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DEC 20 2006  
STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 15, 2006

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

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

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT WITH THE HIGHLANDS, LLC; in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jane E. McBride", is written over the typed name.

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

JEM/pp  
Enclosures



**CERTIFICATE OF SERVICE**

I hereby certify that I did on December 15, 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 WITH THE HIGHLANDS, LLC

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

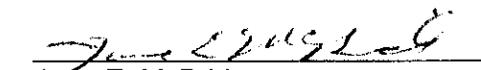
Mr. Charles M. Gering  
Foley & Lardner LLP  
321 N. Clarke St.  
Suite 2800  
Chicago, IL 60610-4764

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

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

A copy was also sent by First Class Mail with postage thereon fully prepaid

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

  
Jane E. McBride  
Assistant Attorney General

This filing is submitted on recycled paper.

**RECEIVED**  
CLERK'S OFFICE

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

DEC 20 2006

**STATE OF ILLINOIS**  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 THE HIGHLANDS, LLC, an Illinois limited )  
 liability corporation, and MURPHY )  
 FARMS, INC., (a division of MURPHY- )  
 BROWN, LLC, a North Carolina limited )  
 liability corporation, and SMITHFIELD )  
 FOODS, INC., a Virginia corporation), )  
 )  
 Respondent. )

*00*  
 PCB No. 06-104  
 (Enforcement - Air, Water)

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004). In support of this motion, Complainant states as follows:

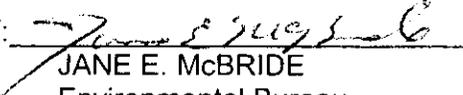
1. The People of the State of Illinois and THE HIGHLANDS, LLC, have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

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: December 15, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

DEC 20 2006

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 THE HIGHLANDS, LLC, an Illinois limited )  
 liability corporation, and MURPHY )  
 FARMS, INC., (a division of MURPHY- )  
 BROWN, LLC, a North Carolina limited )  
 liability corporation, and SMITHFIELD )  
 FOODS, INC., a Virginia corporation). )  
 )  
 Respondents. )

PCB No. 00-104  
(Enforcement – Air, Water)

**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH THE HIGHLANDS, LLC**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and THE HIGHLANDS, LLC, (“Respondent”, “Respondent Highlands” or “Respondent The Highlands LLC”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony that would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

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. On December 21, 1999, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent.

2. On August 20, 2002, the Complainant filed an amended complaint in this matter. On October 8, 2002, the amended complaint was entered pursuant to Hearing Office Order.

3. On February 18, 2004, the Complainant filed a second amended complaint in this matter. On May 6, 2004, the second amended complaint was entered pursuant to Board Order.

4. 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).

5. At all times relevant to the Second Amended Complaint, Respondent Highlands was and is a limited liability corporation, registered and in good standing in the State of Illinois. Highlands is a member-managed LLC. The members of the LLC are Douglas B. Baird, 1124 Knox Highway 18, Williamsfield, Illinois 61489; James R. Baird, 2218 Knox Road 100N, Yates City, IL 61572; and Patricia A. Baird, 2218 Knox Road 100N, Yates City, IL 61572. The registered agent is John J. Hattery, Suite 402, Hill Arcade, Galesburg, IL 61401.

**B. Site Description**

1. At all times relevant to the Second Amended Complaint up until January 1, 2003, Respondents Highlands and Murphy owned and operated a swine facility located just south of Williamsfield in the NE 1/4, Section 10, T.10N, R.4E, Elba Township, Knox County, Illinois (the "facility"). The facility's offices are located at 1122 Knox Highway 18, Williamsfield, IL 61489.

2. As of January 1, 2003, Respondent Murphy Farms, Inc. terminated, and effectively withdrew from, its contractual obligations at the Highlands' facility. Since January 2003, the Highlands has housed hogs owned by The Maschhoffs, Inc. of Carlyle, IL. The Maschhoffs, Inc. corporate offices are located at 7475 State Rt. 127, Carlyle, Illinois 62231.

3. At all times relevant to the Second Amended Complaint, Respondent Highlands owned and operated the property and buildings and operated the wastewater treatment facility, and provided labor for operation of the facility.

4. Until January 2003, Respondent Murphy owned all of the hogs at the facility, owned and provided all feed, owned and provided all medication, owned and provided all else that went in and on the hogs such as syringe needles and marking sticks, provided for the transportation of all hogs, provided for veterinary services for the hogs, trained the facility's employees and otherwise shared in the direct control and management of the operation with Respondent Highlands. All hog excrement that is deposited and stored at the facility came from

hogs owned by Respondent Murphy.

5. The facility is a 3,650 sow farrow-to-wean operation, comprised of a gestation building, breeding building, a farrowing building, a nursery and a finishing building.

