



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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OCT 13 2006

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

October 11, 2006

PCB07-23

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: **People v. Greg Giertz, d/b/a Giertz Swine Farm #1**

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

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

JEM/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
GREG GIERTZ, d/b/a)
GIERTZ SWINE FARM #1,)
)
Respondent.)

PCB No. 07-23
(Enforcement)

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STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Greg Giertz
d/b/a Giertz Swine Farm #1
5212 Knoxville Road
New Windsor, IL 61465

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

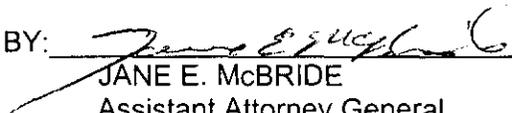
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

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: October 11, 2006

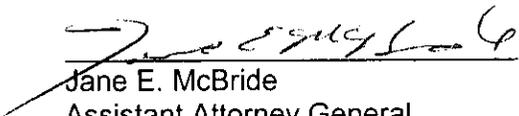
CERTIFICATE OF SERVICE

I hereby certify that I did on October 11, 2006, send by certified 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, ENTRY OF APPEARANCE and COMPLAINT:

To: Greg Giertz
d/b/a Giertz Swine Farm #1
5212 Knoxville Road
New Windsor, IL 61465

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
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
vs.)
)
GREG GIERTZ, d/b/a)
GIERTZ SWINE FARM #1,)
)
Respondent.)

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PCB No. 07-23
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STATE OF ILLINOIS
Pollution Control Board

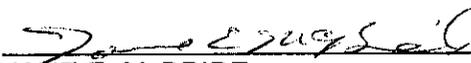
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JANE E. McBRIDE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

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
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 11, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
)
Complainant,)
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v.)
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GREG GIERTZ, d/b/a)
GIERTZ SWINE FARM #1)
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Respondent.)

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STATE OF ILLINOIS
Pollution Control Board
PCB No. 07-23
(Enforcement)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, complain of Respondent GREG GIERTZ, d/b/a GIERTZ SWINE FARM #1, as follows:

COUNT I

WATER POLLUTION VIOLATIONS, APRIL 6, 2004

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 and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2004).

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4(2002), and which is charged, inter alia, with the duty of enforcing the Act.

3. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), after providing the Respondent Greg Giertz, d/b/a Giertz Swine Farm #1 with notice and the opportunity to meet with the Illinois EPA.

4. Respondent Greg Giertz ("Giertz") is an individual engaged in the business of swine production. Respondent Giertz owns and operates a swine finishing facility consisting of two barns with cement feedlots and three total confinement buildings with two foot deep waste storage pits below the confinement buildings, located approximately twenty miles south of the City of Moline in Mercer County, at 5212 Knoxville Road, New Windsor, Mercer County, Illinois 61465 (the "facility").

5. Section 3.55 of the Act, 415 ILCS 5/3.55 (2004), provides:

"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 waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

6. Section 3.56 of the Act, 415 ILCS 5/3.56 (2004), provides:

"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.

7. Section 3.06 of the Act, 415 ILCS 5/3.06 (2004), provides:

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

8. Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004), provide, in pertinent part:

No person shall:

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

* * *

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

* * *

- 9. Section 501.403(a) of the Board's Agriculture Related Pollution Regulations, 35

Ill. Adm. Code 501.403(a), provides, in pertinent part, as follows:

- a) Existing livestock management facilities and livestock waste-handling facilities shall have adequate diversion dikes, walls or curbs that will prevent excessive outside surface waters from flowing through the animal feeding operations and will direct runoff to an appropriate disposal, holding or storage area. The diversions are required on all aforementioned structures unless there is negligible outside surface water which can flow through the facility or the runoff is tributary to an acceptable disposal area or a livestock waste-handling facility. If inadequate diversions cause or threaten to cause a violation of the Act or applicable regulations, the Agency may require corrective measures.

