

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
vs.)	PCB No.
)	(Enforcement)
WALK STOCK FARM, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

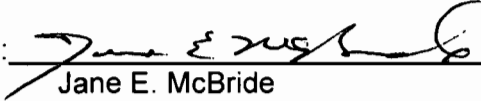
PLEASE TAKE NOTICE that on January 23, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINT, MOTION FOR RELIEF FROM HEARING 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

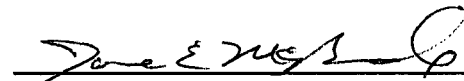
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

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

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 23, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on January 23, 2012, 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.


Jane E. McBride
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Walk Stock Farm, Inc.
c/o Claire A. Manning
Brown Hay & Stephens, LLP
205 S. Fifth St., Suite 700
P.O. Box 2459
Springfield, IL 62705-2459

4. Respondent Walk Stock owns and operates a swine farrowing facility located at Cumberland County Road 700 North, 1 mile west of 500 East Road, 8 1/4 miles west of Toledo, in rural Neoga, Illinois (the "facility" or "site"). The following inventory of swine are confined at the facility: 2,600 adult swine weighing 55 pounds or more and 3,000 piglets less than 21 days old. The facility is in the watershed of Muddy Creek. Muddy Creek is a perennial creek that flows into the Embarras River. The Embarras River flows into the Wabash River and is a water of the United States.

5. 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.

6. Section 3.545 of the Act, 415 ILCS 5/3.545, 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 waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

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

8. Section 12 of the Act, 415 ILCS 5/12, provides the following prohibitions:

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;

9. On September 24, 2010, the Illinois EPA conducted an inspection in response to a report by the Illinois Conservation Police that there was an ongoing release at the facility. At the time of the inspection, the Illinois EPA inspector observed brown liquid in the otherwise dry creek bed of an unnamed tributary of Muddy Creek. The liquid smelled of manure. On the east side of the creek bed, there was dead grass and pooled manure. Just west of the facility swine barn there was a long brown stain leading to the liquid on the creek bank. One-third mile south of the facility, the creek joins Muddy Creek.

10. Respondent Walk Stock, in the person of Roger Walk, indicated the release was the result of an employee allowing pit plugs to remain open in a farrowing building, causing manure to drain to the gestation barn pit. At the time, the gestation barn pit was full and scheduled to be pumped for land application. The continual addition of waste from the farrowing building caused the gestation building pit to overflow.

11. On January 20, 2011, the Illinois EPA issued Violation Notice W-2011-30082 to Respondent Walk Stock, which alleged that Walk Stock failed to manage livestock waste in accordance with applicable law. Walk Stock submitted a Compliance Commitment Agreement ("CCA") by letter dated March 2, 2011, in which Mr. Walk indicated that in response to the release, the gestation building pit was pumped down several feet and the facility committed to land apply manure later in the spring each year so as to shorten the time between pumping.

12. On March 15, 2011, the Illinois EPA sent Respondent Walk Stock a letter indicating the agency rejected Respondent's CCA.

13. On April 14, 2011, Respondent Walk Stock submitted a follow-up CCA. The amended CCA committed to (1) assign an employee to measure pit freeboard bi-weekly, (2) pump the gestation pit more often, if necessary, and (3) plant available acreage later in the spring in order to save space for land application of manure, if necessary.

14. On May 10, 2011, the Illinois EPA sent Respondent Walk Stock a Notice of Intent to Pursue Legal Action ("NIPLA").

15. On June 7, 2011, a meeting was held pursuant to the NIPLA.

16. By causing and allowing the discharge of swine manure, a contaminant, from a swine production manure storage pit into a creek bed so as to create or likely create a nuisance, the Respondent has caused or tended to cause water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Walk Stock Farm, Inc.

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

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

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

D. Assessing against Respondent for every non-NPDES permit violation 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 such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the

Respondents for every NPDES permit violation 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 II

WATER POLLUTION HAZARD

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

2-15. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 15 of Count I as paragraphs 2 through 15 of this Count II.

16. Section 12 of the Act, 415 ILCS 5/12, provides the following prohibitions:

No person shall:

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

17. By causing or allowing manure to remain pooled in a dry creek bed and on the bank of the dry creek bed, the Respondent has allowed contamination to exist as a water pollution hazard on the land and in a creek bed and thereby Respondent Walk Stock has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Walk Stock Farm Inc.

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

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

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

D. Assessing against Respondent for every non-NPDES permit violation 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 such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondents for every NPDES permit violation 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

NPDES VIOLATION

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

2-15. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 15 of Count I as paragraphs 2 through 15 of this Count III.

16. Section 12 of the Act, 415 ILCS 5/12, provides the following prohibitions:

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.

