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FEB 03 2009

OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS  
STATE OF ILLINOIS  
Pollution Control Board

Lisa Madigan  
ATTORNEY GENERAL

January 29, 2009

PCB09-56

John T. Therriault, Assistant Clerk  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Brent Speckhart, d/b/a Brent Speckhart Swine Farm***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Complaint, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jane E. McBride".

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

JEM/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
BRENT SPECKHART, d/b/a )  
BRENT SPECKHART SWINE FARM, )  
)  
Respondent. )

PCB No. 09-56  
(Enforcement)

NOTICE OF FILING

RECEIVED  
CLERK'S OFFICE

FEB 03 2009

STATE OF ILLINOIS  
Pollution Control Board

To: Brent Speckhart  
d/b/a Brent Speckhart Swine Farm  
435 East 900<sup>th</sup> Road  
Quincy, Illinois 62305

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  
Sr. Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 29, 2009

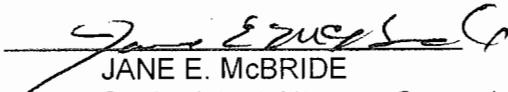
**CERTIFICATE OF SERVICE**

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: Brent Speckhart  
d/b/a Brent Speckhart Swine Farm  
435 East 900<sup>th</sup> Road  
Quincy, Illinois 62305

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  
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
BRENT SPECKHART, d/b/a )  
BRENT SPECKHART SWINE FARM, )  
)  
Respondents. )

PCB No. 09-56  
(Enforcement)  
RECEIVED  
CLERK'S OFFICE  
FEB 03 2009  
STATE OF ILLINOIS  
Pollution Control Board

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  
Sr. Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 29, 2009



“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such water 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.

5. Section 3.550 of the Act, 415 ILCS 5/3.550, 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.

6. Section 3.165 of the Act, 415 ILCS 5/3.165, provides:

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

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

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.

\* \* \*

8. On April 30, 2008, the Illinois Environmental Protection Agency (“Illinois EPA”) received a neighbor citizen’s complaint that “sewage” was exiting a pipe through a lagoon berm at Respondent Speckhart’s facility, located adjacent to the complainant’s property. The complainant indicated the pipe had a valve in it and it was dripping at the time the neighbor

made the observation. The neighbor complainant indicated that the "gully" downstream of the pipe contained sewage and the surrounding vegetation was "burnt". The complainant further indicated that he believed the content level of the facility lagoon was down, and the complainant estimated that half of the contents of the lagoon had discharged from the lagoon.

9. On May 1, 2008, an Illinois EPA inspector conducted an inspection of Respondent Speckhart's facility. At the time of the inspection, the manure pits associated with the three swine confinement buildings at the facility were full of livestock waste and the two cells of the earthen lagoon at the facility were both partially full of livestock waste. The lagoon contained liquid and solid livestock waste and measured approximately fifty by seventy five feet. The north cell of the lagoon had an excess of three feet of freeboard at the height of the overflow pipe to the south cell, and the south cell had an excess of six feet of freeboard. A 6 inch diameter sewer pipe exited the south berm on the south cell at the same elevation as the livestock waste remaining in the cell. The land on top of the lagoon berms did not contain any evidence of machine or human tracks that would indicate a recent land application.

10. At the time of the inspection, Illinois EPA inspector observed an area of burned vegetation that was approximately 50 yards in length that started at the south cell sewer pipe and ended at Fall Creek. The area of burned vegetation contained manure solids in several locations and there was a slight odor associated with livestock waste. Although at the time of the inspection there was no direct evidence that livestock waste flowed into Fall Creek because of the recent precipitation, the area of burned vegetation indicated that livestock waste from the lagoon may have flowed from the sewer pipe, down a ravine and into Fall Creek.

11. At the time of the inspection, the Illinois EPA inspector observed a ring of burned vegetation within the upper walls of the south cell of the lagoon and based on the size of the lagoons, the Illinois EPA inspector estimated that approximately 140,000 gallons of livestock

waste had discharged from the sewer pipe on the south cell of the lagoon. At the time of the inspection, the pipe in the berm of the south cell continued to discharge a small amount of liquid livestock waste onto the land.

12. At the time of the May 1, 2008 inspection, the Illinois EPA inspector spoke with Respondent Speckhart who stated that he had failed to perform a land application the previous fall. Respondent Speckhart stated that with the precipitation in the winter and spring the livestock waste reached a level that could overtop the berms of the lagoon. Respondent Speckhart stated that due to the recent rain a land application was impossible so he had opened the sewer pipe to discharge the livestock waste in order to ensure the integrity of the structure. The Illinois EPA inspector told Respondent Speckhart to cap the sewer pipe.

