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NOV 14 2006
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 8, 2006

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

PCB07-35

Re: ***People v. Bradshaw Enterprises, LLC, et al.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Complaint, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement 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

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NOV 14 2006

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
 Complainant,)
)
 vs.)
)
 BRADSHAW ENTERPRISES, LLC)
 an Illinois limited liability corporation,)
 and BRIAN BRADSHAW, individually,)
)
 Respondents.)

PCB No. **07-35**
(Enforcement)

NOTICE OF FILING

To: Jason P. Stone
Lewis and Longlett
435 Hampshire Street
Quincy, IL 62301

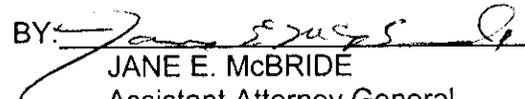
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

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: November 8, 2006

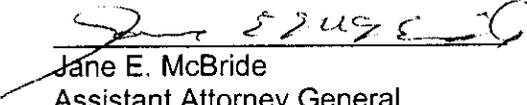
CERTIFICATE OF SERVICE

I hereby certify that I did on November 8, 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 FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Jason P. Stone
Lewis and Longlett
435 Hampshire Street
Quincy, IL 62301

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

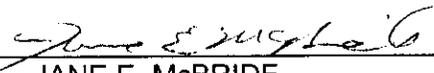
This filing is submitted on recycled paper.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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: November 8, 2006

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 BRADSHAW ENTERPRISES, LLC)
 an Illinois limited liability corporation, and)
 BRIAN BRADSHAW, individually)
)
 Respondents.)

PCB No. 67-35
(Water-Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, BRADSHAW ENTERPRISES, LLC. and BRIAN BRADSHAW, individually,:

COUNT I

WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

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

4. Bradshaw Enterprises, LLC ("Bradshaw Enterprises"), is listed with the Illinois Secretary of State's offices as an Illinois limited liability corporation subject to involuntary

dissolution, effective May 29, 2004. Brian Bradshaw is the registered agent. Brian Bradshaw's address is RR 1, Box 3, New Salem, Illinois 62357. Brian Bradshaw has indicated to the Illinois EPA that Bradshaw Enterprises LLC is active and properly the subject of this enforcement action. According to the Illinois Secretary of State's business records, Bradshaw Enterprise, LLC was reinstated as of August 27, 2004.

5. Brian Bradshaw ("Bradshaw") has identified himself to the Illinois EPA as the owner of the facility that is the subject of this complaint. At all times relevant to this complaint, Respondent Brian Bradshaw personally directed and has been in control of the day-to-day operations of the subject facility.

6. The Respondents' swine production facility is a farrow to wean hog operation with a capacity of approximately 1,000 sows located in the southwest quarter of Section 15, Township 9 North, Range 14 West, Clark County (the "facility"). All livestock waste is directed to the facility's primary lagoon. An overflow pipe in the berm of the primary lagoon allows livestock waste to flow into the facility's secondary lagoon.

7. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002) provides:

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

8. Section 3.395 of the Act, 415 ILCS 5/3.395 (2002) provides in pertinent part:

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

9. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002) 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 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.

10. Section 3.550 of the Act, 415 ILCS 3.550 (2002) 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.

11. Section 12 of the Act, 415 ILCS 5/12 (2002), provides in pertinent part that:

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 as to create a water pollution hazard;

* * *

12. Section 501.405 of the Board's Agriculture Related Pollution Regulations, 35 Ill.

Adm. Code 501.405, provide, in pertinent part:

Field Application of Livestock Waste

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

13. On December 16, 2003, the Illinois EPA received a complaint from Clark County Highway Engineer Jack Ward that the facility had allowed livestock waste to flow into an unnamed tributary of Mount Branch, which is tributary to the North Fork of the Embarrass River.

