

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

GERALD N. KNOBLAUCH, L.L.C.)

an Illinois limited liability company, and)

BENDER LAND IMPROVEMENT, INC.,)

an Illinois corporation,)

Respondent.)

PCB No.
(Enforcement)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

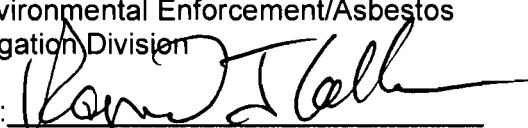
PLEASE TAKE NOTICE that on November 8, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

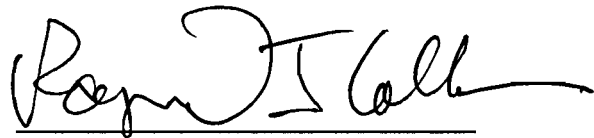
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Raymond J. Callery
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 8, 2010

CERTIFICATE OF SERVICE

I hereby certify that I did on November 8, 2010, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.

A handwritten signature in black ink, appearing to read "Raymond J. Callery", written over a horizontal line.

Raymond J. Callery
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Mr. Clifford Bender
Bender Land Improvement, Inc.
1394 County Road 1800 N.
Low Point, IL 61545

Mr. Russell Knoblauch
Gerald N. Knoblauch, L.L.C.
P.O. Box 709
Metamora, IL 61548

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No.
)	(Enforcement)
GERALD N. KNOBLAUCH, L.L.C.)	
an Illinois limited liability company, and)	
BENDER LAND IMPROVEMENT, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

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) (2008), 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) (2008). In support of this motion, Complainant states as follows:

1. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2008).

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) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

Raymond J. Callery
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 8, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
ex rel. LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	NO.
)	
GERALD N. KNOBLAUCH, L.L.C.)	
an Illinois limited liability company and)	
BENDER LAND IMPROVEMENT, INC.,)	
an Illinois corporation,)	
)	
Respondents.)	

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondents, GERALD N. KNOBLAUCH, L.L.C., an Illinois limited liability company, and BENDER LAND IMPROVEMENT, INC., an Illinois corporation, as follows:

COUNT I
WATER POLLUTION VIOLATIONS

1. This Complaint is brought by the 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 the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2008).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2008), and charged, inter alia, with the duty of

enforcing the Act.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008) after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent, GERALD N. KNOBLAUCH, L.L.C. ("KNOBLAUCH"), is an Illinois limited liability company in good standing with the Illinois Secretary of State. The registered agent for KNOBLAUCH is S & R Registered Agent Services, 416 Main Street, Suite 400, Peoria, Illinois 61602.

5. KNOBLAUCH owns a former swine production facility located along Brick Town Road, in the Southeast Quarter of Section 17, T28N, Cazenovia Township, in Woodford County, Illinois (the "Facility"). Swine production ceased at the Facility in 1994.

6. The Facility included two following buildings and one gestation building each with approximately four-foot deep manure collection pits. The Facility also included a finishing building with an eight-foot deep manure collection pit and a livestock lagoon. A dam had been constructed across a ravine to create the livestock lagoon.

7. An unnamed tributary of Richland Creek runs from the Facility. Richland Creek is tributary to the Illinois River. A drainage ditch ran from the dam to the unnamed tributary.

8. Respondent, BENDER LAND IMPROVEMENT, INC. ("BENDER"), is an Illinois corporation in good standing with the Illinois Secretary of State. The registered agent for BENDER is E. Clifford Bender, 1394 County Road 1800N, Lowpoint, Illinois 61545.

9. KNOBLAUCH hired BENDER to demolish the swine production buildings at the Facility and to convert the old livestock lagoon into a pond.

10. On July 13, 2008, a manure release to Richland Creek was reported to the Illinois

Department of Natural Resources ("Illinois DNR") Conservation Police. The Illinois DNR investigated the manure release and traced it to the swine waste lagoon at the Facility.

11. On July 14, 2008, the Illinois DNR inspected the unnamed tributary and Richland Creek. The manure release resulted in a complete fish kill from the Facility to the Illinois River (approximately 7.8 miles). Insects and mussels were also killed.