- 10. Section 501.404(c)(4)(A) of the Board's Agriculture Related Pollution

Regulations, 35 Ill. Adm. Code 501.404(c)(4)(A), provides, in pertinent part, as follows:

* * *

- c) Livestock Waste-Holding Facilities

* * *

- 4) Liquid Livestock Waste

- A) Existing livestock management facilities which handle the waste in a liquid form shall have adequate storage capacity in a liquid manure-holding tank, lagoon, holding pond, or any combination thereof so as not to cause air or water pollution as defined in the Act or applicable regulations. If inadequate storage time causes or threatens to cause a violation of the Act or applicable regulations, the Agency may require that additional storage time be provided. In such cases, interim pollution prevention measures may be required by the Agency.

* * *

11. On March 22, 2004, the Illinois EPA received a citizen complaint of the discharge of livestock waste from a swine confinement building at the Giertz Swine Farm #1 onto the horse pasture area of the complainant's property. The complainant reported that on March 20, 2004, liquid swine manure discharged from the pump-out port of an overflowing manure pit, and the waste drained west onto the complainant's pasture. The complainant also reported observing surface runoff from the Giertz Swine Farm #1, east of the confinement building. The complainant contacted Respondent Giertz, alerting him to the release of waste. Respondent Giertz responded by pumping out the storage pit and land applying the waste, but failed to clean up the discharge on the complainant's property.

12. As of March 22, 2004, and at all times after, Respondent Giertz failed to report the March 20, 2004 release of livestock waste at the Giertz Swine Farm to the Illinois Emergency Management Agency.

13. On March 22, 2004, an Illinois EPA inspector made several phone calls to Respondent Giertz in an attempt to contact him about the discharge, but was unable to make contact. The inspector forwarded a manure release reporting guide to Respondent Giertz.

14. On April 1, 2004, the same citizen complainant reported a trail of manure starting at the Giertz confinement buildings and extending into the complainant's pasture. The complainant also reported a trail of manure that ran into a portion of complainant's front lot. The complainant further indicated that she had reported two discharges from the Giertz Swine Farm #1 in 2003 to the Illinois EPA. Illinois EPA records indicate the previous complaint had been received in April 2002.

15. On April 6, 2004, the Illinois EPA conducted an inspection of Respondent Giertz' facility in response to the complaints. The inspector observed that swine wastewater had

flowed from the confinement buildings and pooled approximately 20 feet south of the buildings. The wastewater was black colored, turbid and emitted a very strong livestock waste odor. The Illinois EPA inspector noted that the complainant's property line was located adjacent to the westernmost confinement building of the Giertz Swine Farm #1, and observed a path of swine manure drainage from the confinement buildings into the complainant's horse pasture. Black deposits on the complainant's property indicated wastewater had recently discharged from the swine confinement buildings. The Illinois EPA inspector observed another path of livestock waste solids leading away from the south swine feedlot, which also flowed into complainant's pasture. A thick accumulation of manure solids was observed in the south swine feedlot. Surface runoff was observed from the north barn/feedlot, where the swine were located at the time of the inspection. The liquid there was brown colored, turbid and emitted a very strong livestock waste odor.

16. Analysis of samples collected at the time of the April 6, 2004 inspection indicate 5-day BOD levels ranging from 4800 to 8900 mg/L, and the ammonia levels ranged from 311 to 1050 mg/L. The discharge flowing off-site into the horse pasture had the highest ammonia levels, 1050 mg/L, which is beyond a level that is toxic to fish and aquatic life. The manure flowing off Respondent Giertz' facility into the neighbor's horse pasture, flowed into a small swale in the pasture, across the pasture, and into a grass waterway that is tributary to Parker Run. This drainage flow constitutes waters of the State.

17. On April 6, 2004, Respondent Giertz threatened water pollution in that such discharges of livestock waste existed on the land in a manner that threatened to alter the physical, thermal, chemical, or biological properties of a water of the State, and such discharge threatened to render waters of the State harmful or detrimental or injurious to public health,

safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

18. On April 6, 2004, after the inspection, the Illinois EPA inspector attempted unsuccessfully to contact Respondent Giertz.

