

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**  
CLERK'S OFFICE

OCT 24 2006

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
PINNACLE GENETICS, LLC, an Illinois )  
limited liability corporation, and )  
PROFESSIONAL SWINE MANAGEMENT, )  
LLC, an Illinois limited liability corporation, )  
)  
Respondents. )

PCB NO. 07-29  
(Enforcement)

NOTICE OF FILING

To: Gary L. Donley, Registered Agent                      Joseph F. Connor, Registered Agent  
Pinnacle Genetics, LLC                                      Professional Swine Management, LLC  
106 E. State Street    34 West Main Street  
P.O. Box 467    P.O. Box 220  
Camp Point, IL 62320                                        Carthage, IL 62321

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 20, 2006

## CERTIFICATE OF SERVICE

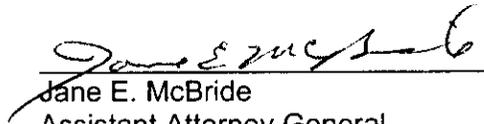
I hereby certify that I did on October 20, 2006, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, APPEARANCE and COMPLAINT

To: Gary L. Donley, Registered Agent  
Pinnacle Genetics, LLC  
106 E. State Street  
P.O. Box 467  
Camp Point, IL 62320

Joseph F. Connor, Registered Agent  
Professional Swine Management, LLC  
34 West Main Street  
P.O. Box 220  
Carthage, IL 62321

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

  
Jane E. McBride  
Assistant Attorney General

This filing is submitted on recycled paper.

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 PINNACLE GENETICS, LLC, an Illinois )  
 limited liability corporation, and )  
 PROFESSIONAL SWINE MANAGEMENT, )  
 LLC, an Illinois limited liability corporation, )  
 )  
 Respondents. )

PCB 07-29  
(Enforcement)

APPEARANCE

I, JANE E. McBRIDE, Assistant Attorney General of the State of Illinois, hereby file my appearance in this proceeding on behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

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 20, 2006

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 limited liability corporation, and )  
 PROFESSIONAL SWINE MANAGEMENT, )  
 LLC, an Illinois limited liability corporation )  
 )  
 Respondents )

PCB NO. 07-29  
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents PINNACLE GENETICS, an Illinois limited liability corporation, and PROFESSIONAL SWINE MANAGEMENT, LLC, an Illinois limited liability corporation, as follows:

COUNT I  
WATER POLLUTION VIOLATIONS

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

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 (2004), and which is charged, *inter alia*, with the duty of enforcing the Act.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent Pinnacle Genetics, LLC ("Pinnacle") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Pinnacle is Gary L. Donley, 106 E. State Street, PO Box 467, Camp Point, IL 62320.

5. Respondent Pinnacle owns an 1800-head sow swine production facility located along County Road 600N approximately 2.5 miles north of Colmar, in the Northwest quarter of Section 3, T.4N., R.4W., in LaMoine Township, McDonough County, Illinois (the "facility" and "site"). The mailing address for the facility is 3131 N. 600<sup>th</sup> Road, Colchester, IL 62326. William L. Hollis is the facility's managing agent. Mr. William Hollis' address, as managing agent for the facility, is William L. Hollis, Managing Agent, Pinnacle Genetics, LLC, 34 West Main Street, Carthage, IL 62321.

6. The Respondent Professional Swine Management, LLC ("Professional") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Professional is Joseph F. Connor, 34 West Main Street, PO Box 220, Carthage, IL 62321.

7. Respondent Professional jointly operates the facility with Respondent Pinnacle.

8. The facility consists of a gestation confinement building and farrowing confinement building, an office and laboratory building, an incinerator used to burn dead swine, a truck washing structure and various manure handling structures. Both the truck wash and the *confinement buildings are in the watershed of Troublesome Creek, which flows into the LaMoine*

River. Various portions of one or more unnamed tributaries to Troublesome Creek flow through and near the facility, including a small stream that flows near the truck washing structure.

