



RECEIVED
CLERK'S OFFICE
FEB 01 2007
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 19, 2007

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

Re: **People v. Randy Edmund, d/b/a Edmund Farms**
PCB No. 07- 73

Dear Clerk Gunn:

Enclosed for filing please find the original and one copy 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 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

RECEIVED
CLERK'S OFFICE
FEB 01 2007
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
RANDY EDMUND, d/b/a EDMUND)
FARMS,)
)
Respondent.)

PCB No. 07- **13**
(Enforcement)

NOTICE OF FILING

To: Bruce Carmen, Esq.
Tellen, Horberg, Smith and Carmen, P.C.
124 W. Exchange Street
PO Box 179
Cambridge, IL 61238

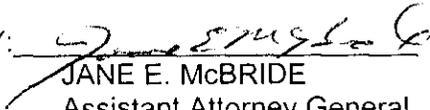
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

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: January 29, 2007

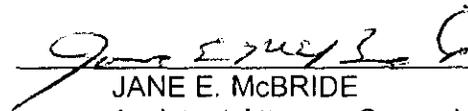
CERTIFICATE OF SERVICE

I hereby certify that I did on January 29, 2007, 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, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Bruce Carmen, Esq.
Tellen, Horberg, Smith and Carmen, P.C.
124 W. Exchange Street
PO Box 179
Cambridge, IL 61238

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.

FEB 01 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
RANDY EDMUND, d/b/a EDMUND)
FARMS,)
)
Respondent.)

PCB No. 07- **13**
(Enforcement)

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:

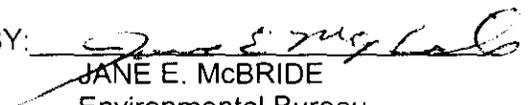
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not 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: January 29, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 01 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 RANDY EDMUND, d/b/a EDMUND FARMS)
)
 Respondent.)

PCB No. **07-73**
(Enforcement)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, complain of Respondent RANDY EDMUND, d/b/a EDMUND FARMS, as follows:

COUNT I
WATER POLLUTION VIOLATIONS

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

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4(2004), and which is charged, *inter alia*, with the duty of enforcing the Act.

3. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), after providing the Respondent Randy Edmund, d/b/a Edmund Farms with notice and the opportunity to meet with the Illinois EPA.

4. Respondent Randy Edmund ("Edmund") is an individual engaged in the business of swine and beef production. Respondent Edmund owns and operates a swine farrow to finish facility consisting of two total confinement buildings, each of which have 8-foot deep manure

storage pits and are used for early weaning, three barns and a variety of open feedlots, pastures, and swine farrowing huts, located approximately 1 mile northeast of Cambridge, at 11104 Illinois Highway 82, in the SW quarter of Section 4, Township 15 N, Range 3 E, Cambridge Township, in rural Henry County, Illinois (the "facility"). At the time of a November 10, 2003 inspection conducted by the Illinois EPA, there were approximately 225 gilts and 200 sows at the facility, along with a cow-calf beef cattle herd consisting of 45 cows.

5. The facility is within the watershed of Spring Creek. A creek flows eastward through the cattle pasture area of the facility, into an unnamed tributary of Spring Creek.

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

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

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

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

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

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

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

No person shall:

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

* * *

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

* * *

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

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

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

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

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

* * *

- c) Livestock Waste-Holding Facilities

* * *

- 4) Liquid Livestock Waste

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

* * *

12. On November 10, 2003, the Illinois EPA conducted a field investigation of a report of a discharge of swine manure and fish kill in an unnamed tributary to Spring Creek in rural Henry County. At the time of the inspection, the stream was dark colored, turbid and odorous, smelling of swine manure, with numerous dead minnows. Stream samples were collected. The Illinois EPA inspectors tracked the discharge of swine manure to the Edmund facility. The discharge resulted from run-off from the Edmund facility. The Edmund facility had recently land applied liquid swine manure on a small, steeply sloped cornfield on the Edmund facility, and the land applied waste had run-off from the land to surface waters. Feedlot runoff also occurred from various swine feedlots and a cattle lot at the facility.

13. Dead minnows were observed in the stream that received the discharge, beginning at a point about 3/4 mile downstream of the feedlots and continuing for a distance of about 1.7 miles in the unnamed tributary to Spring Creek. The fish kill did not extend into Spring Creek.

14. At the time of the November 10, 2003 inspection, a feeder creek flowing through the Edmund facility was observed to be clear above the facility but became brown in color, turbid, and odorous as it traveled through the facility.

15. Analytical data for water samples taken from affected areas of the feeder creek and the unnamed tributary to Spring Creek indicated levels of fecal coliform of 28,000 to 90,000 per 100 ml; BOD levels ranging from 250 to 3430 mg/l, and ammonia levels of 22 to 3900 mg/l. The highest contaminant levels existed at the point where the unnamed tributary received waters flowing through the facility site.