19. On April 12, 2004, the Illinois EPA inspector was able to make contact with Respondent Giertz about the April 6, 2004 inspection. Respondent Giertz acknowledged the discharge of swine waste from a waste storage pit beneath a nursery unit, stating that the pigs had broken a water line inside the building which caused the manure pit to overflow. Respondent Giertz acknowledged that his neighbors informed him of the discharge. The Illinois EPA inspector advised Respondent Giertz to report the manure release, stop the manure discharges and clean up the waste that existed on the land.

20. Respondent Greg Giertz failed to report the April 6, 2004 release to the Illinois Emergency Management Agency.

21. On May 4, 2004, the Illinois EPA sent Respondent Giertz a violation notice letter for the livestock waste handling and storage violations observed at the time of the April 6, 2004 inspection. A list of recommended corrective actions was included with the violation notice.

22. On July 22, 2004, Respondent Giertz faxed a response to the violation notice to the Illinois EPA. He provided the following account: Respondent Giertz was informed of the discharge at 1:30 P.M. on March 20, 2004, and immediately traveled one mile to the farm. He found that liquid was overflowing out of the small nursery and had formed a puddle three to four feet in diameter on the neighbor's property. There was a cracked and leaking waterline in the nursery. He shut off the damaged waterline. He pumped contents from the nursery waste storage pit into a manure tank to stop the overflow. Respondent Giertz indicated that by the time he had completed pumping from the pit, the puddle on the neighbor's property had soaked

into the dry ground. Respondent Giertz fixed the waterline and observed no further leaks when he turned the water back on.

23. In his July 22, 2004 response, Respondent Giertz claimed that the discharges constituted only minor or no violation, and that the release amounted to less than 25 gallons and therefore there was no requirement to report the release. Further, he stated that the waste storage facilities at the farm were adequate and were maintained. He indicated that he did not have a National Pollution Discharge Elimination System ("NPDES") permit for the farm. Respondent Giertz described the farm as his son's 4-H pig farm.

24. In response to the Illinois EPA recommended corrective measures, Respondent Giertz indicated his son did not have the financial resources to build the recommended waste containment structures. Therefore, the sows and pigs currently located on the south feedlot would be sold. Respondent Giertz indicated that the three small confinement buildings had been cleaned out in May 2004 and the north feedlot had been emptied in July 2004.

25. On September 27, 2004, the Illinois EPA sent Respondent Giertz a Notice of Intent to Pursue Legal Action ("NITPLA") letter, citing the violations noted in the March 20, 2004 complaint by the neighbor and the Illinois EPA inspection conducted in response.

26. Respondent Giertz did not request a meeting in response to the NITPLA letter.

27. By causing or allowing the discharge of contaminants in such a manner as to cause or threaten water pollution in Parker Run, and by causing or allowing a discharge of contaminants to exist on the land so as to create a water pollution hazard, Respondent Giertz has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004).

28. By failing to have adequate diversion dikes, walls or curbs that will prevent surface waters from flowing through the animal feeding operations, and by failing to have structures in place that direct runoff to an appropriate disposal, holding or storage area,

Respondent Giertz has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), and 35 Ill. Adm. Code 501.403(a).

29. By failing to have adequate storage capacity in a liquid manure-holding tank, lagoon, holding pond, or any combination thereof so as not to cause water pollution as defined in the Act or applicable regulations, Respondent Giertz has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 501.404(c)(4)(A)

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

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

B. Finding that Respondent Giertz has violated the Act and regulations as alleged herein;

C. Ordering Respondent Giertz to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent Giertz 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 violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

COUNT II

WATER POLLUTION VIOLATIONS, SEPTEMBER 22, 2004

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections

42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-8. Complainant re-alleges and incorporates by reference herein paragraphs 4 through 10 of Count I as paragraphs 2 through 8 of this Count II.

9. On September 21, 2004, a neighbor citizen complainant reported a discharge of livestock waste from the Giertz Swine Farm to the complainant's horse pasture, and a creek behind their house. The complainant indicated the odor from the release was so bad she couldn't go in her back yard.