17. Section 309.102(a) of the Board's Water Pollution Regulations, 35. Ill. Adm. Code 309.102(a), provides:

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.

18. Section 502.101 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.101, provides:

No person specified in Sections 502.102, 502.103 or 502.104 or required to have a permit under the conditions of Section 502.106 shall cause or allow the operation of any new livestock management facility or livestock waste-handling facility, or cause or allow the modification of any livestock management facility or livestock waste-handling facility, or cause or allow the operation of any existing livestock management facility or livestock waste-handling facility without a National Pollutant Discharge elimination System ("NPDES") permit. Facility expansions, production increases, and process modifications which significantly increase the amount of livestock waste over the level authorized by the NPDES permit must be reported by submission of a new NPDES application.

19. Section 502.104 of the Board's Agriculture Related Pollution Regulations, 35 Ill.

Adm. Code 502.104, provides:

- a) An NPDES permit is required if more than the following numbers and types of animals are confined and either condition (b) or (c) below is met:

<u>Number of Animals</u>	<u>Kind of Animals</u>
*** 750__	*** Swine weighing over 55 pounds
*** 300_	*** Animal Units

- b) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

20. Section 502.106 of the Board's Agriculture Related Pollution Regulations, 35 Ill.

Adm. Code 502.106, provides:

- a) Notwithstanding any other provision of this Part, the Agency may require any animal feeding operation not falling within Sections 502.201, 502.103 or 502.104 to obtain a permit. In making such designation the Agency shall consider the following facts:
- 1) The size of the animal feeding operation and the amount of wastes reaching navigable waters;
 - 2) The location of the animal feeding operation relatives to navigable waters;
 - 3) The means of conveyance of animal wastes and process wastewaters into navigable waters;

- 4) The slope, vegetation, rainfall and other factors relative to the likelihood or frequency of discharge of animal wastes and process wastewaters into navigable waters; and
- 5) Other such factors bearing on the significance of the pollution problem sought to be regulated.

21. Section 122.23, 40 CFR 122.23, provides, in pertinent part, as follows

Concentrated animal feeding operations

(A) *Scope*. Concentrated animal feeding operations ("CAFOs"), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

22. Section 122.23 (b)(1), 40 CFR 122.23(b)(1), provides, in pertinent part:

(b) Definitions applicable to this section:

- (1) *Animal feeding operation* ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
 - (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

23. Section 122.23 (b)(8), 40 CFR 122.23(b)(1), provides, in pertinent part:

- (8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.

24. Section 122.23(d) (1), 40 CFR 122.23(d)(1), provides, in pertinent part:

(d) *Who must seek coverage under an NPDES permit?*

(1) *Permit requirement.* The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.

25. A discharge from a building pit is a point source discharge.

26. On September 24, 2010, Respondent Walk Stock had neither applied for nor had it obtained NPDES permit coverage for point source discharges for the facility.

27. The manure release from the facility gestation pit observed on September 24, 2010, discharged into the bed of an unnamed tributary to Muddy Creek. Muddy Creek is a perennial creek tributary to the Embarras River. The Embarras River flows into the Wabash River. The Embarras River is a water of the United States.

28. By causing or allowing the discharge of swine manure from a building pit without NPDES permit coverage, Respondent Walk Stock has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Walk Stock Inc.

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

- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations, such order to include the requirement to immediately apply to obtain NPDES permit coverage for the subject facility; and;
- D. Assessing against Respondent for every non-NPDES permit violation 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 such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondent for every NPDES permit violation 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 IV

OFFENSIVE DISCHARGE

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

2-15. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 15 of Count I as paragraphs 2 through 15 of this Count IV.

16. A discharge from a building manure waste storage pit is a point source discharge.

17. Section 301.275 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 301.275, provides:

Effluent

"Effluent" means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater or sludges, but does not otherwise include nonpoint source discharges such as runoff from land or any livestock management facility or livestock waste handling facility subject to regulation under Subtitle E.

18. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides:

Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

19. By causing or allowing a point source discharge exhibiting unnatural color and manure odor into a creek bed, Respondent Walk Stock has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Walk Stock Farm, Inc.

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

D. Assessing against Respondent for every non-NPDES permit violation 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 such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondent for every NPDES permit violation 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 V

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).

2-15. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 15 of Count I as paragraphs 2 through 15 of this Count IV.

16. Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3), provides:

Section 501.404 Handling and Storage of Livestock Waste

c) Livestock Waste-Holding Facilities

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.

17. Section 501.404(c)(4) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(4), provides:

Section 501.404 Handling and Storage of Livestock Waste

c) Livestock Waste-Holding Facilities

- 4) 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. . . .

18. By failing to have adequate storage capacity in the facility building pits on September 24, 2010 so as to avoid a discharge, the Respondent Walk Stock has violated Section 12(a) of the Act, 415 ILCS 5/12(a), 35 Ill. Adm. Code 501.404(c)(3), and 35 Ill. Adm. Code 501.404(c)(4).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent Walk Stock Farm, Inc.