9. The LaMoine River, Troublesome Creek, and the unnamed tributaries to Troublesome Creek are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), as follows:

"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.

10. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

11. Section 12 of the Act, 415 ILCS 5/12 (2004), provide the following prohibitions:

No person shall:

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

\* \* \*

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

\* \* \*

12. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides:

## Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

13. Section 501.404(b)(1) of the Board's Agriculture Related Pollution Regulations, 35

Ill. Adm. Code 501.404(b)(1), provides, in pertinent part:

### b) Temporary Manure Stacks

- 1) Temporary manure stacks shall be constructed or established and maintained in a manner to prevent runoff and leachate from entering surface or ground waters.

14. Section 501.404(c)(4)(B) of the Board's Agriculture Related Pollution Regulations,

35 Ill. Adm. Code 501.404(c)(4)(B), provides, in pertinent part:

### 4) Liquid Livestock Waste:

\* \* \*

- B) New livestock waste-handling facilities which handle the waste in a liquid form shall provide a minimum of 120-day storage with a liquid manure-holding tank, lagoon, holding pond, or any combination thereof unless the operator has justifiable reasons substantiating that a lesser storage volume is adequate. If inadequate storage volumes cause or threaten to cause a violation of the Act or applicable regulations, the Agency may require corrective measures.

15. On March 2, 2004, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint. At the time of the inspection, the Illinois EPA inspectors observed that a truck wash was in operation at the facility. The facility manager told inspectors that the facility owned a livestock trailer and rented another and that the trailers were washed in the truck wash. The truck wash was a maintenance building associated with a former operation that had been converted to a single bay truck wash. Wastewater and manure solids washed from the trailers in the truck wash were diverted into a floor drain and discharged through a 4

inch diameter PVC line with a concrete headwall at the outfall. The pipe discharged into a channel in a cattle feedlot just south of the truck wash. The channel discharges into an unnamed tributary of Troublesome Creek. The channel flows from north to south.

16. At the time of the March 2, 2004 inspection, two samples were collected downstream of the truck wash discharge point. A sample was collected at the discharge point. At the discharge point, brown, turbid liquid was ponded in the channel. The liquid had a strong swine waste odor. Brown sludge was present in the channel and was noted to be about 10 inches deep. Black, septic sludge was also present. A sample was also collected along the discharge channel about 20 yards south of the discharge point. The inspectors observed a brown colored, turbid and odorous liquid at this location. The liquid contained a strong swine waste odor.

17. At the time of the March 2, 2004 inspection, no construction and operation permit had been issued by the Illinois EPA for the facility's truck wash and the Illinois EPA had not received a construction and operation permit application from the facility.

18. At the time of the March 2, 2004 inspection, the facility had failed to report the wastewater release discharged from the facility's truck wash to the Illinois Emergency Management Agency. Pursuant to 35 Ill. Adm. Code 580.105, a reporting requirement applies to all releases of 25-gallons or more of livestock wastewater to surface water or groundwater from livestock waste storage and handling facilities and from the transportation of livestock waste (pipelines, pumps, and transportation equipment). At the time of the inspection, the Illinois EPA inspectors advised facility personnel to report the release and they refused to do so.

19. At the time of the March 2, 2004 inspection, manure solids were stockpiled along the access road just east of the truck wash. The stockpiled manure solids were not contained in *any manner so as to prevent runoff and leachate from draining from the stockpiles off-site.*

20. On March 2, 2004, the Respondents caused, threatened or allowed water pollution in that discharges of livestock wastewater and solids 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 to likely create a nuisance.

