

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 16 2008

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, LLC,)
)
Respondents.)

PCB NO. 00-104
(Enforcement)

NOTICE OF FILING

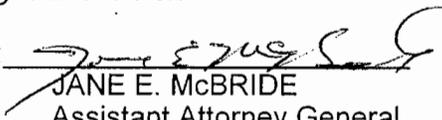
To: Mr. Charles M. Gering
Foley & Lardner
321 N. Clarke St.
Suite 2800
Chicago, IL 60610-4764

PLEASE TAKE NOTICE that on June 12, 2008, I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT WITH RESPONDENT MURPHY FARMS, LLC, 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: June 12, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on June 12, 2008, 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 RESPONDENT MURPHY FARMS, LLC,

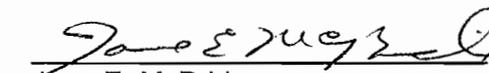
To: Mr. Charles M. Gering
Foley & Lardner
321 N. Clarke St.
Suite 2800
Chicago, IL 60610-4764

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.

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 liability corporation, and MURPHY)
 FARMS, LLC,)
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 Respondents.)

PCB NO. 00-104
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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) (2006), 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) (2006). In support of this motion, Complainant states as follows:

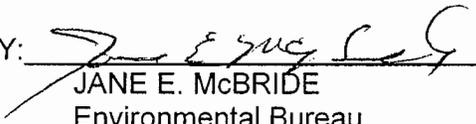
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not 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) (2006).

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) (2006).

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: June 12, 2008

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. 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 (2004), 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 Officer 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. On June 7, 2005, Respondent filed its Answer and Affirmative Defenses to Complainant's Second Amended Complaint.
5. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).
6. At all times relevant to the Complaint, Respondent was and is a corporation that is authorized to transact business in the State of Illinois. At the time of filing of the original

Complaint in this matter, Respondent Murphy Farms, Inc., a/k/a Murphy Family Farms ("Murphy"), was a North Carolina corporation registered to do business in the State of Illinois in good standing. The registered agent, at the time of the filing of the original complaint, was Gerald W. Shea, 547 S. LaGrange Rd., LaGrange, IL 60525. Some time later, the registered agent became Charles Gering, Esq., formerly of McDermott, Will & Emery, 227 West Monroe Street, Chicago, Illinois 60606-5096. Since the time of filing of the original Complaint in this matter, Murphy Farms, Inc. merged into Respondent Murphy Farms LLC, which is a subsidiary of Murphy-Brown, LLC, which is the hog production group for and a subsidiary of Smithfield Foods, Inc. Murphy-Brown, LLC is located at 4134 Highway 117 South, Rose Hill, North Carolina 28458.

7. Respondent The Highlands, LLC ("Highlands") 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 original and first amended Complaint, The Highlands swine facility was operated and located just south of Williamsfield in the NE 1/4, Section 10, T.10N, R.4E, Elba Township, Knox County, Illinois (the "facility" or "site"). The facility's offices are located at 1122 Knox Highway 18, Williamsfield, IL 61489.

2. The facility is a 3,650 sow farrow-to-wean operation which includes a gestation building, a breeding building, a farrowing building, a nursery and a finishing building. In terms

of animal units, 3,650 sows represents approximately 1,460 animal units.

3. Respondent Highlands LLC owns and operates the property and buildings. Plaintiff contends that Respondents Highlands and Murphy shared in the operation of the wastewater treatment facility, which Murphy denies, and Respondent Highlands provided labor for operation of the facility.

4. At all times relevant to the original and first amended Complaint, Respondent Murphy owned all of the hogs at the facility. Respondent Murphy had a contractual arrangement with The Highlands. That contractual relationship ended and Murphy removed its hogs from the facility as of January 1, 2003.

5. Construction of the facility began in the fall of 1997. Sows were first brought into the facility on December 21, 1997. Livestock waste was first diverted to the multiple lagoon system on December 28, 1997. At that time, four lagoons had been constructed and the majority of the transfer piping had been installed.

6. The first count of the second amended complaint in this matter alleges that (1) on numerous occasions, beginning in January 1998 and continuing through the present, the Respondents have caused or allowed the emission of offensive hog odors from the facility; (2) these odors have 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, nausea, sore and/or burning nose and throat, and headache; and (3) such physical discomfort has also included the physical and emotional revulsion an individual might experience when subjected to highly offensive odors. Murphy disputes that it controlled, or had the ability to control, operation of the facility, and denies each of these allegations.

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

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

8. 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.