13. On May 2, 2008, Respondent Speckhart informed the Illinois EPA inspector that the discharge pipe was capped on the end outside of the lagoon and that he would attempt to cap the pipe inside the lagoon. Respondent Speckhart also stated he planned to land apply the remaining waste to a neighbor's crop land.

14. On May 5, 2008, the Illinois EPA inspector re-examined the facility and found that Respondent Speckhart had capped both the inside and outside ends of the pipe in the berm of the lagoon.

15. The Respondent has threatened, allowed or caused the discharge of contaminants to waters of the State as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

16. By discharging livestock waste upon the land in such a place and manner so as allow contaminants to drain into waters of the State, Respondent Speckhart caused, threatened or allowed the discharge of contaminants into the environment to cause or tend to cause water

pollution in Illinois, and has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a).

17. By depositing livestock waste upon the land by allowing it to discharge from the pipe in such a place and manner so as to create a water pollution, Respondent Speckhart caused, threatened or allowed the discharge of contaminants into the environment to cause or tend to cause a water pollution hazard in Illinois, and has thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d).

### **PRAYER FOR RELIEF**

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

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

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

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

D. Assessing against Respondent Speckhart 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, 414 ILCS 5/42(a).

### **COUNT II**

#### **NPDES 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 pursuant to Sections 42(d)

and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e).

2-13. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 13 of Count I as paragraphs 2 through 13 of this Count II.

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

No person shall:

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

\* \* \*

15. 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

16. At the time of the May 1, 2008 inspection, Respondent Speckhart's facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and had not applied for an NPDES permit.

17. By causing the discharge of livestock waste from the facility so as to threaten, cause or allow the discharge of contaminants into Fall Creek, Respondent Speckhart has discharged contaminants into the waters of the state from a point source without an NPDES

permit, and has thereby violating Section 12(f) of the Act, 415 ILCS 5/12(f).

**PRAYER FOR RELIEF**

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

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Speckhart has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Speckhart to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Speckhart a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

**COUNT III**

**AGRICULTURE RELATED 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 pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2008).

2-17. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 17 of Count I as paragraphs 2 through 17 of this Count III.

18. Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3), provides, in pertinent part, as follows:

- 3) The contents of livestock waste-handling facilities shall be kept at levels such that there is adequate storage capacity so that an overflow does not occur except in the case of precipitation in excess of a 25-year, 24-hour storm.

19. 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, the Agency may require that additional storage time be provided. In such cases, interim pollution prevention measures may be required by the Agency.

\*\*\*

20. Respondent Speckhart did not keep the levels of the facility's livestock waste lagoons adequately below levels that would appropriately prevent overflow nor did he maintain adequate storage capacities for the facility's storage lagoon, and, due to this failure, Respondent Speckhart purposefully discharge livestock waste from his lagoon and thereby threatened, cause or allowed contaminants to flow into Fall Creek.

21. By failing to properly manage the facility's livestock waste lagoon and timely land apply waste, Respondent Speckhart failed to maintain lagoon levels such that there was adequate storage capacity to prevent an overflow, and has thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3).

22. By failing to take proper measures to handle the volume of waste in the facility's two-cell lagoon, Respondent Speckhart did not have adequate storage capacity in the facility's two-cell lagoon, and has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 501.404(c)(4)(A) of the Board's Agriculture Related Pollution Regulations, 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 Speckhart:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Speckhart has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Speckhart to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Speckhart 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, 414 ILCS 5/42(a).

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: 1/29/09



## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. Contemporaneously with this Stipulation, 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, 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.

3. At all times relevant to the Complaint, Respondent was and is an individual who owns an unpopulated 1,040 capacity hog operation located southwest of Payson in Adams County. The facility is more specifically located in the northeast corridor of Section 23, Township 3 South, Range 8 West (the "facility" or "site").

### B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

#### Count I

1. By discharging livestock waste upon the land in such a place and manner so as to allow contaminants to drain into waters of the State, Respondent Speckhart caused, threatened or allowed the discharge of contaminants into the environment to cause or tend to cause water pollution in Illinois, and has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a).

2. By depositing livestock waste upon the land by allowing it to discharge from a pipe in such a place and manner so as to create a water pollution, Respondent Speckhart caused, threatened or allowed the discharge of contaminants into the environment to cause or tend to cause a water pollution hazard in Illinois, and has thereby violated Section 12(d) of the

Act, 415 ILCS 5/12(d).