16. On November 10, 2003, and dates better known to Respondent, Respondent Edmund threatened water pollution in that such discharges of livestock waste existed on the land in a manner that threatened to alter the physical, thermal, chemical, or biological properties of a water of the State, and such discharge threatened to render waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

17. On November 12, 2003, the Illinois EPA inspector spoke to Respondent Edmund. Respondent Edmund indicated that liquid swine manure was surface applied to a small cornfield adjacent to his swine confinement buildings.

18. Respondent Edmund indicated his hired man did the manure application on the small cornfield Saturday and Sunday, November 8 and 9, 2003. Respondent Edmund estimated the field size to be about seven acres.

19. Respondent Edmund indicated the manure tank wagon used for the application to have about a 3,000-gallon capacity.

20. Respondent Edmund estimated that 25 loads of manure were hauled for this land application event but was not certain if the hired man maintained written records of the land application.

21. Respondent Edmund indicated that his farm received a total of 3 1/3 inches of rain beginning Saturday night, November 1, 2003, and continuing on Sunday and Monday, November 2 and 3, 2003. He indicated he was certain that the rainfall occurred before the manure surface application.

22. Respondent Edmund indicated that he was aware of surface runoff of manure from the application site but said he felt the grass filter pasture would take care of it.

23. The Illinois EPA inspector advised Respondent Edmund to report the manure release from his livestock operation.

24. On December 2, 2003, the Illinois EPA sent Respondent Edmond a violation notice letter. On January 15, 2004, Respondent Edmund responded with a proposed CCA. On February 3, 2004, Respondent Edmund met with the Illinois EPA pursuant to the violation notice. On February 20, 2004, Respondent Edmund submitted a revised proposed CCA. On March 19, 2004, the Illinois EPA sent a letter rejecting Respondent Edmund's proposed CCA, on the basis of the nature and seriousness of the violations.

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

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

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

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Edmund has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Edmund to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Edmund a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

COUNT II NPDES VIOLATION

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

2-21. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 8 and 12 through 24 of Count I as paragraphs 2 through 21 of this Count III.

22. Section 12 (f) of the Act, 415 ILCS 5/12(f) (2004), provides, in pertinent part:
No person shall:

- f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

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

309.102(a), states, in pertinent part:

NPDES Permit Required

- a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

24. At the time of the November 2003 discharge from the Edmund facility, the facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and had not applied for an NPDES permit.

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

PRAYER FOR RELIEF

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

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

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

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

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

COUNT III
OFFENSIVE CONDITIONS

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

2-22. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 9 and 12 through 24 of Count I as paragraphs 2 through 22 of this Count III.

23. Section 302.203 of the Board's water pollution regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

24. By causing or allowing the discharge of livestock waste to an unnamed tributary of Spring Creek in rural Henry County, so as to cause the stream to be dark colored, turbid and odorous, smelling of swine manure, with numerous dead minnows, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 302.203.

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Edmund has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Edmund to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Edmund a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

COUNT IV
VIOLATION OF AMMONIA WATER QUALITY STANDARD

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

2-22. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 9 and 12 through 24 of Count I as paragraphs 2 through 22 of this Count IV.

23. Section 302.212 of the Board's water pollution regulations; 35 Ill. Adm. Code 302.212, provides, in pertinent part:

Total Ammonia Nitrogen and Un-ionized Ammonia

a) Total ammonia nitrogen (as N: STORET Number 00610) shall in no case exceed 15 mg/L

24. By causing or allowing the discharge of livestock waste into a feeder creek running through the facility and the discharge of livestock waste to an unnamed tributary of Spring Creek, which resulted in levels of ammonia in these affected areas ranging from 20 to 3900 mg/l, Respondent Edmund has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), an 35 Ill. Adm. Code 302.212(a).

PRAYER FOR RELIEF

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

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

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

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

D. Assessing against Respondent Edmund a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

COUNT V
OVER APPLICATION OF LIVESTOCK WASTE

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

2-22. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 9 and 12 through 24 of Count I as paragraphs 2 through 22 of this Count V.

23. Section 501.405 of the Board's agriculture related pollution regulations, 35 Ill. Adm. Code 501.405, provides, 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.

24. By applying livestock waste to steeply sloped saturated fields that resulted in a runoff of waste to waters of the state, Respondent Edmunds has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), and 35 Ill. Adm. Code 501.405(a).

PRAYER FOR RELIEF

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

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

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

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

D. Assessing against Respondent Edmund a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2004).

Respectfully submitted,

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

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
JANE E. MCBRIDE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 29, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
RANDY EDMUND, d/b/a EDMUND FARMS)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

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 RANDY EDMUND, d/b/a EDMUND FARMS ("Respondent"), 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 which 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. (2004).