**C. Allegations of Non-Compliance**

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

Count I:

1. On numerous occasions, beginning in January 1998 and continuing through the present, the Respondents caused or allowed the emission of offensive hog odors from the facility. These odors unreasonably interfered with the enjoyment of life and property by neighboring residents by preventing or disrupting outdoor activities and by invading or penetrating their homes and vehicles causing physical discomfort, including in some cases gagging, nauseousness, sore and/or burning nose and throat, and headache. Such physical discomfort has also included the physical and emotional revulsion an individual might experience when subjected to highly offensive odors.

2. By causing or allowing strong, persistent and offensive hog odors to emanate from the facility that unreasonably interfere with the use and enjoyment of the neighbors' property, Respondent Highlands caused air pollution, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a)(1998).

3. By failing to practice adequate odor control methods and technology at its new livestock management facility and livestock waste-handling facility, thereby causing air pollution, Respondents Highlands violated 35 Ill. Adm. Code 501.402(c)(3)(1998).

Count II:

4. On June 19, 2002, Respondent Highlands reported a release of livestock waste

to the Illinois Emergency Management Agency ("IEMA"). The Highlands reported that the release occurred on June 18, 2002. The release resulted from the land application of waste from the facility.

5. The waste discharged to an unnamed tributary of French Creek. The waste entered the unnamed tributary at the outlet of two field tiles south of Interstate Highway I-74. One tile comes from the west and the other comes from the north. At approximately 2:00 P.M. on June 18, 2002, a neighbor of the Highlands facility observed that the discharge from the west tile was clear, and the discharge from the northerly tile was flowing red. The unnamed tributary was flowing red.

6. Respondent Highlands was land applying waste from the facility via a traveling gun irrigation unit on June 18, 2002. The waste was being applied to a portion of a soybean field on the west side of the facility's lagoons. The entire soybean field is a half mile long by a quarter mile wide and consists of 79 acres. The operator of Respondents' facility told inspectors that he began spray irrigating at approximately 8:00 A.M. on the morning of June 18, 2002, in the soybean field, and shut off the tractor/pump irrigation unit at about 1:00 P.M. that day. During the irrigation, he observed the irrigation gun had not traveled as far as it normally would through the spray field.

7. An Illinois DNR fisheries biologist conducted a fish kill investigation on June 19, 2002. The biologist estimated that approximately 6,600 fish were killed by the release. The species killed included seven minnow species, two species of darter and green sunfish. The biologist observed that the liquid swine manure spill was sufficient in quantity to kill all fish and crayfish in the 1.54 mile length of the tributary and that the dead fish observed at the five count stations were killed in an estimated time period of 6 to 24 hours prior to his investigation.

8. At the time of the June 19, 2002, inspection, and during subsequent inspections on June 24 and June 25, 2002, stream samples were collected at various locations at the site of

the discharge, and along the receiving waters. Samples collected at the time of the June 19, 2002, inspection indicated total ammonia levels of 17 mg/L and 20 mg/L at locations downstream of the release in the unnamed tributary to French Creek. Temperature and pH measurements indicate the existence of conditions that would result in exceedance of the acute standard for unionized ammonia.

9. By causing or allowing the discharge of livestock waste to the unnamed tributary of French Creek so as to cause or tend to cause water pollution, Respondent Highlands violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), and 35 Ill. Adm. Code 302.203.

10. By causing or allowing the discharge of livestock waste to the unnamed tributary of French Creek so as to cause total ammonia levels to exceed 15 mg/L and unionized ammonia nitrogen levels to exceed the acute standard of 0.33 mg/L, Respondent Highlands violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2000), and 35 Ill. Adm. Code 302.212(a) and (b).

11. By causing or allowing the deposit of livestock waste upon the land in such place and manner so as to create a water pollution hazard, Respondent Highlands violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2000), and 35 Ill. Adm. Code 501.405(a).

12. By causing, threatening or allowing the discharge of a contaminant into the waters of the State without an NPDES permit, Respondent Highlands violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2000).

Count III:

13. On November 18, 2003, an Illinois EPA inspector observed livestock waste application equipment in Respondent Highlands' irrigation field immediately west of Respondent Highlands' swine waste lagoons. At the time of the observation, a traveling gun irrigation unit was set up in the agriculture field immediately west of the swine waste lagoons. Field conditions were wet and muddy. A 6-inch diameter aluminum pipe (supply line) extended west

from the lagoons for a distance of several hundred feet. The pipe then turned south and extended to the irrigation reel and gun. The traveling gun was positioned at the reel and had traveled from east to west. It was not operating at the time of the Illinois EPA field visit.