10. On September 22, 2004, the Illinois EPA conducted an inspection of the Giertz Swine Farm #1 and confirmed the discharge of livestock waste to the neighbor's property. The Illinois EPA inspector observed that a swine watering device was operating in the feedlot of the south barn, causing a flow of contaminated water at a rate of several gallons per minute to move toward and into the neighboring property. Later that day, contact was made with Respondent Giertz. Respondent Giertz said he was unaware of the release. The Illinois EPA inspector notified Respondent Giertz of the discharge and advised to shut off the water line, repair the leak, remove the manure from the area and report the discharge of livestock waste to the Illinois Emergency Management Agency.

11. Manure flowing off the Giertz property into the neighbor's horse pasture, flowed into a small swale in the pasture, across the pasture, and into a grass waterway that is tributary to Parker Run. This drainage flow constitutes waters of the State.

12. On September 23, 2004, Respondent Greg Giertz reported the September 22 release to the Illinois Emergency Management Agency.

13. On September 22, 2004, Respondent Giertz threatened water pollution in that such discharges of livestock waste existed on the land in a manner that threatened to alter the

physical, thermal, chemical, or biological properties of a water of the State, and such discharge threatened to render waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

14. In his response to a violation notice date July 22, 2004, Respondent Giertz indicated livestock on the site would come to market weight in 30 to 60 days and be sold. At the time of the September 22, 2004 inspection, swine were still present at the south barn. When contact was made with Respondent Giertz, Respondent Giertz told the inspector there were approximately 60 swine at the facility on September 21 and 22, 2004.

15. By causing or allowing the discharge of contaminants in such a manner as to cause or threaten water pollution in Parker Run, and by causing or allowing a discharge of contaminants to exist on the land so as to create a water pollution hazard, Respondent Giertz has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004).

16. By failing to have adequate diversion dikes, walls or curbs that will prevent surface waters from flowing through the animal feeding operations, and by failing to have structures in place that direct runoff to an appropriate disposal, holding or storage area, Respondent Giertz has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), and 35 Ill. Adm. Code 501.403(a).

17. By failing to have adequate storage capacity in a liquid manure-holding tank, lagoon, holding pond, or any combination thereof so as not to cause water pollution as defined in the Act or applicable regulations, Respondent Giertz has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 501.404(c)(4)(A).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Giertz has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Giertz to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Giertz 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 violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

COUNT III

NPDES VIOLATION, APRIL 6, 2004

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 and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2004).

2-24. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 8 and 11 through 26 of Count I as paragraphs 2 through 23 of this Count III.

25. Section 12 (f) of the Act, 415 ILCS 5/12(f) (2004), provides, in pertinent part:

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.

26. Section 309.102 of the Board's water pollution regulations, 35 Ill. Adm. Code

309.102(a), states, in pertinent part:

NPDES Permit Required

- a) 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.

27. At the time of the April 6, 2004 discharge from Respondent Giertz' facility, the facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and had not applied for an NPDES permit.

28. By causing, allowing or threatening the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, Respondent Giertz has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

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

B. Finding that the Respondent has violated the Act and regulations as alleged herein;

C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act other than violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2000); and a civil penalty of ten thousand dollars (\$10,000) for each day upon which there is a violation of Section 12(f) of the Act, 415 ILCS 5/12(f), pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1)(2004).

COUNT IV

NPDES VIOLATION, SEPTEMBER 22, 2004

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-13. Complainant realleges and incorporates by reference herein paragraphs 4 through 8 of Count I and paragraphs 9 through 14 of Count II as paragraphs 2 through 13 of this Count IV.

14-15. Complainant realleges and incorporates by reference herein paragraph 25 and 26 of Count III as paragraphs 14 and 15 of this Count IV.

16. At the time of the September 22, 2004 discharge from Respondent Giertz' facility, the facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and had not applied for an NPDES permit.

17. By causing, allowing or threatening the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, Respondent Giertz has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

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

B. Finding that the Respondent has violated the Act and regulations as alleged herein;

C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act other than violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2000); and a civil penalty of ten thousand dollars (\$10,000) for each day upon which there is a violation of Section 12(f) of the Act, 415 ILCS 5/12(f), pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1)(2004).