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, a Complaint has been 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. At all times relevant to the Complaint, Respondent was and is an individual engaged in the business of swine and beef production.

B. Site Description

1. At all times relevant to the Complaint, Respondent Edmund owned and operated a swine farrow to finish facility consisting of two total confinement buildings, each of which have 8-foot deep manure storage pits and are used for early weaning, three barns and a variety of open feedlots, pastures, and swine farrowing huts, located approximately 1 mile northeast of Cambridge, at 11104 Illinois Highway 82, in the SW quarter of Section 4, Township 15 N, Range 3 E, Cambridge Township, in rural Henry County, Illinois (the "facility"). At the time of a November 10, 2003 inspection conducted by the Illinois EPA, there were approximately 225

gilts and 200 sows at the facility, along with a cow-calf beef cattle herd consisting of 45 cows.

2. The facility is within the watershed of Spring Creek. A creek flows eastward through the cattle pasture area of the facility, into an unnamed tributary of Spring Creek.

3. On November 10, 2003, the Illinois EPA conducted a field investigation of a report of a discharge of swine manure and fish kill in an unnamed tributary to Spring Creek in rural Henry County. At the time of the inspection, the stream was dark colored, turbid and odorous, smelling of swine manure, with numerous dead minnows. Stream samples were collected. The Illinois EPA inspectors tracked the discharge of swine manure to the Edmund facility. The discharge resulted from run-off from the Edmund facility. The Edmund facility had recently land applied liquid swine manure on a small, steeply sloped cornfield on the Edmund facility, and the land applied waste had run-off from the land to surface waters. Feedlot runoff also occurred from various swine feedlots and a cattle lot at the facility.

4. Dead minnows were observed in the stream that received the discharge, beginning at a point about 3/4 mile downstream of the feedlots and continuing for a distance of about 1.7 miles in the unnamed tributary to Spring Creek. The fish kill did not extend into Spring Creek.

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 discharge of contaminants in such a manner as to cause or threaten water pollution in the unnamed tributary to Spring Creek, and by causing or allowing a discharge of contaminants to exist on the land so as to create a water pollution

hazard, Respondent Edmund has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004).

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

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

Count II:

4. At the time of the November 2003 discharge from the Edmund facility, the facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and had not applied for an NPDES permit.

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

Count III:

6. By causing or allowing the discharge of livestock waste to an unnamed tributary of Spring Creek in rural Henry County, so as to cause the stream to be dark colored, turbid and odorous, smelling of swine manure, with numerous dead minnows, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 302.203.

Count IV:

7. By causing or allowing the discharge of livestock waste into a feeder creek running through the facility and the discharge of livestock waste to an unnamed tributary of Spring Creek, which resulted in levels of ammonia in these affected areas ranging from 20 to 3900 mg/l, Respondent Edmund has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 302.212(a).

Count V:

8. By applying livestock waste to steeply sloped saturated fields that resulted in a runoff of waste to waters of the state, Respondent Edmunds has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), and 35 Ill. Adm. Code 501.405(a).

D. Admission of Violations

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

E. Compliance Activities to Date

1. Respondent has cleaned up accumulated livestock waste from the cattle feed lot where run-off occurred at the facility, and properly land applied the recovered waste at agronomic rates. The lot has been seeded with a grass mixture recommended by the Natural Resource Conservation Service ("NRCS") and cattle are kept out of the area except when corralled and maintained by the barns.

2. Respondent has installed concrete blocks on the downhill side of each of four open lot building areas to contain livestock waste and associated runoff from the lots.

Respondent has installed guttering on the barns to divert storm water from the feedlot area. A

seeded dirt berm has been placed outside of the concrete blocks for additional containment of run off. Respondent inspects the swine feeding area weekly, and maintains a log of his inspections, to prevent and/or address any waste accumulation or runoff. Respondent has agreed to inspect the feedlot area on a frequent and regular basis to prevent waste accumulations.

3. Respondent has discontinued use of a dirt lot off the concrete floor of the 50 foot by 90 foot livestock barn on the facility, for swine.

4. Respondent has moved his cattle feeding area in the winter at the facility as far from the watershed area as possible, and moved the feeding area weekly to avoid the buildup of cattle manure or left over hay in any one concentrated area. Respondent has committed to conduct inspection of the feeding areas to address any accumulations of waste that might occur.

5. Respondent has discontinued any routine use of the small, steeply sloped cornfield on the facility, located adjacent to surface waters. The services of a contract waste land applicator have been secured and will be utilized for any emergency application that might occur on this field.

6. Respondent has seeded the hill sloping down from the feed lots to the creek in switch grass, timothy and oats. The area has been enclosed with an electrified fence to keep cattle off the slope.

7. All land application will be conducted by injection. Respondent will not land apply at times when the soil is saturated.