14. Land application (irrigation) of swine wastewater had occurred from the Highlands swine waste lagoons to Respondent Highlands' irrigation field on November 17, 2003. The irrigation of wastewater that occurred on November 17, 2003 occurred at a time when the weather forecast included a prediction of rain.

15. At the time of the November 18, 2003 field visit, a significant leak was observed along the 6-inch diameter aluminum pipe. The leak resulted in ponding of swine wastewater on the surface of the field north of the aluminum irrigation pipe. The accumulation of wastewater created a barren area in the field. A leak was also observed at the 90 degree elbow at the west end of the aluminum irrigation pipe. At the point of the leak at the 90 degree elbow, a significant hole was eroded in the field beneath the elbow.

16. On October 30, 2003, the Illinois EPA conducted a site visit at the Highlands' facility. At the time of the October 30, 2003 site visit, a leak in the wastewater irrigation system was observed by an Illinois EPA inspector during land application of swine manure. At the time of the October 30, 2003 inspection, the inspector observed ponding of wastewater in the application field at the location of the leak near the hose reel.

17. Respondent Highlands has indicated that preceding the time of the November 18, 2003 inspection, it had experienced transmission difficulties within the irrigation system. These transmission problems caused the system to cease operating frequently. The start and stop interruptions in function resulted in numerous pressure leaks along the piping. Respondent Highlands indicated it was trying to avoid the cost of replacing the transmission. Respondent Highlands also indicated that every year the irrigation piping suffers formation of pinhole leaks. Respondent Highlands indicated it is only willing to repair the leaks occasionally. Respondent

Highlands indicated that the November 2003 inspection occurred at the end of the facility's second irrigation cycle, and Respondent Highlands was unwilling to fix leaks at that time of year. Rather, it would fix all leaks prior to the spring irrigation cycle. The pressure leaks and pin hole leaks are believed to be the cause of the ponding. The ponding occurred at a low point of the field. Also, at the time of the November 18, 2003 inspection, a rainfall event had taken place the night before and Respondent Highlands indicated it had continued to land apply up to an hour prior to beginning of the rain.

18. At the time of the November 18, 2003 site visit, the Illinois EPA inspector observed a reddish colored discharge with foam coming from an 8-inch diameter PVC pipe at a concrete drop box structure located about 3/8 of a mile northeast of the swine farm. Depth of flow in the PVC pipe was about 2 inches. The discharge from the PVC pipe drains east beneath a road and enters an unnamed tributary to French Creek. The PVC pipe discharges from a field tile that, per Respondent Highlands, is connected to a field tile that runs on the south side of Township Road 1100 N immediately in front of the swine facility.

19. At the time of the November 18, 2003 site visit, the Illinois EPA inspector took samples of the wastewater ponded on the irrigation field at the location of the leak in the 6-inch wastewater supply line, and he also took samples of the discharge from the 8-inch PVC pipe at the concrete drop box structure located 3/8 of a mile northeast of the swine farm. Sample results from the ponded wastewater at the location of the leak in the 6-inch supply line indicated the following parameter levels: 31 mg/L ammonia, 60 mg/L BOD, and 592 mg/L total suspended solids. Sample results from the discharge at the concrete drop box indicated the following parameter levels: 1.5 mg/L ammonia, 11 mg/L BOD, 19 mg/L total suspended solids and 3000 fecal coliform/100 ml. Respondent denies agreement with and contests the fecal coliform sample results on the basis that the Illinois EPA did not split samples with the Respondent at the time of the November 18, 2003 site investigation.

20. The pooling of wastewater or the excessive land application of wastewater results in accumulations that cannot be adequately absorbed by soils. As a result, the wastewater penetrates to field tiles and may exist in the field tiles at contaminant levels high enough to cause or tend to cause water pollution at points of discharge.

21. By causing or allowing the ponding and accumulation of livestock waste upon the land so as to cause or tend to cause water pollution, Respondent Highlands has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

22. By causing or allowing the ponding and accumulation of livestock waste in its irrigation field, Respondent Highlands has violated 35 Ill. Adm. Code 501.405(a).

**D. Admission of Violations**

Respondent Highlands admits that The Highlands facility was the source of unreasonably offensive odors in 1999, 2000 and 2001, as alleged in the Second Amended Complaint. Respondent Highlands admits that the facility, at times of reported instances, was the source of unreasonably offensive odors during 2002 and 2003. Further, as set forth in paragraphs 20, 21 and 22 of Respondent Highland's answer to the amended complaint, Respondent Highlands admits that there was a release of livestock waste from the facility on June 18, 2002. Respondent Highlands denies all other violations alleged in the Second Amended Complaint filed in this matter and referenced herein.

