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MAY 26 2006

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 24, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. The Highlands, LLC., et al.***
PCB No. 00-104

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and MOTION TO FILE COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE DEFENSE *INSTANTER*, MOTION FOR LEAVE TO REPLY TO RESPONDENT MURPHY FARMS RESPONSE TO COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE DEFENSE, and REPLY TO RESPONDENT MURPHY FARMS' RESPONSE TO COMPLAINT'S MOTION TO STRIKE RESPONDENT MURPHY'S AMENDED AFFIRMATIVE DEFENSE in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jane E. McBride", is written over a horizontal line.

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 26 2006

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

THE HIGHLANDS, LLC, an Illinois limited
liability corporation, and MURPHY
FARMS, INC., (a division of MURPHY-
BROWN, LLC, a North Carolina limited
liability corporation, and SMITHFIELD
FOODS, INC., a Virginia corporation),

Respondents.

PCB NO. 00-104
(Enforcement)

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Mr. Jeffrey W. Tock
Harrington, Tock & Royse
201 W. Springfield Avenue, Ste. 601
P.O. Box 1550
Champaign, IL 61824-1550

Mr. Charles M. Gering
Foley & Lardner
321 N. Clarke St.
Suite 2800
Chicago, IL 60610-4764

PLEASE TAKE NOTICE that on May 24, 2006, I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION TO FILE COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE DEFENSE *INSTANTER*, MOTION FOR LEAVE TO REPLY TO RESPONDENT MURPHY FARMS RESPONSE TO COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE DEFENSE, and REPLY TO RESPONDENT MURPHY FARMS' RESPONSE TO COMPLAINT'S MOTION TO STRIKE RESPONDENT MURPHY'S AMENDED AFFIRMATIVE DEFENSE, copies of which are attached hereto and herewith served upon you.

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: 
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on May 24, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION TO FILE COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE DEFENSE *INSTANTER*, MOTION FOR LEAVE TO REPLY TO RESPONDENT MURPHY FARMS RESPONSE TO COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE DEFENSE, and REPLY TO RESPONDENT MURPHY FARMS' RESPONSE TO COMPLAINT'S MOTION TO STRIKE RESPONDENT MURPHY'S AMENDED AFFIRMATIVE DEFENSE

To: Mr. Jeffrey W. Tock
Harrington, Tock & Royse
201 W. Springfield Avenue, Ste. 601
P.O. Box 1550
Champaign, IL 61824-1550

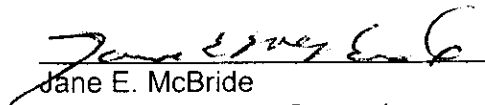
Mr. Charles M. Gering
Foley & Lardner LLP
321 N. Clarke St.
Suite 2800
Chicago, IL 60610-4764

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid and by facsimile (312) 814-3669

To: Mr. Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, IL 60601


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 26 2006

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,)

v.)

PCB No. 00-104 STATE OF ILLINOIS
(Enforcement) Pollution Control Board

THE HIGHLANDS, LLC, an Illinois limited
liability corporation, and MURPHY
FARMS, INC., (a division of MURPHY-
BROWN, LLC, a North Carolina limited
liability corporation, and SMITHFIELD
FOODS, INC., a Virginia corporation).)

Respondents.)

**MOTION TO FILE COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED
AFFIRMATIVE DEFENSE *INSTANTER***

NOW COMES Complainant, People of the State of Illinois, *ex rel.* Lisa Madigan,
Attorney General of the State of Illinois, and moves the Hearing Officer for leave to file
Complainant's motion to strike respondent's amended affirmative defense *instante*, on the
following grounds and for the following reasons:

1. Complainant originally intended the subject filing to be a reply, but upon
reviewing the issues presented determined a motion to strike was the appropriate first pleading.
2. Discovery in this matter is still incomplete. No depositions have been taken. At
the time of the February 16, 2006 status conference, the discovery schedule was stayed to
facilitate settlement discussions. Settlement discussions have continued to this date. Progress
has been made toward settlement of this matter. The discovery schedule has not been
reinstated. The Respondent will not be prejudiced by any means if the Board allows the filing of
the Motion to Strike.

WHEREFORE, for the foregoing reasons, Complainant respectfully requests that the Board grant the People's motion for leave to file its motion to strike Respondent's amended affirmative defense *instante*.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:


JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

WHEREFORE, for the foregoing reasons, Complainant respectfully requests that the Hearing Order grant the People leave to reply to Respondent's response.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:


JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

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liability corporation, and SMITHFIELD
FOODS, INC., a Virginia corporation).)

Respondents.)