14. On December 17, 2003, an Illinois EPA inspector conducted an investigation of the complaint. The inspector observed discoloration, turbidity, odor and dead fish in the unnamed tributary of Mount Branch. The discharge was an obvious red color in the stream.

15. At the time of the Illinois EPA's investigation, the inspector interviewed Respondent Bradshaw. Respondent Bradshaw indicated to the inspector that the facility had been unaware of waste flowing in to the stream until the facility was contacted by the Clark County Highway Department in the afternoon of December 16, 2003. According to Respondent Bradshaw, the over-application of waste resulted when a large irrigation system supply hose became disconnected, allowing the direct discharge of liquid waste onto crop land. At the time of the interview, Respondent Bradshaw admitted that it is the facility's practice to check the waste application system only once every two hours or so, and that the worker assigned to check the system on December 16, 2003 was inexperienced.

16. At the time of the December 17, 2003 inspection, the Illinois EPA inspector observed that the waste that had been discharged from the supply hose had flowed off of the crop land in at least three locations into the nearby stream. The inspector observed that the quantity of waste released onto the land was excessive, and thus resulted in the runoff to the stream.

17. Two small streams converge to form the unnamed tributary that was the stream that received the waste. The stream from the north east was clear and contained live fish. At the time of the December 17, 2003 inspection, the stream from the northwest was red colored and somewhat turbid with a slight livestock waste odor. Several dead fish were observed in the northwest stream. The northwest stream drains the area surrounding the facility.

18. At the time of the December 17, 2003 inspection of the facility, the Illinois EPA inspector collected a water sample from the receiving stream. The sample indicated levels of ammonia nitrogen of 43 mg/l.

19. On December 17, 2003, the Illinois Department of Natural Resources ("Illinois DNR") conducted an investigation of the fish kill that resulted from the facility's release of waste

on December 16, 2003. The Illinois DNR investigators categorized the fish kill as “heavy”, extending for more than four miles and resulting in the loss of an estimated 924 small fish.

20. On March 5, 2004, the Illinois EPA issued a Violation Notice (“VN”) concerning the December 16, 2003 release, to Brian Bradshaw and Bradshaw Enterprises. On April 20, 2004, Respondents Bradshaw and Bradshaw Enterprises responded to the VN by submitting a check in the amount of the fish kill assessment. On May 4, 2004, the Illinois EPA issued a Compliance Commitment Agreement (“CCA”) rejection letter to the Respondents in response, based upon the nature and seriousness of the violations coupled with the Respondents’ failure to outline corrective measures implemented or planned at the facility to avoid a reoccurrence.

21. On May 28, 2004, the Illinois EPA received a letter from the Respondents in response to the Illinois EPA’s May 4, 2004 rejection. The May 28, 2004 letter, the Respondents included an explanation of the cause of the spill and described steps taken to prevent a reoccurrence.

22. On June 4, 2004, the Illinois EPA sent the Respondents a Notice of Intent to Pursue Legal Action (“NITPLA”) notification regarding the December 16, 2003 release. Respondent Bradshaw contacted the Illinois EPA to schedule a meeting pursuant to the NITPLA letter. On July 1, 2004, the requested meeting was held. At the time of the meeting, Respondent Bradshaw indicated he had implemented the following measures at the facility to avoid a future release: he replaced the supply hose clamp and enhanced the security of the connection by adding a retaining wire. Further, he indicated that the pumping system is now monitored during operation by trained staff.

23. By causing or allowing the release of livestock waste so that it discharged directly off crop land into a stream, thereby causing a fish kill four miles in length in “waters” of

the State, the Respondents have caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

24. By causing or allowing the deposit of livestock waste in a manner and quantity that exceeded a practical limit and created a water pollution hazard, Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), and 35 Ill. Adm. Code 501.405.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents Brian Bradshaw and Bradshaw Enterprises LLC:

- 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;
- D. Assessing against Respondent 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; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II

VIOLATION OF WATER QUALITY STANDARDS

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part:

Offensive Conditions

Waters of the State shall be free from sludge or other bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

24. Section 302.212(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.212(a), provides, in pertinent part:

Total Ammonia Nitrogen

a) Total ammonia nitrogen (as N: STORET Number 00610) must in no case exceed 15 mg/l.