**E. Compliance Activities to Date**

1. At the time of the filing of the original Complaint in this matter, the livestock waste management system being utilized at the facility was a multiple lagoon system designed and operated, in conjunction with Respondents Highlands and Murphy, by Bion Technologies, Inc. ("Bion"), a Colorado corporation. Swine waste and wastewater generated in the buildings was

collected in 16-inch deep pits under the buildings. The building pits were drained into the lagoon system. There were four lagoons in the system that were operated in series. The third lagoon was divided into two cells by a synthetic curtain partition. The system utilized four surface aerators. There were two five horsepower aerators in the first lagoon, one five horsepower aerator in the first cell of the third lagoon and one three horsepower aerator in the second cell of the third lagoon. Some of the swine wastewater from the first cell of the third lagoon was recycled to the buildings as pit recharge water. Wastewater in the third and fourth lagoon was land applied via a traveling gun irrigation unit. According to Bion, swine waste solid sludge that accumulated in the second lagoon was to be periodically land applied.

2. Shortly after the filing of the original Complaint in this matter, Bion withdrew from its contractual obligations at the Highlands' facility.

3. In April 2000, Respondents began to convert the Highland facility's lagoon system to a BioSun system. The BioSun system utilized the two large lagoons of the original lagoon series. The two small lagoons that served as the entry point for the waste stream in the Bion system, were taken out of operation but have never been cleaned out and properly closed.

4. It is the Complainant's position that implementation of the BioSun system did not provide sufficient reduction in odor emissions and may have, in fact, resulted in increased emissions during the spring of 2001.

5. In 2004, Respondent Highlands stopped using BioSun products and began to use the liquid micro-organism In-gest-o-vac. This micro-organism is added to all building pits on a weekly basis to reduce odor and improve treatment. The pit flushing schedule was changed from weekly to monthly. The pits are recharged daily.

6. Highlands installed air dams at the east end of the facility's gestation and breeding buildings during the spring of 2001. No analysis has been conducted as to the effectiveness of the air dams in averting air flows and odor emissions. Practical experience

indicates that the dams may have been effective during the day, during times of unstable atmospheric conditions. Accumulations of dust have been observed on the facility side of the air dams, so they may be serving to prevent the emission of some dust and particulates from the facility. Respondent Highlands installed a misting system utilizing a BioSun product in an effort to neutralize odors and address dust. No analysis has been conducted as to the effectiveness of the misting system on odor emissions. Respondent ceased using the misting system in 2004, but continues to regularly power wash the fans.

7. No action was taken to contain the release of wastewater to an unnamed tributary of French Creek that occurred on June 18, 2002. The manure release was not reported until 16 ½ hours after it was first discovered. The waste was allowed to dissipate into the waterway. In so doing, the waste caused a fish kill throughout the length of the un-named tributary. After investigation of the release, the Illinois EPA inspector asked that the operator of Highlands not land apply on the east side of the 79-acre soybean field that was the source of the release. The investigation of the June 18, 2002 discharge indicated that there was a possibility that broken field tiles existed in the field. The operator of the Highlands agreed not to land apply on the southeast portion of the field, but refused to abstain from land applying waste on the northeast section of the field.

8. Respondent Highlands has indicated that the release resulted from a malfunction of the irrigation equipment. The irrigation equipment was turned off and irrigation ceased at 1:00 P.M. The system had been operating since 8:00 A.M. that day. The run-off, caused by a malfunction of the irrigation equipment, was not discovered until 3:00 P.M. on June 18, 2002. The operator observed the irrigation gun had not traveled as far as it normally would through the spray field. It is the Complainant's position that Respondent Highlands may have been able to prevent the release if it would have adequately monitored the operation of its irrigation equipment in the field.

9. Respondent Highland has paid the fish kill claim, in the amount of \$1,114.51. Respondent Highlands has constructed a berm at the southeast end of the irrigation field.

10. Respondent Highlands has applied for an National Pollutonal Discharge Elimination System ("NPDES") permit. This was done upon notification by the Illinois EPA that Highlands was required to do so given the occurrence of the June 18, 2002 release.

11. Respondent Highlands has submitted a final written emergency response plan for containment and cleanup of any future wastewater releases, which has been deemed acceptable by the Illinois EPA.

12. Respondent Highlands has installed a monitoring port to allow sampling access to a field tile in proximity to the facility's land application field.

13. Respondent Highlands has repaired all pin hole leaks in the facility's irrigation equipment and has obtained and installed new gaskets for the joints of the facility's irrigation equipment so as to reduce ponding of liquid waste that has occurred at low points of the field due to leaks in the irrigation equipment.

14. Respondent Highlands has agreed to the compliance schedule set forth in Section VIII.B. Measures to more closely monitor irrigation of wastewater are expected to result in environmental benefit.

