

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO. 10-84
	)	Enforcement
	)	
PROFESSIONAL SWINE MANAGEMENT,	)	
LLC, HILLTOP VIEW, LLC, WILDCAT	)	
FARMS, LLC , HIGH POWER PORK, LLC,	)	
LONE HOLLOW, LLC, EAGLE POINT, LLC,	)	
TIMBERLINE, LLC,	)	
PRAIRIE STATE GILTS, Ltd, AND	)	
LITTLE TIMBER, LLC,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

TO: Mr. Don Brown  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
**(VIA ELECTRONIC MAIL)**

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9276  
**(VIA U.S. MAIL)**

**(PLEASE SEE ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, ***RESPONDENTS' JOINT POST-HEARING RESPONSE***, a copy of which is herewith served upon you.

Respectfully submitted,

BROWN, HAY & STEPHENS, LLP

Dated: January 10, 2017

By: \_\_\_\_\_/s/ Claire A. Manning\_\_\_\_\_

**BROWN, HAY & STEPHENS, LLP**  
Claire A. Manning  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon:

Ms. Jane McBride  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

Edward W. Dwyer  
Joshua J. Houser  
HeplerBroom, LLC  
4340 Acer Grove Drive  
Springfield, IL 62711

Dr. Joseph F. Connor  
Professional Swine Management  
34 West Main Street  
PO Box 220  
Carthage, IL 62321

Matt Bradshaw  
Twin Valley Pumping, Inc.  
22701 U.S. Highway 54  
Griggsville, IL 62340

James A. Hansen  
Schmiedeskamp, Robertson, Neu & Mitchell, LLP  
525 Jersey Street  
P.O. Box 1069  
Quincy, IL 62306

by enclosing the same in an envelope addressed to such party at the above address, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mailbox in Springfield, Illinois, at 5:00 p.m. on this 10<sup>th</sup> day of January, 2017.

/s/ Claire A. Manning

Claire A. Manning

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**RESPONDENTS' JOINT POST-HEARING RESPONSE**

On December 13, 2016 the Illinois Pollution Control Board (“Board”) held a public hearing in the above-referenced proceeding, in accordance with Section 31 of the Illinois Environmental Protection Act (“Act”) and Section 103.304 of the Board’s procedural rules, 35 Ill. Adm. Code 103.304. The hearing was for the purpose of accepting public comments on the Stipulations and Proposals for Settlement (“Stipulations”) executed by the parties in this matter: The State of Illinois, Office of Attorney General and Illinois Environmental Protection Agency (“IEPA”) (collectively “the State”) and the various respondents: Professional Swine Management, LLC (“PSM”), Hancock County; Hilltop View, LLC (“Hilltop”), Schuyler County; Wildcat Farms, LLC (“Wildcat”), Hancock County; High Power Pork, LLC (“High Power”), Adams County; Eagle Point, LLC (“Eagle Point”), Fulton County; Lone Hollow, LLC (“Lone Hollow”), Hancock County; Timberline, LLC (“Timberline”), Schuyler County; Prairie State Gilts, Ltd (“PSG”). Schuyler County; and Little Timber, LLC (“Little Timber”), Hancock County.

The violations alleged in the State's Complaint involve incidents that occurred between the summer of 2004 and the spring of 2009 at eight farms, located in three different Illinois counties. At hearing, the State entered eight separate Stipulations into the record. The Stipulations represent agreements reached for each of the separately charged farms. The executed Stipulations follow the format of standard State-negotiated settlement agreements under the Act and contain provisions related to compliance and civil penalties. Accordingly, each of the Stipulations represent current compliance with the Act and regulations on the part of each of the farms. In settlement of the alleged violations, the farms agreed to pay civil penalties ranging from \$10,055 to \$18,000 per farm, for a combined total penalty in this matter of \$116,500.

Six members of the public provided public comment at the hearing; such comment involved the following general subjects: deterrence effect of civil penalties, suitability of the location of the farms, and socioeconomic value of the farms. Some of the comments were raised as "rhetorical questions".