21. On March 19, 2004, the Illinois EPA sent Respondent Pinnacle and Respondent Professional Swine Management each a Violation Notice pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1). On April 28, 2004 and May 6, 2004, Frank & West Environmental Engineers, Inc. responded to the violation notice on behalf of Respondent Pinnacle. On May 19, 2004, Respondent Professional Swine Management responded to the violation notice by referencing the Frank & West responses. On May 14, 2004, the Illinois EPA issued a notice to Respondent Professional Swine Management rejecting its proposed compliance commitment agreement. On May 19, 2004, the Illinois EPA issued a notice to Respondent Pinnacle rejecting Respondent Pinnacle's proposed compliance commitment agreement. On August 19, 2004, the Illinois EPA issued a Notice of Intent to Pursue Legal Action ("NIPLA") to Respondent Pinnacle and Respondent Professional Swine Management, pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b). On September 23, 2004, the Illinois EPA met with Respondent Pinnacle and Respondent Professional Swine Management, upon the Respondents' request pursuant to the NIPLA notice.

22. By causing or allowing the discharge of contaminants in such a manner as to cause or threaten water pollution in a channel that flowed into an unnamed tributary of Troublesome Creek, and by causing or allowing the deposit of solids in an uncontained manner

as to cause or threaten water pollution, the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

23. By causing or allowing livestock waste to discharge directly from the truck wash through a pipe onto the ground, the Respondents have deposited swine waste upon the ground in such a place and manner so as to cause or tend to cause a water pollution hazard, and have thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

24. By causing or allowing discharges of livestock wastewater and manure solids to directly drain from the facility's truck wash through a pipe and be discharged and directly deposited on the ground as brown colored, turbid, odorous deposits and flows, Respondents have caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution and have deposited swine waste upon the ground in such a place and manner so as to cause or tend to cause a water pollution hazard, and have thereby violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004), and 35 Ill. Adm. Code 304.106.

25. By causing or allowing livestock waste solids to be stockpiled in an un-contained manner upon the ground near the access road east of the truck wash at the facility, the Respondents have caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution and have deposited swine waste upon the ground in such a place and manner so as to cause or tend to cause water pollution, and have thereby violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004), and 35 Ill. Adm. Code 501.404(b)(1).

26. By causing or allowing a new livestock waste-handling facility, namely the facility's truck wash, which handles livestock waste in a solid and liquid form to exist without a minimum of 120-day storage for the liquid waste and thereby cause or threaten to cause water pollution,

Respondents have violated Section 12(a), 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 501.404(c)(4)(B).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, :

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents 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.

**COUNT II**

**NPDES PERMIT VIOLATION**

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count II.

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

No person shall:

\* \* \*

- (f) Cause, threaten or allow the discharge fo any contaminants into the waters of the State, as defined herein, including but not limited to, water to any sewage works, or into any well or from any point source with the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of thisAct, 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 with respect to the NPDES program.

23. Section 309.102(a) 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.

24. Respondents never applied for, nor obtained, a National Pollution Discharge Elimination System ("NPDES") permit for subject truck wash.

25. By constructing and operating a truck wash with no liquid waste storage capacity, that was designed to and did discharge liquid livestock waste directly into a channel in a cattle feedlot that discharges into an unnamed tributary of Troublesome Creek, Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f), 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 the Respondents, :

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents 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 III**

#### **CONSTRUCTION PERMIT VIOLATION**

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count III.

22. Section 309.202 of the Board's Water Pollution Control Regulations, provide, in pertinent part:

##### Section 309.202 Construction Permits

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency . . .

23. By failing to apply for and obtain a construction and operation permit from the Illinois EPA for the facility's truck wash, the Respondents have caused or allowed the discharge of contaminants in such a manner as to cause, allow or threaten water pollution in a channel that flowed into an unnamed tributary of Troublesome Creek, from an un-permitted wastewater

source, and have thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), and 35 Ill. Adm. Code 309.202.

### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, :

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents 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.

### **COUNT IV**

#### **AIR POLLUTION VIOLATIONS**

1-9. Complainant realleges and incorporates by reference herein paragraphs 1 through 8 and 21 of Count I as paragraphs 1 through 9 of this Count IV.

10. Section 3.115 of the Act, 415 ILCS 5/3.115 (2004), states:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

11. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), states:

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

12. Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), provides, in pertinent part, as follows:

No person shall

- 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;

\* \* \*

13. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides, in pertinent part:

Prohibition of Air Pollution

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

14. Section 501.402(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.402(c)(3) (1998), provides, in pertinent part, as follows:

Location of New Livestock Management Facilities and  
New Livestock Waste-Handling Facilities

- c) 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.