8. Respondent has completed and implemented a manure management plan.

9. Respondent has prepared an emergency response plan for the facility.

10. Respondent has applied for a National Pollution Discharge Elimination System

("NPDES") permit.

11. Respondent has paid the Illinois Department of Natural Resources the \$211.15 in costs associated with the fish kill.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee 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, 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 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 and Proposal for Settlement, 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 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 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 the following:

1. The discharges from Respondent's facility resulted in elevated levels of ammonia in the receiving waters and a fish kill. The receiving waters were turbid and odorous.

Respondent failed to report the release and thus hindered the Illinois EPA's and Respondent's response to the run-off and discharge.

2. There is social and economic benefit to the facility.

3. Operation of the facility was not suitable for the area when run-off from the feedlot was allowed to enter a creek traveling through the feedlot area, and land application was conducted during wet conditions on land sloping to surface waters. In that the facility and operations have now been modified to address these compliance problems, the location can now be considered suitable.

4. Operation of the facility in compliance with the Illinois Environmental Protection Act and regulations promulgated thereunder is both technically practicable and economically reasonable.

5. Respondent has 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 Respondent was operating a livestock facility in violation of water pollution regulations. He was clearly allowing storm water run-off to flow through the feedlot, and enter a creek that ran through and was immediately adjacent to the feedlot. Further, he land applied waste in wet conditions on land that sloped to surface waters. This land application event resulted in contaminated run-off to surface waters. A fish kill resulted from these discharges. These conditions and practices existed at the facility for a period of time better known to the Respondent, and were resolved only upon discovery by the Illinois EPA and the Illinois EPA's demand for implementation of compliance measures.
2. Respondent was 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. Compliance has been achieved by initiating and incorporating farming best management practices at this facility. In that much of the work has been accomplished by on-farm labor, the cost of compliance and thus amount of economic benefit has not been specifically calculated and is not available.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, 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 Seven Thousand Five Hundred Dollars (\$7,500.00) 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 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's FEIN, 36-2894396, 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

Thomas 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, 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, Respondent may be reached at the following address:

Bruce Carmen, Esq.
Tellen, Horberg, Smith and Carmen, P.C.
124 W. Exchange Street
PO Box 179
Cambridge, Illinois 61238

Randy Edmund
Edmund Farms
11104 Illinois Highway 82
Cambridge, Illinois 61238

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 Compliance

1. Respondent shall continue rotating the location of his cattle feeding operation, as far as practicable from surface waters. Respondent shall make regular inspections of the feeding areas to ensure that excessive accumulations of waste do not occur.

2. Respondent shall conduct weekly inspections of swine feeding areas to avoid contaminated run-off and excessive waste accumulation and shall record and keep a log of the results of such inspections. Respondent shall clean the swine feeding area on a frequent enough basis to prevent excessive waste build ups.

3. Respondent shall maintain an electrified fence so as to exclude animals from the hill sloping down from the feedlots to the creek, and keep the hill planted in appropriate vegetation.

4. Respondent shall land apply by injection any liquid waste removed from the confinement hog facility. No waste shall be land applied when the soil is saturated or too wet for proper incorporation.

5. Respondent shall adhere to the manure management plan and comprehensive nutrient management plan prepared for the facility, and shall keep his emergency response plan updated and implement it when necessary.

C. 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.F, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent 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, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

D. 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 ("Allegations of Non-Compliance") of this Stipulation.

E. Release from Liability

In consideration of the Respondent's payment of the \$7,500.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.D 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 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 Complaint filed simultaneously with this Stipulation. 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.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") of this Stipulation shall be submitted as follows:

As to the Complainant

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

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

Eric Ackerman
Peoria Regional Office
Illinois EPA
5415 North University
Peoria, Illinois 61614

As to the Respondent

Bruce Carmen, Esq.
Tellen, Horberg, Smith & Carmen, P.C.
124 W. Exchange Street
PO Box 179
Cambridge, Illinois 61238

Randy Edmund
Edmund Farms
11104 Illinois Highway 82
Cambridge, Illinois 61238

G. 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 made in writing and submitted to the contact persons identified in Section VIII.F. 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.

H. 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. Respondent agrees 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 Respondent 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 Respondent 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

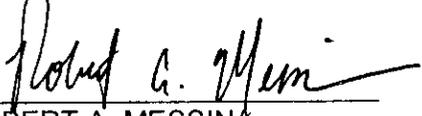
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 1/29/07

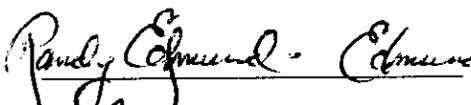
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 

ROBERT A. MESSINA
Chief Legal Counsel

DATE: 12/21/06

RANDY EDMUND, d/b/a EDMUND FARMS

BY:  Edmund Farms DATE: 1-20-07

Name: RANDY EDMUND

Title: OWNER