

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 PROFESSIONAL SWINE MANAGEMENT,)
 LLC, an Illinois limited liability corporation,)
 HILLTOP VIEW, LLC, an Illinois limited)
 liability corporation, WILDCAT FARMS, LLC,)
 an Illinois limited liability corporation,)
 HIGH-POWER PORK, LLC, an Illinois limited)
 liability corporation, EAGLE POINT, LLC, an)
 Illinois limited liability corporation, LONE)
 HOLLOW, LLC, an Illinois limited liability)
 corporation, TIMBERLINE, LLC, an Illinois)
 limited liability corporation, PRAIRIE STATE)
 GILTS, LTD, an Illinois corporation, NORTH)
 FORK PORK, LLC, an Illinois limited liability)
 corporation, LITTLE TIMBER, LLC, an Illinois)
 limited liability corporation, TWIN VALLEY)
 PUMPING, INC., an Illinois corporation,)
)
 Respondents.)

**PCB NO. 10-84
(Enforcement)**

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on January 27, 2011, I electronically filed 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 NORTH FORK PORK, 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

500 S. Second St.
Springfield, IL 62706
217/782-9031

BY: 
Jane E. McBride
Sr. Assistant Attorney General
Environmental Bureau

CERTIFICATE OF SERVICE

I hereby certify that I did on January 27, 2011, 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, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT WITH NORTH FORK PORK, LLC, upon the persons listed on the Service List.


JANE McBRIDE
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Mr. Edward W. Dwyer
Ms. Jennifer M. Martin
Hodge Dwyer Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705

Claire A. Manning
Brown, Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459

Fred C. Prillaman
Joel A. Benoit
Mohan, Alewelt, Prillaman & Adami
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE MANAGEMENT,)	
LLC, an Illinois limited liability corporation,)	
HILLTOP VIEW, LLC, an Illinois limited)	
liability corporation, WILDCAT FARMS, LLC,)	
an Illinois limited liability corporation,)	
HIGH-POWER PORK, LLC, an Illinois limited)	
liability corporation, EAGLE POINT, LLC, an)	
Illinois limited liability corporation, LONE)	
HOLLOW, LLC, an Illinois limited liability)	
corporation, TIMBERLINE, LLC, an Illinois)	
limited liability corporation, PRAIRIE STATE)	
GILTS, LTD, an Illinois corporation, NORTH)	
FORK PORK, LLC, an Illinois limited liability)	
corporation, LITTLE TIMBER, LLC, an Illinois)	
limited liability corporation, TWIN VALLEY)	
PUMPING, INC., an Illinois corporation,)	
)	
Respondents.)	

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 was filed on April 15, 2010, with the Illinois Pollution Control Board ("Board") in this matter.
2. The Complainant and Respondent North Fork Pork, LLC 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).

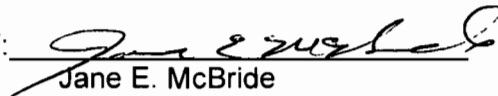
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:



Jane E. McBride
Environmental Bureau
Sr. Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 27, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE)	
MANAGEMENT, LLC, an Illinois)	
limited liability corporation, and)	
HILLTOP VIEW, LLC, an Illinois)	
limited liability corporation, WILDCAT)	
FARMS, LLC, an Illinois limited)	
liability corporation, HIGH-POWER)	
PORK, LLC, an Illinois limited liability)	
corporation, EAGLE POINT FARMS, LLC, an)	
Illinois limited liability corporation,)	
LONE HOLLOW, LLC, an Illinois limited)	
liability corporation, TIMBERLINE, LLC,)	
an Illinois limited liability corporation,)	
PRAIRIE STATE GILTS, LTD, an Illinois)	
corporation, NORTH FORK PORK, LLC, an)	
Illinois limited liability corporation, LITTLE)	
TIMBER, LLC, and Illinois limited liability)	
corporation,)	
Respondents.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT WITH NORTH FORK PORK, LLC

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and North Fork Pork, LLC ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This Stipulation is with regard to and concerns the allegations against Respondent North Fork Pork, LLC only, contained in Count VIII of the Amended Complaint. 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. (2006), and

the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On July 13, 2010, an Amended 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 (2006), 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 (2006).

3. The Respondent NORTH FORK PORK, LLC ("Respondent") is and was at all times relevant to this Complaint an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to the Complaint, Respondent owned and had ultimate responsibility for the operation of a sow farrow-to-wean total confinement swine facility located in St. Albans Township (Section 8), just south of the intersection of 450N and 1400E, approximately 3 miles west of West Point, Hancock County, IL ("facility" or "site"). There are a total of 8200 hogs greater than 55 pounds maintained at this facility, and 7700 under 55 pounds.

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:

1. On December 3, 2003, an Illinois EPA inspector observed a discharge from the perimeter tile serving the facility's south gestation barn. The tile discharged to a field that drains to a field tile that enters a stream adjacent to the facility property. The discharge had a strong swine waste odor and black bottom deposits.

2. On December 19, 2007, an Illinois EPA inspector observed a discharge of diesel product draining into a tile inlet. The tile went beneath the farrowing building and discharged into a pond on the north side of the building. On December 19, 2007, an Illinois EPA inspector observed leachate runoff coming from the facility's uncovered mortality compost structure draining to a small pond on the facility property.