COUNT V

WATER POLLUTION VIOLATIONS, APRIL 6, 2002 AND APRIL 22, 2002

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-6. Complainant re-alleges and incorporates by reference herein paragraphs 4 through 8 of Count I as paragraphs 2 through 6 of this Count V.

7. On April 6, 2002, neighbors with property directly west of Respondent Giertz' facility observed swine wastewater flowing out of the western pump out port of the facility's west swine confinement building. The west swine confinement building is 20 feet from the neighbors' property line. The neighbor maintains horses in the pasture and paddock adjacent to Respondent Giertz facility. The swine waste flowed away from the confinement unit and into the paddock where the neighbors keep horses. The neighbors contacted Respondent Greg Giertz at the time of the incident. Respondent Giertz arrived at the facility about an hour after receiving notice. By the time he arrived, the overflow had reportedly ceased. Mr. Giertz made no effort to clean the spill area. The neighbors reported to the Illinois EPA that this was not the first manure release incident from the swine facility.

8. On April 12, 2002, the neighbors reported the April 6, 2002 release from Respondent's property to both the Mercer County Sheriff's Department and the Illinois EPA. Mercer County Sheriff's Deputy William Glancey took a report of the release from the neighbors, and Deputy Glancey made a release report to the Illinois Emergency Management Agency ("IEMA") regarding the spill. Respondent Giertz did not report the release to IEMA,

even though he had been alerted to the release by the neighbors and had observed the release upon arriving at his facility in response to his neighbors' complaint.

9. On April 12, 2002, the Illinois EPA conducted an inspection of Respondent's facility in response to the neighbors' complaint.

10. On April 22 and 23, 2002, the neighbors directly west of Respondent Giertz' facility contacted the Illinois EPA to report a release of swine waste from the Giertz facility on April 22, 2002 that had run into the neighbors' horse pasture.

11. On April 24, 2002, an Illinois EPA inspector conducted a phone conversation with Respondent Giertz regarding the April 6 and April 22, 2002 releases from his facility.

Respondent Giertz acknowledged he owned the facility, and that it is a hobby farm for show pigs. The inspector advised Respondent Giertz of the Illinois EPA's April 12, 2002 inspection. Respondent Giertz indicated he was aware of the April 6, 2002 release. Respondent Giertz indicated the release was caused by a nipple waterer that had become unthreaded which allowed a full stream of water to empty into the manure pit. The pit was reported to be full and about two foot in depth. Respondent Giertz indicated he was also aware of the April 22, 2002 release. Respondent Giertz indicated the release was caused due to a break in a water line which caused the pit to overflow. The Illinois EPA inspector advised Mr. Giertz of the requirement to report releases. The inspector sent Respondent Giertz a booklet containing information on the state reporting requirement.

12. On April 6 and 22, 2002, Respondent Giertz threatened water pollution in that such discharges of livestock waste existed on the land in a manner that threatened to alter the physical, thermal, chemical, or biological properties of a water of the State, and such discharge threatened to render waters of the State harmful or detrimental or injurious to public health,

safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

13. On May 22, 2002, the Illinois EPA sent Respondent Giertz a noncompliance advisory letter setting forth apparent violations at the facility and recommended compliance measures.

14. On June 3, 2002, the Illinois EPA received a response from Respondent Giertz. Respondent Giertz indicated in the letter that he had recently acquired the facility, which had older buildings he was just learning how to manage. He indicated the buildings contained show pigs for his son, and that they stood empty six months of the year. Respondent Giertz indicated that, in response to the releases, he purchased a transfer pump and transferred manure to another building right after the spill. His investigation after the April 22 spill revealed that the pump out port in the west confinement building was 6 to 8 inches below the bottom of the subfloor and also lower than other pump out ports. Waste was again transferred from the west confinement building to another building at the facility after the second release. Respondent Giertz reported that he capped the pump out port on the west side of the building to prevent spills to the neighbors' property. He also indicated that with the purchase of the transfer pump, he will be able to move waste from the west building to the other building if conditions are not appropriate for land application.