**F. Value of Settlement and Resulting Benefits**

1. Costs of compliance expended by Respondent Highlands include the following: air dams, \$5,431.00; enzyme injected on exhaust fans, \$2,051.00; 2002 expenditures to convert the Bion system to a BioSun system, \$17,362.00; Water Resource Management costs for lagoon testing, \$2,635.00; NPDES permit application preparation, \$2,148.00; PCD lab expenses for tile line test, \$841.00; BioSun additives for conversion and operation as BioSun system, \$54,469.00; berm and tile flow control structure to stop run-off to the south, \$4,163.00; new

irrigation pipe gaskets, \$247.00; Halox chlorine dioxide generator, \$16,207.00; supplies for operation of Halox chlorine dioxide generator since January, 2005, \$5,785.00; new irrigation hose couplings, \$4,327.00; north tile sampling port and control structure, \$650.00. The rounded total of these amounts is \$116,320.00.

2. Respondent Highland paid the fish kill claim, in the amount of \$1,114.51.

#### IV.

#### APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, employee or servant of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers or agents 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 Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

2. In the event that the Respondent proposes to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation, the Respondent 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 Respondent 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 Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

3. The Respondent shall notify each prime 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 and Proposal for Settlement to each contractor already retained no later than 30 days after the date of filing of this Stipulation. In addition, the Respondent 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 Respondent 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 as follows:

1. The violations of the Act alleged in the Second Amended Complaint adversely impacted the environment. Specifically, Complainant contends that the emission of offensive livestock odors caused air pollution and the release of livestock waste to the unnamed tributary of French Creek caused water pollution. Further, the pooling of wastewater or the excessive land application of wastewater results in accumulations as observed at the time of the November 2003 inspection. Such accumulations cannot be adequately absorbed by soils. Complainant alleges that as a result, wastewater at the facility penetrates to field tiles and may exist in the field tiles at contaminant levels high enough to cause or tend to cause water pollution at points of discharge. Respondent denies that the pooled wastewater would enter field tiles as alleged in Count III of the Complaint and further denies that such wastewater would enter the tiles and exist as contamination in the point of discharge identified in Count III of the Complaint.

2. The Highlands' facility can only be of economic and social value to the surrounding community, to the Highlands' employees, and to the Highlands' customers, if it is operated in a fashion that does not violate Illinois environmental laws and regulations.

3. The Complainant contends that the Highlands' facility as designed and operated is not suitable to the site where it is located. The facility was located too close to neighbor residences and it has a minimal amount of land for the application of waste.

4. Alternate waste treatment facility designs were available at the time of construction of the facility that are capable of minimizing the release of odors. Among the alternatives to reduce the odor intensity from the existing facility are the following: provide a cover for the lagoons to prevent the escape of odorous gases; capture and flare (and/or utilize) gas from the entire waste management system; install a system utilizing an enclosed, temperature controlled anaerobic digester and provide sufficient aeration to the storage basin receiving the digester effluent to maintain aerobic conditions; provide for twice weekly draining of the underfloor manure storage pits and re-filling with odor free water with a dissolved oxygen concentration in excess of 2.0 mg/l; provide adequate filtration for exhaust air generated at the swine confinement buildings; reduce organic loading on the treatment system by reducing the population of hogs in the facility. It was and continues to be economically reasonable to have originally installed or to modify the existing system utilizing one of the alternatives listed immediately above.

The release of livestock waste to the unnamed tributary of French Creek could have been prevented by exercising continuous monitoring during wastewater irrigation activities at all fields. Further, by failing to follow the Illinois EPA rules which require immediate reporting of releases to surface waters, set forth as 35 Ill. Adm. Code 580.105, the Respondents failed to exercise proper due diligence in mitigating this release. Early notification may have allowed the Illinois EPA to investigate the release a day earlier which, in turn, may have allowed for implementation of corrective action to minimize the impact of the release. It is technically practicable and economically reasonable to exercise sufficient monitoring so as to prevent the discharge or runoff of waste from an irrigation field.

It would also have been technically feasible and economically reasonable for Respondent Highlands to repair the faulty transmission and pinhole leaks that were ultimately the cause of ponding on the irrigation field on November 18, 2003. It also would have been technically feasible and economically reasonable for the Highlands to abstain from land application during conditions of imminent rain.

5. Complainant has not received continuous odor complaints regarding the facility since 2002, and has not received a single neighbor complaint against the facility since April 2003. Respondents Murphy and Highlands settled a private nuisance suit with the neighbor who lives within a quarter mile of the facility early in 2002.

It is the Complainant's position that implementation of the BioSun system has not provided sufficient reduction in odor emissions and may have, in fact, resulted in increased emissions during the spring of 2001. Highlands installed air dams at the east end of the facility's gestation and breeding buildings during the spring of 2001. No analysis has been conducted as to the effectiveness of the air dams in averting air flows and odor emissions. Practical experience indicates that the dams may have been effective during the day, during times of unstable atmospheric conditions. Accumulations of dust have been observed on the facility side of the air dams, so they may be serving to prevent the emission of some dust and particulates from the facility. Since odor-causing particles typically adhere to dust particles in the air, this suggests that some odor removal was taking place as a result of the placement of the air dams.