25. On December 16, 2004, liquid livestock waste discharged from the facility flowed into a nearby stream, causing unnatural coloration, turbidity and odor.

26. The facility's discharge of liquid livestock waste cause ammonia nitrogen levels in the receiving stream to reach 43 mg/l.

27. By causing or allowing a discharge to waters of the State that resulted in unnatural coloration, turbidity and odor, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002) and 35 Ill. Adm. Code 302.203.

28. By causing or allowing a discharge of livestock waste to waters of the State that resulted in levels of ammonia nitrogen that exceeded 15 mg/l, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) and 35 Ill. Adm. Code 302.212(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents Brian Bradshaw and Bradshaw Enterprises LLC:

- 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;
- D. Assessing against Respondent 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; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III

NPDES VIOLATION

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 this Count III.

23. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), 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.

24. Respondents have not obtained an NPDES permit for the facility. The Illinois EPA does has not received an NPDES permit application for the facility from the Respondents

for the facility. At all times relevant to the complaint, the facility was not permitted under the NPDES program.

25. The release of livestock waste from the facility's land application supply hose was a point source discharge of contaminants to waters of the State.

26. By causing or allowing the release of livestock waste to waters of the State from a point source at and under the control of a facility that is not permitted under the NPDES program, Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents Brian Bradshaw and Bradshaw Enterprises LLC:

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;

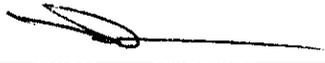
D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

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

Respectfully submitted,

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

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

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

Jane E. McBride
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 11/08/06

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. Simultaneously with this Stipulation and Proposal for Settlement, a Complaint is being filed, on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).

3. Bradshaw Enterprises, LLC ("Bradshaw Enterprises"), is listed with the Illinois Secretary of State's offices as an Illinois limited liability corporation subject to involuntary dissolution, effective May 29, 2004. Brian Bradshaw is the registered agent. Brian Bradshaw's address is RR 1, Box 3, New Salem, Illinois 62357. Brian Bradshaw has indicated to the Illinois EPA that Bradshaw Enterprises LLC is active and properly the subject of this enforcement action. According to the Illinois Secretary of State's business records, Bradshaw Enterprise, LLC was reinstated as of August 27, 2004.

4. Brian Bradshaw ("Bradshaw") has identified himself to the Illinois EPA as the owner of the facility that is the subject of this complaint. At all times relevant to this complaint, Respondent Brian Bradshaw personally directed and has been in control of the day-to-day operations of the subject facility.

B. Site Description

1. At all times relevant to the Complaint, Respondents owned a farrow to wean hog operation with a capacity of approximately 1,000 sows located in the southwest quarter of Section 15, Township 9 North, Range 14 West, Clark County (the "facility"). All livestock waste is directed to the facility's primary lagoon. An overflow pipe in the berm of the primary lagoon allows livestock waste to flow into the facility's secondary lagoon.

2. On December 16, 2003, the Illinois EPA received a complaint from Clark County Highway Engineer Jack Ward that the facility had allowed livestock waste to flow into an unnamed tributary of Mount Branch, which is tributary to the North Fork of the Embarrass River.

3. On December 17, 2003, an Illinois EPA inspector conducted an investigation of the complaint. The inspector observed discoloration, turbidity, odor and dead fish in the unnamed tributary of Mount Branch. The discharge was an obvious red color in the stream.

