instruments entitled NOTICE OF FILING, COMPLAINT, STIPULATION AND PROPOSAL FOR SETTLEMENT, and MOTION FOR RELIEF FROM HEARING REQUIREMENT upon the following persons:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
(Via Electronic Filing)

Scott Dean
d/b/a/ Scott Dean Swine Farm
2222 East Highway 24
Astoria, IL 61501
(Via U.S. Postal Service)

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, Illinois 62794
Carol.Webb@illinois.gov
(Via Email)

Hollis Shafer
d/b/a Hollis Shafer Swine Farm
P.O. Box 675
Astoria, IL 61501
(Via U.S. Postal Service)

s/BRIAN J. CLAPPIER
BRIAN J. CLAPPIER
Assistant Attorney General
Attorney Reg. No. 6307721
500 South Second Street
Springfield, Illinois 62706
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ebs@atg.state.il.us