No action was taken to contain the release of wastewater to an unnamed tributary of French Creek that occurred on June 18, 2002. The manure release was not reported until 16 ½ hours after it was first discovered. The waste was allowed to dissipate into the waterway. In so doing, the waste caused a fish kill throughout the length of the unknown tributary. After investigation of the release, the Illinois EPA inspector asked that the operator of Highlands not

land apply on the east side of the 79-acre soybean field that was the source of the release. The operator of the Highlands agreed not to land apply on the southeast portion of the field, but refused to abstain from land applying waste on the northeast section of the field.

The November 18, 2003 observation of ponding on irrigation fields occurred after the facility had been previously warned by the Illinois EPA about leaking irrigation equipment and the potential of wastewater to travel to field tiles at unacceptably high levels of contamination. The ponding resulted from the facility's refusal to repair failing equipment in a timely manner and its insistence upon land applying when soil and weather conditions were unfavorable. Respondent Highlands had been a named respondent in this enforcement action for over four years at the time of the November 18, 2003 alleged water pollution infraction.

## 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 Complainant contends that between the months of January 1998 and December 1998, the Illinois EPA received approximately 110 complaints alleging odor coming from the facility that unreasonably interfered with life and/or property submitted by neighbors of the facility. Between the months of January 1999 and November 1999, the Illinois EPA received approximately 120 complaints alleging odor coming from the facility that unreasonably interfered with life and/or property submitted by neighbors of the facility. Throughout 2000 and 2001, the Illinois EPA continued to receive complaints alleging odor emanating from the facility that unreasonably interfered with life and/or property. During the spring of 2001, the frequency, duration and number of households filing complaints regarding nuisance odors emanating from the Highlands facility increased. The Illinois EPA continued to receive complaints alleging that odor coming from the facility has unreasonably interfered with life and/or property. The last such complaint documented an odor episode in April 2003 at the Del Leonard residence, approximately one mile north of the facility.

The June 18, 2002 release of livestock waste from the Highlands' facility into an unnamed tributary of French Creek resulted in a fish kill. An Illinois DNR fisheries biologist estimated that approximately 6,600 fish were killed by the release. The biologist observed that the liquid swine manure spill was sufficient in quantity to kill all fish and crayfish in the 1.54 mile length of the tributary and that the dead fish observed at the five count stations were killed in an estimated time period of 6 to 24 hours prior to his investigation. Further, in response to the release, downstream neighbors were forced to removed livestock from the immediate area of

the receiving stream, and a well on the property used for drinking water for livestock was rendered unsafe by the release. By failing to follow the Illinois EPA rules which require immediate reporting of releases to surface waters, set forth as 35 Ill. Adm. Code 580.105, Respondent Highlands failed to exercise proper due diligence in mitigating this release. Early notification may have allowed the Illinois EPA to investigate the release a day earlier which, in turn, may have allowed for implementation of corrective action to minimize the impact of the release.

The November 18, 2003 observation of ponding on irrigation fields occurred after the facility had been previously warned by the Illinois EPA about leaking irrigation equipment and the potential of wastewater to travel to field tiles at unacceptably high levels of contamination. The ponding resulted from the facility's refusal to repair failing equipment in a timely manner and its insistence upon land applying when soil and weather conditions were unfavorable.

2. Complainant has not received continuous odor complaints regarding the facility since 2002, and has not received a single neighbor complaint against the facility since April 2003. Respondents Murphy and Highlands settled a private nuisance suit with the neighbor who lives within a quarter mile of the facility early in 2002.

It is the Complainant's position that implementation of the BioSun system has not provided any reduction in odor emissions and may have, in fact, resulted in increased emissions during the spring of 2001. Highlands installed air dams at the east end of the facility's gestation and breeding buildings during the spring of 2001. No analysis has been conducted as to the effectiveness of the air dams in averting air flows and odor emissions. Practical experience indicates that the dams may have been effective during the day, during times of unstable atmospheric conditions. Accumulations of dust have been observed on the facility side of the air dams, so they may be serving to prevent the emission of some dust and particulates from the facility. Since odor-causing particles typically adhere to dust particles in the air, this

suggests that some odor removal was taking place as a result of the placement of the air dams.