12. On July 14, 2008, the Illinois EPA also inspected the Facility. The two farrowing buildings were demolished. The gestation and finishing buildings were in the process of being demolished. The east walls of the concrete manure pits had been removed to allow the pit manure to drain. The finishing building pit was still approximately half full. Manure glaciers were observed east of the confinement buildings along the drainage path to the ravine. BENDER had begun removing sludge and bottom deposits containing old manure from the lagoon and placing these deposits in a shallow excavation at the base of the south (outside) slope of the dam.

13. Rain on the night of July 11, 2008 and the morning of July 12, 2008 had produced a significant runoff from the stockpiled manure. A manure glacier was noted along the drainage ditch from the dam to the unnamed tributary of Richland Creek and thick black manure deposits were noted along the banks of this stream.

14. The water in the unnamed tributary and in Richland Creek near the release was black and very turbid. The water in Richland Creek near the Illinois River was not as dark and turbid due to dilution. Numerous dead fish, insects, and mussels were observed in these streams.

15. On July 15, 2008, the Illinois EPA re-inspected the Facility. BENDER had begun clean-up at the Facility on July 14, 2008. An earthen dam was constructed across the drainage ditch from the lagoon to the unnamed tributary of Richland Creek to prevent further discharges. A

bypass channel was cut and the regular channel dammed at four points. Manure solids were excavated from these pools. The majority of the manure solids were deposited on a wheat field just east of the Facility. BENDER also placed earthen dams across the east end of the gestation and finishing building manure pits to prevent further discharges from those structures into the ravine and lagoon.

16. On July 17, 2008, the Illinois EPA re-inspected the Facility. A significant amount of manure solids had been removed from the stream. The solids along the drainage channel and in the excavation near the lagoon were to be addressed after the solids were removed from the stream.

17. On July 23, 2008, the Illinois EPA re-inspected the Facility. A significant amount of manure solids had been removed from the drainage ditch, excavation, and the unnamed tributary. The manure solids applied to the wheat field were to be disked as soon as they dried sufficiently. The manure in the finishing building pit was to be applied in the fall to the cornfield just east of the Facility. The contents of the livestock lagoon were also to be applied in the fall and the lagoon closed. Water in the unnamed tributary and Richland Creek appeared clear, however, some black solids were noted in a few pools further downstream. Those deposits were to be addressed later in the summer.

18. On September 12, 2008, a meeting among the Illinois EPA, KNOBLAUCH and BENDER was held at the Facility. The majority of the manure deposits had been recovered from the stream and applied to a wheat field, returned to the lagoon, or returned to the finishing building pit. Manure still needed to be removed from the shallow gestation building pit and the eight foot deep finishing building pit before these pits could be demolished. Wastewater and manure solids in the livestock lagoon still needed to be removed and applied to cropland and the bottom cleaned

pursuant to Illinois Department of Agriculture lagoon closure requirements.

19. On November 11, 2008, the Illinois EPA re-inspected the Facility. J & B Applications had been hired to remove and apply wastewater and solids from the abandoned livestock lagoon and clean the slopes/bottom. Removal and application had commenced on November 10, 2008. No runoff or odors were noted at the application fields. BENDER was removing debris from the building pits.

20. On November 19, 2008, the Illinois EPA re-inspected the Facility. J & B Applications continued to remove and apply wastewater and solids from the abandoned livestock lagoon. J & B Applications had disposed of approximately 900,000 gallons from the lagoon. BENDER continued to remove debris from the building pits.

21. On November 21, 2008, the Illinois EPA re-inspected the Facility. J & B Applications continued to remove and apply wastewater and solids from the abandoned livestock lagoon. J & B Applications had disposed of approximately 1,600,000 gallons from the lagoon.

22. By letter dated June 30, 2009, KNOBLAUCH informed the Illinois EPA that the lagoon had been cleaned and converted into a pond. The lagoon bottom had been scrapped and the sides water blasted to remove contaminants. The dam area and slopes had been reshaped and seeded to prevent erosion. The remaining building with a manure pit was to be cleaned out in the fall when cropland was available.