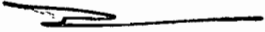
- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated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

D. Assessing against Respondent for every non-NPDES permit violation 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 such violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a); and assessing against the Respondent for every NPDES permit violation 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).

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, Bureau Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

JANE E. MCBRIDE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 1/23/11

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No.
)	(Enforcement)
WALK STOCK FARM, 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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

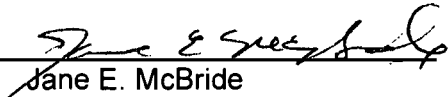
1. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and 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) (2010).

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) (2010).

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 23, 2012

pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. At all times relevant to the Complaint, Respondent Walk Stock was and is a corporation that is authorized to transact business in the State of Illinois. Respondent Walk Stock owns and operates a swine farrowing facility located at Cumberland County Road 700 North, 1 mile west of 500 East Road, 8 1/4 miles west of Toledo, in rural Neoga, Cumberland County, Illinois (the "facility" or "site"). The facility is in the watershed of Muddy Creek which is a perennial creek that flows into the Embarras River which flows into the Wabash River. The Embarras River is a water of the United States.

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 causing and allowing the discharge of swine manure, a contaminant, from a swine production manure storage pit into a creek bed so as to create or likely create a nuisance, the Respondent has caused or tended to cause water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a).

Count II

2. By causing or allowing manure to remain pooled in a dry creek bed and on the bank of the dry creek bed, the Respondent has allowed contamination to exist as a water pollution hazard on the land and in a creek bed and thereby Respondent Walk Stock has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

Count III

3. By causing or allowing the discharge of swine manure from a building pit without NPDES permit coverage, Respondent Walk Stock has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

Count IV

4. By causing or allowing a point source discharge exhibiting unnatural color and manure odor into a creek bed, Respondent Walk Stock has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

Count V

5. By failing to have adequate storage capacity in the facility building pits on September 24, 2010 so as to avoid a discharge, the Respondent Walk Stock has violated Section 12(a) of the Act, 415 ILCS 5/12(a), 35 Ill. Adm. Code 501.404(c)(3), and 35 Ill. Adm. Code 501.404(c)(4).

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 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

Respondent requires an employee to conduct a facility perimeter inspection daily. The available freeboard in the gestation pit is measured and recorded bi-weekly. The facility has installed pit agitators so when the pit is pumped it can be pumped to a lower level, thereby providing for greater storage capacity before it is pumped again. The facility's comprehensive nutrient management plan has been revised to include the pit agitation resulting in an additional pumped volume. The facility has obtained EQIP funding to construct a new composting structure. This construction will be completed in the summer of 2012.

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 discharge of manure into a creek bed threatened harm to the environment.

2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Maintaining sufficient capacity in facility manure waste storage structures so as to avoid an overflow of waste is technically practicable and economically reasonable.
5. As set forth in Section I.D, Respondent has undertaken the listed activities to bring the facility into compliance.

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 unknown how long the gestation pit was discharging. The complainant indicated the discharge had been apparent for a week. Respondent Walk Stock indicates it stopped the discharge in two days, when it pumped down the gestation building reception pit. The Respondent did not clean up the discharge, but rather allowed the manure to disseminate into the environment.

2. Respondent now requires an employee to conduct a facility perimeter inspection daily. The available freeboard in the gestation pit is measured and recorded bi-weekly. The facility has installed pit agitators so when the pit is pumped it can be pumped to a lower level, thereby providing for greater storage capacity before it is pumped again. The facility's comprehensive nutrient management plan has been revised to include the pit agitation resulting in an additional pumped volume.

3. There is no economic benefit. Respondent asserts that the manure release was a one-time incident that resulted from employee error and not due to any defective equipment that needed to be purchased or replaced. Subsequent to the incident, Walk Stock implemented operation changes to prevent reoccurrence of a manure release.

4. Complainant and the Illinois EPA have 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.

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

6. Respondent was made aware of the release by the Illinois EPA.

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 Five Thousand Dollars (\$5,000.00) 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 \$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. 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 numbers 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. Respondent shall implement and abide by its revised CNMP.
2. By August 31, 2012, Respondent shall complete construction of a new compost structure for the subject facility and cause it to become operational.
3. 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.
4. 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.

5. 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 \$5,000.00 penalty, its commitment to cease and desist as contained in Section III.D.5 above, and 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

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.

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

BY: 
JOHN J. KIM
Interim Director

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

DATE: 1/21/12

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 1/23/12

WALK STOCK FARM, INC.

BY: Roger Walk
Name: Roger Walk
Title: Pres

DATE: 1/18/12