4. At the time of the Illinois EPA's investigation, the inspector interviewed Respondent Bradshaw. Respondent Bradshaw indicated to the inspector that the facility had been unaware of waste flowing in to the stream until the facility was contacted by the Clark County Highway Department in the afternoon of December 16, 2003. According to Respondent Bradshaw, the over-application of waste resulted when a large irrigation system supply hose became disconnected, allowing the direct discharge of liquid waste onto crop land. At the time of the interview, Respondent Bradshaw admitted that it is the facility's practice to check the

waste application system only once every two hours or so, and that the worker assigned to check the system on December 16, 2003 was inexperienced.

5. At the time of the December 17, 2003 inspection, the Illinois EPA inspector observed that the waste that had been discharged from the supply hose had flowed off of the crop land in at least three locations into the nearby stream. The inspector observed that the quantity of waste released onto the land was excessive, and thus resulted in the runoff to the stream.

6. Two small streams converge to form the unnamed tributary that was the stream that received the waste. The stream from the north east was clear and contained live fish. At the time of the December 17, 2003 inspection, the stream from the northwest was red colored and somewhat turbid with a slight livestock waste odor. Several dead fish were observed in the northwest stream. The northwest stream drains the area surrounding the facility.

7. At the time of the December 17, 2003 inspection of the facility, the Illinois EPA inspector collected a water sample from the receiving stream. The sample indicated levels of ammonia nitrogen of 43 mg/l.

8. On December 17, 2003, the Illinois Department of Natural Resources ("Illinois DNR") conducted an investigation of the fish kill that resulted from the facility's release of waste on December 16, 2003. The Illinois DNR investigators categorized the fish kill as "heavy", extending for more than four miles and resulting in the loss of an estimated 924 small fish.

9. On March 5, 2004, the Illinois EPA issued a Violation Notice ("VN") concerning the December 16, 2003 release, to Brian Bradshaw and Bradshaw Enterprises. On April 20, 2004, Respondents Bradshaw and Bradshaw Enterprises responded to the VN by submitting a check in the amount of the fish kill assessment. On May 4, 2004, the Illinois EPA issued a Compliance Commitment Agreement ("CCA") rejection letter to the Respondents in response,

based upon the nature and seriousness of the violations coupled with the Respondents' failure to outline corrective measures implemented or planned at the facility to avoid a reoccurrence.

10. On May 28, 2004, the Illinois EPA received a letter from the Respondents in response to the Illinois EPA's May 4, 2004 rejection. The May 28, 2004 letter, the Respondents included an explanation of the cause of the spill and described steps taken to prevent a reoccurrence.

11. On June 4, 2004, the Illinois EPA sent the Respondents a Notice of Intent to Pursue Legal Action ("NITPLA") notification regarding the December 16, 2003 release. Respondent Bradshaw contacted the Illinois EPA to schedule a meeting pursuant to the NITPLA letter. On July 1, 2004, the requested meeting was held. At the time of the meeting, Respondent Bradshaw indicated he had implemented the following measures at the facility to avoid a future release: he replaced the supply hose clamp and enhanced the security of the connection by adding a retaining wire. Further, he indicated that the pumping system is now monitored during operation by trained staff.

12. At all times relevant to the complaint, the facility was not permitted under the NPDES program.

13. The release of livestock waste from the facility's land application supply hose was a point source discharge of contaminants to waters of the State.

C. Allegations of Non-Compliance

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

Count I:

1. By causing or allowing the release of livestock waste so that it discharged

directly off crop land into a stream, thereby causing a fish kill four miles in length in “waters” of the State, the Respondents have caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

2. By causing or allowing the deposit of livestock waste in a manner and quantity that exceeded a practical limit and created a water pollution hazard, Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), and 35 Ill. Adm. Code 501.405.

Count II:

3. By causing or allowing a discharge to waters of the State that resulted in unnatural coloration, turbidity and odor, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002) and 35 Ill. Adm. Code 302.203.

4. By causing or allowing a discharge of livestock waste to waters of the State that resulted in levels of ammonia nitrogen that exceeded 15 mg/l, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) and 35 Ill. Adm. Code 302.212(a).

Count III:

5. By causing or allowing the release of livestock waste to waters of the State from a point source at and under the control of a facility that is not permitted under the NPDES program, Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).