15. Special Conditions 5b and 5c of the facility's air permit for its incinerator, Per No. 109809 AAc, provide, in pertinent part, as follows:

- 5b. The afterburner combustion chamber shall be preheated to at least the manufacturer's recommended temperature but no less than the temperature at which compliance was demonstrated in the most recent

compliance test before the incineration process is begun. This temperature shall be maintained during the whole process.

- 5c. The afterburner shall be equipped with a continuous temperature monitoring device which is installed, calibrated, maintained, and operated according to vendor's specifications at all times that the afterburners are in use.

16. On March 2, 2004, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint submitted on the same date by a neighbor of the facility, reporting very offensive odors of burning flesh coming from the facility. The neighbor experienced the odor three-fourths of a mile from the facility. The neighbor reported that the odor, at times, forced her husband to stop outdoor activities and come indoors.

17. On November 9, 2004, the Illinois EPA received another complaint from the same neighbor reporting that the neighbors had experienced very offensive odors from the facility mid-afternoon on November 6, 2004. The neighbors observed that the incinerator at the facility was in operation at the time they experienced the odor. The wind was from the southwest, blowing from the direction of the facility toward the neighbors residence.

18. Dead swine are incinerated at the facility. A Larry Lewis Livestock incinerator with an after-burner is utilized at the facility to incinerate dead swine.

19. At the time of the inspection, and on dates better known to the Respondents, the facility operated the incinerator under Air Permit No. 109809AAc, issued by the Illinois EPA. This permit contains nine special conditions. These conditions include operational restrictions associated with the afterburner, a continuous afterburner temperature-monitoring requirement, and several records/reporting requirements. Pursuant to the permit, the afterburner must be preheated and maintained at the recommended temperatures to prevent the emission of noxious odor. The crematorium feed rate and the operating hours are to be recorded. These records

must be maintained on-site for three years. The permit requires that an air emission report be submitted annually. If operated correctly, the incinerator should not produce off-site odors.

20. Based on discussions with facility personnel, Illinois EPA inspectors ascertained that the facility failed to pre-heat and obtain and maintain requisite temperatures in the incinerator prior to loading carcasses into the incinerator. Further, the facility failed to install a monitoring device that would indicate whether or not appropriate temperatures were maintained while the incinerator was in operation. Written operating instructions for the incinerator, submitted by the Respondents to the Illinois EPA, indicate that it was standard procedure that the facility personnel load animal carcasses prior to pre-heating the incinerator.

21. Respondents failed to comply with the facility's air permit conditions by failing to obtain and install a proper monitoring device and to operate the incinerator so that it was pre-heated and maintained at proper temperatures.

22. By failing to properly operate the facility's incinerator, Respondents have caused or allowed the discharge or emission of odor, an air contaminant, into the environment so as to cause or tend to cause air pollution, and have thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a), 35 Ill. Adm. Code 201.141, and 35 Ill. Adm. Code 501.402(c)(3).

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, :

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondents 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.

**COUNT V**

**AIR PERMIT VIOLATIONS**

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2000).

2-21. Complainant realleges and incorporates by reference herein paragraphs 2 through 21 of Count IV as paragraphs 2 through 21 of this Count V.

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

Sec. 9. Acts prohibited. No person shall.

\* \* \*

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit;

23. By failing to comply with the facility's air permit conditions, Respondents have violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2004).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, :

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

B. Finding that Respondents have violated the Act and regulations as alleged herein;

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

D. Assessing against Respondents 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.

## COUNT VI

### OPEN BURNING OF VETERINARY MEDICAL WASTE

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 of Count IV as paragraphs 1 through 12 of this Count VI.

13. Section 9(c) of the Act, 415 ILCS 5/9(c) (2004), states, in pertinent part:

No person shall:

- (c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act . . .