Count II

3. Respondent does not have an NPDES permit for the subject facility. By causing the discharge of livestock waste from the facility so as to threaten, cause or allow the discharge of contaminants into Fall Creek, Respondent Speckhart has discharged contaminants into the waters of the state from a point source without an NPDES permit, and has thereby violating Section 12(f) of the Act, 415 ILCS 5/12(f).

Count III

4. By failing to properly manage the facility's livestock waste lagoon and timely land apply waste, Respondent Speckhart failed to maintain lagoon levels such that there was adequate storage capacity to prevent an overflow, and has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3).

5. By failing to take proper measures to handle the volume of waste in the facility's two-cell lagoon, Respondent Speckhart did not have adequate storage capacity in the facility's two-cell lagoon, and has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 501.404(c)(4)(A) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(4)(A).

**C. Admission of Violations**

The Respondent admits to the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B herein.II.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA

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. 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 for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

### **III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c), 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 to this Stipulation state the following:

1. The release that is the subject of this matter, was deposited in an area that drained into a waterway. This resulted in actual and threatened contamination of the environment.

2. There is no social and economic benefit to the facility as a depopulated hog facility. The waste lagoons associated with the facility have not been properly closed out, or otherwise properly maintained.

3. When properly maintained in compliance with the state's environmental regulations, the facility is suitable for the area in which it exists.

4. Proper waste handling and maintenance of the hog was lagoons at the site is both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. It is apparent that the release of livestock waste from the subject lagoon began prior to the neighbor complaint and Illinois EPA inspector's observation of the release. The release was discovered on April 30, 2008. On May 2, 2008, the Respondent informed the Illinois EPA inspector that the pipe from which the release occurred had been capped.

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 him of his noncompliance.

3. The release occurred because the Respondent failed to properly draw down the level of waste in the lagoon during the fall season. As a result, by April, when conditions were not appropriate for land application, the lagoon waste levels were too high and began to discharge through the pipe in the lagoon berm. The economic benefit of noncompliance included the Respondent's cost savings in failing to properly manage the lagoon and provide for the removal of waste from the lagoon and proper land application of the waste. In response to the release, Respondent contracted with a commercial applicator to draw down the waste in the facility lagoons.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of seven thousand dollars (\$ 7,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Respondent failed to report the waste release. He was required to do so pursuant to 35 Ill. Adm. Code 580.105.

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Seven Thousand Dollars (\$ 7,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **B. Stipulated Penalties, Interest and Default**

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$50.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of

collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. The Respondent shall, by the date of entry of the Board's Order accepting this Stipulation, permanently remove or plug all pipes or any other conveyance permeating earthen berms at any facility he owns that has livestock waste lagoons or earthen holding cells.

2. Until such time as Respondent has properly closed all waste lagoons and holding cells existing at any livestock production facility he owns and/or controls, Respondent shall

maintain a freeboard of two (2) feet in each lagoon or cell and shall properly anticipate and implement seasonal management of each such lagoon or holding cell, as well as waste pits beneath livestock buildings. By the date of entry of the Board's Order accepting this Stipulation, Respondent shall install a freeboard marker in each earthen livestock waste storage structure under his ownership and control and record the freeboard level on a weekly basis. This record shall be reported to the Illinois EPA on a monthly basis until all livestock waste has been removed and land applied.

3. By March 31, 2009, Respondent shall develop and submit for Illinois EPA approval a waste management plan for any and all livestock waste lagoons or earthen holding cells under the Respondent's ownership and control. Said plans shall outline appropriate utilization and disposal of the contents of said structures, including land application schedules, a description of each land application area, volumes and amounts to be applied to each land application area, and methods of land application to be utilized.

4. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees 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 conducting inspections and evaluating compliance status. 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.

5. 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.

6. The Respondent shall cease and desist from future violations of the Act and

Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$7,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 contemporaneously 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. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such

through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondent 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 V.G. 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 to this Stipulation.

**G. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

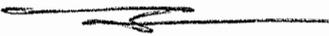
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

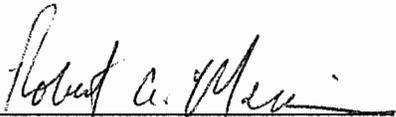
DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:

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

BY:

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

DATE:

1/29/09

DATE:

1/27/09

BRENT SPECKHART

BY:

Brent W. Speckhart

DATE:

December 4, 2008