15. By causing or allowing the discharge of contaminants in such a manner as to cause or threaten water pollution in Parker Run, and by causing or allowing a discharge of contaminants to exist on the land so as to create a water pollution hazard, Respondent Giertz has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Giertz has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Giertz to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Giertz 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 violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

COUNT VI

NPDES VIOLATION, APRIL 6 AND 22, 2002

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-15. Complainant realleges and incorporates by reference herein paragraphs 4 through 8 of Count I and paragraphs 7 through 14 of Count V as paragraphs 2 through 15 of this Count VI.

16-17. Complainant realleges and incorporates by reference herein paragraph 25 and 26 of Count III as paragraphs 16 and 17 of this Count VI.

18. At the time of the April 6 and 22, 2002 discharges from Respondent Giertz' facility, the facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and had not applied for an NPDES permit.

19. By causing, allowing or threatening the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, Respondent Giertz has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

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

B. Finding that the Respondent has violated the Act and regulations as alleged herein;

C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act other than violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2000); and a civil penalty of ten thousand dollars (\$10,000) for each day upon which

there is a violation of Section 12(f) of the Act, 415 ILCS 5/12(f), pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1)(2004).

COUNT VII

FAILURE TO REPORT RELEASE, APRIL 6 AND 22, 2002, APRIL 6, 2004

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/42(d) and (e) (2004).

2-23. Complainant re-alleges and incorporates herein by reference paragraph 4 and paragraphs 11 through 26 of Count I and paragraphs 7 through 14 of Count V as paragraphs 2 through 23 of this Count VII.

24. The authority for the implementation and authorization of the livestock waste release reporting requirements includes Section 18 of the Illinois Livestock Management Facilities Act ("LMFA"), 510 ILCS 77/18 and Section 4(h) of the Illinois Environmental Protection Act, 415 ILCS 5/4(h) (2004). 35 Ill. Adm. Code Part 580.

25. Section 4(h) of the Act, 415 ILCS 5/4(h) (2004), provides, in pertinent part, as follows:

- (h) The Agency shall have authority to require the submission of complete plans and specifications from any applicant for a permit required by this Act or by regulations thereunder, and to require the submission of such reports regarding actual or potential violations of the Act or of regulations thereunder, or of permits or terms or conditions thereof, as may be necessary for purposes of this Act.

26. Section 580.104 of the Board's regulations, 35 Ill. Adm. Code 580.104, provides, in pertinent part, the following definitions:

"Livestock waste" means livestock excreta and associated feed losses, bedding, wash waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock.

"Livestock waste handling facility" means individually or collectively those immovable constructions or devices, except sewers, used for collecting, pumping, treating, or disposing of livestock waste or for the recovery of by-products from the livestock waste.

27. Section 580.105 of the Board's Agriculture Related Water Pollution Regulations,

35 Ill. Adm. Code 580.105, provide, in pertinent part, as follows:

Method of Reporting a Release of Livestock Waste from a Lagoon

- a) An owner or operator of a livestock waste handling facility shall report any release of livestock waste from the lagoon within 24 hours after the discovery of the release. Reports of releases to surface waters, including to sinkholes, drain inlets, broken subsurface drains or other conduits to groundwater or surface waters, shall be made upon discovery of the release, except when such immediate notification will impeded the owner's or operator's response to correct the cause of the release or to contain the livestock waste, in which case the report shall be made as soon as possible but no later than 24 hours after discovery.
- b) The report required under subsection (a) shall be given to the Illinois Environmental Protection Agency through the Illinois Emergency Management Agency . . . :

28. By failing to report the April 6, 2002, April 22, 2002, April 6, 2004 and September 22, 2004 releases of livestock waste from a livestock waste handling facility upon discovery of the release, and, at the latest, 24 hours after discovery of the release, Defendant Giertz has violated Section 4(h) of the Act, 415ILCS 5/4(h) (2004), and 35 Ill. Adm. Code 580.105.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent Giertz:

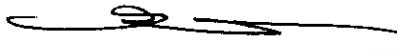
A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Giertz 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 violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

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/Asbestos
Litigation Division

BY: 
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Assistant Attorney General

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Dated: 10/11/06