**REPLY TO RESPONDENT MURPHY FARMS' RESPONSE TO COMPLAINANT'S MOTION
TO STRIKE RESPONDENT MURPHY'S AMENDED AFFIRMATIVE DEFENSE**

NOW COMES, Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, and hereby replies to Respondent Murphy Farms' Response to Complainant's Motion to Strike Respondent's Amended Affirmative Defense:

- I. **COMPLAINANT'S MOTION TO STRIKE WAS FILED PRIOR TO COMPLETION OF DISCOVERY. NO DEPOSITIONS HAVE BEEN TAKEN. THE LITIGATION WAS STAYED AT THE TIME OF FILING AND CONTINUES TO BE STAYED TO FACILITATE SETTLEMENT DISCUSSIONS. THE RESPONDENT HAS NOT BE UNDULY PREJUDICED OR HARMED IN ANY MANNER.**

1. At the time of the February 16, 2006 hearing officer status conference in this matter, the Hearing Officer asked the Complainant if it intended to file a replying, noting there was no deadline to do so. Counsel for the Complainant indicated it was her practice to file a reply in the alternative, contemporaneously and conjunction with a motion to strike. Noting such was evidently in this matter, she indicated she would be filing a reply. She indicated she would do so immediately. The Hearing Officer said there was no rush, but he just needed to ascertain the status of the pleadings.

2. Upon reviewing the issues at hand pertaining to Respondent's claim of laches,

Complainant determined that the more appropriate first pleading was a motion to strike.

3. With this filing, Complainant has contemporaneously filed a motion for file its motion to strike *instantly* to address the issue of timing.

4. Discovery in this matter is still incomplete. No depositions have been taken. Final written discovery remains open pursuant to the now stayed discovery schedule. At the time of the February 16, 2006 status conference, the discovery schedule was stayed to facilitate settlement discussions. Settlement discussions have continued to this date. Progress has been made toward settlement of this matter. The discovery schedule has not been reinstated. The Respondent will neither be prejudiced or harmed by any means if the Board allows the filing of the Motion to Strike.

II. THE PLEADING FILED BY COMPLAINANT, INCLUDING THE AFFIDAVIT AND ATTACHED EXHIBITS, ARE COMPLETELY PROPER TO ADDRESS WHETHER OR NOT RESPONDENT HAS SUFFICIENTLY PLED FACTS OF BOTH ELEMENTS OF LACHES SO AS TO DEFEAT THE CAUSE OR ACTION OR AVOID THE LEGAL EFFECT OF THE ASSERTED CLAIM.

5. As set forth in Respondent's response, page 4, first full paragraph, a motion to strike an affirmative defense admits well-pled facts constituting the defense, only attacking the legal sufficiency of the facts. Citations omitted.

6. Complainant's motion to strike attacks the legal sufficiency of the facts pled by Respondent. Complainant, in its motion to strike, contends that the Respondent has not pled laches. The facts Respondent has pled are insufficient to constitute laches, that is, as pled the facts do not constitute the two elements of laches.

7. As stated in the Respondent's response, page 4, "What facts will combine to constitute laches is to be determined in light of the circumstances of each case." Citation omitted here. As shown by Complainant's motion, in this case, the facts Respondent has pled in support of its claim of laches, are insufficient to constitute laches in this case.

8. Given the material presented in Complainant's motion, properly supported by affidavit and exhibits, Respondent has failed to plead a lack of due diligence in this case on the part of the party asserting the original claim, and the Respondent has also failed to plead prejudice to itself. In fact, as very aptly pled in Complainant's motion, the Illinois EPA was very diligent in warning Respondent of the possibility of violation and then subsequently raising compliance issues at the time of construction inspections and inspections conducted in response to complaints. Respondent was not prejudiced because it has proceeded at its own peril.

III. COMPLAINANT'S MOTION TO STRIKE SHOULD BE GRANTED BECAUSE RESPONDENT MURPHY'S CLAIM THAT THE MOTION LENDS CREDENCE TO ITS ARGUMENT THAT THE ILLINOIS EPA "SAT BACK" AND LET IT VIOLATE IS WITHOUT MERIT

9. In its response to the motion and supporting material, Respondent Murphy has the audacity to continue to persist in its argument that, somehow, the Illinois EPA had the authority to stop it from constructing the Highlands in the manner that it did, based on the circumstances at the time. This issue is fully briefed, with the benefit of supporting material in Complainant's Motion. For whatever reason, Respondent continues to persist in its position with this alleged affirmative defense of laches, that somehow, the Illinois EPA is responsible for the fact the Respondent persisted on its path toward non-compliance despite the Illinois EPA's diligent efforts to get the Respondent to consider and address all the important pertinent factors that impact large livestock confinement facilities. The Motion to Strike amply addresses the fallacy of this alleged affirmative defense, by properly attacking the legal sufficiency of the facts pled.

WHEREFORE, on the foregoing grounds, Complainant respectfully requests that the Board strike Respondent Murphy's Amended Affirmative Defense.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:


JANE E. MCBRIDE
Assistant Attorney General

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Springfield, Illinois 62706
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