14. Section 237.101 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 237.101, provides, in pertinent part:

"Open Burning": The combustion of any matter in such a way that the products of the combustion are emitted to the open air without originating in or passing through equipment for which a permit could be issued under Section 9(b) of the Act (Environmental Protection Act, (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1009(b)).

"Refuse": Any discarded matter; or any matter which is to be reduced in volume, or otherwise changed in chemical or physical properties, in order to facilitate its discard, removal or disposal.

15. Section 237.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 237.102, provides, in pertinent part:

No person shall cause or allow open burning, except as provided in this Part.

No person shall cause or allow the burning of any refuse in any chamber or apparatus, unless such chamber or apparatus is designed for the purpose of disposing of the class of refuse being burned.

16. At the time of the March 2, 2004 Illinois EPA inspection, the inspectors observed a trash burn pile near the facility office. The burn pile contained veterinary medical waste items.

17. Veterinary medical waste is categorized as a class of refuse requiring special handling and disposal in an apparatus specifically design for such waste.

18. By causing or allowing the open burning of veterinary medical waste items at the facility, Respondents have violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2004), and 35 Ill. Adm. Code 237.102.

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, :

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents 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.

## COUNT VII

### NPDES STORM WATER PERMIT VIOLATIONS

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2000).

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

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

\* \* \*

10. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in *compliance with federal regulations, including 40 CFR 122.26.*

11. Storm water discharges are regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a storm water pollution prevention plan for construction activity including clearing, grading and excavation:

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

\* \* \*

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

\* \* \*

(4) Discharges through large and medium municipal separate storm sewer systems. . . .

\* \* \*

(9) (i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

\* \* \*

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

\* \* \*

(b) Definitions.

\* \* \*

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. . . . The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

\* \* \*

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of

development or sale if the larger common plan will ultimately disturb five acres or more;

\* \* \*

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

\* \* \*

12. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), requires an NPDES permit:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], 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.

13. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), provides that no person shall cause, threaten, or allow the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Illinois EPA.

14. On March 29, 2006, the Illinois EPA conducted a compliance inspection at the facility. At the time of the inspection, construction was underway at the site to double the capacity of the facility. A new gestation building with a maximum capacity of approximately 1,600 sows was under construction. The new gestation building would also include some gilt pens. An addition was also being constructed on the farrowing building, that included seven farrowing rooms with 52 crates per room.

15. At the time of the March 29, 2006 inspection, the Respondents had failed to file a notice of intent with the Illinois EPA for coverage under the state's general storm water permit for construction sites, and had failed to submit to the Illinois EPA a storm water pollution prevention plan.

16. At the time of the March 29, 2006 inspection, the inspectors observed that the drainage system installed prior to construction at the site to properly handle excess storm water at the site as it existed prior to construction, had received a significant amount of silt due to recent construction. In this silted condition, and in that no additional structures or practices had been installed or implemented to handle storm water runoff during construction, there existed a threat that construction activity storm water pollution could discharge from the site. A field tile riser existed at the location of a pre-existing retention basin. The silt trap associated with the riser was overloaded, and thus there existed a threat the riser could serve as a conduit to moving silt into the field tile receiving waters. The retention basin itself was silted in and thus existed in a condition of reduced capacity to handle storm water.

17. By causing or allowing or threatening the discharge of construction activity storm water contaminants into waters of the State without coverage under the state's general storm water NPDES permit, the Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Water Pollution Regulations, 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 the Respondents, :

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

- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents 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 VIII**

#### **FAILURE TO REPORT RELEASE**

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).

2-20. Complainant re-alleges and incorporates herein by reference paragraphs 2 and 4 through 21 of Count I as paragraphs 2 through 20 of this Count VIII.

21. 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.

22. 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.

23. 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.

24. 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 . . . :

25. By failing to report the release 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,

Respondents Pinnacle and Professional Swine Management have violated Section 4(h) of the Act, 415ILCS 5/4(h) (2004), and 35 Ill. Adm. Code 580.105.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, :

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondents 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.

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  
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Dated: 10/19/06