As the Board knows, Section 33(c) of the Act requires an evaluation of specific statutory factors when addressing alleged violations of the Act. *See* 415 ILCS 5/33(c). Similar factors are set forth in Section 42(h) of the Act. *See* 415 ILCS 5/42(h). An analysis of the Section 33(c) factors in the context of this case is set forth in each of the Stipulations. These factors are directly relevant to the parties' agreement concerning the appropriateness of the settlement and civil penalties to be paid in relation to each of the specific charges. Section III of each of the Stipulations addresses these factors and, consequently, most of the items raised by the commenters, including suitability of location, socioeconomic benefit of the facilities, and subsequent compliance.

The Stipulations in this case were fairly negotiated, over a lengthy period of time, and represent the parties' good faith mutual judgment of compliance with the Act, both in terms of settlement of the charges as envisioned by the legislature in order to deter future violations and in terms of achieving compliance on an ongoing basis. Further, the Stipulations were not executed until the State conducted site visits at each of the farms for the purpose of ascertaining that each was in compliance with all applicable rules.

As Illinois Courts have recognized in regards to the Act, the law generally favors the encouragement of settlements. *See Chemetco, Inc. v. Illinois Pollution Control Bd.*, 140 Ill. App. 3d 283, 288–89, 488 N.E.2d 639, 643 (1986), citing *Airline Stewards & Stewardesses Assn v. American Airlines* (7th Cir.1978), 573 F.2d 960, 963, *cert. denied* \*289 439 U.S. 876, 99 S.Ct. 214, 58 L.Ed.2d 190). This is so because the “primary goal of the Act is the enhancement of the environment, and settlements that do not contain a finding of violation but do impose a penalty and a compliance plan may more expeditiously facilitate this enhancement.” *Id.*

Similarly, the Board has recognized that its role in approving settlement agreements is to determine whether the settlement agreement is a reasonable resolution of the matter and adequately protects the environmental concerns of the State. *See People v. Archer Daniels Midland Corp.*, 140 Ill. App. 3d 823, 824, 489 N.E.2d 887, 888 (1986). In reviewing the Board's actions related to settlement agreements, the courts have recognized that:

[T]he public interest is better served by a procedure which encourages respondents to enter into settlement discussions and negotiations by which respondents may avoid the stigma of a finding of violation, and assist the State in effectuating the goals of the Act in those cases where the proof is tenuous or difficult to establish. By allowing the State and respondents to reason together the result will conserve resources which would otherwise be expended in litigation.

*People v. Archer Daniels Midland Corp.*, 140 Ill. App. 3d 823, 825, 489 N.E.2d 887, 888–89 (1986)

Here, the purposes of the Act have been achieved – through the respective farm’s deliberate and extensive negotiations with the State to arrive at a result which the parties to this proceeding believe best serves the public interest. Further, these negotiations occurred during a time when the Board was promulgating new and revised state regulations based upon federal regulations under the Clean Water Act that are relevant to livestock farms nationwide. *See In the Matter of: Concentrated Animal Feeding Operations (CAFOS): Proposed Amendments to 35 ILL. ADM. CODE PARTS 501, 502, AND 504, 2014 WL 3924271, R12-23 (August 7, 2014).* These Board regulations represent Illinois’ adherence to the federal CAFO program as to livestock operations in Illinois; these Stipulations represent the parties’ concurrence that the Respondent farms are in compliance with those regulations.

We ask that the Board approve these Stipulations and Proposals for Settlement at its next Board meeting, and we thank the Board and the State for its commitment to public service in this proceeding.

Respectfully submitted,

HILLTOP VIEW, LLC, EAGLE POINT FARMS, LLC, TIMBERLINE, LLC, LITTLE TIMBER, LLC and WILDCAT FARMS, LLC

PRAIRIE STATE GILTS, LLC, LONE HOLLOW, LLC, and HIGH POWER PORK, LLC

                                /s/ Edward Dwyer  
**HEPLERBROOM, LLC**  
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                                /s/Claire A. Manning  
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PROFESSIONAL SWINE  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon:

Mr. Don Brown  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
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Ms. Carol Webb  
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James A. Hansen  
Schmiedeskamp, Robertson, Neu &  
Mitchell, LLP  
525 Jersey Street  
P.O. Box 1069  
Quincy, IL 62306

by enclosing the same in an envelope addressed to such party at the above address, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mailbox in Springfield, Illinois, at 5:00 p.m. on this 10<sup>th</sup> day of January, 2017.

/s/ Claire A. Manning