9. In the course of the investigation, the Illinois EPA inspectors were informed by the operator of the Highlands facility that no actions were taken to pump out, barricade or otherwise stop the release once the facility became aware of the release, which was at approximately 4:45 P.M. on June 18, 2002. The release was not reported to IEMA until approximately 9:15 A.M. on June 19, 2002. The owner and operator of the Highlands reported the waste had dissipated and there was nothing to contain. The Illinois EPA received notification from IEMA at approximately 9:55 A.M. on June 19, 2002. Upon arrival at the release site, Illinois EPA inspectors recognized that the unnamed tributary had suffered a fish kill and they immediately contacted the Illinois Department of Natural Resources ("Illinois DNR") to conduct a fish kill investigation.

10. 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.

11. Murphy denies that it had any role in the land application of waste from the facility at any time.

C. Allegations of Non-Compliance

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

Count I

1. Complainant alleges that the facility has been a continuous source of offensive odors both from the confinement buildings and the lagoon system. Complainant further alleges that these two odor sources are related to the Respondents' choice and design of the buildings and waste treatment system. Murphy denies that it had any role in Highlands' choice and design of the buildings and waste treatment system, and that the facility has been a continuous source of offensive odors.

2. Complainant alleges that Respondent Murphy has caused the emission of strong, persistent and unreasonably offensive hog waste odors from the Highlands facility so as to cause unreasonable interference with the use and enjoyment of the neighbors' property, and that Respondent Murphy has caused air pollution, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a)(1998). Murphy denies each of these allegations.

Count II

3. Complainant alleges that by failing to follow the Illinois EPA rules which require immediate reporting of releases to surface waters, set forth at 35 Ill. Adm. Code 580.105, the Respondents failed to exercise proper due diligence in mitigating this release. Complainant further alleges that 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. Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

4. Complainant alleges that 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 Murphy has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 302.203. Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

5. Complainant alleges that 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 Murphy has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2002), and 35 Ill. Adm. Code 302.212(a) and (b). Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

6. Complainant alleges that 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 Murphy has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), and 35 Ill. Adm. Code 501.405(a). Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

7. Complainant alleges that by causing, threatening or allowing the discharge of a contaminant into the waters of the State without an NPDES permit, Respondent Murphy has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002). Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

D. No Admission of Violations

Respondent Murphy Farms LLC neither admits nor denies that the facility was the source of unreasonably offensive odors in 1999, 2000 and 2001, as alleged in the Second Amended Complaint. Murphy disputes that it controlled, or had the ability to control, operation of the facility and denies that it had any role in Highlands' choice and design of the buildings and waste treatment system. Respondent Murphy denies each and every violation alleged against Respondent Murphy in the Second Amended Complaint filed in this matter and referenced herein.

E. Compliance Activities to Date

Respondent Murphy has terminated its contractual obligations at the Highlands' facility.

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.

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)(2004), 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, Complainant asserts 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. Murphy denies each of these allegations.

Complainant contends that (1) between January 1998 and December 1998, the Illinois EPA received approximately 110 complaints submitted by neighbors of the facility alleging odor coming from the facility that unreasonably interfered with life and/or property, (2) between January 1999 and November 1999, the Illinois EPA received approximately 120 complaints submitted by neighbors of the facility alleging odor coming from the facility that unreasonably interfered with life and/or property, (3) throughout 2000 and 2001, the Illinois EPA continued to

receive complaints alleging odor emanating from the facility which unreasonably interfered with life and/or property, (4) during the spring of 2001, the frequency, duration and number of households filing complaints regarding nuisance odors emanating from the Highlands facility increased, (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, and (6) respondents Murphy and Highlands settled a private nuisance suit with two neighbors who live within a quarter mile of the facility early in 2002. Murphy denies that odors emanating from the facility unreasonably interfered with the life and/or property of any of the facility's neighbors at any time.

Complainant further contends that (1) a June 18, 2002 release of livestock waste from the Highlands' facility into an unnamed tributary of French Creek resulted in a fish kill, (2) an Illinois DNR fisheries biologist estimated that approximately 6,600 fish were killed by the release, (3), 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, (4) by failing to follow the Illinois EPA rules which require immediate reporting of releases to surface waters, set forth at 35 Ill. Adm. Code 580.105, the Respondents failed to exercise proper due diligence in mitigating this release, and (5) 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. Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

2. Complainant contends that 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. Complainant contends that the Highlands' facility as designed and operated is not suitable to the site where it is located, and that given the size and design of the facility, it was sited and constructed in a location too close to neighboring residents. Murphy denies each of these allegations.

4. Complainant contends that: (1) alternate waste treatment facility designs were available at the time of construction of the facility that are capable of minimizing the release of odors, including 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; (2) it was and continues to be economically reasonable to have originally installed or to modify the existing system utilizing one or more of the alternatives listed immediately above; (3) if the Highlands facility does not incur the cost of adequate odor controls, the alternative is for the neighbors to be burdened with costs associated with attempting to treat, screen and otherwise avoid air pollution emissions from this facility; and (4) the neighbors are further burdened with the inevitable injury to general welfare that results from continual exposure to air pollution. Murphy denies each of these allegations.