D. Admission of Violations

The Respondents represent that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within

Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

Respondent Bradshaw purchased injection equipment for the facility in response to the spill. The purchase included Angus hose, 4-inch drag hose, an applicator plow and a tractor to pull the applicator. The system incorporated use of existing equipment, including a Dota manure pump and a tractor to run the pump.

F. Value of Settlement and Resulting Benefits

The total amount expended to achieve compliance was \$93,000.00.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

1. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

2. In the event that the Respondents propose to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation and Proposal for Settlement, the Respondents shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

3. The Respondents shall notify each contractor to be retained to perform work required by any Order accepting and adopting the terms of this Stipulation of each of the requirements of said Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to each contractor already retained no later than 30 days after the date of adoption of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by any Order accepting and adopting the terms of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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

Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), provides as follows:

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

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

In response to these factors, the parties state the following:

1. The December 16, 2003 discharge of livestock waste resulted in a fish kill, the receiving water being impacted by unnatural color, turbidity and odor, and elevated ammonia nitrogen levels in the receiving stream.
2. There is social and economic benefit to the facility.
3. Operation of the facility, when done in compliance with the state's environmental regulations, is suitable for the area in which it occurred.
4. It is technically practicable and economically reasonable to land apply livestock waste without a discharge.
5. Respondents have subsequently complied with the Act and the Board

Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The discharge of waste occurred on December 16, 2003. Complainant is not aware of another discharge or over-application of livestock waste at this facility.
2. The Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. The over-application of waste resulted when a large irrigation system supply hose became disconnected, allowing the direct discharge of liquid waste onto crop land. The hose became disconnected due to the failure of a clamp. At the time of the discharge inspection, Respondent Bradshaw admitted that it was the facility's practice to check the waste application system only once every two hours or so, and that the worker assigned to check the system on December 16, 2003 was inexperienced. Respondent Bradshaw has replaced the irrigation system in use at the time of the December 16, 2003 discharge, with an injection system. The amount required to come into compliance would entail repair or modification of the original system so as to prevent a discharge and for the labor costs involved in additional training for personnel and time dedicated to monitoring waste application. Respondent Bradshaw chose to replace the original system with an injection system. The cost of the injection system was \$93,000.00.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Three Thousand Five Hundred Dollars (\$3,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents, Bradshaw Enterprises LLC and Brian Bradshaw individually,

shall, jointly and severally, pay a civil penalty in the sum of Three Thousand Five Hundred Dollars (\$3,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondents stipulate that payment has been tendered to Respondents' attorney of record in this matter in a form acceptable to that attorney. Further, Respondents stipulate that said attorney has been directed to make the penalty payment on behalf of Respondents, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

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

The name and number of the case and Respondent Bradshaw Enterprise LLC's Federal Employer Identification Number (FEIN), 35-2164473, shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Jane E. McBride
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

James Day
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall

accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondents may be reached at the following address:

Mr. Brian Bradshaw
RR 1, Box 3
New Salem, Illinois 62357

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondents hereby agree that this Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or

5/42(h)(2002). Further, Respondents agree to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondents' joint and several payment of the \$3,500.00 penalty and agreement to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed simultaneously with this Stipulation and Proposal for Settlement. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and

d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

E. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

F. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be submitted to the Plaintiff in writing. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

G. Enforcement of Board Order

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

2. Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

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

PEOPLE OF THE STATE OF ILLINOIS,

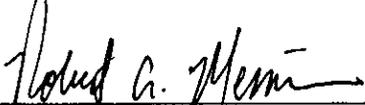
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 11/6/05

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 10/10/06

BRADSHAW ENTERPRISES, LLC

BY: 
Name: Brian Bradshaw
Title: manager/owner

DATE: 11/3/06

BRIAN BRADSHAW

BY: 
BRIAN BRADSHAW

DATE: 11/3/06