3. By causing, allowing or threatening the discharge of contaminants to waters of the State at the North Fork site so as to cause or tend to cause water pollution in Illinois, Respondents North Fork and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

4. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the North Fork site, Respondents North Fork and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

5. By causing or allowing the discharge of livestock wastewater to waters of the State and navigable waters of the United States on December 3, 2007 without an NPDES permit, Respondents North Fork and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. As of October 2008, Pike Pig Systems Inc. took over the management services of Respondent North Fork's facility.

2. Respondent North Fork installed a sump at the south end of the compost

structure to collect from and return leachate runoff to the facility's mortality compost structure. An earthen berm was placed around the sump. A terrace was placed above the compost structure along with a riser pipe to keep surface water from running near the compost structure. The Respondent North Fork has acquired additional copies of the University of Missouri guide to compost management and has made sure all employees involved with management of deads and the compost structure are trained on proper procedures.

3. Respondent North Fork has completed construction of a cover over its mortality compost structure.
4. Respondent North Fork has applied for NPDES permit coverage for the facility.
5. Respondent North Fork installed a lift station to direct the south gestation building perimeter tile discharge back to the facility's waste storage structures.
6. Respondent North Fork installed new pads in the cooling cells to prevent the cells from leaking. Any cooling cell pads that were faulty have been replaced, and the Respondent is maintaining a supply of pads on site. Respondent North Fork has inspected the two above-ground diesel tanks on site and determined neither is leaking.
7. Respondent North Fork excavated east of the facility's grow/finish building to locate the perimeter tile outlet for that building. Respondent has commenced monitoring this tile.

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 environment was threatened by the discharge and release of livestock waste, mortality compost leachate runoff as well as diesel product runoff from the facility.
2. There is social and economic benefit to the facility when it operates on compliance with environmental regulations.
3. Operation of the facility was suitable for the area in which it occurred.
4. It is technically practicable and economically reasonable for this facility to operate without discharges of livestock waste, mortality compost leachate and diesel production to the environment.
5. Upon adherence to the terms and conditions of this settlement agreement,

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), 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. The Respondent had an unpermitted discharge from one of the facility's perimeter tiles in December 2003, and then subsequently had discharges from its mortality compost structure and a diesel product in December 2007. The facility installed a lift station to pump the tile discharge back to the building waste storage pits, which was in place at the time of a May 2004 Illinois EPA inspection. The facility had not adequately modified its mortality

compost structure to prevent leachate runoff until this action was brought with the filing of the original complaint on April 29, 2010. At some time after December 2008, Respondent modified and repaired the facility's cooling cells to prevent the accumulation and discharge of diesel product.

2. Respondent was diligent in installing a lift station to address the December 2003 perimeter tile discharge. However, the Respondent did not adequately modify the mortality compost structure until three years after the December 2007 runoff observation.

3. The new management entity that took control of the subject facility in October 2008 immediately initiated activity to correct all outstanding violations. Since the time that this action was initiated, the new management entity and Respondent North Fork Pork, LLC have taken immediate action to implement all additional compliance recommendations communicated by the Illinois EPA and Illinois Attorney General's Office in the course of settlement negotiations.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Four Thousand Five Hundred Dollars (\$4,500.00) 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. Self-disclosure was not an 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 Respondent shall pay a civil penalty in the sum of Four Thousand Five Hundred Dollars (\$4,500.00) 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 \$25.00 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. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

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. Monitoring results for the west tile servicing the breeding building indicate levels of nitrate of 92.4 mg/l on July 28, 2010, and 62.9 mg/l on September 8, 2010. Respondent agrees to install a lift station to pump the tile discharge back into the building waste storage pits. The lift station shall be installed and operating by April 15, 2011.

2. Respondent shall submit quarterly monitoring results for the east perimeter tile serving the grow/finish building to the Illinois IEPA and Illinois Attorney General's Office at the addresses stated in Section V.G of this Stipulation.

3. Respondent agrees that if nitrate levels exceeding 20 mg/l occur over two consecutive quarterly monitoring periods for the east perimeter tile serving the grow/finish building, Respondent shall install a lift station to pump the east perimeter tile discharge back to a waste storage structure. This lift station shall be installed within 60 days of receipt of the second consecutive sample result showing nitrate exceeding 20 mg/l.

4. On December 28, 2010, Respondent's NPDES permit was posted for public notice. Once the permit is issued, Respondent shall comply with all permit conditions.

5. 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, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

6. 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.

7. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Amended Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$ 4,500.00 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 on July 13, 2010. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;

- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. Correspondence, Reports and Other Documents

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

As to the Complainant

Jane E. McBride
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

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

Eric Ackerman
Bureau of Water
Peoria Regional Office
5415 North University
Peoria, IL 61614

As to Respondent

Claire A. Manning
Brown, Hay & Stephens, LLP
205 S. Fifth St - Suite 700
P O Box 2459
Springfield, IL 62705-2459

G. 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.

H. 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,

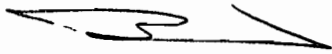
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

DATE:

1/27/11

BY:



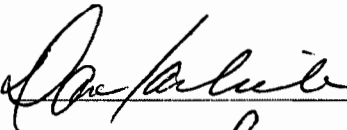
John J. Kim
Chief Legal Counsel

DATE:

1/14/11

NORTH FORK PORK, LLC

BY:



Name: Dan Carliste

Title: Manager

DATE:

1/24/11