Complainant further contends that 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, Complainant contends that by failing to follow the Illinois EPA rules which require immediate reporting of releases to surface waters, set forth at 35 Ill. Adm. Code 580.105, the Respondents failed to exercise proper due diligence in mitigating this release. Complainant asserts that 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. Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

5. Complainant contends that Respondents have failed to bring the facility into compliance. It is the Complainant's position that implementation of a BioSun system did not provide sufficient reduction in odor emissions and may have, in fact, resulted in increased emissions during the spring of 2001. Respondents installed an air dam at the east end of the facility's building during the spring of 2001. No analysis has been conducted as to the effectiveness of the air dam in averting air flows and odor emissions. Practical experience indicates that the dam may have been effective during the day, during times of unstable atmospheric conditions. However, Complainant contends that during times of stable atmospheric conditions and temperature inversions, the odor conditions at a neighbor residence a quarter mile from the facility were actually worse and more penetrating. Inspectors observed that quite a bit of dust from the facility settled out of the air when it hit the air dams. Since odor-causing particles typically adhere to dust particles in the air, this suggests that odor removal was taking place as a result of the placement of the air dams. Murphy admits that an air dam was installed during the spring of 2001, but denies each of the remaining allegations set forth in this paragraph.

With regard to the alleged June 18, 2002 release of livestock waste to an unnamed tributary of French Creek, Complainant contends that Respondents' failure to immediately report the release to surface waters constitutes a failure to exercise proper due diligence in mitigating this release. Murphy denies that it had any role in the land application of waste from the facility at any time, and that it violated any provision of the Act relating to water pollution.

In response to these Section 33(c) factors, Murphy states as follows:

1. Murphy denies that any injury to, or interference with the protection of the health, general welfare and physical property of the people occurred.

2. Murphy asserts that Highlands' facility has significant value to the surrounding community, to Highlands' employees and to Highlands' customers, and that its value is not diminished by the presence of odors commonly associated with raising livestock, especially given that the General Assembly recognized at 35 Illinois Administrative Code Section 501.102 that the presence of such odors is an inherent characteristic of such facilities.

3. Murphy asserts that Highlands' facility is suitable to the agricultural area in which it is located,³ and that it was sited by Highlands consistently with all applicable statutes and regulations.⁴ Murphy further asserts that Highlands' land application of livestock waste is a suitable and, indeed, beneficial means of using such waste.

4. Murphy asserts that the odor control technology used at Highlands' facility has, at all times, been state-of-the-art, that such technology has adequately controlled odors generated at the facility, and that at no time was it technically practicable or economically reasonable for Highlands to reduce or eliminate emissions from its facility.

5. Murphy asserts that it had no ability to control, and that it did not control, the operation of Highlands' facility at any time.

6. Murphy asserts that it complied with all applicable state, federal and local

environmental laws and regulations, including all applicable reporting requirements, throughout its relationship with Highlands.

VII. TERMS OF SETTLEMENT

A. Monetary Payment

1. The Respondent shall make a monetary payment in the sum of Thirty-Five Thousand Dollars (\$ 35,000.00) to the University of Illinois, College of Agriculture, Consumer and Environmental Sciences, for the college's Discovery Farms research project. Said payment shall be made 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 payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in the manner prescribed below. The payment described in this Stipulation shall be paid by certified check, money order or electronic funds transfer to the University of Illinois, designated for the Discovery Farms research project, and submitted to:

University of Illinois, Urbana-Champaign
Office of Sponsored Programs & Research Administration
1901 South First Street
Suite A - MC685
Champaign, IL 61820

The name and number of the case and Respondent's Federal Employer Identification Number ("FEIN") 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

and

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

2. The parties agree that 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 (2004). 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:

Murphy Farms, LLC
c/o Charles Gering
Foley & Lardner, LLP
321 North Clark Street
Suite 2800
Chicago, Illinois 60610

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. Agreement Not to Violate

Respondent Murphy hereby agrees not to and shall not violate 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.

C. Release from Liability

In consideration of the Respondent's monetary payment of \$35,000.00 and agreement not to violate the Act and Board regulations in the future, 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 the alleged violations of the Act and Board Regulations that were the subject matter of the Second Amended 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 May 6, 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.

D. 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.A. 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 shall accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and the Stipulation to approve and accept the Stipulation as amended.

E. 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 Murphy 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 Murphy 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 Murphy Farms, 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

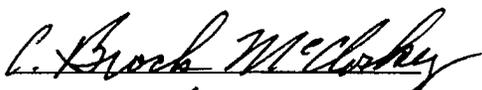
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 5/14/08

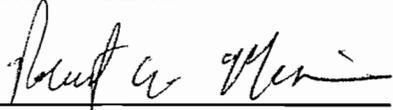
MURPHY FARMS, LLC

BY: 

Name: C. Brock McCluskey
Title: VP

DATE: 12/18/07

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 5/2/08