23. Section 12 of the Act, 415 ILCS 5/12 (2008), 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.

* * *

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

* * *

24. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides the following definition:

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

25. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), provides the following definition:

"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.

26. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), provides the following definition:

"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.

27. Section 302.203 of the Pollution Control Board's Water Pollution Regulations, 35

Ill. Adm. Code 302.203, provides, in pertinent part:

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 . . .

* * *

28. Respondents caused, threatened or allowed livestock manure to discharge into an unnamed tributary of Richland Creek, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

29. Respondents caused bottom deposits, odor, color and turbidity of other than natural origin in the receiving waters of the Facility, in violation of 35 Ill. Adm. Code 302.203.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, GERALD N. KNOBLAUCH, L.L.C. and BENDER LAND IMPROVEMENT, INC.:

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

B. Finding the Respondents have violated the Act and the regulations as alleged

herein;

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

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008) impose a civil penalty of not more than the statutory maximum; and

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

COUNT II
WATER POLLUTION HAZARD VIOLATION

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count II.

27. Respondents, by placing excavated manure solids in piles on the outer edge of the old livestock lagoon without installing structures to contain any runoff from the piles, created a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, GERALD N. KNOBLAUCH, L.L.C. and BENDER LAND IMPROVEMENT, INC.:

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

B. Finding the Respondents have violated the Act and the regulations as alleged herein;

- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III
NPDES PERMIT VIOLATION

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count III.

27. Respondents allowed contaminated stormwater to discharge from the manure stockpiles and enter the unnamed tributary to Richland Creek and Richland Creek itself without a NPDES permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, GERALD N. KNOBLAUCH, L.L.C. and BENDER LAND IMPROVEMENT, INC.:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding the Respondents have violated the Act and the regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act

and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008) impose a civil penalty of not more than the statutory maximum; and

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

COUNT IV
FISH KILL

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count IV.

27. Section 42(c) of the Act, 415 ILCS 5/42(c) (2008), provides, in pertinent part:

(c) Any person that violates this Act, or an order or other determination of the Board under this Act and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

28. The Illinois DNR personnel have observed the totality of the fish kill and will provide an assessment and estimate of the value of the fish and aquatic life destroyed by the discharge of contaminated stormwater from the manure stockpiles at the Facility into the waters of the State.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, GERALD N. KNOBLAUCH, L.L.C. and BENDER LAND IMPROVEMENT, INC.:

A. Authorizing a hearing in this matter at which time the Respondents will be

required to answer the allegations herein;

B. Finding the Respondents have violated the Act and the regulations as alleged herein;

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

D. Pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c) (2008), assess to the Respondents the reasonable value of the fish and aquatic life destroyed due to the discharge of contaminated stormwater from the manure stockpiles at the Facility, and order that such amount be paid to the Wildlife and Fish Fund in the State Treasury; and

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

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
Assistant Attorney General
Environmental Bureau

Of Counsel

RAYMOND J. CALLERY
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: November 8, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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v.)	PCB NO.
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an Illinois limited liability company and)	
BENDER LAND IMPROVEMENT, INC.,)	
an Illinois corporation,)	
)	
Respondents.)	

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 GERALD N. KNOBLAUCH, L.L.C., an Illinois limited liability company ("KNOBLAUCH") and BENDER LAND IMPROVEMENT, INC., an Illinois corporation ("BENDER") ("Respondents") ("Parties to the Stipulation"), 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. A Complaint was filed in this matter 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 (2008), against the Respondents.

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 (2008).

3. At all times relevant to the Complaint, KNOBLAUCH was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, KNOBLAUCH owned a former swine production facility located along Brick Town Road, Cazenovia Township, Woodford County, Illinois ("Facility").

5. At all times relevant to the Complaint, BENDER was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

6. KNOBLAUCH hired BENDER to demolish the swine production buildings at the Facility and to convert the old livestock lagoon into a pond.