With regard to the June 18, 2002 release of livestock waste to an unnamed tributary of French Creek, Respondent Highlands' failure to immediately report the release to surface waters constitutes a failure to exercise proper due diligence in mitigating this release. No action was taken to contain the release of wastewater to an unnamed tributary of French Creek that occurred on July 18, 2002. The manure release was not reported until 16 ½ hours after it was first discovered. The waste was allowed to dissipate into the waterway. In so doing, the waste caused a fish kill throughout the length of the unknown tributary. After investigation of the release, the Illinois EPA inspector asked that the operator of Highlands not land apply on the east side of the 79-acre soybean field that was the source of the release. The operator of the Highlands agreed not to land apply on the southeast portion of the field, but refused to abstain from land applying waste on the northeast section of the field. Respondent Highlands may have been able to prevent the release if it had more closely and more frequently monitored the operation and functioning of its irrigation equipment.

With regard to the ponding and potential infiltration of contamination into field tiles that was observed in November 2003, Respondent Highlands has indicated that at the time of the November 2003 incident, it was trying to save the cost of replacing a transmission in the irrigation system and also avoid the cost of repairing the irrigation piping. Respondent Highlands may have prevented the ponding if it had immediately repaired the transmission rather than allow the system to operate in a manner that resulted in repeated pressure leaks. Respondent Highlands may have prevented the ponding if it had timely repaired pinhole leaks in the irrigation piping. The failure of the system due to the faulty transmission and leaking pipes resulted in ponding on the irrigation fields. Further, Respondent Highlands may have prevented the ponding if it had abstained from land application sooner before the forecasted rainfall.

3. Respondent Highlands has accrued economic benefit by avoiding the costs that

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might have been incurred in the original construction if the facility consisted of buildings and a waste management system properly designed to control odor emissions, and has further accrued economic benefit by avoiding the costs of installing and implementing odor control measures or modifying the design of the facility so as to allow for adequate odor control.

As stated above, alternate waste treatment facility designs were available at the time of construction of the facility that are capable of minimizing the release of odors. Among the alternatives to reduce the odor intensity from the existing facility are the following: provide a cover for the lagoons to prevent the escape of odorous gases; capture and flare (and/or utilize) gas from the entire waste management system; install a system utilizing an enclosed, temperature controlled anaerobic digester and provide sufficient aeration to the storage basin receiving the digester effluent to maintain aerobic conditions; provide for twice weekly draining of the underfloor manure storage pits and re-filling with odor free water with a dissolved oxygen concentration in excess of 2.0 mg/l; provide adequate filtration for exhaust air generated at the swine confinement buildings; reduce organic loading on the treatment system by reducing the population of hogs in the facility.

4. Complainant has determined, based upon the specific facts of this matter, including analysis and evaluation of a hardship claim asserted by Respondent Highlands and substantiated with financial documentation, that a penalty of nine thousand dollars (\$9,000.00) will serve to recover any economic benefit accrued by the Respondent, to deter further violations and aid in future voluntary compliance with the Act and Board regulations. Based on the facts of the matter, the penalty demanded by the Complainant for settlement was \$85,000.00. Respondent Highland documented a claim of hardship and upon completion of analysis of that claim, Complainant reduced its demand to \$50,000. Extensive additional information was provide on the financial condition of the facility, and after an in-depth evaluation of all information provided, the amount was reduced to \$9,000.00.

5. To Complainant's knowledge, Respondent has 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 Respondent shall pay a civil penalty in the sum of Nine Thousand Dollars (\$9,000.00) in two installments. The first \$4,500.00 installment shall be paid within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The second installment of \$4,500.00 shall be submitted in the same manner as described immediately above so that it may be paid within 120 days from the date the Board adopts and accepts this Stipulation. The penalty installments 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, Illinois 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number

(FEIN), 36-4127830, shall appear on the check. A copy of the certified check or money order and the transmittal letter shall be sent to:

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

Tom Andryk  
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 or money order, 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, Respondent may be reached at the following address:

Doug Baird  
The Highlands LLC  
1122 Knox Hwy 8  
Williamsfield, IL 61489-9754

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, the Respondent agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action 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, Respondent agrees to waive any rights to contest, in any subsequent enforcement action, any allegations that these alleged violations were adjudicated.

**C. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Section IX. of this Stipulation, shall be submitted as follows:

As to the Complainant

Jane McBride  
Assistant Attorney General (or other designee)  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

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

As to the Respondent

Doug Baird

The Highlands LLC  
1122 Knox Hwy 8  
Williamsfield, IL 61489-9754

**D. 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 Respondent's 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.

**E. Compliance Plan**

Water pollution - wastewater release

1. The facility shall not discharge wastewater, livestock waste, manure, swine waste lagoon wastewater and other contaminants from its operation so as to cause water pollution.
2. Respondent Highlands agrees to conduct wastewater disposal and monitoring so as to prevent wastewater releases from land application sites, and adhere to the following practices:
  - a. Application of waste at agronomic rates, or less.
  - b. Application of waste at hydraulic loading rates low enough to prevent excessive ponding or runoff that results in water pollution.
  - c. Avoid application of wastewater when rainfall is imminent or immediately following rainfall events, or longer if antecedent soil moisture conditions exist that dictate and mandate longer abstention of irrigation

activities.

3. Respondent Highlands has installed a monitoring port on the field tile located north and east of the 80-acre irrigation field. This field tile is located on the south side of Road 1100 N. Highlands shall sample the field tile monitoring port and the 8-inch diameter PVC pipe at the concrete drop box at least once prior to initiating land application irrigation, and twice during the irrigation season, for a total of three sample events each irrigation season. Samples shall be collected at the field tile monitoring port and the 8-inch diameter PVC pipe at the concrete drop box about 3/8 of a mile northeast of the swine farm. The concrete drop box houses an 8-inch diameter PVC pipe that drains east beneath a road and enters an unnamed tributary to French Creek. The PVC pipe discharges from a field tile that, per Respondent Highlands, is connected to the field tile that runs on the south side of Township Road 1100 N immediately in front of the swine facility. Each sample collected shall be analyzed for the following parameters: ammonia nitrogen, nitrate nitrogen, fecal coliform, BOD<sub>5</sub> and phosphorous. This sampling shall continue for three years after the time of entry of the Board's order accepting this Stipulation. Results of this sampling shall be submitted to the Illinois EPA on December 31 of each year.

4. Respondent Highlands shall provide the Illinois EPA Peoria Regional Office, 5415 N. University, Peoria, IL 61614, with 24-hour notice of the initiation of the land application irrigation season in the spring for three years after the time of entry of the Board's order accepting this Stipulation. Said notification shall be by facsimile and telephone call.

5. Respondent Highlands shall record irrigation activities and monitoring of said irrigation activities. All categories of information customarily recorded by the Highlands shall be included, with the addition of notation of the gallons of wastewater pumped per day. Respondent Highlands shall submit its irrigation records to the Illinois EPA Peoria Regional office annually on December 31 of each year. Respondent Highlands shall continue to submit

irrigation records annually until it experiences three consecutive years of land application without an alleged violation of the Act and the Board's Water Pollution and Agricultural Relation Pollution regulations. Respondent Highlands shall monitor its irrigation activity on-site at the application field and downstream of the field to observe and verify that no surface runoff or discharge of wastewater is occurring nor that there is the potential for such to occur. Said visual monitoring shall include written documentation of visual observations at least every three hours when the irrigation system is operating. Irrigation activity records to be submitted to the Illinois EPA annually on December 31 of each year are to include documentation of all visual inspections conducted during land applications events.

6. Should pooling of waste occur in low areas of the irrigation field, Respondent Highlands has agreed to and shall take all appropriate measures to address the pooled waste and prevent water pollution.

Air pollution - odor

7. Respondent Highlands shall not allow or cause odors to be emitted from its facility so as to cause air pollution.

8. Respondent Highlands shall conduct neighbor interviews of all neighbors residing within a one and one half mile radius of the facility on a quarterly basis for the first two years after entry of the Board's order accepting this Stipulation and on a semi-annual basis for the subsequent three years, to ascertain whether the neighbors have been impacted by odors from the facility. Documentation of each interview, including the questions asked and responses received shall be submitted to the Illinois EPA Peoria Regional Office on the following dates each year: March 15, June 15, September 15, December 15 for the first two years, and June 15 and December 15 for the subsequent three years.

**F. Cease and Desist**

The Respondent 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. of this Stipulation.

**G. Release from Liability**

In consideration of the Respondent's payment of the \$ 9,000.00 penalty, upon the completion of all activities required hereunder, and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges the Respondent 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 Second Amended Complaint filed on February 18, 2004. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following: a. criminal liability; b. liability for future violation of state, federal, local, and common laws and/or regulations; c. liability for natural resources damage arising out of the alleged violations; and d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois 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 Respondent.

**H. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation,

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. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation 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, then neither party is bound by the terms herein.

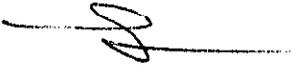
4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable,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

WHEREFORE, Complainant and Respondent The Highlands LLC request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

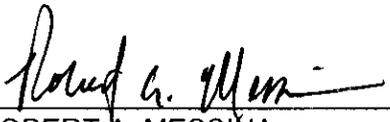
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

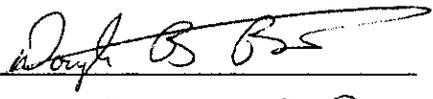
DATE: 11/20/05

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:   
\_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 11/16/06

THE HIGHLANDS, LLC

BY:   
\_\_\_\_\_  
Name: Douglas B. Baird  
Title: Member

DATE: 12/8/06