7. On July 13, 2008, a manure release to Richland Creek was reported to the Illinois Department of Natural Resources ("Illinois DNR") Conservation Police. Illinois DNR investigated the manure release and traced it to the swine waste lagoon at the Facility.

8. On July 14, 2008, the Illinois DNR inspected an unnamed tributary adjacent to the Facility and Richland Creek. The manure release resulted in a complete fish kill from the Facility

to the Illinois River (approximately 7.8 miles). Insects and mussels were also killed.

9. On July 14, 15, 17, and 23, 2008, Illinois EPA also inspected the Facility.

10. Approximately 156,870 fish were killed as a result of the manure release.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

- | | |
|------------|--|
| Count I: | Water Pollution
415 ILCS 5/12(a)
35 Ill. Adm. Code 302.203 |
| Count II: | Water Pollution Hazard
415 ILCS 5/12(d) |
| Count III: | NPDES Permit
415 ILCS 5/12(f) |
| Count IV: | Fish Kill
415 ILCS 5/42(c) |

C. Admission of Violations

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

1. BENDER constructed earthen dams at the Facility to prevent further discharges.

Manure solids were then excavated and applied to an adjacent field.

2. J & B Applications was subsequently retained to remove and apply the wastewater and solids from the abandoned livestock lagoon and to clean the slopes/bottom.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not rise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their 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 Respondents 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), 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 the Stipulation state the following:

1. The injury to or interference with the health, general welfare and physical property

of the People was the contamination of Richland Creek and the resulting negative impact on the habitat of animals and aquatic life. The manure release killed approximately 156,870 fish and impacted the creek for approximately 7.8 miles. The degree of injury would be significant.

2. The Facility is no longer being used for a swine production operation.
3. The Facility is no longer being used for a swine production operation.
4. The Parties to the Stipulation agree that complying with the Act and Board regulations is technically practicable and economically reasonable; and
5. Respondents have 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) (2008), 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 the Stipulation state as follows:

1. The violations were observed during Illinois EPA inspections on July 14, 15, 17, and 23, 2008. While Respondents acted with great diligence after the incident to resolve the situation as quickly as possible, the gravity of the violations is large. The manure release resulted in a fish kill of 156,870 and impacted Richland Creek for approximately 7.8 miles.
2. Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified them of their noncompliance.
3. The economic benefit of noncompliance gained by Respondents is not considered significant.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand Dollars (\$5,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. Respondents are additionally liable for the fish value and expenses in the amount of \$20,699.68.
5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents 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 Respondents' 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. Fish Kill Liability

Respondents shall make a further payment of Twenty Thousand Six Hundred Ninety-Nine Dollars and Sixty-Eight Cents (\$20,699.68) to the State of Illinois Wildlife and Fish Fund for recovery of fish killed and investigation expenses within thirty (30) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, for deposit in the State of Illinois Wildlife and Fish Fund, and shall be forwarded as specified in Section V, paragraph C above.

E. Future Compliance

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

2. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

F. Release from Liability

In consideration of the Respondents' payment of the \$5,000.00 penalty and further payment of \$20,699.68 to the State of Illinois Wildlife and Fish Fund, their commitment to cease and desist as contained in Section V, paragraph E above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 in this matter. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

G. Enforcement

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.

H. Execution of Stipulation

The undersigned representatives for the Parties to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS,

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: 
JOHN Y. KIM
Chief Legal Counsel

DATE: 11/08/10

DATE: 11/4/10

GERALD N. KNOBLAUCH, L.L.C.

BENDER LAND IMPROVEMENT, INC.

BY: _____

BY: 

Name: _____

Name: Cliff Bender

Title: _____

Title: President

DATE: _____

DATE: 10-21-10

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

PEOPLE OF THE STATE OF ILLINOIS,

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: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

GERALD N. KNOBLAUCH, L.L.C.

BENDER LAND IMPROVEMENT, INC.

BY: Gerald N. Knoblauch LLC

BY: _____

Name: By Barbara Knoblauch

Name: _____

Title: manager

Title: _____

DATE: 10/19/10

DATE: _____